



thirty (30) calendar days.

c. It is specifically understood and agreed that in the event no funds or insufficient funds are appropriated by Fort Bend County under this Agreement, Fort Bend County shall notify all necessary parties that this Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were made without penalty, liability or expense to Fort Bend County. County is a body corporate and politic under the laws of the State of Texas and claims exemption from sales and use taxes. A copy of a tax-exempt certificate will be furnished upon request. Interest resulting from late payments by County shall be governed by Chapter 2251, TEXAS GOVERNMENT CODE.

4. **Limit of Appropriation.** PS Lightwave clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of Nine Hundred Nineteen Thousand, Six Hundred Eighty-One and 20/100 dollars (\$919,681.20), specifically allocated to fully discharge any and all liabilities County may incur. PS Lightwave does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that PS Lightwave may become entitled to and the total maximum sum that County may become liable to pay to PS Lightwave shall not under any conditions, circumstances, or interpretations thereof exceed Nine Hundred Nineteen Thousand, Six Hundred Eighty-One and 20/100 dollars (\$919,681.20). In no event will the amount paid by the County for all services under this Agreement exceed this Limit of Appropriation without an amendment executed by the parties.
5. **Public Information Act.** PS Lightwave expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by PS Lightwave shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement are not proprietary or confidential information.
6. **Indemnity.** The parties agree that under the Constitution and laws of the State of Texas, County cannot enter into an agreement whereby County agrees to indemnify or hold harmless another party; therefore, all references of any kind to County defending, indemnifying, holding or saving harmless PS Lightwave for any reason are hereby deleted. PS Lightwave shall indemnify and defend County against all losses, liabilities, claims, causes of action, and other expenses, including reasonable attorney's fees, arising from activities of PS Lightwave, its agents, servants or employees, performed under this agreement that result from the negligent act, error, or omission of PS Lightwave or any of PS Lightwave's agents, servants or employees.

7. **Applicable Law; Arbitration; Attorney Fees.** The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity. County does not agree to submit disputes arising out of the Agreement to binding arbitration. Therefore, any references to binding arbitration or the waiver of a right to litigate a dispute are hereby deleted. County does not agree to pay any and/or all attorney fees incurred by PS Lightwave in any way associated with the Agreement.
8. **No Waiver of Jury Trial.** The County does not agree that all disputes (including any claims or counterclaims) arising from or related to this Agreement shall be resolved without a jury. Therefore, any references to waiver of jury trial are hereby deleted.
9. **Certain State Law Requirements for Contracts.** The contents of this Section are required by Texas Law and are included by County regardless of content.
  - a. Agreement to Not Boycott Israel Chapter 2271 Texas Government Code: By signature below, PS Lightwave verifies PS Lightwave does not boycott Israel and will not boycott Israel during the term of this Agreement.
  - b. Texas Government Code § 2252.152 Acknowledgment: By signature below, PS Lightwave represents pursuant to § 2252.152 of the Texas Government Code, that PS Lightwave is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under § 806.051, § 807.051, or § 2252.153.
10. **Modifications.** The parties may not amend or waive this Agreement, except by a written agreement executed by both Parties.
11. **Human Trafficking.** BY ACCEPTANCE OF CONTRACT, PS LIGHTWAVE ACKNOWLEDGES THAT FORT BEND COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.
12. **Use of Customer Name.** PS Lightwave may use County's name without County's prior written consent only in any PS Lightwave's customer lists, any other use must be approved in advance by County.
13. **Performance Warranty.** PS Lightwave warrants to County that PS Lightwave has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and PS Lightwave will apply that skill and knowledge with care and diligence to ensure that the services provided hereunder will be performed and delivered in accordance with the highest professional standards.
14. **Conflict.** In the event there is a conflict between this Addendum and the Agreement, this Addendum controls.

15. **Understanding, Fair Construction.** By execution of this Addendum, the parties acknowledge that they have read and understood each provision, term and obligation contained in this Addendum. This Addendum, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting party than the nondrafting party.
16. **Inspection of Books and Records.** PS Lightwave will permit County, or any duly authorized agent of County, to inspect and examine the books and records of PS Lightwave for the purpose of verifying the amount of work performed under the Scope of Services. County's right to inspect survives the termination of this Agreement for a period of four (4) years.
17. **Captions.** The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.
18. **Electronic and Digital Signatures.** The Parties to this Agreement agree that any electronic and/or digital signatures of the Parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as the use of manual signatures.
19. **Successors and Assigns.**
  - a. This Agreement shall be binding on the heirs, successors and assigns of the parties hereto.
  - b. PS Lightwave shall not assign, sublet or transfer its interest or obligations in and under this Agreement without the prior, written consent of County.
  - c. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the County.
20. **Compliance with Laws.** PS Lightwave shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, PS Lightwave shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.
21. **Product Assurance.** PS Lightwave represents and warrants that its hardware, software and any related systems and/or services related to its software and/or hardware (collectively, the "Product") furnished by PS Lightwave to County will not infringe upon or violate any patent, copyright, trademark, trade secret, or any other proprietary right of any third party. PS Lightwave will, at its expense, defend any suit brought against County and will indemnify County against an award of damages and costs (including reasonable attorney fees, court costs and appeals), made against County by settlement or final judgment of a court that is based on a claim that the use of PS Lightwave's Product infringes an intellectual property right of a third party. Such defense and indemnity shall survive termination or expiration of the Agreement and PS Lightwave's liability for the above is not limited by any limitation of liability clauses that may appear in any document executed by the Parties.

22. **Confidential Information.** PS Lightwave acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by PS Lightwave or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by PS Lightwave shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by PS Lightwave) publicly known or is contained in a publicly available document; (b) is rightfully in PS Lightwave's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of PS Lightwave who can be shown to have had no access to the Confidential Information.

PS Lightwave agrees to hold Confidential Information in strict confidence, using at least the same degree of care that PS Lightwave uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. PS Lightwave shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, PS Lightwave shall advise County immediately in the event PS Lightwave learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and PS Lightwave will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or PS Lightwave against any such person. PS Lightwave agrees that, except as directed by County, PS Lightwave will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, PS Lightwave will promptly turn over to County all documents, papers, and other matter in PS Lightwave's possession which embody Confidential Information.

PS Lightwave acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. PS Lightwave acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.

PS Lightwave in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

23. **County Data.** Nothing in this Agreement will be construed to waive the requirements of § 205.009 of the Texas Local Government Code.

24. **Termination.**

24.1. Termination for Default. County may terminate the whole or any part of this Agreement for cause in the following circumstances:

- (a). If PS Lightwave fails to timely perform services pursuant to this Agreement or any extension thereof granted by the County in writing;
- (b). If PS Lightwave materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to County's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County specifying such breach or failure.

24.2. Upon termination of this Agreement, County shall compensate PS Lightwave in accordance with § 3, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to County. PS Lightwave's final invoice for said services will be presented to and paid by County in the same manner set forth in § 3 above.

24.3. If County terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to PS Lightwave.

25. **Independent Contractor.** In the performance of work or services hereunder, PS Lightwave shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of PS Lightwave or, where permitted, of its subcontractors. PS Lightwave and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

26. **Severability.** If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

27. **Insurance.** Prior to commencement of the services under this Agreement, PS Lightwave shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. PS Lightwave shall provide certified copies of insurance endorsements and/or policies if requested by County. PS Lightwave shall maintain such insurance coverage from the time Services commence until Services are completed and

provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. PS Lightwave shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

- (a). Workers' Compensation insurance. Substitutes to genuine Workers' Compensation Insurance will not be allowed. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.
- (b). Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.
- (c). Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.
- (d). Professional Liability insurance with limits not less than \$1,000,000.

County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation. All Liability policies including Workers' Compensation written on behalf of PS Lightwave shall contain a waiver of subrogation in favor of County and members of Commissioners Court.

If required coverage is written on a claims-made basis, PS Lightwave warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of two years beginning from the time that work under the Agreement is completed.

(Execution Page Follows)  
(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, this Addendum is signed, accepted, and agreed to by all parties by and through the parties or their agents or authorized representatives. All parties hereby acknowledge that they have read and understood this Addendum and the attachments and exhibits hereto. All parties further acknowledge that they have executed this legal document voluntarily and of their own free will.

**FORT BEND COUNTY**

\_\_\_\_\_  
KP George  
County Judge

\_\_\_\_\_  
Date

ATTEST

\_\_\_\_\_  
Laura Richard  
County Clerk

REVIEWED

\_\_\_\_\_  
Information Technology Department

**PS LIGHTWAVE, INC.**

DocuSigned by:  
*Rhonda Cook*  
208C4F4DBF16434...  
\_\_\_\_\_  
Authorized Agent – Signature

Rhonda Cook

\_\_\_\_\_  
Authorized Agent- Printed Name

CEO

\_\_\_\_\_  
Title

9/15/2020

\_\_\_\_\_  
Date

**AUDITOR’S CERTIFICATE**

I hereby certify that funds in the amount of \$ \_\_\_\_\_ are available to pay the obligation of Fort Bend County within the foregoing Agreement.

\_\_\_\_\_  
Robert Ed Sturdivant, County Auditor

Exhibit A: PS Lightwave’s Order No. PLW-16330

Exhibit B: HCDE Choice Partners Contract No. 18/056KD-52

# Exhibit A



5959 Corporate Drive - Ste. 3300 - Houston TX 77036  
[www.pslightwave.com](http://www.pslightwave.com) - 832.615.8000

**SERVICE ORDER**

	Date: <u>7/28/2020</u>	Order No: <u>PLW - 16330</u>
Consultant: <u>David Caddle</u>	Campaign: <u>18/056KD-52</u>	
	Email: <u>dcaddle@pslightwave.com</u>	

**SECTION 1: CUSTOMER INFORMATION & CONTACTS**

Company: Fort Bend County Address: 500 Liberty City/State/ZIP: Richmond, TX 77471 Phone: Contact/Title: E-Mail:	<b>BILLING (complete if different from Contact Info):</b> 301 Jackson - Ste 201 Richmond, TX 77469 281.341.3759 Purchasing
<b>TECHNICAL CONTACT(S)</b>	
Contact/Title: Charles King Phone: 281.341.4584 E-Mail: <a href="mailto:Charles.King@fortbendcountytexas.gov">Charles.King@fortbendcountytexas.gov</a>	

**SECTION 2: ORDER PROFILE**

Type: <u>NEW</u>	Customer: <u>Existing</u>	ETP: <u>100%</u>
Term: <u>36mths</u>	ARO: <u>10/01/2020 - 09/30/2023</u>	

**SECTION 3: SITE information (If multiple sites, enter as attachment on separate sheet)**

Site	Address (Street, Ste., City, ZIP)	Site	Address (Street, Ste., City, ZIP)
	See attached Exhibit A		

**SECTION 4: ORDERED SERVICES/EQUIPMENT** (\*Pricing may be subject to additional regulatory fees, taxes and/or building access fees. Tax rates are subject to change. At the discretion of PS Lightwave, applicable Non-Recurring Costs (NRC) may be invoiced either upon service provisioning or within fifteen (15) days of execution of this order).

Service	Code	Description	Quantity	Price*	Monthly Recurring*	Installation*
Ethernet	EPL5MB	EPL 5 MB DEDICATED	1	\$ 155.00	\$ 155.00	\$0.00
Ethernet	EPL20MB	EPL 20 MB DEDICATED	15	\$ 247.00	\$ 3,705.00	\$0.00
Ethernet	EPL20MB	EPL 20 MB DEDICATED	2	\$ 338.00	\$ 676.00	\$0.00
Ethernet	EPL30MB	EPL 30 MB DEDICATED	3	\$ 278.00	\$ 834.00	\$0.00
Ethernet	EPL50MB	EPL 50 MB DEDICATED	10	\$ 344.00	\$ 3,440.00	\$0.00
Ethernet	EPL100MB	EPL 100 MB DEDICATED	15	\$ 496.00	\$ 7,440.00	\$0.00
Ethernet	EPL100MB	EPL 100 MB DEDICATED	1	\$ 525.00	\$ 525.00	\$0.00
Ethernet	EPL100MB	EPL 100 MB DEDICATED	1	\$ 550.00	\$ 550.00	\$0.00
Ethernet	EPL150MB	EPL 150 MB DEDICATED	3	\$ 516.00	\$ 1,548.00	\$0.00
Ethernet	EPL1GB	EPL 1 GB DEDICATED	1	\$ 800.00	\$ 800.00	\$0.00
Internet	IP20MB	IP 20 MB DEDICATED	1	\$ 340.00	\$ 340.00	\$0.00
Internet	IP50MB	IP 50 MB DEDICATED	1	\$ 412.00	\$ 412.00	\$0.00
Internet	IP100MB	IP 100 MB DEDICATED	2	\$ 500.00	\$ 1,000.00	\$0.00
Internet	IP1GB	IP 1 GB DEDICATED	1	\$ 1,200.00	\$ 1,200.00	\$0.00
Internet	IP3GB	IP 3 GB DEDICATED	1	\$ 2,301.00	\$ 2,301.00	\$0.00
VoIP	VOIPSIPTR13	SIP-13 (Includes 13 SIP Trunks)	1	\$ 235.95	\$ 235.95	\$0.00
VoIP	VOIP911FEE	911 SERVICE FEE	1	\$ 1.00	\$ 1.00	\$0.00
VoIP	VOIPDID1	DIDs	245	\$ 0.75	\$ 183.75	\$0.00
					<b>\$25,346.70</b>	<b>\$0.00</b>

**SECTION 5: SPECIAL INSTRUCTIONS**

Fort Bend County - New term: 10/01/2020 - 09/30/2023  
 Ethernet Total: \$19,673 / Internet Total: \$5,253 / Telephony Total: \$ 420.70  
 Include the upgrades of EPL 100MB to EPL 1GB CID802  
 and upgrade of IP 500MB to IP2GB at 1410 William Way BLVD CID813  
 See Exhibit A for complete site and service list  
 Choice Partners Catalog #18/056KD-52

Customer: <u>Fort Bend County</u>	PS LIGHTWAVE, INC. DocuSigned by:  Rhonda Cook - CEO Date: <u>9/15/2020</u>
Name-Title:	
Date:	

MASTER NETWORKING SERVICE ADDENDEM  
Fort Bend County

Contract NO PLW-16330

## EXHIBIT A

Ethernet Services						
Previous Contract	CID	ALOC	ZLOC	Bandwidth	ItemCode	MRC
PLW-10112	1412	Sherriff's Office, 1410 William Way Blvd, Richmond, Texas 77469	Tomball Tower, 15503 Brown, Tomball, Texas 77377	5	EPL5MB	\$155.00
PLW-11735	1881	Jane Long Annex, 500 Liberty, Richmond, Texas 77469	EMS Medic 8, 6626 August Glen Dr, Rosenberg, Texas 77471	20	EPL20MB	\$247.00
PLW-11309 (MNSA.SO24.CO1)	1887	Jane Long Annex, 500 Liberty, Richmond, Texas 77470	Kitty Hollow Park, 9555 Highway 6, Missouri City, Texas 77459	20	EPL20MB	\$247.00
PLW-11309 (MNSA.SO24.CO1)	1899	Jane Long Annex, 500 Liberty, Richmond, Texas 77471	EMS Medic 10, 10210 Mula, Stafford, Texas 77477 (Old Address 2710 S Main)	20	EPL20MB	\$338.00
PLW-11309 (MNSA.SO24.CO1)	1890	Jane Long Annex, 500 Liberty, Richmond, Texas 77473	Purchasing and Social Servcies, 9110 Long St., Needville, Texas 77461	20	EPL20MB	\$247.00
PLW-11309 (MNSA.SO24.CO1)	1885	Jane Long Annex, 500 Liberty, Richmond, Texas 77474	Sienna Springs Consolidated, 5855 Sienna Springs Way, Missouri City, 77459	20	EPL20MB	\$247.00
PLW-11309 (MNSA.SO24.CO1)	1886	Jane Long Annex, 500 Liberty, Richmond, Texas 77475	Medic #5, 5955 Sienna Parkway, Missouri, Texas 77459	20	EPL20MB	\$247.00
PLW-11309 (MNSA.SO24.CO1)	1884	Jane Long Annex, 500 Liberty, Richmond, Texas 77476	Facilities IDC, 1809 Eldridge Rd., Sugar Land, Texas 77498	20	EPL20MB	\$247.00
PLW-11309 (MNSA.SO24.CO1)	1879	Jane Long Annex, 500 Liberty, Richmond, Texas 77477	Building Maintenance, 902 Morton St., Richmond, Texas 77469	20	EPL20MB	\$247.00
PLW-11309 (MNSA.SO24.CO1)	1876	Jane Long Annex, 500 Liberty, Richmond, Texas 77478	EMS Medic 4, Missouri City Fire, 2496 Texas Pkwy, Missouri City, Texas 77479	20	EPL20MB	\$247.00
PLW-11309 (MNSA.SO24.CO1)	1874	Jane Long Annex, 500 Liberty, Richmond, Texas 77479	EMS Community Paramedics, 1514 Parkway Blvd., Sugar Land, Texas 77478	20	EPL20MB	\$247.00
PLW-11309 (MNSA.SO24.CO1)	1877	Jane Long Annex, 500 Liberty, Richmond, Texas 77480	EMS Medic #9, Willowfork Fire Department, 24655 Westheimer Parkway, Katy, Texas 77494	20	EPL20MB	\$247.00
PLW-11309 (MNSA.SO24.CO1)	1889	Jane Long Annex, 500 Liberty, Richmond, Texas 77481	JP #1 Place, 13114 Rosenberg St., Needville, Texas, 77461	20	EPL20MB	\$247.00
PLW-11309 (MNSA.SO24.CO1)	1867	Jane Long Annex, 500 Liberty, Richmond, Texas 77482	Fairgrounds, 4310 Highway 36 South, Rosenberg, Texas 77471	20	EPL20MB	\$247.00
PLW-11309 (MNSA.SO24.CO1)	1869	Jane Long Annex, 500 Liberty, Richmond, Texas 77483	EMS Medic #2, 406 Houston, Rosenberg, Texas 77471	20	EPL20MB	\$247.00
PLW-11309 (MNSA.SO24.CO1)	1875	Jane Long Annex, 500 Liberty, Richmond, Texas 77484	Fresno Campus, 2725 FM 521, Fresno, Texas 77545	20	EPL20MB	\$247.00
PLW-11309 (MNSA.SO24.CO1)	1888	Jane Long Annex, 500 Liberty, Richmond, Texas 77485	EMS Squad 1, 3323 Richmond St., Needville, Texas, 77461	20	EPL20MB	\$247.00
PLW-12343	1898	Jane Long Annex, 500 Liberty, Richmond, Texas 77486	Medic #8, 3849 Cartwright Rd. #2, Missouri City, Texas 77459	20	EPL20MB	\$338.00
PLW-11309 (MNSA.SO24.CO1)	2239	George Memorial Library, 1001 Golf View, Richmond, Texas 77469	Albert George Library, 9230 Gene St., Needville, Texas 77461	30	EPL30MB	\$278.00
PLW-11309 (MNSA.SO24.CO1)	2242	George Memorial Library, 1001 Golf View, Richmond, Texas 77469	Bob Lotts Library, 8100 FM 359 South, Fulshear, Texas 77469	30	EPL30MB	\$278.00
PLW-11309 (MNSA.SO24.CO1)	2240	George Memorial Library, 1001 Golf View, Richmond, Texas 77469	Mamie George Library, 320 Dulles Ave., Stafford, Texas 77477	30	EPL30MB	\$278.00
PLW-11309 (MNSA.SO24.CO1)	1859	Jane Long Annex, 500 Liberty, Richmond, Texas 77486	Four Corners, 15700 Old Richmond Rd., Sugar Land, Texas 77498	50	EPL50MB	\$344.00
PLW-11309 (MNSA.SO24.CO1)	1897	Jane Long Annex, 500 Liberty, Richmond, Texas 77486	Rosenberg Boot Camp, 3403 Avenue F, Rosenberg, Texas 77471	50	EPL50MB	\$344.00
PLW-11309 (MNSA.SO24.CO1)	1895	Jane Long Annex, 500 Liberty, Richmond, Texas 77486	R&B Beechnut, 19310 Beechnut St., Richmond, Texas 77407	50	EPL50MB	\$344.00
PLW-11309 (MNSA.SO24.CO1)	1892	Jane Long Annex, 500 Liberty, Richmond, Texas 77486	Child Advocacy, 5403 Avenue N, Rosenberg, Texas 77471	50	EPL50MB	\$344.00
PLW-11309 (MNSA.SO24.CO1)	1891	Jane Long Annex, 500 Liberty, Richmond, Texas 77486	Needville Road & Bridge Services, 3743 School St., Needville, Texas 77461	50	EPL50MB	\$344.00
PLW-11309 (MNSA.SO24.CO1)	2244	Jane Long Annex, 500 Liberty, Richmond, Texas 77486	Fifth St Community Center, 3110 Fifth St., Stafford, Texas 77477	50	EPL50MB	\$344.00
PLW-11309 (MNSA.SO24.CO1)	2191	Jane Long Annex, 500 Liberty, Richmond, Texas 77486	Mustang Community Center, 4521 FM 521 North, Fresno, Texas 77545	50	EPL50MB	\$344.00
PLW-11309 (MNSA.SO24.CO1)	1870	Jane Long Annex, 500 Liberty, Richmond, Texas 77486	Crabb Service Center, 201 Payne Ln, Richmond, Texas 77469	50	EPL50MB	\$344.00
PLW-11309 (MNSA.SO24.CO1)	1871	Jane Long Annex, 500 Liberty, Richmond, Texas 77486	Jake Dove Arcola Juvenile Center, 400 Coen, Arcola, 77583	50	EPL50MB	\$344.00
PLW-11309 (MNSA.SO24.CO1)	1868	Jane Long Annex, 500 Liberty, Richmond, Texas 77486	EMS Administration, 4332 Highway 6 South, Rosenberg, Texas 77471	50	EPL50MB	\$344.00

MASTER NETWORKING SERVICE ADDENDEM

Fort Bend County

Contract NO PLW-16330

PLW-11309 (MNSA.SO24.CO1)	2237	George Memorial Library, 1001 Golf View, Richmond, Texas 77469	First Colony Library, 2121 Austin Parkway, Sugar Land, Texas 77469	100	EPL100MB	\$496.00
PLW-11309 (MNSA.SO24.CO1)	2233	George Memorial Library, 1001 Golf View, Richmond, Texas 77469	Sugar Land Library, 550 Eldridge Rd, Sugar Land, Texas 77478	100	EPL100MB	\$496.00
PLW-11309 (MNSA.SO24.CO1)	2232	George Memorial Library, 1001 Golf View, Richmond, Texas 77469	Sienna Branch Library, 8411 Sienna Springs Blvd., Missouri City, Texas 77459	100	EPL100MB	\$496.00
PLW-11309 (MNSA.SO24.CO1)	1861	Jane Long Annex, 500 Liberty, Richmond, Texas 77486	Justice Center, 1422 Eugene Heimann Circle, Richmond, Texas 77469	100	EPL100MB	\$496.00
PLW-11309 (MNSA.SO24.CO1)	1878	Jane Long Annex, 500 Liberty, Richmond, Texas 77486	Rose Annex, 4520 Reading Rd., Rosenberg, Texas 77471	100	EPL100MB	\$496.00
PLW-11309 (MNSA.SO24.CO1)	2243	Jane Long Annex, 500 Liberty, Richmond, Texas 77486	Fort Bend County Senior Center, 6530 Hobby, Houston, Texas 77053	100	EPL100MB	\$496.00
PLW-11309 (MNSA.SO24.CO1)	1880	Jane Long Annex, 500 Liberty, Richmond, Texas 77486	Blume Campus, 1124 Blume Rd., Rosenberg, Texas 77471	100	EPL100MB	\$496.00
PLW-11309 (MNSA.SO24.CO1)	1872	Jane Long Annex, 500 Liberty, Richmond, Texas 77486	Precinct #4, 12919 Dairy Ashford Rd., Sugarland, Texas 77478	100	EPL100MB	\$496.00
PLW-11309 (MNSA.SO24.CO1)	1882	Jane Long Annex, 500 Liberty, Richmond, Texas 77486	Missouri City Annex, 307 Texas Parkway, Missouri City, Texas 77489	100	EPL100MB	\$496.00
PLW-11309 (MNSA.SO24.CO1)	2236	Jane Long Annex, 500 Liberty, Richmond, Texas 77486	Precinct #3, 22333 Grand Corner, Katy, Texas 77494	100	EPL100MB	\$496.00
PLW-11309 (MNSA.SO24.CO1)	1864	Jane Long Annex, 500 Liberty, Richmond, Texas 77486	George Memorial Library, 1001 Golf View, Sugar Land, Texas 77469	100	EPL100MB	\$496.00
PLW-11309 (MNSA.SO24.CO1)	1866	Jane Long Annex, 500 Liberty, Richmond, Texas 77486	Juvenile Probation, 122 Golfview, Richmond, Texas 77469	100	EPL100MB	\$496.00
PLW-11309 (MNSA.SO24.CO1)	1862	Jane Long Annex, 500 Liberty, Richmond, Texas 77486	Richmond Tax Office, 1317 Eugene Heiman Circle, Richmond, Texas 77469	100	EPL100MB	\$496.00
PLW-11309 (MNSA.SO24.CO1)	1863	Jane Long Annex, 500 Liberty, Richmond, Texas 77486	Precinct One Building, 1517 Eugene Heimann Circle, Richmond, Texas 77469	100	EPL100MB	\$496.00
PLW-11309 (MNSA.SO24.CO1)	1873	Jane Long Annex, 500 Liberty, Richmond, Texas 77486	Emily Court Sugar Land Annex, 12550 Emily Court, Sugar Land, Texas 77478	100	EPL100MB	\$496.00
PLW-13041	1946	Jane Long Annex, 500 Liberty, Richmond, Texas 77486	Public Transportation Facility, 3737 Bamore Rd., Rosenberg, Texas 77471	100	EPL100MB	\$525.00
PLW-12477	2245	George Memorial Library, 1001 Golf View, Richmond, Texas 77469	Mission Bend Branch Library, 8421 Addicks Clodine Rd., Houston, Texas 77083	100	EPL100MB	\$550.00
PLW-11309 (MNSA.SO24.CO1)	2241	George Memorial Library, 1001 Golf View, Richmond, Texas 77469	Cinco Ranch Library, 2620 Commercial Center Blvd., Katy, Texas 77494	150	EPL150MB	\$516.00
PLW-11309 (MNSA.SO24.CO1)	2238	George Memorial Library, 1001 Golf View, Richmond, Texas 77469	University Library, 14010 University Blvd., Sugar Land, Texas 77479	150	EPL150MB	\$516.00
PLW-11309 (MNSA.SO24.CO1)/PLW-13298	2234	George Memorial Library, 1001 Golf View, Richmond, Texas 77469	Missouri City Library, 1530 Texas Parkway, Missouri City, Texas 77489	150	EPL150MB	\$516.00
PLW-11309 (MNSA.SO24.CO1)	802 (FKA 1865)	Jane Long Annex, 500 Liberty, Richmond, Texas 77486	County Sherriff's Office, 1410 William Way Blvd., Richmond, Texas 77469	1000	EPL1000MB	\$800.00
					Total Ethernet:	\$19,673.00

**Internet Services**

Previous Contract	CID	ALOC		Bandwidth	ItemCode	MRC
PLW-11310 (ISA.SO25)	365	Fairgrounds, 4310 Highway 36 South, Rosenberg, Texas 77471	Internet	100	IP100MB	\$500.00
PLW-11310 (ISA.SO25)	800	Employee Medical Clinic, 301 Jackson, Richmond, Texas 77469	Internet	20	IP20MB	\$340.00
PLW-11310 (ISA.SO25)	801	Sherriff's Office, 1410 William Way Blvd, Richmond, Texas 77469	Internet	50	IP50MB	\$412.00
PLW-15082	1277	George Memorial Library, 1001 Golf View, Richmond, Texas 77469	Internet	1000	IP1GB	\$1,200.00
PLW-15082	813	Jane Long Annex, 500 Liberty, Richmond, Texas 77486	Internet	3000	IP3GB	\$2,301.00
PLW-11310 (ISA.SO25)	1286	Administration Building, 1003 Golfview, Richmond, Texas 77469	Internet	100	IP100MB	\$500.00
					Total Internet:	\$5,253.00

**Telephony Services**

Previous Contract	CID	ALOC		ItemCode	MRC	
PLW-11573	Telephony	Jane Long Annex, 500 Liberty, Richmond, Texas 77486	SIP-13 (Includes 13 SIP Trunks)	VOIPSIPTR13	\$235.95	
PLW-11573/PLW-12252/PLW-14371/PLW-15678	Telephony	Jane Long Annex, 500 Liberty, Richmond, Texas 77486	DIDs 245	VOIPDID1	\$183.75	
PLW-11573	Telephony	Jane Long Annex, 500 Liberty, Richmond, Texas 77486	VOIP911FEE	911FEE	\$1.00	
					Total Telephony:	\$420.70
					Total:	\$25,346.70


# Exhibit B

## Exhibit B

**EXECUTION OF OFFER**

The undersigned Proposer has carefully examined all instructions, requirements, specifications, terms and conditions of this RFP and the Agreement and certifies:

1. It is a reputable company regularly engaged in providing goods and/or services necessary to meet the requirements, specifications, terms and conditions of the RFP and the Agreement.
2. It has the necessary experience, knowledge, abilities, skills, and resources to satisfactorily perform the requirements, specifications, terms and conditions of the RFP and the Agreement. Further, if awarded, the Proposer agrees to perform the requirements, specifications, terms and conditions of the RFP and the Agreement.
3. All statements, information, and representations prepared and submitted in response to this RFP are current, complete, true, and accurate. Proposer acknowledges that HCDE will rely on such statements, information, and representations in selecting the successful Proposer(s).
4. It is not currently barred or suspended from doing business with the Federal government, any of the members represented, or any of their respective agencies.
5. It shall be bound by all statements, representations, warranties, and guarantees made in its proposal.
6. Submission of a proposal indicates the Proposer's acceptance of the evaluation technique and the Proposer's recognition that some subjective judgments may be made by HCDE and its membership as part of the evaluation.
7. That all of the requirements of this RFP and the Agreement have been read and understood. In addition, compliance with all requirements, terms and conditions will be assumed by HCDE if not otherwise noted in the proposal.
8. The individual signing below has authority to enter into this on behalf of Proposer.
9. Proposer acknowledges that the Agreement may be canceled if any conflict of interest or appearance of a conflict of interest is discovered by HCDE.
10. This Agreement is subject to purchase orders duly authorized and executed by HCDE.


<b>CORPORATE NAME:</b>	PS LIGHTWAVE, INC.		
<b>AUTHORIZED SIGNATURE:</b>			
<b>PRINT NAME:</b>	RHONDA COOK		
<b>TITLE:</b>	PRESIDENT, CEO		
<b>DATE:</b>	JUNE 26, 2018		
<b>ADDRESS:</b>	5959 CORPORATE DR #3300		
<b>CITY, STATE, ZIP CODE:</b>	HOUSTON, TX 77036		
<b>PHONE:</b>	832.615.8000	<b>FAX:</b>	
<b>EMAIL ADDRESS:</b>			
<b>WEBSITE URL</b>	WWW.PSLIGHTWAVE.COM		

**This Section to be Completed by HCDE**

Contract Number: 18/056KD-52 Term of contract: 09/19/2018 to 09/18/2019

Vendor shall honor all CPC Administrative Fees for any sales resulting from this Contract whether Vendor is awarded a renewal or not.

Approved by Harris County Department of Education:

  
 \_\_\_\_\_  
 Jesus J. Amezcua, PhD., CPA, RSTBA  
 Assistant Superintendent for Business Services

  
 \_\_\_\_\_  
 Board Approval Date

## 5.0 CONTRACT TERMS AND CONDITIONS

---

These Contract Terms and Conditions are part of the final contract in each product and/or service contract awarded as a result of this RFP and are part of the terms and conditions of each Purchase Order or proposal forms issued in connection with this RFP. Vendors are responsible for identifying any exceptions to these terms and conditions. **ANY EXCEPTIONS MUST BE NOTED DIRECTLY BELOW EACH OF THE RESPECTIVE TERMS AND CONDITIONS.** Proposals that are qualified with conditional clauses, items not called for, or other irregularities may be considered non-responsive by HCDE/CP and eliminated from further consideration.

**CONTRACT BETWEEN  
HARRIS COUNTY DEPARTMENT OF EDUCATION AND  
PS Lightwave, Inc. dba Pure Speed Lightwave (“VENDOR”)  
FOR  
Technology Hardware, Software and Services**

This Contract is entered into between HCDE/CP and Vendor, having submitted a proposal in response to this RFP issued by HCDE/CP and whose proposal has been accepted and awarded by HCDE. In consideration of the mutual covenants and conditions contained in this Contract and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, HCDE/CP and Vendor, intending to be legally bound, and subject to the terms, conditions, and provisions of this Contract, agree as follows:

5.1. **Definitions**

The terms used in this Contract shall have the meanings assigned to them in **Section 1.0 Notice of Intent** of the RFP.

5.2. **Use of Contract by CP members**

Vendor agrees and understands that this RFP and Contract may be used to accomplish work for HCDE/CP, a local governmental entity. Vendor further agrees and understands that this RFP and Contract may also be utilized by CP members pursuant to the piggyback method, as contemplated in the U.S. Department of Agriculture Memorandum SP 35-2012, *Procuring Services of Purchasing Cooperatives, Group Purchasing Organizations, Group Buying Organizations, etc.* (“SP 35-2012”). Vendor agrees and understands that CP members include “school food authorities,” as that term is used in SP 35-2012.

5.3. **Contract Terms; Amendment**

The terms and conditions of this Contract shall govern all procurements conducted hereunder. No pre-published terms on Vendor’s Purchase Order, acknowledgments, invoices, or other forms shall have any force or effect unless expressly agreed to by the CP member and Vendor. No amendment of this Contract shall be permitted unless and until first approved in writing by HCDE/CP and, if necessary, the CP member(s), and no such amendment shall have any effect unless and until a written amendment to this Contract is executed by the HCDE Superintendent or his designee after any necessary approvals have been obtained from the HCDE Board of Trustees. In the event that a Vendor has an existing HCDE/CP contract in the same contract title, upon award the new contract will immediately supersede the older contract.

5.4. **Term of Contract; Renewal of Contract**

The initial term of this Contract is for a period of one (1) year, with HCDE/CP having the option to renew the Contract for three (3) additional one-year terms, at HCDE’s sole discretion, unless otherwise specified in **Section 6.0 Scope of Proposal**. Consequently, the total term of the Contract may be for a period of **four (4)** years. The phrase “Term” in this Contract shall mean the then-current Term of the Contract, whether an initial term or a renewal term.

5.5. **Termination of Contract; Survival**

This Contract shall remain in effect until (1) the Contract expires by its terms or (2) the Contract is terminated by mutual consent of HCDE/CP and Vendor. All Supplemental Contracts, purchase orders, and/or orders for goods or services issued by HCDE and/or CP members and accepted by Vendor shall survive the expiration or

termination of this Contract. During the term of any Supplemental Contract entered into between Vendor and a CP member, all terms of this Contract shall continue to apply to the Supplemental Contract.

In the event of a breach or default of the Contract and/or the RFP by Vendor, HCDE/CP reserves the right to enforce the performance of the Contract in any manner prescribed by law or deemed to be in the best interest of HCDE/CP and/or CP members. HCDE/CP further reserves the right to terminate the Contract immediately in the event Vendor fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in the RFP, this Contract, and/or a Purchase Order; (2) make any payments owed; or (3) otherwise perform in accordance with this Contract and/or the RFP. HCDE/CP also reserves the right to terminate the Contract immediately, with written notice to Vendor, if HCDE/CP believes, in its sole discretion that it is in the best interest of HCDE/CP and/or CP members to do so.

In the event that a material change to the terms of the Contract occurs, then the Contract shall be allowed to expire and shall not be renewed upon the conclusion of the Contract's term. The phrase "material change" in this paragraph shall mean a modification that substantially exceeds the terms of the original contract between HCDE/CP and Vendor. Upon the expiration of the Contract's term, HCDE/CP may issue a new RFP for the goods or services procured under the previous contract.

Vendor agrees that HCDE/CP shall not be liable for damages in the event that HCDE/CP declares Vendor to be in default or breach of this Contract and/or the RFP. Vendor further agrees that upon termination of the Contract for any reason, Vendor shall, in good faith and with reasonable cooperation, aid in the transition to any new arrangement and/or Vendor.

#### 5.6. **Buy America Act; Prevailing Wage Rates**

##### Buy American Act

The Buy American Act, set forth in 7 C.F.R. Part 210.21(d), requires that participants in the National School Lunch Program and School Breakfast Program use the federal nonprofit food service funds, to the maximum extent practical, to buy domestic commodities or products. 7 CFR Part 210.21(d) defines a "domestic commodity or product" as one that is either produced in the U.S. or is processed in the U.S. substantially using agricultural commodities that are produced in the U.S. "Substantially" means that over 51 percent of the final processed product consists of agricultural commodities that were grown domestically.

Because many HCDE/CP members participate in the National School Lunch Program and School Breakfast Program, HCDE/CP requires Vendor to certify whether its products are "domestic commodities or products", as defined by 7 C.F.R. Part 210.21(d). Accordingly, Vendor agrees to provide certification of the domestic content in the parts, components, and other elements contained in the product, including specific information about the percentage of U.S. content from the supplier (i.e., manufacturer or distributor).

Exceptions to the Buy American provision should be used as a last resort; however, an alternative or exception may be approved by the CP member, upon request. To be considered for an exception to the Buy American provision, Vendor may submit a good faith request for an exception, certifying that Vendor reasonably believes that:

- (a) the product is not produced or manufactured in the U.S. in sufficient and reasonable available quantities of a satisfactory quality; and/or
- (b) the costs of a U.S. product are significantly higher than the non-domestic product.

In the event Vendor or Vendor's supplier(s) are unable or unwilling to certify compliance with the Buy American Provision, or the applicability of an exception to the Buy American provision, HCDE/CP members may decide not to purchase from Vendor.

Additionally, HCDE/CP members may require country of origin on all products and invoices submitted for payment by Vendor, and Vendor agrees to comply with any such requirement.

##### Prevailing Wage Rates

Vendor and all subcontractors of Vendor shall comply with all laws regarding prevailing wage rates, including, but not limited to, TEX. GOV'T. CODE Chapter 2258, applicable to the construction of a public work, and any

related federal requirements, including the DAVIS-BACON ACT. In the event TEX. GOV'T. CODE Chapter 2258 applies to a product or service provided by Vendor to HCDE/CP or a CP member, Vendor and any subcontractor(s) shall comply with the prevailing wage rates set by HCDE/CP or the CP member.

5.7. **Change Orders**

Pursuant to TEX. EDUC. CODE § 44.0411(a), for HCDE/CP and CP members that are Texas school districts, if a change in plans or specifications is necessary after the performance of a Purchase Order has begun or if it is necessary to decrease or increase the quantity of work to be performed or of materials, equipment, or supplies to be furnished, the CP member may approve change orders making the changes. The total Purchase Order price may not be increased because of the changes unless additional money for increased costs is approved for that purpose from available money or is provided for by the authorization of the issuance of time warrants. The CP member may grant general authority to an administrative official to approve the change orders. A Purchase Order with an original contract price of \$1 million or more may not be increased under TEX. EDUC. CODE § 44.0411(a) by more than 25 percent. If a change order for a Purchase Order with an original contract price of less than \$1 million increases the contract amount to \$1 million or more, the total of the subsequent change orders may not increase the revised contract amount by more than 25 percent of the original contract price.

5.8. **Compliance with Laws**

Vendor shall comply with all applicable federal, state, and local laws, statutes, ordinances, standards, orders, rules, and regulations, including, as applicable, workers' compensation laws; minimum and maximum salary and wage statutes and regulations; prompt payment and licensing laws and regulations; anti-discrimination statutes and regulations (Title VI of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title 7 C.F.R. Parts 15, 15a, and 15b; the Americans with Disabilities Act; and FNS Instruction 113-1, Civil Rights Compliance and Enforcement—Nutrition Programs and Activities); the Davis-Bacon Act (40 U.S.C. § 276a / 29 CFR Part 5); the Copeland "Anti-Kickback" Act (18 U.S.C. § 874 / 29 CFR Part 5); the Equal Opportunity Employment requirements (Executive Orders 11246 and 11375 / 41 CFR Chapter 60); the McNamara-O'Hara Service Contract Act (41 U.S.C. 351); Section 306 of the Clean Air Act (42 U.S.C. § 1857h); Section 508 of the Clean Water Act (33 U.S.C. § 1368); Executive Order 11738, Environmental Protection Agency regulations (40 CFR Part 15); the Contract Work Hours and Safety Act (40 U.S.C. § 3701-3708; 29 C.F.R. Part 5); the Solid Waste Disposal Act (Section 6002 as amended by the Resource Conservation and Recovery Act for procuring solid waste management services in a manner that maximizes energy and resource recovery when contract amount is in excess of \$10,000); the Education Department General Administrative Regulations ("EDGAR") (2 C.F.R. Part 200); mandatory standards and policies contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871); and all applicable requirements and regulations, including those related to reporting, patent rights, copyrights, data rights, and those mandated by federal agencies making awards of federal funds to HCDE/CP and/or CP members, including, without limitation, the U.S. Department of Agriculture and/or Texas Department of Agriculture. Vendor understands that Vendor is ineligible to receive a contract award with HCDE/CP if Vendor or its principal(s) is listed on the government wide exclusions in the System for Award Management (Debarment and Suspension Orders Executive Orders 12549 and 12689) or is 30 days or more delinquent in paying child support (Tex. Fam. Code § 231.006). For the entire duration of this Contract, Vendor and all subcontractors shall maintain all required licenses, certifications, permits, and any other documentation necessary to perform this Contract. All permits will be acquired by Vendor and invoiced to the CP member at cost as part of the Purchase Order, unless the permits are provided by the CP member. For the entire duration of this Contract, Vendor and all subcontractors shall also comply with all requirements pertaining to local, state, or federal health and safety certifications, licensing, or regulations. Vendor must comply with all state and local building code requirements unless otherwise specifically provided in the CP member's Purchase Order, and Vendor must pay all fees and charges for connections to outside services and for use of property outside the project site. The states of individual CP members may have regulations and laws that govern payment retention and progress payments for public projects. Vendor is responsible for being acquainted with and complying with each state's requirements. When required or requested by HCDE/CP or a CP member, Vendor shall furnish HCDE/CP and/or the CP member with satisfactory proof of Vendor's compliance with this provision.

5.9. **Confidentiality**

Vendor and HCDE/CP agree to secure the confidentiality of all information and records in accordance with applicable federal and state laws, rules, and regulations. Vendor and HCDE/CP understand that the Family

Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, governs the privacy and security of educational records and information and agree to abide by FERPA rules and regulations, as applicable. Vendor also acknowledges that HCDE/CP and numerous CP members are subject to the Texas Public Information Act, and Vendor waives any claim against and releases from liability HCDE/CP and CP members, their respective officers, employees, agents, and attorneys with respect to disclosure of information provided under or in this Contract or otherwise created, assembled, maintained, or held by Vendor, HCDE, or a CP member and determined by HCDE/CP or the CP member, the Attorney General of Texas, or a court of law to be subject to disclosure under the Texas Public Information Act.

5.10. **Performance and Payment Bonds**

Vendor agrees to provide performance bonds and/or payment bonds as required by law, based on the amount or estimated amount of any Purchase Order for a public work contract, which is defined as a contract for constructing, altering, or repairing a public building or carrying out or completing any public work. TEX. GOV'T. CODE § 2253.001(4). Pursuant to TEX. GOV'T. CODE § 2253.021, a performance bond is required if a Purchase Order is in excess of \$100,000 for CP members that are governmental entities subject to Chapter 2253; a payment bond is required if a Purchase Order is in excess of \$25,000 for CP members that are governmental entities subject to Chapter 2253 and are not municipalities or a joint board created under Subchapter D, Chapter 22 of the Tex. Transp. Code, and a payment bond is required if a Purchase Order is in excess of \$50,000 for CP members that are governmental entities subject to Chapter 2253 and are municipalities or a joint board created under Subchapter D, Chapter 22 of the TEX. TRANSP. CODE. Additionally, Vendor shall provide all bonds, including bid guarantee, performance bond, and payment bond, as applicable under U.S. Department of Agriculture and/or Texas Department of Agriculture rules.

5.11. **Title and Risk of Loss**

Whenever HCDE/CP or a CP member is purchasing (and not leasing) a product under this Contract, title and risk of loss shall pass upon the later of HCDE/CP or the CP member's acceptance of the product or payment of the applicable invoice.

5.12. **Warranty Conditions**

All product(s) and/or service(s) provided by the Vendor under this Contract must be warranted to be free from defects in material, workmanship, and free from such defects in design for a period of one (1) year upon the later of HCDE's or the CP member's acceptance of the product and/or service or payment of the applicable invoice. Vendor warrants that all products and/or services furnished under this Contract shall conform in all respects to the terms of this Contract, including any drawings, specifications, and/or standards incorporated herein, including, without limitation, those detailed in the RFP and Purchase Order. In addition, Vendor warrants that products and/or services are suitable for and will perform in accordance with the purposes for which they are intended. Vendor shall assume all liabilities incurred within the scope of consequential damages and incidental expenses, as set forth in the Vendor or manufacturer's warranty, which result from either delivery or use of product, which does not meet the specifications within this Contract, the RFP, or Purchase Order.

5.13. **Criminal History Review**

**Section 10.0 Attachment–SB 9 Contractor Certification: Contractor Employees (Required) and Attachment–SB 9 Contractor Certification: Subcontractor Form (If Applicable) must be submitted with packet, if applicable.**

Prior to commencing any work under the Contract, if Vendor contracts with HCDE/CP to provide services, Vendor must certify, on the form provided herein, that for each covered employee of Vendor who will have direct contact with students, Vendor has obtained, as required by TEX. EDUC. CODE Section 22.0834: (a) state criminal history record information from a law enforcement or criminal justice agency or a private entity that is a consumer reporting agency governed by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.) for each covered employee of Vendor employed before January 1, 2008; and (b) national criminal history record information for each employee of Vendor employed on or after January 1, 2008. Vendor must also obtain similar certifications of compliance with TEX. EDUC. CODE, Chapter 22 requirements from any subcontractors on the form provided herein. Covered employees with disqualifying criminal history are prohibited from serving at HCDE/CP or at CP school district members' locations; Vendor and any subcontracting entity may not permit a covered employee to provide services at a school if the employee has been convicted of a felony or misdemeanor

offense that would prevent a person from being employed under TEX. EDUC. CODE § 22.085(a) (i.e., Title 5 felony or an offense requiring registration as a sex offender and victim was under 18 years of age or was enrolled in a public school at the time the offense occurred). Covered employees do not include employees of a contracting or subcontracting entity that is providing engineering, architectural, or construction services on a project to design, construct, alter, or repair a public work if: (1) the public work does not involve the construction, alteration, or repair of an instructional facility as defined by Texas Education Code Section 46.001; (2) the employee's duties will be completed more than seven (7) days before a new instructional facility will be used for instruction; or (3) for an existing instructional facility, the work area contains sanitary facilities separated from all areas used by students by a fence at least six (6) feet high, and the Contractor adopts, informs employees of, and enforces a policy prohibiting employees and any subcontractor's employees from interacting with students or entering areas used by students. Tex. Educ. Code §§ 22.0834(a-1), .08341. The criminal history record information review obligation applies only if Vendor contracts with HCDE/CP to provide services; it does not apply to a contract for the purchase of goods, products or real estate.

5.14. **Customer Support**

Vendor shall provide timely and accurate technical advice and sales support to HCDE/CP staff, and CP members. Vendor shall respond to requests for customer support within one (1) business day after receipt of the request. Vendor shall provide training to HCDE/CP staff and/or CP members regarding products and/or services supplied by Vendor, at no additional charge, if requested by HCDE/CP or a CP member.

5.15. **HCDE/CP and/or CP members' Property**

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

5.16. **Tax Exempt Status**

HCDE/CP and all CP members that are Texas governmental entities or agencies are exempt from payment of Texas State Sales Taxes under TEXAS TAX CODE § 151.310 for the purchase of tangible personal property. Laws of other states govern the tax status of CP members in states other than Texas. Vendor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, without limitation, any federal, state, or local income, sales or excise taxes of Vendor or its employees. HCDE/CP and CP members shall not be liable for any taxes resulting from this Contract, except where otherwise required by law.

5.17. **Other State Tax Requirements**

5.17.1. Payment of Taxes by CP members Outside of Texas – CP members outside of Texas will pay only the rate and/or amount of taxes identified in Vendor's proposal submitted in response to the RFP as appropriate to the specific CP member.

5.17.2. State and Local Transaction Privilege Taxes – The CP member is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sales of products and are the sole responsibility of Vendor, as the seller, to remit. Failure to remit taxes from HCDE/CP and/or the CP member, as the buyer, does not relieve Vendor, as the seller, from its obligation to remit taxes.

5.18. **State of Texas Franchise Tax**

By submitting a proposal in response to the RFP, Vendor certifies that Vendor is not currently delinquent in Vendor's payment of any franchise taxes or other taxes owed to the State of Texas.

5.19. **Tax Responsibilities of Vendor and Indemnification for Taxes**

Vendor is responsible for complying with the tax laws of states and the federal government. Vendor and all subcontractor(s) of Vendor shall pay all federal, state, and local taxes applicable to Vendor's operation, any

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

5.20. **IRS W-9**

To receive payment under this Contract, Vendor shall have a current I.R.S. W-9 Form on file with the CP member.

5.21. **Assignment of Contract**

Vendor may not assign this Contract or any of its rights, duties or obligations hereunder without the prior written approval of HCDE. Any attempted assignment of this Contract by Vendor shall be null and void. Any Purchase Order made as a result of this Contract may not be transferred, assigned, subcontracted, mortgaged, pledged, or otherwise disposed of or encumbered in any way by Vendor without the prior written approval of HCDE/CP and, if applicable, the CP member.

5.22. **Notification of Material Change**

Vendor is required to notify HCDE/CP when any material change in operations occurs, including changes in distribution rights for awarded products, bankruptcy, material changes in financial condition, change of ownership, and the like, within three (3) business days of such change.

5.23. **Performance**

Vendor agrees to use commercially reasonable best efforts to provide the product(s) and/or service(s) subject to this Contract. Vendor shall furnish all supervision, labor, tools, equipment, permits, licenses, transportation, insurance, material, and supplies necessary to complete any scope of work, Purchase Order under this Contract. Vendor shall use skilled, trained personnel, who shall be supervised by Vendor.

5.24. **Subcontractors**

If Vendor uses subcontractors in the performance of any part of this Contract, Vendor shall be fully responsible to HCDE/CP and CP members for all acts and omissions of the subcontractors. Nothing in this Contract shall create for the benefit of any such subcontractor any contractual relationship between HCDE/CP and any such subcontractor, nor shall it create any obligation on the part of HCDE/CP or CP members to pay or to see to the payment of any monies due any such subcontractor except as may otherwise be required by law. Vendor represents and warrants that it is willing, able, and capable of obtaining, supervising, and being responsible for any subcontractors who perform and/or provide products and services related to this Contract.

5.25. **Non-Appropriation**

Renewal of this Contract, if any, will be in accordance with TEX. LOCAL GOV'T. CODE § 271.903 concerning non-appropriation of funds for multi-year contracts. Notwithstanding any other provision of this Contract or obligation imposed on HCDE/CP or any CP member by this Contract, HCDE/CP and CP members shall have the right to terminate this Contract, any Supplemental Contract, or Purchase Order without default or liability to Vendor resulting from such termination, effective as of the expiration of each budget period of HCDE/CP or any CP member if it is determined by HCDE/CP or any CP member, at their sole discretion, that there are insufficient funds to extend this Contract, any Supplemental Contract, any Purchase Order. The parties agree that this Contract, any Supplemental Contract, and/or any Purchase Order are commitments of the current revenue of HCDE/CP and CP members only.

5.26. **Ordering Procedures**

Purchase Orders are issued by HCDE/CP and/or CP members to the Vendor according to this Contract and any Supplemental Contract between HCDE/CP and the CP member. CP members must send Purchase Orders to HCDE/CP, unless otherwise stipulated by HCDE/CP. HCDE/CP may request confirmation of receipt of the Purchase Order from Vendor.

HCDE/CP also may elect to require e-commerce functionality, in which Purchase Orders are sent directly to Vendor and reported by the CP member to HCDE/CP on a specified basis. The e-commerce approach must be approved by HCDE/CP prior to the start date of any Term of the Contract.

#### 5.27. **Invoices; Payments**

5.27.1. Vendor shall submit invoices, in duplicate, directly to HCDE/CP or the CP member at the appropriate location(s) specified by HCDE/CP or the CP member. Each invoice shall include HCDE's or the CP member's Purchase Order number and HCDE/CP Contract Number. All invoices shall be itemized to include the type of product(s) and/or service(s) rendered. Vendor shall submit invoices within a timely manner during HCDE's or the CP member's fiscal year in which the product(s) and/or service(s) are purchased. The shipment tracking number or pertinent information for verification of HCDE's or the CP member's receipt shall be made available upon request by HCDE/CP or the CP member.

5.27.2. HCDE/CP or the CP member will make payments directly to Vendor. HCDE/CP or the CP member placing the Purchase Order with Vendor shall alone be liable and/or responsible for payment for product(s) and/or service(s) ordered and must be invoiced directly by Vendor. Neither HCDE/CP nor any CP member shall be liable for the indebtedness of any one CP member.

5.27.3. TEX. GOV'T. CODE § 2251.021 shall govern when payments are due to the Vendor. Payments are due to Vendor by HCDE/CP and any CP member whose governing body meets only once a month or less frequently, **within forty-five (45) days** after the later of the following: (1) the date HCDE/CP or the CP member receives the products and services under the Contract; (2) the date the performance of the service under the Contract is completed; or (3) the date HCDE/CP or the CP member receives an invoice for the products or service. For CP members whose governing bodies meet more than once a month or more often, payments are due by those CP members **within thirty (30) days** after the later of the following: (1) the date the CP member receives product(s) under the Contract; (2) the date the performance of the service under the Contract is completed; or (3) the date the CP member receives an invoice for product(s) or service(s). Vendor agrees to pay any subcontractors the appropriate share of the payment received from HCDE/CP or the CP member not later than the **tenth (10th) day** after the date the Vendor receives the payment from HCDE/CP or the CP member.

The exceptions to payments made by HCDE, a CP member, and/or Vendor listed in TEX. GOV'T. CODE § 2251.002 shall apply to this Contract.

#### 5.28. **Reporting**

The Vendor shall provide HCDE/CP with a detailed monthly report showing the total dollar volume of all sales under this Contract for the previous month in Microsoft Excel format, in the format and with the information specified by HCDE/CP. Reports are due on the **fifteenth (15) day of the month**, after the close of the previous month and shall provide information regarding Purchase Orders during the previous month. Vendor is responsible for collecting and compiling all sales under this Contract from all CP members and submitting **one (1)** consolidated monthly report. The monthly report shall include, at a minimum, the date of each Purchase Order, Purchase Order number, CP member name, city/town, and Purchase Order total dollar amount.

The Vendor shall provide HCDE/CP with velocity/usage reports within five (5) business days of any request by HCDE/CP for such reports.

Reports shall be submitted in an electronic format to HCDE/CP at 6005 Westview, Houston, Texas 77055, or electronically mailed to [supplyreporting@choicepartners.org](mailto:supplyreporting@choicepartners.org).

#### 5.29. **Pricing Changes**

All prices and discount percentages in Vendor's proposal shall be firm for the Term of this Contract. Pricing may be negotiated during the Contract renewal period. In the event Proposer's prices will be adjusted or escalated upon a renewal (if any) of the fixed-price contract awarded pursuant to this RFP, Proposer must indicate such in its proposal. Any adjustment or escalation of the fixed price(s) will be based on the CPI index and may only be made at the time of contract renewal. Vendor agrees to promptly lower the proportionate price of any product

purchased through this Contract following a reduction in the price the Vendor is paying suppliers. All pricing submitted to HCDE/CP in Vendor's proposal shall include the administrative fee to be remitted to HCDE/CP by Vendor. It is Vendor's responsibility to keep all pricing up-to-date and on file with HCDE/CP. All price changes shall be presented to HCDE/CP for acceptance or rejection by HCDE/CP, in its sole discretion, using the same format as was accepted in Vendor's original proposal; all price changes for products and/or services provided under this Contract must be approved, in writing, by HCDE/CP prior to taking effect.

The following documentation shall be provided to support a request for a price change:

- justification for change/increase
- terms and conditions
- market conditions
- manufacturers'/distributors' impact, if any

All price decreases shall be allowed for all products and/or services.

### 5.30. **HCDE/CP Administrative Fee**

HCDE/CP will invoice Vendor for the HCDE/CP Administrative Fee of 2%, subject to the Administrative Incentive Clause, below. HCDE/CP reserve the right to modify the Administrative Fee at any time, upon notice to Vendor. The invoice for the Administrative Fee will be based on total sales made through this Contract. Vendor shall remit payment of the HCDE/CP Fee to HCDE/CP no later than **thirty (30)** days following the end of the month. Failure to pay the HCDE/CP Administrative Fee in a timely manner may result in Vendor breaching this Contract and may result in HCDE/CP suspending or terminating this Contract. Vendor shall honor and pay HCDE/CP the HCDE/CP Administrative Fee for any sales resulting from this Contract that occurred within **thirty (30) days** of the expiration or termination of this Contract. All rebates, discounts, and other applicable credits granted by Vendor as a result of any Supplemental Contracts entered into between Vendor and CP members shall accrue exclusively to CP member(s).

**Administrative Fee Incentive Clause.** The following incentives will be determined in the sole discretion of HCDE/CP and will be based on amounts actually billed by Vendor. Vendor's failure to abide by the Contract's terms and conditions, including, without limitation, Vendor's requirement to report sales to HCDE/CP, may result in HCDE/CP voiding the Administrative Fee Incentive, in HCDE/CP's sole discretion.

#### **Aggregate Year**

- **Gross sales above \$5M invoiced by Choice Partners = 1.5% for remainder of the then-current Contract Term**
- **Subsequent renewal 1-year Term = 1.75% and Vendor must maintain production of \$5M to keep 1.75% fee for the next subsequent renewal 1-year Term**

#### **Task Orders/Job Orders**

- **\$2M or above - 1.5% only in the Contract Term in which they are invoiced**
- **\$1M or above - 1.75% only in the Contract Term in which they are invoiced**

**NOTE: FAILURE TO REPORT WILL VOID THIS ADMINISTRATIVE FEE INCENTIVE**

### 5.31. **Records Retention**

Vendor shall maintain its records and accounts in a manner that shall assure a full accounting for all product(s) and/or service(s) provided by the Vendor to HCDE/CP and/or CP members under this Contract. These records and accounts shall be retained by Vendor and made available for review and copying by HCDE/CP and CP members for a period of **not less than five (5) years** from the date of completion of the service(s), receipt of product(s), the date of the receipt by HCDE/CP or the CP member of Vendor's final invoice or claim for payment in connection with this Contract, or the date HCDE/CP or the CP member makes final payments and closes pending matters in connection with a federal grant, whichever is later. If an audit or a compliance review has been announced, the Vendor shall retain its records and accounts until such audit or compliance review has been completed.

When federal funds are expended by HCDE or any CP member pursuant to this Contract, Vendor certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.333. Vendor further certifies that Vendor will retain all records as required by 2 CFR § 200.333 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

5.32. **Right to Review, Audit and Inspect**

HCDE/CP, CP members, any federal agency that has awarded federal funds/grant(s) to HCDE/CP or a CP member, and the Comptroller General of the United States, and/or any of their authorized representatives, shall, upon written notice, have the right to audit and examine all of Vendor's records and accounts relating to this Contract and inspect any project performed by the Vendor relating to this Contract. Records subject to audit/review shall include, but are not limited to, all Purchase Orders resulting from this Contract and records which may have a bearing on matters in connection with the Vendor's work for HCDE/CP and/or CP members, and shall be open to inspection and subject to audit/review and/or reproduction by HCDE/CP, CP member, and/or their authorized representative(s) to the extent necessary to adequately permit evaluation and verification of:

5.32.1. Vendor's compliance with this Contract and the requirements of the RFP.

5.32.2. Compliance with procurement laws, policies, and procedures, including, without limitation, reviewing/comparing pricing on invoices for HCDE/CP and/or CP members.

5.32.3. Compliance with provisions for computing billings to HCDE/CP and/or to CP members.

5.32.4. Any other matter related to this Contract.

5.33. **Indemnification**

VENDOR SHALL INDEMNIFY AND HOLD HARMLESS HCDE/CP AND EACH CP MEMBER, INCLUDING HCDE'S AND CP MEMBERS' TRUSTEES, OFFICERS, ADMINISTRATORS, EMPLOYEES, AND AGENTS, FROM ALL CLAIMS, LIABILITIES, COSTS, SUITS OF LAW OR IN EQUITY, EXPENSES, ATTORNEYS' FEES, FINES, PENALTIES OR DAMAGES ARISING FROM ACTS OR OMISSIONS OF VENDOR, VENDOR'S EMPLOYEES, AGENTS, OR SUBCONTRACTORS, IN CONNECTION WITH THIS CONTRACT, INCLUDING WITHOUT LIMITATION, THOSE ARISING FROM CLAIMED INFRINGEMENT OF ANY PATENTS, TRADEMARKS, COPYRIGHT OR OTHER CORRESPONDING RIGHT(S) WHICH IS RELATED TO ANY ITEM VENDOR IS REQUIRED TO DELIVER. VENDOR'S OBLIGATIONS UNDER THIS CLAUSE SHALL SURVIVE ACCEPTANCE AND PAYMENT BY HCDE/CP OR THE CP MEMBER.

5.34. **Governing Law and Exclusive Venue**

The laws of the State of Texas, without regard to its provisions on conflicts of laws, govern this Contract. Any dispute under this Contract involving HCDE/CP must be brought exclusively in the state and federal courts located in Houston, Harris County, Texas. Any dispute not involving HCDE/CP but involving a CP member and Vendor shall be governed by the laws of the state of the CP member, without regard to its provisions on conflicts of laws, and exclusive jurisdiction and venue shall lie in the city, county, and state of the CP member.

5.35. **Multiple Contract Awards; Non-Exclusivity**

HCDE/CP reserves the right to award multiple contracts under the RFP, including multiple contracts for each product/service category. Product/Service categories are established at the sole discretion of HCDE/CP. Nothing in this Contract may be construed to imply that Vendor has the exclusive right to provide products and/or services to HCDE/CP and/or CP members. During the Term of this Contract, HCDE/CP and CP members reserve the right to use all available resources to procure other products and/or services as needed and doing so will not violate any rights of Vendor. In the event that a Vendor has an existing HCDE/CP contract in the same contract title, upon award the new contract will immediately supersede the older contract.

5.36 **New Products**

New products that meet the specifications detailed in the RFP may be added to this Contract, with prior written approval from HCDE/CP. Pricing of any new products shall be equivalent to the percentage discount or proposed

prices for other similar products. Vendor may replace or add products to the contract if: the replacing products are equal to or superior to the original products offered or discounted in a similar degree or to a greater degree and the products meet the requirements of the RFP. No products may be added to avoid competitive procurement procedures. HCDE/CP may reject any proposed additions, without cause, in its sole discretion.

During the Term of a Contract awarded under this RFP, additional purchases not included in the original RFP list and resulting awarded contract may become necessary and benefit HCDE/CP members. Vendor and HCDE/CP agree that the aggregate value of added purchases during each year of the Contract (if renewed) shall not exceed 10% of the estimated total value of the Contract. The total value of the Contract must be agreed upon, and the dollar value listed in the Contract and each renewal term of the Contract (if any). For purposes of this section, the total value of the Contract includes all contracts awarded as a result of the procurement solicitation to all vendors. For the initial Term of a Contract awarded under this RFP, Vendor and HCDE/CP agree that the total value of the Contract shall be \$200,000,000. Additions of new products may be included in the awarded Contract list during the renewal of the Contract through an amendment to the Contract, and the total Contract value adjusted accordingly. For each renewal term of the Contract, the total actual value of the Contract in the preceding year and the additional new product(s) made during that Term will be the basis for determining the maximum dollar amount (not to exceed 10%) of the additional new product(s) that will be allowed during the next Contract renewal term.

**5.37. No Substitution; Product Recall**

Any Purchase Order issued pursuant to this Contract shall conform to the specifications and descriptions identified in this Contract and the RFP. Vendor shall not deliver substitutes without prior written authorization from HCDE/CP or the CP member.

If a product recall is instituted on any good that has been furnished and delivered to HCDE/CP or any CP member, Vendor must immediately (i.e., within 24 hours but preferably sooner) notify the purchasing agent of HCDE/CP and the purchasing CP member by e-mail or in writing and must include all pertinent information relating to the recall. If Vendor is unable to contact the purchasing agent, Vendor must contact the Director of Purchasing of HCDE/CP and the purchasing CP member. Vendor will be responsible for all costs associated with replacing the recalled product, including replacement cost, shipping charges, etc. This requirement shall survive payment and acceptance of the goods.

**5.38 Penalties**

If the Vendor is unable to provide the product(s) or services at the prices quoted in Vendor's proposal or if Vendor fails to fulfill or abide by the terms and conditions of the Contract, the RFP, or a Supplemental Contract, HCDE/CP or the CP member may take the following action(s), in the sole discretion of HCDE/CP or the CP member, and Vendor agrees to comply with the chosen action(s):

- 5.38.1 Insist that the Vendor honor the quoted price(s) specified in Vendor's proposal or the Supplemental Contract, as applicable;
- 5.38.2 Have the Vendor pay the difference between the Vendor's price and the price of the next acceptable proposal, as determined by HCDE/CP or the CP member;
- 5.38.3 Have the Vendor pay the difference between Vendor's price and the actual purchase price of the product or service on the open market; and/or
- 5.38.4 Recommend to HCDE Board of Trustees that the Vendor no longer be given the opportunity to submit a proposal to HCDE/CP and/or that this Contract be terminated.

**5.39. Promotion of Contract Marketing Plan**

The marketing of Vendor's company, product, and/or services shall be the sole responsibility of Vendor. HCDE/CP may only supply Vendor with CP members' contact lists that contain name, address, phone numbers, and/or email addresses. Other items geared toward the joint-marketing of HCDE/CP and Vendor's company, product, and/or services shall be at HCDE/CP's sole discretion. Encouraging CP members to circumvent this Contract by purchasing directly from Vendor may result in suspension or termination of this Contract. For so long as this Contract is valid and enforceable between the parties, Vendor agrees to display the CP seal in its marketing collateral materials, such as Vendor's website and related marketing materials. Vendor shall submit all promotional materials to HCDE/CP and obtain written approval before Vendor finalizes or publishes

promotional material bearing the HCDE/CP or HCDE/CP name or seal. Vendor may not release any press release or other publication regarding this Contract or HCDE/CP unless and until HCDE/CP first approves the press release or publication in writing.

5.40. **Website Support**

Vendor agrees to cooperate with HCDE/CP in publicizing contract particulars on the CP website. Vendor also agrees to work with HCDE/CP in updating and maintaining current information on Vendor activities related to the Contract on the CP website. Vendor agrees to provide an electronic version of its logo for use on the CP website upon Contract award and provide other information as reasonably requested by HCDE/CP to help ensure that the CP website is current and consistently updated.

5.41. **Safety**

Vendor, its subcontractor(s), and their respective employees shall comply fully with all applicable federal, state, and local safety and health laws, ordinances, rules, and regulations in the performance of services under this Contract, including, without limitation, those promulgated by HCDE/CP, CP members, and by the Occupational Safety and Health Administration (“OSHA”). In case of conflict, the most stringent safety requirements shall govern. Vendor shall comply with all other safety guidelines and standards as required by HCDE/CP or CP members. Vendor shall indemnify and hold HCDE/CP and/or the CP member harmless from and against all claims, demands, suits, actions, judgments, fines, penalties, and liability of every kind arising from the breach of Vendor’s obligations under this provision.

5.42. **Workforce**

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

5.43. **Supplemental Contracts**

A CP member and Vendor may enter into a separate, Supplemental Contract. Any Supplemental Contract developed as a result of this Contract and/or the RFP is exclusively between the CP member and Vendor and shall have no effect or impact on HCDE, any other CP member, or this Contract. Any Supplemental Contract between Vendor and a CP member is exclusively between that specific CP member and Vendor and will be subject to immediate cancellation by the CP member (without penalty to the CP member) if, in the opinion of the CP member, the quality, service, and specification requirements, and/or the terms and conditions are not maintained as stated in the Supplemental Contract. Vendor shall promptly notify HCDE/CP of any Supplemental Contract executed between Vendor and a CP member. Supplemental Contracts are entered into pursuant to the piggyback method delineated in the U.S. Department of Agriculture directive SP 35-2012. Should the “piggybacking” result in a material change to the Contract, HCDE/CP will proceed under Section 4.22 of this RFP.

5.44. **Insurance**

Vendor is required to provide HCDE/CP and/or the CP member with copies of certificates of insurance, naming HCDE/CP and/or the CP member as additional insured’s for Texas Workers Compensation and General Liability Insurance, **within 14 business days of contract award and prior to the commencement of any work under this Contract.** Certificates of Insurance, name and address of Vendor, the limits of liability, the effective dates of each policy, and policy number shall be delivered to HCDE/CP and/or the CP member prior to commencement of any work under this Contract. The insurance company insuring Vendor shall be licensed in the State of Texas or the state in which the CP member is located, and shall be acceptable to HCDE/CP and/or the CP member. Vendor shall give HCDE/CP or the CP member a **minimum of ten (10) days’** notice prior to any modifications or cancellation of said policies of insurance. Vendor shall require all subcontractors performing any work under or relating to this Contract to maintain coverage as specified below. Vendor shall, at all times during the Term of this Contract, maintain insurance coverage with not less than the type and requirements shown below. If the CP member has higher insurance requirements than those listed below, such may be added to the Purchase Order. Such insurance is to be provided at the sole cost of the Vendor. These requirements do not establish limits of Vendor’s liability.

All policies of insurance shall waive all rights of subrogation against HCDE, CP members, and HCDE/CP and CP members' officers, employees and agents.

Upon request, certified copies of original insurance policies shall be furnished to HCDE/CP and/or to CP members.

HCDE/CP and the CP member, as requested, shall be named as an "additional insured" on insurance policies.

HCDE/CP and the CP member reserve the right to require additional insurance should HCDE/CP or the CP member deem additional insurance necessary, in their sole discretion.

- Workers Compensation (with waiver of subrogation to HCDE/CP and the CP member) Employer's Liability, including all states, U.S. Longshoremen, Harbor Workers and other endorsements.
- Statutory, and Bodily Injury by Accident: \$100,000 each employee. Bodily Injury by Disease: \$500,000, policy limit \$100,000 each employee.
- Commercial General Liability Occurrence Form including, but not limited to, Premises and Operations, Products Liability Broad Form Property Damage, Contractual Liability, Personal and Advertising Injury Liability and where the exposure exists, coverage for watercraft, blasting collapse, and explosions, blowout, cratering and underground damage. \$300,000 each occurrence Limit Bodily Injury and Property Damage combined. \$300,000 Products-Completed Operations Aggregate Limit \$500,000 per Job Aggregate. \$300,000 Personal and Advertising Injury Limit.
- Automobile Liability Coverage: \$300,000 Combined Liability Limits Bodily Injury and Property Damage Combined.

#### 5.45. **Participation in HCDE/CP**

Vendor acknowledges and agrees that continued participation in the HCDE/CP cooperative purchasing program is subject to HCDE/CP's sole discretion and that Vendor may be removed from the HCDE/CP program at any time, with or without cause, in HCDE/CP's sole discretion. All work resulting from this Contract must cease immediately after completion of the final accepted Purchase Order. Nothing in this Contract or in any other communication between HCDE/CP and Vendor may be construed as a guarantee that HCDE/CP or CP members will submit any Purchase Order to Vendor at any time.

At a minimum, to continue participation in the HCDE/CP cooperative purchasing program, Vendor must:

- Submit detailed monthly reports of all sales activity (such report is required even if there is no sales activity for a given month);
- Timely remit Administrative Fee(s) to HCDE/CP;
- Market Choice Partners, including inclusion of CP seal on Vendor's website, development and execution of marketing plan, and participation in at least 3 of marketing events (such as trade shows and conferences) annually;
- Maintain a minimum annual sales activity of \$15,000;
- Completion of all required forms (such as Form 1295, EDGAR Certifications, etc.); and
- Maintain required insurance and submit updated certificate(s) to CP annually

#### 5.46. **No Agency or Endorsements**

It is the intention of the parties to this Contract that Vendor is independent of HCDE/CP and CP members, is an independent contractor, and is not an employee, agent, joint venturer, or partner of HCDE/CP or any CP member. Nothing in this Contract shall be interpreted or construed as creating or establishing the relationship of employer and employee, agent, joint venturer or partner, between HCDE/CP and Vendor, any CP member and Vendor, HCDE/CP and any of Vendor's agents, or any CP member and any of Vendor's agents. Vendor has no power or authority to assume or create any obligation or responsibility on behalf of HCDE/CP or any CP member, and HCDE/CP and HCE members have no power or authority to assume or create any obligation or responsibility on behalf of Vendor. This Contract shall not be construed to create or imply any partnership, agency, or joint venture,

nor shall it be construed or deemed an endorsement of a specific company or product. Vendor agrees that HCDE/CP and CP members have no responsibility for any conduct of any of Vendor's employees, agents, representatives, contractors, or subcontractors.

5.47. **Equal Opportunity**

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

5.48. **Force Majeure**

Neither HCDE, any CP member, or Vendor shall be deemed to have breached any provision of this Contract as a result of any delay, failure in performance, or interruption of service resulting directly or indirectly from acts of God, network failures, acts of civil or military authorities, civil disturbances, wars, energy crises, fires, transportation contingencies, interruptions in third-party telecommunications or Internet equipment or service, other catastrophes, or any other occurrences which are reasonably beyond HCDE, any CP member, or Vendor's control.

HCDE, CP members, and Vendor are required to use due caution and preventive measures to protect against the effects of force majeure, and the burden of proving that a force majeure event has occurred shall rest on the party seeking relief under this provision. The party seeking relief due to force majeure is required to promptly notify the other parties in writing, citing the details of the force majeure event and relief sought, and shall resume performance immediately after the obstacles to performance caused by a force majeure event have been removed, provided the Contract has not been terminated. Delay or failure of performance, by either party to this Contract, caused solely by a force majeure event, shall be excused for the period of delay caused solely by the force majeure event. HCDE, CP members, and Vendor shall not have any claim for damages against any other party resulting from delays caused solely by force majeure. Notwithstanding any other provision of this Contract, in the event the Vendor's performance of its obligations under this Contract is delayed or stopped by a force majeure event, HCDE/CP shall have the option to terminate this Contract. This section shall not be interpreted as to limit or otherwise modify any of HCDE's or CP members' contractual, legal, or equitable rights.

5.49. **Severability**

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

5.50. **Waiver**

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

5.51. **Entire Agreement**

The Contract, the RFP, Vendor's proposal submitted in response to the RFP, the attached and incorporated attachments, addendum, and/or exhibits, if any, and the Supplemental Contract, if any, contain the entire agreement of the parties relative to the purpose(s) of the Contract and supersede any other representations, agreements, arrangements, negotiations, or understandings, oral or written, between the parties to this Contract. In the event of a conflict between this Contract and the RFP or Vendor's proposal submitted in response to the RFP, this Contract shall control. In the event of a conflict between the RFP and Vendor's proposal submitted in

response to the RFP, the RFP shall control. This Contract supersedes any conflicting terms and conditions on any Purchase Order, invoices, checks, order acknowledgements, forms, purchase orders, or similar commercial documents relating hereto and which may be issued by Vendor after the Effective Date of this Contract.

In addition to this Contract, a Supplemental Contract between Vendor and the CP member may be established to further detail the terms and conditions of the CP member's specific project. In the event of a conflict between this Contract and the Supplemental Contract, as to HCDE, this Contract shall prevail. In the event of a conflict between this Contract and the Supplemental Contract, as to the CP member, the Supplemental Contract shall prevail unless the Supplemental Contract states otherwise.

5.52. **Interpretation**

Vendor agrees that the normal rules of construction that requires that any ambiguities in this Contract are to be construed against the drafter shall not be employed in the interpretation of this Contract.

5.53. **Notice**

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

5.54. **Captions**

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

5.55 **Certifications**

Vendor hereby certifies that it is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State. Vendor further certifies and verifies that neither Vendor, nor any affiliate, subsidiary, or parent company of Vendor, if any (the "Vendor Companies"), boycotts Israel, and Vendor agrees that Vendor and Vendor Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term "boycott" shall mean and include terminating business activities or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory.

Vendor certifies and agrees that it shall not assist an employee, contractor, or agent of HCDE or of any other school district in obtaining a new job if the Vendor knows, or has probable cause to believe, that the individual engaged in sexual misconduct regarding a minor or student in violation of the law. Routine transmission of an administrative or personnel file does not violate this prohibition. *See* HCDE Policy CJ (Legal) and (Local).

## EXCEPTIONS

---

PS LIGHTWAVE takes a blanket exception to the terms and conditions contained and/or incorporated into this RFP; however, PS LIGHTWAVE will work cooperatively to finalize and clarify any contractual provisions for a mutually acceptable final contract consistent with PS LIGHTWAVE contract specifications, federal and state laws relating to the entity and type of services requested. The products and services proposed in this response, as well as the rates, charges, terms and conditions (*including PS LIGHTWAVE's Service Level Agreement and Acceptable Use Policy*) shall be provided to the HCDE in a mutually agreed contract to be executed by and between PS LIGHTWAVE and the HCDE.

**GENERAL TERMS:** All terms and conditions contained in this RFP relating to Payment, Limitation of Liability, General Liability, Indemnification, Insurance, Force Majeure, Assignment, and preprinted terms of a purchase order form shall be null and void in lieu of those incorporated in a mutually agreed to contract document executed by and between the HCDE and PS LIGHTWAVE. Following are the specific terms taken exception to in the original response:

### Item 5.5 Termination of Contract; Survival

HCDE will be provided remedies for termination under default conditions or inability to secure E-Rate funding in a contractual agreement between PS LIGHTWAVE and HCDE. PS LIGHTWAVE does not provide for termination without cause. PS LIGHTWAVE may only be held liable to the HCDE for costs up to but not exceeding the total Contract price for expenses the HCDE may incur to complete or procure replacement services, in the event of PS LIGHTWAVE's default under a contract to be executed between the HCDE and PS LIGHTWAVE.

### Item 5.6. Buy America Act; Prevailing Wage Rates

Prevailing Wage Rates are not applicable to this project pursuant to 2258.002. APPLICABILITY OF CHAPTER TO PUBLIC WORKS.

(a) This chapter applies only to the construction of a public work, including a building, highway, road, excavation, and repair work or other project development or improvement, paid for in whole or in part from public funds, without regard to whether the work is done under public supervision or direction.

(b) This chapter does not apply to work done directly by a public utility company under an order of a public authority.

### Item 5.10. Performance and Payment Bonds

PS LIGHTWAVE believes issuance of a bond would be unnecessary based on the nature of the contracted services. Bonds are issued to assure contractors will proceed with the contract if awarded (Bid), guarantee the value of the work will not be lost in case of an unfortunate event (Performance), and labor and material costs will be paid (Payment). Since the service would be delivered over the wholly-owned PS LIGHTWAVE network, the HCDE would be assessed no installation or provisioning costs, and labor consists of PS LIGHTWAVE employees, the cost of such bonds would significantly de-value the contract based on the competitive pricing being made available to the HCDE. PS LIGHTWAVE has provided in its contracts default and service level language to protect the interests of our customers. As provided for in References, the HCDE can be secure that PS LIGHTWAVE has worked with every major school HCDE in the Greater Houston Metropolitan area, all without bonds, for the delivery of this type of service.

As such, if PS LIGHTWAVE is required to maintain a performance, payment and bid bond for this project, it would be necessary to add the annual premiums to the bid. Additionally, PS LIGHTWAVE's insurance provider would require use of Travelers annual bond form with annual renewal by continuation certificate, irrespective of contract term. Non-renewal of the bond does not constitute default

### Item 5.25: Non-Appropriation Clause