NEW CANEY INDEPENDENT SCHOOL DISTRICT PURCHASE ORDER TERMS AND CONDITIONS

1. This Purchase Order ("PO") and its terms and conditions constitute a binding contract (the "Agreement") between the entity listed on the face of the PO ("Vendor") and New Caney Independent School District ("District" or "NCISD"), to furnish the goods and/or services specified on the face of the PO. Vendor's commencement of performance or acceptance of this PO in any manner shall conclusively evidence agreement to this PO's terms and conditions as written. District's acceptance of Vendor's goods and/or services does not constitute acceptance of any terms and conditions stated in Vendor's terms and conditions included in any Vendor documentation, agreements, or online materials.
   - 1.1 Under no circumstances is the amount of this PO to be exceeded without prior written approval of the Purchasing Director or designee.
   - 1.2 No substitution of materials of any kind or change in, cancellation of, waiver of, or exception to any of the terms or specifications of any PO, contract, or service agreement will be recognized without the prior written authorization of the Purchasing Director or designee.
   - 1.3 District's PO number must appear on all of Vendor's invoices, delivery memoranda, bills of lading, packages, and correspondence.
   - 1.4 Vendor shall address all communications (excluding invoices) concerning this PO to the Purchasing Director, at the address on the front of the purchase order, or by contacting (281) 577-8600.
2. ***Agreement***. The following documents contain the entire agreement of the District and Vendor relative to the purpose(s) of this PO, and in the event of a conflict between or among the documents that form the entire agreement, the following hierarchy shall prevail: (1) Vendor's completed NCISD Vendor Packet/bid attributes, except in the following circumstance: in the event of a conflict or inconsistency related to a matter of data privacy or data protection between or among the Texas Student Privacy Alliance's Standard Student Data Privacy Agreement, incorporated by reference herein ("DPA"), this PO, and/or applicable data privacy or data protection law, the requirement that affords the most protection to NCISD Data (as that term is defined in the DPA) will supersede and prevail; (2) if applicable, the terms and conditions of the NCISD Contracted Services Agreement and its attached addenda, exhibits, attachments, and documents/forms; (3) these PO terms and conditions; (4) District's procurement solicitation, a cooperative contract used by District, the CTPA or governmental entity contract used by District, or the quote/open market used by District (each a "Procurement Document"); and (5) the portion(s) of Vendor's submitted proposal or quote accepted by District. This Agreement supersedes any conflicting terms and conditions on any Vendor purchase or work orders, invoices, checks, order acknowledgements, forms, contracts, terms of use, online or website source terms, or similar commercial documents relating hereto and which may be issued by Vendor after the Effective Date of this Agreement.
3. ***Applicable Law & Venue*.** The laws of the State of Texas, without regard to its provisions on conflicts of laws, govern all Purchase Orders. The exclusive jurisdiction for any dispute under this Purchase Order is the state and federal courts located in New Caney, Montgomery County, Texas. Vendor represents that the merchandise covered by the Contract was not manufactured and is not being sold in violation of any federal, state, or local law. Vendor represents that the merchandise covered by the Contract was not manufactured and is not being sold in violation of any federal, state, or local law.
4. ***Purchase Order*.** The District requires a PO before order fulfillment. The PO number must appear on all invoices, delivery memoranda, bills of lading, packages, and correspondence. A PO is valid only when the following two conditions have been met: (a) a PO number appears in the space provided; and (b) a written or stamped signature of District's Purchasing Director or designee appears in the space provided.
5. ***Termination and Purchase Order Changes.***
   - ***5.1 Termination***. The Parties may mutually agree in writing to terminate this PO for any reason, with or without cause, effective as of the date agreed. In the event of such early termination, NCISD will be responsible for payment for only those goods or services that have been accepted by NCISD up to the termination date. NCISD is entitled to a pro-rata refund for any Services for which NCISD has paid but which have not yet been accepted by NCISD. Upon breach of this PO by NCISD, Vendor shall provide written notice to NCISD and an opportunity to cure of no less than thirty (30) days; if NCISD has failed to undertake reasonable measures to cure its breach upon the expiration of thirty (30) days of NCISD having received written notice from Vendor, Vendor has the right to terminate this Agreement. NCISD may, by written notice, immediately terminate this PO if Vendor has defaulted in whole or in part (including, but not limited to, failure to provide goods or services under this PO in a satisfactory and proper manner, in the sole discretion of NCISD), refuses or fails to comply with the provisions of this PO, fails to make progress, does not cure such failure after written notice within a reasonable period of time, or fails to perform within the same time period specified or any written extension thereof. In such event, NCISD may obtain comparable services elsewhere and either deduct the costs of obtaining such goods and/or services from any amount owed to the Vendor or Vendor shall reimburse NCISD for such costs incurred by NCISD. Such costs shall not exceed the cost of the Vendor's remaining performance owed pursuant to this PO. NCISD may further terminate this PO for any reason, with or without cause, by giving thirty (30) days' written notice to Vendor. Upon receipt of a Notice of Termination by the District, the Vendor shall promptly cease all

further work pursuant to this PO, with such exceptions, if any, specified in the Notice of Termination.

5.2 Changes. The District reserves the right to make changes to this PO (e.g., increase/decrease quantities, change delivery address, etc.). Any changes to the PO shall be communicated to Vendor by the issuance of a written Change Order.

6. ***Appropriated Funds.*** Renewal of this PO or continuation beyond the current fiscal year, if any, will be in accordance with Texas Local Government Code § 271.903 concerning non-appropriation of funds for multi-year contracts. Notwithstanding any other provision of this PO or obligation imposed on District by this PO, District shall have the right to terminate this PO without default or liability to Vendor resulting from such termination, effective as of the expiration of each budget period of District if it is determined by District, in District's sole discretion, that there are insufficient funds to extend this PO. The parties agree that this PO is a commitment of District's current revenue only. To the extent that NCISD will use grant funds to fulfill its obligations under this PO, Vendor acknowledges that grant funds will be used to pay for all or a portion of funds due under this PO and that this PO is only effective upon receipt of the Notice of Grant Award ("NOGA") and receipt of grant funding by NCISD from the awarding agency. As such, if NCISD does not receive sufficient grant funding for the goods/services provided in this PO, NCISD may terminate this PO without penalty and without further liability, obligation, or duty (monetary or otherwise) to Vendor, at any time upon written notice to Vendor. Further, in the event that any payment(s) to Vendor under this PO are subsequently disallowed by a grant awarding agency or in the event that NCISD is required to refund any funding received from a grant awarding agency relating to Vendor's goods/services, to the maximum extent permitted by applicable law, Vendor shall repay to NCISD, on demand, the amount of any such disallowed costs and/or refund(s). NCISD may, in its sole discretion, deduct the amount(s) of any such disallowed costs and/or refund(s) from subsequent payments to Vendor under this or other POs.
7. ***No Assignment/Delegation.*** Neither this PO nor any duties or obligations under it shall be assignable by Vendor without the prior written acknowledgement and authorization of NCISD.
8. ***Relationship of Parties/ Independent Vendor Status.*** Vendor is an independent contractor and is not an employee, agent, joint venturer, or partner of NCISD. Nothing in this PO shall be interpreted or construed as creating or establishing the relationship of employer and employee between NCISD and either Vendor or any employee, volunteer, or agent of Vendor, nor shall anything in this PO be construed as creating or establishing a joint venture or business partnership between NCISD and either Vendor or any employee, volunteer, subcontractor, or agent of Vendor.
9. ***Warranties and Remedies.*** In addition to the warranties provided by law, Vendor expressly warrants that it has the right to sell the goods and/or services provided under this PO and that such services and/or goods provided by Vendor shall, for a period of one (1) year upon the later of NCISD's acceptance of the good and/or service or payment of the applicable invoice: (a) be in full conformity with the specifications, plans and samples approved by NCISD and will be new, of good quality, material and workmanship, merchantable, fit for the use and purpose for which they were intended, and free from defects; (b) be manufactured, sold, delivered, and installed in compliance with the provisions of all applicable federal, state, and local laws, ordinances rules, and regulations; and (c) not infringe on any valid patent, trade mark, trade name, or copyright. Any and all warranties made by the manufacturer or supplier of goods delivered by Vendor are hereby assigned to NCISD and nothing contained herein shall exclude or affect the operation of any implied warranties otherwise arising in favor of NCISD. Vendor will bear the cost of inspecting, testing and/or replacement of rejected goods and/or services. Warranties granted herein shall survive inspection, testing, acceptance and payment and shall accrue to NCISD.
10. ***No Substitution.*** By acceptance of this PO, Vendor agrees to deliver the goods and/or render the services in conformance with the specifications and descriptions identified on the face of the PO, the Procurement Document and/or any contract entered into between District and Vendor. Unless otherwise specified, Vendor shall not deliver substitutes or inferior materials without prior, written authorization from District.

10.1 ***Quality of Goods.*** In the event no quality is specified on the face of the PO, in the Procurement Document, or in any contract entered into between District and Vendor, the goods delivered hereunder shall be of the best quality. Vendor shall ensure that all goods delivered to District be new (i.e., previously unused and in their original packaging) and have not been reconditioned, repackaged, returned, remanufactured, refurbished, or damaged.

10.2 ***Transfer of Manufacturer's Warranty.*** If the Vendor is not the manufacturer, and the goods are covered by a separate manufacturer's warranty, the Vendor shall transfer and assign such manufacturer's warranty to the District. If for any reason the manufacturer's warranty cannot be fully transferred to the District, the Vendor shall assist and cooperate with the District to the fullest extent to enforce such manufacturer's warranty for the benefit of the District.

10.3 ***Services.*** The Vendor warrants and represents that all services to be provided the District under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

10.4 ***Quantities.*** The quantities specified for delivery in the PO are the only quantities required by the District. Therefore, if Vendor delivers quantities in excess of those specified on the face of the PO, the District is not required to make any payment for the excess goods and, at the District's election, may keep or return the excess goods. All risk and

expense for the return of the quantities of goods in excess of those specified on the face of the PO shall be borne by Vendor unless prior written authorization is issued by the District.

11. Delivery.

11.1 All deliveries shall be to the site(s) specified on the PO, be freight prepaid, Free On Board (F.O.B.) Destination (New Caney Independent School District), and pricing shall include all shipping, handling, freight, and/or delivery charges. The District has no facilities for off-loading deliveries. Unless specifically stated otherwise, all shipments MUST include "inside delivery

11.2 The obligation of Vendor to meet the delivery dates, specifications, and quantities set forth in the PO is of the essence of this PO. If, at any time, Vendor believes it may be unable to comply with the delivery or completion schedules, then Vendor must immediately notify the District's Purchasing Director in writing of the probable length of any anticipated delay and the reasons for it. In the event of such notification or of an actual failure by Vendor to comply with the delivery or completion schedules, the District may, in addition to all other remedies, require Vendor, at Vendor's expense, to ship the goods via airfreight or expedited routing to avoid or minimize delay.

11.3 When a delivery is to be made to a District campus: (a) such delivery shall be made between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except on school holidays and (b) such delivery shall be made and goods shall be placed inside the campus building in the designated room(s) at no additional charge. THE DISTRICT CANNOT AND WILL NOT ACCEPT TAILGATE DELIVERY AT A SCHOOL ENTRANCE UNLESS SPECIFIED OTHERWISE ON THIS PURCHASE ORDER.

11.4 All unshipped items on this Purchase Order will automatically be cancelled ninety (90) days after date of order unless prior approval by District's Purchasing Director has been obtained. Shipments initiated after such date may not be accepted.

12. Inspection and Acceptance. Prior to acceptance of any goods and/or services and continuing for a period of thirty (30) days after NCISD's first use of the goods and/or services NCISD reserves the absolute right to inspect, test, and reject all goods and/or services, in whole or in part, furnished by Vendor, to ensure that they comply with this PO, the Procurement Document , and/or any contract entered into between NCISD and Vendor. This right shall exist even if payment has already been made to Vendor. Goods or services which, in the sole opinion of NCISD, fail to conform to the required specification(s) or standard(s) may be considered non-conforming. NCISD reserves the right to inspect the goods and/or services provided under this PO at all reasonable times and places during the Term. If any of the goods/services do not conform to the requirements set forth in this PO or the Procurement Document, NCISD reserves the absolute right to, in the District's sole discretion: (i) require Vendor to perform the services again / provide goods in conformity with such requirements, with no additional charge to NCISD; (ii) to inspect, test, and reject all goods and/or services, in whole or in part, furnished by Vendor; or (iii) equitably reduce payment due Vendor to reflect the reduced value of the services performed / goods provided. These remedies do not limit other remedies available to NCISD in this PO or otherwise available by law.

13. Product Recall. Vendor shall notify the NCISD's Procurement Services Department immediately if a product recall is instituted on any good Vendor has delivered or if Vendor discovers or becomes aware of any quality or other deficiency in the delivered good. This requirement shall survive payment and acceptance of the good(s).

14. ***Notice***. Any notice provided under this PO by either party to the other shall be in writing and may be effected by hand-delivery, certified mail – return receipt requested, or by electronic message. Notice to either party shall be sufficient if made or addressed to the physical or the email address provided on the face of the PO.

15. ***Indemnification.*** The District shall not be required to indemnify and/or hold harmless the Vendor and/or its agents and employees**. TO THE FULLEST EXTENT PERMITTED BY LAW, VENDOR SHALL INDEMNIFY AND HOLD HARMLESS NEW CANEY ISD, ITS DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ALL LIABILITY, LOSS, DAMAGE, EXPENSE (INCLUDING REASONABLE LITIGATION COSTS AND ATTORNEY'S FEES), AND CLAIMS FOR INJURY TO OR DEATH OF ANY PERSON, OR INJURY OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING OUT OF OR OCCASIONED BY, DIRECTLY OR INDIRECTLY, PERFORMANCE UNDER THIS PO (COLLECTIVELY, "CLAIM"), WHETHER OR NOT THE CLAIM ARISES FROM THE NEGLIGENCE, WILLFUL ACT, BREACH OF CONTRACT, OR VIOLATION OF LAW BY VENDOR, ITS EMPLOYEES, AGENTS, CONTRACTORS, OR SUBCONTRACTORS, EXCEPT FOR CLAIMS ARISING ENTIRELY FROM THE NEGLIGENCE OF NEW CANEY ISD.**

16. ***Price.*** The District accepts Vendor's price(s) as recorded on Vendor's quote/proposal and on the PO but reserves the right to cancel the PO if the prices are to be increased prior to the delivery of goods or the completion of services. The price(s) specified on the face of the PO shall remain firm until the District has processed Vendor's invoice, or until the goods and/or services have been accepted by the District, whichever is later. Vendor is directed not to fill this PO at increased prices without authorization from the Purchasing Director or designee. No separate charges, except those clearly recorded on Vendor's quote/proposal and on this PO will be allowed. Prices may be negotiated during the renewal period of any contract

entered into between the District and Vendor.

17. ***Invoices and Payment.***
    17.1 Any invoices submitted to the District shall be itemized and must include the following: the PO and/or contract number; Invoice Date, Name of Vendor, brief description of the item, quantity, unit price, and extended price; Vendor's complete mailing address and telephone number; transportation charges, if any, listed separately; when applicable, a copy of the bill of lading and the freight waybill attached to the invoice; and any other substantiating documentation or information specifically required by the PO. Vendor shall submit itemized invoices to the Business and Financial Services Department – Accounts Payable via e-mail at gsimthson@newcaneyisd.org or mailed to 21580 Loop 494 New Caney Texas 77357.
    17.2 Invoices that do not indicate the PO number will be returned to Vendor.
    17.3 The District is tax-exempt. Vendor shall not include taxes on the invoice. The District's Tax Identification Number is 74-6019972.
    17.4 In accordance with Texas Government Code § 2251.021, payments are due to Vendor within forty-five (45) days after the later of the following: (1) the date the District receives the goods; (2) the date the performance of the service is completed; or (3) the date the District receives an invoice for the goods or services.
    17.5 All inquiries concerning payment should be directed to Accounts Payable, 281-577-8600 or gsimthson@newcaneyisd.org. All inquiries concerning purchase orders should be directed to the Purchasing Department, 281-577-8600 or *purchasing@newcaneyisd.org*.

18. Title and Risk of Loss. The title to any and all goods, products, merchandise, materials, and/or services that are provided to the District shall pass to the District upon acceptance of the good or payment of the applicable invoice, whichever is later.

19. ***No 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 of this PO shall be taken or held to be a waiver of any other term hereof or the breach thereof. No failure or delay by NCISD in exercising any right or power accruing upon the non-compliance or failure of performance by Vendor under the provisions of this PO shall be construed to be a waiver of such non-compliance or failure of performance or subsequent rights accruing to NCISD. No waiver of any of the provisions of this PO shall be binding unless in writing and signed by duly authorized representatives of the parties hereto.

20. Severability. In the event that any one or more of the provisions contained in this PO 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 this PO shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

21. 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. Vendor understands that Vendor is ineligible to receive a contract award with the District 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). For the entire duration of this Purchase Order, Vendor and all subcontractors shall maintain all required licenses, certifications, permits, and any other documentation necessary to perform this PO.

22. Material Safety Data Sheets (MSDS). The District is required to obtain current and accurate Material Safety Data Sheets for each product which may contain hazardous substances, create hazardous substances as a by-product, cause harmful physical effects, or otherwise be considered hazardous. If applicable, Vendor shall deliver Material Safety Data Sheets (MSDS) with the requested goods. Vendor shall comply with OSHA safety rules and any other safety guidelines and standards as required by the District. Vendor agrees to perform services(s) rendered safely, diligently, efficiently, and in a professional manner.