

8.13 **Project Development Team(s):** Project Development Team(s) are teams formed by the Owner for each Project to allow input in the design and construction process by persons in the community interested in a particular school project, such as a member of the Owner, the STIP, the school principal, and staff representatives.

8.14 **Project Work or Work:** The Project Work or Work is all construction at any Project site necessary to complete all improvements for that Project. The Program Work is all construction at all project sites necessary to complete the improvements for all Projects, **including but not limited to, the procurement and installation and testing of information technology equipment.**

8.15 **Trade Contractor:** A Trade Contractor is any individual or firm performing specialty-type Program Work and bound by an agreement enforceable at law with a Prime Contractor, another Trade Contractor, the STIP or the Owner.

8.1 **The Contract Documents.** The Contract documents consist of this Agreement, the STIP's proposal as well as other documents listed and attached to this agreement and modifications issued after execution of this Agreement. These documents form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire integrated agreement between the parties hereto and supercedes prior negotiations, representations, either written or oral. An enumeration of the Contract Documents other than Modifications, appears in the "Table of Contents." **In the event of an ambiguity, conflict or inconsistency between or among the Contract Documents, the order of precedence to govern interpretation of the Contract Documents shall be first any Change Order mutually agreed upon by the parties, then the Agreement, then Section 8, then Section 7, then the remainder of the RFP, and then the remainder of the other parts of the Contract Documents.**

8.2 Term of Contract and Dates of Commencement and Substantial Completion.

8.2.1 The term of this Agreement is five years.

8.2.2 The date of commencement is the date from which the Contract Time is measured, and shall be the date of this Agreement, as first written above unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

8.2.3 **The Work** described in the Contract Documents consists of Work at schools listed at Tab 11 during the term of the Agreement. The Owner and STIP shall schedule the Work at the individual schools annually during the Term of the Agreement.

8.2.4 The STIP shall achieve Substantial Completion of the entire Program Work not later than December 31, 2007, subject to adjustments of this Contract Time as provided in the Contract Documents **and to provisions of the Agreement.**

8.3 Contract Sum.

8.3.1 The Owner shall pay the STIP in current funds for the STIP's or its sub-contractor's performance of the **Design Services a percentage of construction cost. Construction cost is the sum of Contracts for individual school projects. The Contract Sum per school shall be determined as set forth below.**

8.3.2 **Contract Sum per school.** The Owner and STIP further agree that the above Contract Sum is based on a contract sum per individual school. The Contract sum includes:

8.3.2.1 Cost of Equipment and other deliverables based on Unit Prices, as listed in Sub-section 10.3, for procurement of itemized equipment.

8.3.2.2 Contract Sum per school for contracted services, including but not necessarily limited to cabling and electrical sub-contracts, as set forth at Tab 13.

8.4 **Construction Cost.** For the purpose of determining the STIP's fee for Design Services, the term "Construction Cost" is defined as follows:

8.4.1 during the design, design development and construction document phases, Construction Cost shall be determined by the owner's budget for the project.

8.4.2 during the bidding and negotiation phase, construction cost shall be determined by the lowest responsible bid or bids, including add alternates.

8.4.3 during the construction phase, Construction Cost shall be determined by the Contract Sum as stated in the owner-contractor agreement or agreements and any change orders formally approved by the owner and prime contractor or contractors.

8.4.4 The cost of the equipment and deliverables purchased and installed at each school project is a part of the "Construction Cost."

8.5 **Progress Payments.**

8.5.1 Based on Applications for Payment submitted to the Owner and Certificates for Payment issued by the STIP, the Owner shall make progress payments on account of the Contract Sum to the STIP as provided below and elsewhere in the Contract Documents.

8.5.2 The period covered by each Application for Payment shall be one calendar month ending on the 25th day of the month.

8.5.3 Provided an Application for Payment is received by the Owner not later than the **LAST WORKING DAY** of a month, the Owner shall make payment to the STIP not later than the **FIFTEENTH DAY of the NEXT month**. If an Application for Payment is received by the Owner after the Application date fixed above, payment shall be made by the Owner not later than 45 days after the Owner receives the Application for Payment.

8.5.4 Each Application for Payment shall be based upon **Paragraph 3.0 of the Agreement and** the Schedule of Values and unit prices submitted by the STIP in accordance with the Contract Documents. The Schedule of Values and Unit Prices shall allocate the entire Contract Sum among the various individual schools as listed and described at Tab 11 of the Contract Documents and be prepared in such form and supported by such data to substantiate its accuracy as the Owner or STIP may require. This Schedule, unless objected to by the Owner or STIP, shall indicate the percentage of completion of each school as of the end of the period covered by the Application for Payment.

8.5.5 Application for Payment shall indicate the percentage of completion of each portion of the Work at each school as of the end of the period covered by the Application for Payment.

8.5.6 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- 8.5.6.1 Take that portion of the Contract Sum properly allocated to the completed Work at a school as determined by multiplying the percentage completion of each portion of the Project Work by the Contract Sum listed for the school at Tab 3, less retainage of TEN percent (10%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included even though the Contract Sum allocated for that school has not yet been adjusted by Change Order;
- 8.5.6.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored in a bonded warehouse off site at a location agreed upon in writing), less retainage of TEN percent (10%);
- 8.5.6.3 Subtract the aggregate of previous payments made by the Owner; and
- 8.5.6.4 Subtract amounts, if any, for which the Owner on new construction or STIP on ITS projects has withheld or nullified a Certificate of Payment.
- 8.5.6.5 Upon SUBSTANTIAL Completion of the Project Work at a particular school, a sum sufficient to increase the total payments to NINETY-FIVE percent (95%) of the Contract Sum for that school, less such amounts as the Owner or STIP shall determine for incomplete Work or unsettled claims; and
- 8.5.6.6 If final completion of the Work at a school or schools is materially delayed through no fault of the STIP or by the issuance of Change Orders affecting final completion of the Work at a school or schools, and the Owner so confirms, the Owner shall, upon application by the STIP and certification by the Owner, and without terminating the Contract, make payment of the balance due for the portion of the Work at a school fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Contract Documents, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the STIP to the Owner prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

8.6 **Final Payment.** Final payment, constituting the entire balance of the Contract Sum at all schools scheduled to be completed **during a fiscal year**, shall be made by the Owner to the STIP and/or Prime Contractor(s) when (1) the Contract has been fully performed at all of the schools scheduled for a fiscal year by the Contractor except for the Contractor's responsibility to correct nonconforming Work as provided in the Contract Documents and to satisfy other requirements, if any, which necessarily survive final payment; and (2) a Final Certificate for Payment has been issued by the Owner or STIP; such final payment shall be made by the Owner not more than 45 days after issuance of the Owner's or STIP's final certificate for Payment.

8.7 **Miscellaneous Provisions.**

- 8.7.1 Where reference is made in this Agreement to a provision to the STIP's proposal or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

8.7.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the legal rate prevailing from time to time in North Carolina.

8.8 Enumeration of Contract Documents. The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

8.8.1 The Agreement is this executed Agreement between the Owner and Contractor.

8.8.2 Other Contract Documents are listed in the chart below as follows:

TAB	DOCUMENT TITLE OR DESCRIPTION
1.	The Request For Proposals, dated December 3, 2002
2.	STIP's Performance Proposal, dated: and Finance Proposal dated:
3.	Schedule of the Work including Commencement Date and Date of Substantial Completion per school.
4.	Contract Sum by Individual School
5.	Contract with Ambassador Technologies and Rauland-Borg Corp.
6.	Contract with Commercial Sound and Bogen Communications Inc.
7.	WS/FCS Policy3310, "Affirmative Action Policy for MWBE.
8.	Certificate(s) of Insurance

8.8.3 Incorporation of items 5 and 6 above shall not be construed to mean that STIP is a party to those contracts, as they are reference documents concerning the services to be provided by STIP hereunder.

8.9 **Standards:** Manufactured items and/or fabricated assemblies comprising Deliverables shall meet all requirements of the Occupational Safety and Health Act (OSHA), and State and federal requirements relating to clean air and water pollution, if applicable. STIP will provide and maintain a quality assurance system or program that includes any Deliverables and will tender to the WS/FCS only those Deliverables that have been inspected and found to conform to the requirements of this Contract. All manufactured items and/or fabricated assemblies comprising Deliverables are subject to operation, certification or inspection, and accessibility requirements as required:

- by State or Federal Regulation,
- by Information Resource Management Commission (IRMC) policy or regulation, or
- acceptance with appropriate standards of operations or uses of said Deliverables as may be shown by identification markings or other means of the appropriate certifying standards organization.

8.10 **Site Preparation:** Contractor shall provide OWNER complete site requirement specifications for the Deliverables, if any. These specifications shall ensure that the Deliverables to be installed shall operate properly and efficiently within the site environment. The Contractor shall advise the OWNER of any site requirements for any Deliverables required by the OWNER' specifications. Any alterations or modification in site preparation which are directly attributable to incomplete or erroneous specifications provided by the Contractor and which would involve additional expenses to the OWNER, shall be made at the expense of the Contractor.

- 8.11 **Goods Return:** Deliverables and any other goods or materials furnished by **Prime Contractors and/or Suppliers, as defined herein**, to fulfill technical requirements shall be in good working order and be maintained in good working order by **Contractors and/or suppliers** for the duration of the Contract; unless otherwise provided in a separate maintenance agreement or in the Solicitation Documents. Deliverables failing to meet the OWNER's technical requirements shall be considered non-conforming goods and subject to return to the **Prime Contractor or Supplier** for replacement at the OWNER's option, and at the **Prime Contractor's or Supplier's** expense. The OWNER is responsible for the return costs related to the termination of a Contract, including deinstallation, and freight to destinations within the Continental United States; except in the case of default by the **Prime Contractor or supplier** or delivery of non-conforming goods by a **Prime Contractor or Supplier**. Shipping or freight charges, if any, paid by the OWNER for non-conforming goods will be reimbursed to the OWNER.
- 8.12 **Specifications:** The apparent silence of the specifications as to any detail, or the apparent omission of detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and only material and workmanship of the first quality may be used. Upon any notice of noncompliance provided by the OWNER or **CM, Prime Contractor** shall supply proof of compliance with the specifications. **Prime Contractor** must provide written notice of its intent to deliver alternate or substitute products, goods or Deliverables. Alternate or substitute products, goods or Deliverables may be accepted or rejected in the sole discretion of the OWNER **upon the recommendation of the CM**; and any such alternates or substitutes must be accompanied by **Prime Contractor's** certification and evidence satisfactory to the **CM and OWNER** that the function, characteristics, performance and endurance will be equal or superior to the original Deliverables specified.
- 8.13 **Warranties:** CM shall require in contract documents that **Prime Contractors** shall assign all applicable third party warranties for Deliverables to the OWNER.
- 8.14 **Personnel:** **STIP** shall not substitute key personnel assigned to the performance of this Contract without prior written approval by the OWNER. Any desired substitution shall be noticed to the OWNER accompanied by the names and references of **STIP's** recommended substitute personnel. The OWNER will approve or disapprove the requested substitution in a timely manner. The OWNER may, in its sole discretion, **require the removal terminate the services** of any person providing services under this Contract **from this Project**. Upon such termination, the OWNER may request acceptable substitute personnel or terminate the contract services provided by such personnel.
- 8.15 **Subcontracting:** The **STIP serving as a CM** may subcontract the performance of **its the** work with other contractors or third parties with the prior written consent of the OWNER. **STIP Contractor** shall provide the OWNER with complete copies of any agreements made by and between Contractor and all subcontractors. The **STIP** remains solely responsible for the performance of its subcontractors. Subcontractors, if any, shall adhere to the same standards required of the selected **STIP**. Any contracts made by the **STIP** with a subcontractor shall include an affirmative statement that the OWNER is an intended third party beneficiary of the contract; that the subcontractor has no agreement with the OWNER; and that the OWNER shall be indemnified by the **STIP** for any claim **made by the subcontractor against the STIP, except for any such claim arising out of the Owner's failure to perform**. Notwithstanding any other term herein, **STIP** shall timely exercise its contractual remedies against any non-performing subcontractor and, when appropriate, substitute another subcontractor.
- 8.16 **STIP's Representation:** **STIP** warrants that qualified personnel will provide services in a professional manner. "Professional manner" means that the personnel performing the services will possess the skill and competence consistent with the prevailing business

standards in the information technology industry. **STIP** agrees that it will not enter any agreement with a third party that might abridge any rights of the OWNER under this Contract. ~~Contractor will serve as the prime Contractor under this Contract.~~ Should the OWNER approve any subcontractor(s), the **STIP** shall be legally responsible for the performance and payment of the subcontractor(s). Names of any third party Contractors or subcontractors of **STIP** may appear for purposes of convenience in Contract documents; and shall not limit **STIP's** obligations hereunder. Third party subcontractors, if approved, may serve as subcontractors to **STIP**. **STIP** will retain **management responsibility** for functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s). **Unless otherwise agreed in writing, suppliers shall not be in contractual privity with STIP. The STIP agrees to provide services in accordance with the prevailing standards of care applicable to construction managers.**

8.17 **Software License.** Deliverables comprising goods, equipment or products (hardware) may contain software for internal operation, or as embedded software or firmware that is generally not sold or licensed as a severable software product. Software may be provided on separate media, such as floppy diskettes or CD-ROM, or may be included within the hardware at or prior to delivery. Such software is proprietary, copyrighted, and may also contain valuable trade secrets and may be protected by patents. **STIP shall require Prime Contractors and/or Suppliers** to grant the OWNER a license to use the Code (or any replacement provided) on, or in conjunction with, only the Deliverables purchased, or with any system identified in the solicitation documents. The OWNER shall have a worldwide, nonexclusive, non-sublicensable license to use such software and/or documentation for its internal use. The OWNER may make and install copies of the software to support the authorized level of use. Provided, however that if the hardware is inoperable, the software may be copied for temporary use on other hardware. The OWNER shall promptly affix to any such copy the same proprietary and copyright notices affixed to the original. The OWNER may make one copy of the software for archival, back-up or disaster recovery purposes. The license set forth in this Paragraph shall terminate immediately upon the OWNER's discontinuance of the use of the equipment on which the software is installed. The software may be transferred to another party only with the transfer of the hardware. If the hardware is transferred, the OWNER shall (1) destroy all software copies made by the OWNER, (2) deliver the original or any replacement copies of the software to the transferee, and (3) notify the transferee that title and ownership of the software and the applicable patent, trademark, copyright, and other intellectual property rights shall remain with Contractor, or Contractor's licensors. The OWNER shall not disassemble, decompile, reverse engineer, modify, or prepare derivative works of the embedded software, unless permitted under the solicitation documents.

8.18 **Maintenance/Support Services:** For the first year and all subsequent Contract years, **Prime Contractors and/or Suppliers** shall agree to provide the following services for the current version and one previous version of any Software provided with the Deliverables, commencing upon installation of the Deliverables or delivery of the Software:

8.18.1 **Error Correction.** Upon notice by OWNER or **STIP** of a problem with the Software (which problem can be verified), Contractor and/or Supplier shall use reasonable efforts to correct or provide a working solution for the problem. The OWNER shall comply with all reasonable instructions or requests of Contractor and/or Supplier in attempts to correct an error or defect in the Program. Contractor and the OWNER shall act promptly and in a reasonably timely manner in communicating error or problem logs, other related information, proposed solutions or workarounds, and any action as may be necessary or proper to obtain or effect maintenance services under this Paragraph.

8.18.2 Contractor and/or Supplier shall notify the **STIP and OWNER** of any material errors or defects in the Deliverables known, or made known to Contractor or Supplier from any source during the Contract term that could cause the production of

inaccurate, or otherwise materially incorrect, results. Contractor and/or Supplier shall initiate actions as may be commercially necessary or proper to effect corrections of any such errors or defects.

- 8.18.3 **Updates.** Contractor and/or Supplier shall provide to the OWNER, at no additional charge, all new releases and bug fixes (collectively referred to as "Changes") for any Software Deliverable developed or published by Contractor and/or Supplier and made generally available to its other customers at no additional charge. All such Updates shall be a part of the Program and Documentation and, as such, be governed by the provisions of this Contract.
- 8.18.4 **Telephone Assistance.** Contractor and/or Supplier shall provide the **STIP and OWNER** with telephone access to technical support engineers for assistance in the proper installation and use of the Software, and to report and resolve Software problems, during normal business hours, 8:00 AM - 5:00 PM Eastern Time, Monday-Friday. Contractor shall respond to the telephone requests for Program maintenance service, within four hours, for calls made at any time.
- 8.19 **Governmental Restrictions:** In the event any restrictions are imposed by governmental requirements that necessitate alteration of the material, quality, workmanship, or performance of the Deliverables offered prior to delivery thereof, the **STIP** shall provide written notification of the necessary alteration(s) to the OWNER. The OWNER reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract. The OWNER may advise **STIP** of any restrictions or changes in specifications required by North Carolina legislation, rule or regulatory authority that require compliance by the Owner. In such event, **STIP** shall use its best efforts to comply with the required restrictions or changes. If compliance cannot be achieved by the date specified by the OWNER, the OWNER may terminate this Contract and compensate **STIP** for sums due under the Contract.
- 8.20 **Availability of Funds:** Any and all payments to **STIP**, Contractors and Suppliers are expressly contingent upon and subject to the appropriation, allocation and availability of funds to the OWNER for the purposes set forth in this Contract. If this Contract or any Purchase Order issued hereunder is funded in whole or in part by federal funds, the OWNER's performance and payment shall be subject to and contingent upon the continuing availability of said federal funds for the purposes of the Contract or Purchase Order. If the term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract is expressly contingent upon the appropriation, allocation and availability of funds by the N.C. Legislature and the Board of Forsyth County Commissioners for the purposes set forth in the Contract. If funds to effect payment are not available, the OWNER will provide written notification to **STIP and Contractors**. If the Contract is terminated under this paragraph, contractors and supplier must agree to take back any affected Deliverables and software not yet delivered or stored in bonded warehouse under this Contract, terminate any services supplied to the OWNER under this Contract, and relieve the OWNER of any further obligation thereof. The OWNER shall remit payment for Deliverables and services accepted prior to the date of the aforesaid notice in conformance with the payment terms.
- 8.21 **Payment Terms:** Payment terms are set forth in sections 8.4 and 8.5 above. OWNER is responsible for all payments under the Contract. Upon **STIP's** written request of not less than 30 days and approval by OWNER, the Owner may:
- 8.21.1 Forward the **STIP's** payment check(s) directly to any person or entity designated by the **STIP**, or

- 8.21.2 Include any person or entity designated in writing by **STIP** as a joint payee on the **STIP's** payment check(s), however
- 8.21.3 In no event shall such approval and action obligate the **OWNER** to anyone other than the **STIP** and the **STIP** shall remain responsible for fulfillment of all Contract obligations.
- 8.22 **Acceptance Criteria:** In the event acceptance of Deliverables is not described in additional Contract documents, the **STIP in behalf of the OWNER** shall have the obligation to notify Contractor and/or Supplier, in writing ten calendar days following installation of any Deliverable described in the Contract if it is not acceptable. The notice shall specify in reasonable detail the reason(s) a deliverable is unacceptable. Acceptance by the **STIP in behalf of the OWNER** shall not be unreasonably withheld; but may be conditioned or delayed as required for installation and/or testing of Deliverables. Final acceptance is expressly conditioned upon completion of all applicable inspection and testing procedures. Should the Deliverables fail to meet any specifications or acceptance criteria the **OWNER** may exercise any and all rights hereunder, including such rights provided by the Uniform Commercial Code as adopted in North Carolina. Deliverables discovered to be defective or failing to conform to the specifications may be rejected upon initial inspection or at any later time if the defects contained in the Deliverables or non-compliance with the specifications was not reasonably ascertainable upon initial inspection. If the Contractor and/or Supplier fails to promptly cure the defect or replace the Deliverables, the **OWNER, upon the recommendation of the STIP**, reserves the right to cancel the Purchase Order, contract with a different Contractor or Supplier, and to invoice the original Contractor for any differential in price over the original Contract price. When Deliverables are rejected by the **STIP**, the Contractor must remove the rejected Deliverables from the premises of the **OWNER** within seven (7) calendar days of notification, unless otherwise agreed by the **OWNER**. Rejected items may be regarded as abandoned if not removed by Contractor as provided herein.
- 8.23 **Equal Employment Opportunity: STIP and** Contractors shall comply with all Federal and Owner requirements concerning fair employment and employment of the disabled, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or physical disability.
- 8.24 **Affirmative Action Contracting. STIP and** Contractors shall make a good faith effort to recruitment and select minority businesses for participation in this contract and shall comply with the provisions of NCGS §143-128.
- 8.25 **Inspection at Contractor's Site:** The **STIP in behalf of the OWNER** reserves the right to inspect, during Contractor's and/or Supplier's regular business hours at a reasonable time, upon notice of not less than two (2) weeks, and at its own expense, the prospective Deliverables comprising equipment or other tangible goods, or the plant or other physical facilities of a prospective Contractor and/or Supplier prior to Contract award, and during the Contract term as necessary or proper to ensure conformance with the specifications/requirements and their adequacy and suitability for the proper and effective performance of the Contract.
- 8.26 **Advertising/Press Release:** The **STIP** absolutely shall not publicly announce or disseminate any information concerning the Contract without prior written approval from the **OWNER, except as needed for performance of its services or work hereunder.**
- 8.27 **Confidentiality:** In accordance with 9 NCAC 06B.0207 and 06B.1001 and to promote maximum competition in the Owner competitive bidding process, the **STIP and OWNER** may maintain the confidentiality of certain types of information described in N.C. Gen. Stat. §132-1 et. seq. Such information may include trade secrets defined by N.C. Gen. Stat.

§66-152 and other information exempted from the Public Records Act pursuant to N.C. Gen. Stat. §132-1.2. **STIP** may designate appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type "**CONFIDENTIAL**". By so marking any page, the **STIP** warrants that it has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors, that the portions marked confidential meet the requirements of the Rules and Statutes set forth above. **However, under no circumstances shall price information be designated as confidential.** The OWNER may serve as custodian of **STIP's** confidential information and not as an arbiter of claims against **STIP's** assertion of confidentiality. If an action is brought pursuant to N.C. Gen. Stat. §132-9 to compel the OWNER to disclose information marked confidential, the **STIP** agrees that it will intervene in the action through its counsel and participate in defending the OWNER, including any public official(s) or public employee(s) **named as defendants.** The **STIP** agrees that it shall hold the OWNER and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys' fees awarded against the OWNER in **any such action to the extent such damages were caused by any mis-marking or marking by STIP not in compliance with applicable law.** The OWNER agrees to promptly notify the **STIP** in writing of any action seeking to compel the disclosure of **STIP's** confidential information. The OWNER shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The OWNER shall have no liability to **STIP** with respect to the disclosure of **STIP's** confidential information ordered by a court of competent jurisdiction pursuant to N.C. Gen. Stat. §132-9 or other applicable law.

8.27.1 Care of Information: **STIP** agrees to use commercial best efforts to safeguard and protect any data, documents, files, and other materials received from the OWNER during performance of any contractual obligation from loss, destruction or erasure.

8.27.2 **STIP** agrees that all its employees and any approved third party Contractors or subcontractors are subject to a non-disclosure and confidentiality agreement enforceable in North Carolina. **STIP** will, upon request of the OWNER, verify and produce true copies of any such agreements. Production of such agreements by **STIP** may be made subject to applicable confidentiality, non-disclosure or privacy laws; provided that **STIP** produces satisfactory evidence supporting exclusion of such agreements from disclosure under the N.C. Public Records laws in NCGS §132-1 et. seq. The OWNER may, in its sole discretion, provide a non-disclosure and confidentiality agreement satisfactory to the OWNER for **STIP's** execution. The OWNER may exercise its rights under this subparagraph as necessary or proper, in its discretion, to comply with applicable security regulations or statutes including, but not limited to 26 USC 6103 and IRS Publication 1075, (Tax Information Security Guidelines for Federal, Owner, and Local Agencies), HIPAA, 42 USC 1320(d) (Health Information Portability and Accountability Act), any implementing regulations in the Code of Federal Regulations, and any future regulations imposed upon the Office of Information Technology Services or the N.C. Department of Revenue pursuant to future statutory or regulatory requirements.

8.27.3 Nondisclosure: **STIP** agrees that its officers, directors, principals and employees, and any subcontractors, shall hold all information received during performance of this Contract in the strictest confidence and shall not disclose the same to any third party without the express written approval of the OWNER.

8.28 **Deliverables:** Deliverables, as used herein, shall comprise all project materials, including goods, software, data, and documentation created during the performance or provision of services hereunder. Deliverables are the property of OWNER and must be kept confidential or returned to OWNER or destroyed as required by the Owner. Proprietary

Contractor and/or Supplier materials licensed to OWNER shall be identified to OWNER by Contractor and/or Supplier prior to use or provision of services hereunder and shall remain the property of the Contractor. Embedded software or firmware shall not be a severable Deliverable. OWNER's scope statement may supplement or substitute this definition and the requirements set forth in this Paragraph. Deliverables include "Work Product" and means any expression of Licensor's findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, enhancements, and other technical information; but not source and object code or software. All Software source and object code is the property of Licensor and is licensed nonexclusively to OWNER, at no additional license fee, pursuant to the terms of the software license contained herein, and in the Supplemental Terms and Conditions for Software and Services or the License Agreement if incorporated in the Solicitation Documents.

8.29 **Late Delivery, Back Order:** Contractor and/or Supplier shall advise **STIP** immediately upon determining that any Deliverable will not, or may not, be delivered at the time or place specified. Together with such notice, Contractor and/or Supplier shall notify **STIP** of the projected delivery time and date. In the event the delay projected by Contractor and/or Supplier is unsatisfactory, **STIP** shall so advise Contractor and Supplier and may proceed to procure substitute Deliverables or services.

8.30 **Patent, Copyright, and Trade Secret Protection:**

8.30.1 **To the extent a Contractor and/or Supplier has created, acquired or otherwise has rights in, and may, in connection with the performance of services for the OWNER, employ, provide, create, acquire or otherwise obtain rights in various concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models, templates and general purpose consulting and software tools, utilities and routines (collectively, the "Contractor Technology") and to the extent that a Contractor's and/or Supplier's Technology is contained in any of the Deliverables including any derivative works, the STIP shall require the Contractor and/or Supplier to grant OWNER a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to use such Contractor and/or Supplier Technology in connection with the Deliverables for OWNER's purposes.**

8.30.2 Contractor and Supplier shall not acquire any right, title and interest in and to the copyrights for goods, any and all software, technical information, specifications, drawings, records, documentation, data or derivative works thereof, or other work products provided by **STIP** or OWNER to Contractor. OWNER hereby grants a royalty-free, fully paid, worldwide, perpetual, non-exclusive license for Contractor's and/or Supplier's internal use to non-confidential Deliverables first originated and prepared by the Contractor or Supplier for delivery to OWNER.

8.30.3 The Contractor and/or Supplier, at their own expense, shall defend any action brought against OWNER to the extent that such action is based upon a claim that the services or Deliverables supplied by the Contractor and/or Supplier, or the operation of such Deliverables pursuant to a current version of Contractor/Supplier-supplied software, infringes a United Owners patent, or copyright or violates a trade secret. The Contractor and/or Supplier shall pay those costs and damages finally awarded against the OWNER in any such action. Such defense and payment shall be conditioned on the following:

8.30.3.1 that the Contractor and Supplier shall be notified within a reasonable time in writing by the OWNER of any such claim; and,

8.30.3.2 that the Contractor and/or Supplier shall have the control of the defense of any action on such claim and all negotiations for its settlement or

compromise, provided, however, that the OWNER shall have the option to participate in such action at its own expense.

- 8.30.4 Should any services or software supplied by Contractor and/or Supplier, or the operation thereof become, or in the Contractor's and/or Supplier's opinion are likely to become, the subject of a claim of infringement of a United Owners patent, copyright, or a trade secret, the OWNER shall permit the Contractor and/or Supplier, at its option and expense, either to procure for the OWNER the right to continue using the goods/hardware or software, or to replace or modify the same to become noninfringing and continue to meet procurement specifications in all material respects. If neither of these options can reasonably be taken, or if the use of such goods/hardware or software by the OWNER shall be prevented by injunction, the Contractor and/or Supplier agrees to take back such goods/hardware or software, and refund any sums the OWNER has paid Contractor and Supplier less any reasonable amount for use or damage and make every reasonable effort to assist the OWNER in procuring substitute Deliverables. If, in the sole opinion of the OWNER, the return of such infringing Deliverables makes the retention of other items of Deliverables acquired from the Contractor and Supplier under this Contract impractical, the OWNER shall then have the option of terminating the Contract, or applicable portions thereof, without penalty or termination charge. The Contractor and/or Supplier agrees to take back such Deliverables and refund any sums the OWNER has paid Contractor and Supplier less any reasonable amount for use or damage.
- 8.30.5 Contractor and Supplier will not be required to defend or indemnify the OWNER if any claim by a third party against the Owner for infringement or misappropriation (1) results from the OWNER's alteration of any Contractor/Supplier-branded product or Deliverable, or (2) results from the continued use of the good(s) or Services and Deliverables after receiving notice they infringe on a trade secret of a third party.
- 8.30.6 Nothing stated herein, however, shall affect Contractor's and/or Supplier's ownership in or rights to its preexisting intellectual property and proprietary rights.
- 8.31 **Access to Persons and Records:** Pursuant to N.C. General Statute 147-64.7, the OWNER is authorized to examine all books, records, and accounts of the **STIP**, Contractors and/or Suppliers insofar as they relate to transactions with Owner pursuant to the performance of this Contract or to costs charged to this Contract. The **STIP**, Contractors and Suppliers shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of this Contract. Additional audit or reporting requirements may be required by the OWNER, if in the OWNER's opinion, such requirement is imposed by federal or Owner law or regulation.
- 8.32 **Assignment: Neither STIP nor Owner** may assign this Contract or its obligations hereunder without prior written approval of **the other party**. **STIP** shall provide reasonable notice of not less than thirty (30) days prior to any consolidation, acquisition, or merger. Any assignee shall affirm this Contract according to the terms and conditions agreed, and that **STIP** shall affirm that the assignee is fully capable of performing all obligations of **STIP** under this Contract. An assignment may be made, if at all, in writing by the **STIP** and the OWNER setting forth the foregoing obligation of **STIP** and Assignee.
- 8.33 **Insurance Coverage:** During the term of the Contract, the **STIP** at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Contract. As a minimum, the **STIP** shall provide and maintain the following coverage and limits:

- 8.33.1 **Worker's Compensation** - The **STIP** shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$150,000.00, covering all of **STIP's** employees who are engaged in any work or services under the **Agreement**. If any work is sublet, the **STIP** shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under **this Agreement**; and
- 8.33.2 **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$2,000,000.00 Combined Single Limit (Defense cost shall be in excess of the limit of liability); and
- 8.33.3 **Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the Contract. The minimum combined single limit shall be \$1,000,000 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$10,000.00 medical payment; and
- 8.33.4 **Umbrella**: The umbrella must follow-form over the general liability, employer's liability and automobile liability. \$2,000,000 each Occurrence with \$2,000,000 aggregate.
- 8.33.5 Providing and maintaining adequate insurance coverage described herein is a material obligation of the **STIP** and is of the essence of this Contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The **STIP** shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this Contract. The limits of coverage under each insurance policy maintained by the **STIP** shall not be interpreted as limiting the **STIP's** liability and obligations under the Contract.
- 8.34 **Certificates of Insurance** acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These Certificates and the insurance policies required by this Paragraph shall contain a provision that names the Owner as an additional insured and states that coverages afforded under the policies will not be cancelled, reduced in amount, modified or allowed to expire until at least 30 days prior written notice has been given to the Owner by certified mail. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the Application for Payment. If this insurance is written on the comprehensive general liability policy form, the certificates shall be AIA document G705, certificate of insurance. If the insurance is written on a commercial general liability policy form, accord certificate of insurance form 25S will be acceptable.
- 8.35 **Dispute Resolution:**
- 8.35.1 The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the **STIP** shall be submitted in writing to the OWNER for decision. A claim by the OWNER shall be submitted in writing to the **STIP** for decision. The Parties shall negotiate in good faith and use all reasonable efforts to resolve such dispute(s). During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this Contract. If a dispute cannot be resolved between the Parties within thirty (30)

days after delivery of notice, either Party may elect to exercise any other remedies available under this Contract, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.

- 8.35.2 Voluntary Mediation or Arbitration. Any controversy or claim arising out of or relating to the Contract or the breach thereof, may be settled by voluntary mediation and/or arbitration by mutual agreement between or among the parties in interest in accordance with the North Carolina Uniform Arbitration Act, N.C.G.S. §1-567.1 et seq., or any other mediation or arbitration procedure mutually agreeable to the parties.
- 8.36 **Default:** In the event any Deliverable furnished by Contractors and/or Suppliers during performance of any Contract fails to conform to any material requirement of the Contract specifications, notice of the failure is provided by the **STIP in behalf of OWNER** and the failure is not cured within ten (10) days, the **OWNER upon the recommendation of the STIP** may cancel and procure the articles or services from other sources; holding Contractor and/or Supplier liable for any excess costs occasioned thereby, subject only to the limitations provided in Paragraphs 8.32 and 8.33 and the obligation to informally resolve disputes as provided in Paragraph 8.28 of these General Conditions. The **OWNER** reserves the right to require performance guaranties pursuant to 09 NCAC 06B.1031 from any Contractor without expense to the **OWNER**. The rights and remedies of the **OWNER** provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.
- 8.36.1 If a Contractor and/or Supplier fails to deliver Deliverables within the time required by this Contract, the **STIP in behalf of the Owner** may provide written notice of said failure to Contractor and Supplier, and by such notice require payment of a penalty.
- 8.36.2 Should the **STIP or Owner** fail to perform any of its obligations upon which Contractor's performance is conditioned, Contractor shall not be in default for any delay, cost increase or other consequences due to the Owner's failure. Contractor will use reasonable efforts to mitigate delays, costs or expenses arising from assumptions in the Contractor's bid documents that prove erroneous or are otherwise invalid. Any deadline that is affected by any such failure in assumptions or performance by the Owner shall be extended by an amount of time reasonably necessary to compensate for the effect of such failure.
- 8.36.3 Contractor shall provide a plan to cure any default if requested by the **STIP in behalf of Owner**. The plan shall notify the **STIP and Owner** of the nature of the default, the time required for cure, any mitigating factors causing or tending to cause the default, and such other information as the Contractor may deem necessary or proper to provide.
- 8.37 **Waiver of Default:** Waiver by **STIP or Owner** of any default or breach by a Contractor or Supplier shall not be deemed a waiver or any subsequent default or breach and shall not be construed to be a modification or novation of the terms of this Contract, unless so stated in writing and signed by authorized representatives of the Owner, **STIP** and the Contractor, and made as an amendment to this Contract.
- 8.38 **Termination:** Any notice or termination made under this Contract shall be transmitted via US Mail, Certified Return Receipt Requested. The period of notice for termination shall begin on the day the return receipt is signed and dated.
- 8.38.1 The parties may mutually terminate this Contract by written agreement at any time.

8.38.2 **Termination for Cause by Owner:** In the event any **work** or service furnished by the **STIP** during performance of any Contract term fails to conform to any material requirement of the Contract, and the failure is not cured within the specified time after providing written notice thereof to **STIP**, the Owner may cancel and procure the work or services from other sources; holding **STIP** liable for any excess costs occasioned thereby, subject only to the limitations provided in Paragraphs 10.29 and 10.30 herein. The rights and remedies of the Owner provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract. **STIP** shall not be relieved of liability to the Owner for damages sustained by the Owner arising from **STIP's** breach of this Contract; and the Owner may, in its discretion, withhold any payment due as a setoff until such time as the damages are finally determined or as agreed by the parties. Voluntary or involuntary Bankruptcy or receivership by **STIP** shall be cause for termination.

8.38.3 **Termination for Cause by STIP. This Agreement may be terminated by Contractor upon thirty (30) days written notice to Owner should Owner substantially fail to perform hereunder. Substantial failure to perform includes the Owner's failure to pay Contractor as provided for herein.**

8.38.4 **Termination For Convenience Without Cause:** The Owner may terminate service and indefinite quantity contracts, in whole or in part by giving 30 days prior notice in writing to the **STIP**. **STIP** shall be entitled to sums due as compensation for work provided and services performed in conformance with the Contract. In the event the Contract is terminated for the convenience of the Owner, the Owner will pay for all work performed and products delivered in conformance with the Contract up to the date of termination.

8.39 Limitation of STIP's Liability:

8.39.1 Where Deliverables are under the Owner's exclusive management and control, the **STIP** shall not be liable for direct damages caused by the Owner's failure to fulfil any Owner responsibilities of assuring the proper use, management and supervision of the Deliverables and programs, audit controls, operating methods, office procedures, or for establishing all proper checkpoints necessary for the Owner's intended use of the Deliverables.

8.39.2 The **STIP's** liability for damages to the Owner for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall be limited to two times the value of the Contract. Provided, however, that the Owner's Solicitation Documents or the Supplemental Terms and Conditions for **Work** or Services, if any, may increase **STIP's** maximum liability for damages, but in no event shall the liability for damages be less than the total value of the Contract.

8.39.3 The foregoing limitation of liability shall not apply to the payment of costs and damage awards referred to in the Paragraph entitled "Patent, Copyright, and Trade Secret Protection", to claims covered by other specific provisions calling for liquidated damages or specifying a different limit of liability, or to claims for injury to persons or damage to property caused by **STIP's** negligence or willful or wanton conduct. This limitation of liability does not apply to the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on this Contract.

8.40 Contractor's Liability for Injury to Persons or Damage to Property:

8.40.1 The work described in the Contract Documents, in general, will be performed on actively operative, elementary or secondary school sites. The **STIP** shall take

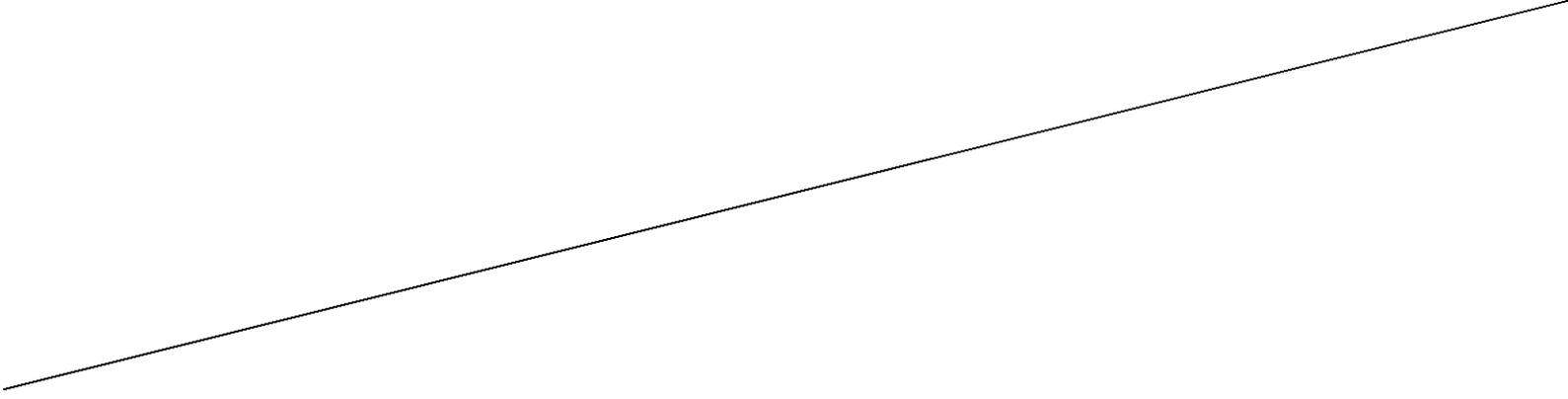
reasonable precautions necessary to provide for the safety of school children and to prevent school children from entering the construction site or an area where materials are stored. **The STIP may in the develop of contract documents assign some of this responsibility to prime contractors and their sub-contractors.**

- 8.40.2 The **STIP** shall be liable for damages arising out of personal injuries and/or damage to real or tangible personal property of the Owner, employees of the Owner, persons designated by the Owner for training, or person(s) other than agents or employees of the **STIP**, designated by the Owner for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the **STIP's** site or at the Owner's place of business, provided that the injury or damage was **proximately** caused by a **negligent act or omission** of the **STIP, its employees or agents.**
- 8.40.3 The **STIP** agrees to indemnify, defend and hold the Owner and its Officers, employees, agents and assigns harmless from any liability relating to personal injury or injury to real or personal property of any kind, accruing or resulting to any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, whether tangible or intangible, arising out of the ordinary negligence, willful or wanton negligence, or intentional acts of the **STIP, its officers, employees, agents, assigns or subcontractors, in the performance of this Contract.**
- 8.40.4 **STIP** shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the **STIP, or for damage to alterations or attachments that may result from the normal operation and maintenance of the goods or equipment which are part of any Project or Program.**
- 8.41 **General Indemnity:** The **STIP** shall hold and save the Owner, its officers, agents and employees, harmless from liability of any kind, including all claims and losses, with the exception of consequential damages, accruing or resulting to any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this Contract. The foregoing indemnification and defence by the **STIP** shall be conditioned upon the following:
- 8.41.1 The Owner shall give **STIP** written notice within thirty (30) days after it has actual knowledge of any such claim(s) or action(s) filed; and
- 8.41.2 The **STIP** shall have the sole control of the defense of any such claim(s) or action(s) filed and of all negotiations relating to settlement or compromise thereof, provided, however, that the Owners shall have the option to participate at their own expense in the defense of such claim(s) or action(s) filed.
- 8.42 **Stop Work Order:** OWNER may issue a written Stop Work Order to **STIP** for cause at any time requiring **STIP** to suspend or stop all, or any part, of the performance due under this Contract for a period up to 90 days after the Stop Work Order is delivered to the **STIP**. The 90-day period may be extended for any further period for which the parties may agree.
- 8.42.1 The Stop Work Order shall be specifically identified as such and shall indicate that it is issued under this term. Upon receipt of the Stop Work Order, the **STIP** shall immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the Stop Work Order during the period of work suspension or stoppage. Within a period of 90 days after a Stop Work Order is delivered to **STIP, or within any extension of that period to which the parties agree, the Owner shall either:**

- 8.42.1.1 Cancel the Stop Work Order, or
- 8.42.1.2 Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this Contract.
- 8.42.2 If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the **STIP** shall resume work. The Owner shall make an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if:
 - 8.42.2.1 The Stop Work Order results in an increase in the time required for, or in the **STIP's** cost properly allocable to the performance of any part of this Contract, and
 - 8.42.2.2 The **STIP** asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided that if the Owner decides the facts justify the action, the Owner may receive and act upon a proposal submitted at any time before final payment under this Contract.
- 8.42.3 If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for Convenience of the Owner, the Owner shall allow reasonable direct costs resulting from the Stop Work Order in arriving at the termination settlement.
- 8.42.4 OWNER shall not be liable to the **STIP** for loss of profits because of a Stop Work Order issued under this term.
- 8.43 **Time is of the Essence.** Time is of the essence in the performance of this Contract.
- 8.44 **Date and Time Warranty:** The **STIP** shall require contractors and suppliers to warrant that any Deliverable, whether hardware, firmware, middleware, custom or commercial software, or internal components, subroutines, and interface therein which performs any date and/or time data recognition function, calculation, or sequencing, will provide accurate date/time data and leap year calculations. This warranty shall survive termination or expiration of the Contract.
- 8.45 **Independent Contractors:** Contractor, Supplier and their employees, officers and executives, and subcontractors, if any, shall be independent Contractors and not employees or agents of the **STIP** or Owner. This Contract shall not operate as a joint venture, partnership, trust, agency or any other business relationship.
- 8.46 **Transportation:** Transportation of Deliverables shall be FOB Destination; unless otherwise specified in the solicitation document or purchase order. Freight, handling, hazardous material charges, and distribution and installation charges shall be included in the total price of each item. Any additional charges shall not be honored for payment unless authorized in writing by the **STIP**. In cases where parties, other than the **STIP** ship materials against this order, the shipper must be instructed **by the STIP** to show the purchase order number on all packages and shipping manifests to ensure proper identification and payment of invoices. A complete packing list must accompany each shipment.

- 8.47 **Notices:** Any notices required under this Contract should be delivered to the Contract Administrator for each party. Unless otherwise specified in the Solicitation Documents, any notices shall be delivered in writing by U.S. Mail, Commercial Courier or by hand.
- 8.48 **Titles and Headings:** Titles and Headings in this Contract are used for convenience only and do not define, limit or proscribe the language of terms identified by such Titles and Headings.
- 8.49 **Amendment:** This Contract may not be amended orally or by performance. Any amendment must be made in written form and signed by duly authorized representatives of the Owner and Contractor.
- 8.50 **Taxes:** The Owner is exempt from Federal excise taxes and no payment will be made for any personal property taxes levied on the Contractor or for any taxes levied on employee wages. Applicable Owner or local sales taxes shall be invoiced as a separate item.
- 8.51 **Governing Laws, Jurisdiction, and Venue:**
- 8.51.1 This Contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. The place of this Contract or purchase order, its situs and forum, shall be Forsyth County, North Carolina, where all matters, whether sounding in contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined. **STIP** agrees and submits, solely for matters relating to this Contract, to the jurisdiction of the courts of the State of North Carolina, and stipulates that Forsyth County shall be the proper venue for all matters.
- 8.52 **Force Majeure:** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.
- 8.53 **Compliance with Laws:** The **STIP** shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, State, and local agencies having jurisdiction and/or authority.
- 8.54 **Severability:** In the event that a court of competent jurisdiction holds that a provision or requirement of this Contract violates any applicable law, each such provision or requirement shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Contract shall remain in full force and effect. All promises, requirements, terms, conditions, provisions, representations, guarantees and warranties contained herein shall survive the expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or State statute, including statutes of repose or limitation.
- 8.55 **Federal Intellectual Property Bankruptcy Protection Act:** The Parties agree that the Owner shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365(n), and any amendments thereto.
- 8.56 **Changes in the Work.**

- 8.56.1 Changes in the Work of **STIP** may be accomplished after execution of the Contract, without invalidating the Contract, by Change Order or order for a minor change in the Work.
- 8.56.2 A Change Order shall be based upon agreement among the Owner and STIP. The Owner or STIP alone may issue a minor change in the work.
- 8.56.3 A Change Order is a written agreement between the Owner and STIP, and, if appropriate, a contractor and/or Supplier stating their agreement on the following:
 - 8.56.3.1 A change in the Work;
 - 8.56.3.2 The amount of the adjustment in the Contract Sum, if any, per school; and
 - 8.56.3.3 The extent of the adjustment of the Contract Time, if any.
- 8.56.4 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the **STIP** shall proceed promptly, unless otherwise provided in the Change Order or order for a minor change in the Work.
- 8.56.5 If the Change Order provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods.
 - 8.56.5.1 The unit prices stated in the Contract Documents. Unit prices shall be used to make adjustments in the Contract Sum in the event schools are added to or deleted from the Scope of the Work described in the Change Order or adjusted proportionately if the quantity of deliverables at a school is increased or decreased.
 - 8.56.5.2 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation.
 - 8.56.5.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed fee.
- 8.56.6 The Owner or STIP shall have the authority to order minor changes in the Work not involving adjustment in the Contract Sum or extensions of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor and Supplier, if applicable. The Contractor shall carry out such written orders promptly.
- 8.57 **Preferred Customer Agreement(s) with Supplier(s).** Owner will accept proposals of the **STIP** to enter into "Preferred Customer" Agreement(s) with Supplier(s) that are included with **STIP's** Financial Proposal and upon provisions of strategic decision recommendations to Owner by STIP.
- 8.58 **Performance and Payment Bonds.** The **STIP** shall require prime contractors to provide to Owner performance and payment bonds as required by N.C.G.S. §143-129(c) and Article 3 of Chapter 44A for the full amount of the Project to secure the faithful performance of the terms of the contract and the payment of all sums due for labor and materials less the amount due to be paid the Supplier for apparatus, supplies, materials, or equipment under the Preferred Customer Agreement.



FCC Form

Approval by OMB
3060-0806**470**

Schools and Libraries Universal Service Description of Services Requested and Certification Form

Estimated Average Burden Hours Per Response: 5.0 hours

This form is designed to help you describe the eligible telecommunications-related services you seek so that this data can be posted on the Fund Administrator website and interested service providers can identify you as a potential customer and compete to serve you.

Please read instructions before completing.

(To be completed by entity that will negotiate with providers.)

Block 1: Applicant Address and Identifications

(School, library, or consortium desiring Universal Service funding.)

Form 470 Application Number: 293310000380330
Applicant's Form Identifier: WSFCS5-1
Application Status: CERTIFIED
Posting Date: 11/15/2001
Allowable Contract Date: 12/13/2001
Certification Received Date: 11/16/2001

1. Name of Applicant: WINSTON-SALEM/FORSYTH CO S D			
2. Funding Year: 07/01/2002 - 06/30/2003		3. Your Entity Number 126817	
4. Applicant's Street Address, P.O.Box, or Route Number			
a. Street 1605 MILLER ST			
City WINSTON SALEM	State NC	Zip Code 5Digit 27103	Zip Code 4Digit
b. Telephone number (336) 748- 4010		ext. C. Fax number (336) 727- 8404	
d. E-mail Address gpearce@wsfcs.k12.nc.us			
5. Type Of Applicant (Check only one box)			
<input type="radio"/> Library (including library system, library branch, or library consortium applying as a library)			
<input type="radio"/> Individual School (individual public or non-public school)			
<input checked="" type="radio"/> School District (LEA;public or non-public[e.g., diocesan] local district representing multiple schools)			
<input type="radio"/> Consortium (intermediate service agencies, states, state networks, special consortia)			
6a. Contact Person's Name: Gaff Pearce			

6b. Street Address, P.O.Box, or Route Number (if different from Item 4) <input type="radio"/> 1605 MILLER ST			
City	State	Zip Code 5Digit	Zip Code 4Digit
WINSTON SALEM	NC	27103	
<input type="radio"/> 6c. Telephone Number (10 digits + ext.) (336) 748- 4010			
<input type="radio"/> 6d. Fax Number (10 digits) (336) 727- 8404			
<input checked="" type="radio"/> 6e. E-mail Address (50 characters max.) gpearce@wsfcs.k12.nc.us			

Block 2: Summary Description of Needs or Services Requested

7 This Form 470 describes (check all that apply):
<input checked="" type="checkbox"/> a. Tariffed services - telecommunications services, purchased at regulated prices, for which the applicant has no signed, written contract. A new Form 470 must be filed for tariffed services for each funding year.
<input checked="" type="checkbox"/> b. Month-to-month services for which the applicant has no signed, written contract. A new Form 470 must be filed for these services for each funding year.
<input checked="" type="checkbox"/> c. Services for which a new written contract is sought for the funding year in Item 2.
<input type="checkbox"/> d. A multi-year contract signed on or before 7/10/97 but for which no Form 470 has been filed in a previous program year.
NOTE: Services that are covered by a qualified contract for all or part of the funding year in Item 2 do NOT require filing of Form 470. A qualified contract is a signed, written contract executed pursuant to posting a Form 470 in a previous program year OR a contract signed on/before 7/10/97 and reported on a Form 470 in a previous year as an existing contract.

8 <input checked="" type="checkbox"/> Telecommunications Services Do you have a Request for Proposal (RFP) that specifies the services you are seeking ?
<input type="radio"/> a YES, I have an RFP. Choose one of the following: It is available on the Web at _____ or via <input type="checkbox"/> the Contact Person in Item 6 or <input type="checkbox"/> the contact listed in Item 11.
<input checked="" type="radio"/> b NO, I do not have an RFP for these services.
If you answered NO, you must list below the Telecommunications Services you seek. Specify each service or function (e.g., local voice service) and quantity and/or capacity (e.g., 20 existing lines plus 10 new ones). See the Eligible Services List at www.sl.universalservice.org for examples of eligible Telecommunications Services, and remember that only common carrier telecommunications companies can provide these services under the universal service support mechanism. Add additional lines if needed.

Service or Function:	Quantity and/or Capacity:
basic telephone service (POTS, Centrex, trunk)	for 126 buildings
long distance, calling cards	for 126 buildings
high bandwidth service (ISDN, frame-relay, T1, DS3, ATM, satellite, MAN, WAN, LAN interconnect)	for 126 buildings
wireless service (cellular, PCS, paging, LAN, WAN)	for 126 buildings
video service, interactive TV, distance learning	for 126 buildings
maintenance/installation (inside wire maintenance)	for 126 buildings
Internet 2	for 126 buildings

homework hotline service	for 126 buildings
dark fiber, professional services	for 126 buildings

9 Internet Access
Do you have a Request for Proposal (RFP) that specifies the services you are seeking ?

a YES, I have an RFP. Choose one of the following: It is available on the Web at
 or via the Contact Person in Item 6 or the contact listed in Item 11.

b NO, I do not have an RFP for these services.

If you answered NO, you must list below the Internet Access Services you seek. Specify each service or function (e.g., monthly Internet service) and quantity and/or capacity (e.g., for 500 users). See the Eligible Services List at www.sl.universalservice.org for examples of eligible Internet Access Services. Add additional lines if needed.

Service or Function:	Quantity and/or Capacity:
internet access (bundled, unbundled)	for 126 buildings
WAN, dark fiber	for 126 buildings
high bandwidth service (ISDN, frame-relay, T1, DS-3, OC-3, ATM, satellite, MAN, WAN, LAN interconnect)	for 126 buildings
maintenance/installation	for 126 buildings
e-mail	for 126 buildings
construction costs, contingency fees, leasing fees, professional services, per diem, travel time	for 126 buildings

10 Internal Connections
Do you have a Request for Proposal (RFP) that specifies the services you are seeking ?

a YES, I have an RFP. Choose one of the following: It is available on the Web at
 or via the Contact Person in Item 6 or the contact listed in Item 11.

b NO, I do not have an RFP for these services.

If you answered NO, you must list below the Internal Connections Services you seek. Specify each service or function (e.g., local area network) and quantity and/or capacity (e.g., connecting 10 rooms and 300 computers at 56Kbps or better). See the Eligible Services List at www.sl.universalservice.org for examples of eligible Internal Connections Services. Add additional lines if needed.

Service or Function:	Quantity and/or Capacity:
wiring (Cat3, Cat5, coax, fiber, conduit, wiring accessories)	for 126 buildings
routers, servers, switches, hubs and upgrades	for 126 buildings
PBX, KSU, ARS, console, components and upgrades, voice compression module, VIC, VoIP	for 126 buildings
video CODEC, MCU, MPEG encoder, PVBX, video group and desktop equipment, EMMI	for 126 buildings
maintenance/installation, technical support, documentation, extended warranty	for 126 buildings
wireless service, LAN	for 126 buildings
video equipment (broadband amplifier, cable box and modem)	for 126 buildings

ATM equipment (edge device, EMMI)	for 126 buildings
hardware and upgrades for internal connections (CSU/DSU, antenna, tape backup, line sharing device, media converter, modem, monitor, multiplexing, satellite dish, TA, terminal server, UPS, zip drive, DIMM, transceiver)	for 126 buildings
internal connections components (UPS, cabinets, power strips, circuit card, ethernet card, graphics card, hard disk array controller, RAID, MAU, NIC, SNMP module, multiport serial card)	for 126 buildings
operational software and upgrades, e-mail software, client access licenses, programming and configuration charges	for 126 buildings
construction costs, contingency fees, leasing fees, professional services, per diem, travel time	for 126 buildings

11 (Optional) Please name the person on your staff or project who can provide additional technical details or answer specific questions from service providers about the services you are seeking. This need not be the contact person listed in Item 6 nor the signer of this form.

Name: Gaff Pearce	Title: WAN/Telecom
-----------------------------	------------------------------

Telephone number (10 digits + ext.)
(336) 748 - 4010

Fax number
(336) 727 - 8404

E-mail Address (50 characters max.)
gpearce@wsfcs.k12.nc.us

12. Check here if there are any restrictions imposed by state or local laws or regulations on how or when providers may contact you or on other bidding procedures. Please describe below any such restrictions or procedures, and/or give Web address where they are posted.
We may purchase from existing North Carolina State negotiated contracts or we may follow State guidelines to purchase "off contract".

13. (Optional) Purchases in future years: If you have plans to purchase additional services in future years, or expect to seek new contracts for existing services, summarize below (including the likely time-frames).

Block 3: Technology Assessment

14. **Basic telephone service only:** If your application is for basic local and long distance voice telephone service only, check this box and skip to Item 16.

15. Although the following services and facilities are ineligible for support, they are usually necessary to make effective use of the eligible services requested in this application. Unless you indicated in Item 14 that your application is ONLY for basic telephone service, you must check at least one box in (a) through (e). You may provide details for purchases being sought.

a. Desktop communications software: Software required <input checked="" type="checkbox"/> has been purchased; and/or <input type="checkbox"/> is being sought.
b. Electrical systems: <input checked="" type="checkbox"/> adequate electrical capacity is in place or has already been arranged; and/or <input type="checkbox"/> upgrading for additional electrical capacity is being sought.
c. Computers: a sufficient quantity of computers <input type="checkbox"/> has been purchased; and/or <input checked="" type="checkbox"/> is being sought.
d. Computer hardware maintenance: adequate arrangements <input type="checkbox"/> have been made; and/or <input checked="" type="checkbox"/> are being sought.
e. Staff development: <input type="checkbox"/> all staff have had an appropriate level of training or additional training has already been scheduled; and/or <input checked="" type="checkbox"/> training is being sought.
f. Additional details: Use this space to provide additional details to help providers to identify the services you desire.

Block 4: Recipients of Service

16. Eligible Entities That Will Receive Service:

Check the ONE choice that best describes this application and the eligible entities that will receive the services described in this application.

You must select a state if (b) or (c) is selected: **NC**

a. **Individual school or single-site library: Check here, and enter the billed entity in Item 17.**

b. **Statewide application (check all that apply):**

- All public schools/districts in the state:
- All non-public schools in the state:
- All libraries in the state:

If your statewide application includes INELIGIBLE entities, check here. If checked, complete Item 18.

c. **School district, library system, or consortium application to serve multiple eligible sites:**

Number of eligible sites	126
<i>For these eligible sites, please provide the following</i>	
Area Codes (list each unique area code)	Prefixes associated with each area code (first 3 digits of phone number) separate with commas, leave no spaces
336	595, 661, 712, 727, 748, 769, 771, 774, 922, 923, 924, 945, 969, 993, 996
If your application includes INELIGIBLE entities, check here. <input type="checkbox"/> If checked, complete Item 18.	

17. Billed Entities	
Entity Name	Entity Number
WINSTON-SALEM/FORSYTH CO S D	126817

18. Ineligible Entities			
Ineligible Participating Entity	Entity Number	Area Code	Prefix

Block 5: Certification

19. The applicant includes:(Check one or both)

a. schools under the statutory definitions of elementary and secondary schools found in the Elementary and Secondary Education Act of 1965, 20 U.S.C. Secs. 8801(14) and (25), that do not operate as for-profit businesses, and do not have endowments exceeding \$50 million; and/or

b. libraries or library consortia eligible for assistance from a State library administrative agency under the Library Services and Technology Act of 1996 that do not operate as for-profit businesses and whose budgets are completely separate from any school (including, but not limited to) elementary and secondary schools, colleges and universities.

20. All of the individual schools, libraries, and library consortia receiving services under this application are covered by:

a. individual technology plans for using the services requested in the application

b. higher-level technology plans for using the services requested in the application

c. no technology plan needed; application requests basic local and long distance telephone service only.

21. Status of technology plans (if representing multiple entities with mixed technology plan status, check both a and b):

a. technology plan(s) has/have been approved by a state or other authorized body.

b. technology plan(s) will be approved by a state or other authorized body.

c. no technology plan needed; application requests basic local and long distance telephone service only.

22. I certify that the services the applicant purchases at discounts provided by 47 U.S.C. Sec. 254 will be used solely for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value.

23. I recognize that support under this support mechanism is conditional upon the school(s) or library(ies) I represent securing access to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to use the services purchased effectively.

24. I certify that I am authorized to submit this request on behalf of the above-named entities, that I have examined this request, and to the best of my knowledge, information, and belief, all statements of fact contained herein are true.

25. Signature of authorized person:

26. Date (mm/dd/yyyy): 11/15/2001

- 27. Printed name of authorized person: **Gaff Pearce**
- 28. Title or position of authorized person: **WAN/Telecom**
- 29. Telephone number of authorized person: **(336) 748 - 4010** ext.

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