REQUEST FOR PROPOSAL

Please submit proposals on the item(s) listed below. The right is reserved to reject any or all Proposals. If substitutions are offered, give full particulars. The Proposal must be submitted no later than 28TH OF MARCH @ 2:00 PM, CT 2017

The Shelby County Board of Education reserves the right to accept or reject any or all proposals, or any part thereof, and to waive any informalities and/or technicalities that are deemed to be in the best interest of the Shelby County Board of Education. Successful Respondents shall be paid only when delivery is complete. *For the appropriate purchases, all material data safety data sheets (MSDA) must accompany all shipments covered under Tennessee Hazardous Chemical Right to Know Law- Tennessee Public Chapter #417- House Bill #731.

PROPOSAL FOR RESOURCES FOR EDUCATIONAL SERVICES

The Shelby County Board of Education (“SCBE”) invites the submission of proposals from qualified organizations for the provision of services to support a comprehensive system of school/student support by working with teachers, leaders, parents and community members, and students, as appropriate, across grade bands to address academic and/or socio-emotional learning needs, and enhance the overall school climate, in accordance with the specifications enclosed herewith.

Proposals MUST be received by Shelby County Schools (“SCS” or “District) by the due date and time set forth above.

Questions regarding general submission of Proposals may be directed to SCS via telephone at (901) 416-5376.

Questions or requests for clarification of technical issues and terms pertaining to this RFP must be submitted in writing via e-mail to parteews@email@scsk12.org, and received by SCBE no later than 2:00PM/CT on March 15, 2017.

ISSUED BY: Wendy Stoltz Partee

RFP# 030617YDES

We propose to furnish the item(s) and/or services outlined in the proposal at prices quoted and guarantee safe delivery F.O.B. delivered and as specified. Proposals are submitted with a declaration that no Shelby County Board of Education Member or employee has a financial or beneficial interest in this transaction.

INVOICES WILL BE PAID ACCORDING TO Negotiated TERMS

TIME REQUIRED FOR DELIVERY ____________ DAYS

NAME OF FIRM

ADDRESS

PHONE ________________ FAX # ________________

E-MAIL ADDRESS ____________________________

CITY STATE ZIP

CHECK HERE IF YOU ARE A MINORITY VENDOR

PRINT AUTHORIZED REPRESENTATIVE NAME

“Shelby County Board of Education does not discriminate in its programs or employment on the basis of race, color, religion, national origin, handicap/disability, sex or age.”
REQUEST FOR PROPOSAL

SUBJECT: RESOURCES FOR EDUCATIONAL SERVICES

DATE: March 7, 2017

PROPOSAL DUE DATE: MARCH 28, 2017 PROPOSAL DUE TIME: 2:00 P.M.

The Shelby County Board of Education (“SCBE”) invites the submission of Proposals from qualified organizations for the provision of services to support a comprehensive system of school/student support by working with teachers, leaders, parents and community members, and students, as appropriate, across grade bands to address academic and/or socio-emotional learning needs, and enhance the overall school climate, in accordance with the specifications enclosed herewith.

Proposals MUST be received by SCBE by the due date and time set forth above. Questions regarding general submission of Proposals may be directed to SCS via telephone at (901) 416-5376.

Questions or requests for clarification of technical issues and terms pertaining to this RFP must be submitted in writing via e-mail to parteews@scsk12.org, and must be received by SCBE no later than 2:00PM/CT on March 15, 2017. Subject line of email shall read “Resources for Educational Services RFP”. Questions must include a return e-mail address and specifically reference the section of the RFP to which the question pertains. All questions must be submitted in writing. IN ORDER TO PREVENT AN UNFAIR ADVANTAGE TO ANY RESPONDENT, VERBAL QUESTIONS WILL NOT BE ANSWERED. All questions and answers will be posted on Procurement’s website at the end of the business day on March 21, 2017. These guidelines for communication have been established to ensure a fair and equitable evaluation process for all Respondents. Any attempt to bypass the above lines of communication may be perceived as establishing an unfair or biased process and will lead to disqualification.

Sincerely,

Jonathan Lawshe, Interim Director
Department of Procurement Services
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SECTION A - ANNOUNCEMENT
ANNOUNCEMENT
Request for Proposals,
RESOURCES FOR EDUCATIONAL SERVICES

With this request for proposal (this “RFP”), the Shelby County Board of Education (“SCBE”) hereby solicits submissions of written proposals (“Proposals”), from qualified companies (“Respondents”) to provide for SCBE the services described herein, all in accordance with the terms and conditions detailed herein. **In particular, the services sought by SCBE will require the Respondent to:**

- **Support a comprehensive system of school/student services**, working with teachers, leaders, parents and community members, and students, as appropriate, across grade bands to address academic and/or socio-emotional learning needs, and enhance the overall school climate. Proposers must convey knowledge of a “whole student” approach (e.g., trauma-informed strategies) and must address strategies for improving school/classroom climate and student behavior, increasing engagement and attendance, and increasing high school graduation (including through improved course performance and completion) and college and/or career readiness in their proposals. Successful proposals must show a prior record of success, including measurable progress in improving student attendance, behavior, and/or credits/course performance.

If required in the RFP, the respondents are to provide a copy of current licenses and proof of insurance with each proposal.

Shelby County Board of Education reserves the right to reject or accept any or all Proposals submitted. Shelby County Board of Education shall have the right to consider factors other than the proposal response in awarding a contract. Shelby County Board of Education reserves at its sole discretion, the right to award this contract as deemed to be in the best interests of SCBE.

(All of such services are referred to herein as the “Services”). More information about the requirements pertaining to the Services is set forth in Section B of this RFP.

**Piggy Back Clause**

Shelby County Board of Education reserves the right to extend the terms, conditions, and prices of this contract to other Institutions (such as State, Local and/or Public Agencies) who express an interest in participating in any contract that results from this RFP. Each of the piggyback institutions will issue their own purchasing documents for purchasing of the goods. Proposer agrees that the Shelby County Board of Education shall bear no responsibility or liability for any agreements between Proposer and the other Institution(s) who desire to exercise this option.

**About SCBE**

On July 1, 2013, Shelby County Schools (“SCS”) merged with Memphis City Schools to become one of the largest school districts in the country. During the 2013-14 school year, SCS educated more than 140,000 students in over 270 locations. This included all public schools (traditional, specialty and charter schools authorized by the District) in Shelby County, located within the corporate limits of the city of Memphis, as well as in the six incorporated towns of Arlington, Bartlett, Collierville, Germantown, Lakeland and Millington.

For the 2014-15 school year, approximately 33 schools joined one of six new municipal school districts in Shelby County reducing the student enrollment to approximately 117,269 students in grades kindergarten through grade 12. For the 2015-16 school year, the District projects an enrollment of 109,192 students. The District is comprised of 225 schools, which includes traditional schools, charter schools, career and technology centers, special education centers and alternative schools.

**Background**

In 2014, Shelby County Board of Education formally adopted a set of ambitious 80/90/100% goals for ensuring College and Career Readiness (CCR). By 2025:
• 80% of seniors will be on track to learn in a post-secondary classroom or enter the workforce straight out of high school.

• 90% of students will earn their high school diploma on time.

• 100% of every college- or career-ready graduate in the class of 2025 will enroll in a post-secondary opportunity.

Toward achieving these goals, the District committed to a strategic plan, named Destination 2025, focused on the following priorities:

• Strengthen Early Literacy. By the year 2025, 90% of third grade students will be reading on grade level. Reading proficiency by third grade is the most crucial milestone in predicting high school graduation and career success.

  Key Strategies:
  - Increasing access to quality Pre-K classrooms.
  - Attracting and retaining strong early grade teachers.
  - Engaging family and community partners that are committed to our literacy efforts.
  - Executing a Comprehensive Literacy Plan (CLIP). SCBE launched the CLIP in 2015 to accelerate literacy learning throughout the District. The CLIP set a common, student-centered vision for improving teaching and learning across all grades, content areas, schools and stakeholders.

• Improve Post-Secondary Readiness. By the year 2025, 90% of students will graduate on time, and 100% of college-/career-ready graduates will enroll in a post-secondary opportunity. Students who have opportunities to take rigorous college prep courses and engage in learning experiences that are aligned to degrees and careers of interest are more likely to succeed in post-secondary endeavors.

  Key Strategies:
  - More access to rigorous courses and personalized learning.
  - Expanded career pathway opportunities.
  - Enhanced intervention systems and efforts.
  - More direct and effective supports for college- and career-readiness.
  - More partnerships with higher education institutions and businesses to improve readiness.

• Develop Teachers, Leaders, and Central Office to Drive Student Success. The single most important driver of student success is a highly effective teacher. Strong school leadership is equally essential, and central office must be aligned to student goals and equipped to support schools.

  Key Strategies:
  - Leadership pathways for educators.
  - Data to support continuous improvement.
  - Competitive compensation systems to attract effective classroom and school leaders.
  - High-quality feedback and evaluation for all staff.
• Expand High-Quality School Options. By the year 2025, we will increase our market share of students by 5%. As education choices increase, having many high performing schools with quality learning options is critical to attract and retain students.

Key Strategies:
  o Communicate quality of schools.
  o Transition to a student-based funding model.
  o New school models focused on career training and specialized learning.

• Mobilize Family and Community Partners. By the year 2025, our community confidence rate will grow to 90%. For Destination 2025 to truly be successful—for our District and community—it must be a shared mission, with families and partners supporting the same goals.

Key Strategies:
  o Improved access to information.
  o Customer service training.
  o Volunteer hub to connect our partners to student goals.
  o Be transparent about our students’ needs, successes and progress.

Recent District Accomplishments:
  • Improved school climate, including decreased suspension rates from 18.5% in 2014-15 to 16.1 percent in 2015-16;
  • Improved student attendance from 94.7% (K-8) and 92.9% (9-12) in 2014-15 to 94.8% (K-8) and 93.5% (9-12) in 2015-16;
  • Increased access to targeted supports for struggling students;
  • Launched districtwide, K-12, universal screening and benchmark assessment;
  • Improved K-12 implementation of Response to Instruction and Intervention;
  • Increased graduation rates for all measured student subgroups (by gender, race, economically disadvantaged, English language learners, students with disabilities);
  • Redesigned of our approach to professional learning (e.g., dedicated, content-specific coaches, more cohort-based, professional development) and aligned professional development to the vision and across roles (e.g., principal supervisors, principals, APs, coaches, teachers);
  • Implemented progress monitoring tools, including grade-band specific, literacy look-fors aligned to the CCR shifts and necessary core actions, externally-conducted, classroom observations aligned to CLIP implementation look-fors and adoption of benchmark assessments and universal screeners;
  • Implemented Response to Instruction and Intervention (RTI², RTI2-B and PBIS), including a district-specific handbook, investment in on-line intervention programs and a limited number of intervention teachers, professional development, etc.; and
  • Invested in high-quality, CCR-aligned instructional materials, including revised curriculum maps, curriculum pilots, and supplemental texts.
Submission of Proposals

Proposals will be accepted until 2:00 P.M. on MARCH 28, 2017. PROPOSALS RECEIVED AFTER THIS TIME WILL NOT BE ACCEPTED. One (1) original, one (1) CD/ USB (with Proposal formatted into a single pdf file), and ten (10) copies of your Proposal must be submitted. SCBE RESERVES THE RIGHT TO CONTRACT IN THE BEST INTEREST OF SCBE, AND TO REJECT ANY AND ALL PROPOSALS AT ANY TIME PRIOR TO AWARD.

Proposals must be sealed in a container marked on the lower left-hand corner with the name and address of the Respondent. SCBE will date stamp the container with the submission date and the submission time. In addition, the sealed container in which the Proposal is submitted should be labeled “RESOURCES FOR EDUCATIONAL SERVICES”. FAXED RESPONSES WILL NOT BE ACCEPTED. Further instructions for submitting Proposals may be obtained from:

DEPARTMENT OF PROCUREMENT SERVICES
SHELBY COUNTY BOARD OF EDUCATION
160 SOUTH HOLLYWOOD STREET, ROOM 126
MEMPHIS, TENNESSEE 38112

All completed Proposals and accessory documents should be mailed or delivered to:

WENDY PARTEE
DEPARTMENT OF PROCUREMENT SERVICES
SHELBY COUNTY BOARD OF EDUCATION
160 SOUTH HOLLYWOOD STREET, ROOM 126
MEMPHIS, TENNESSEE 38112

Inquiries for information regarding procurement procedures, proposal submission requirements or other administrative concerns may be directed to the Department of Procurement Services at (901) 416-5376.

Thank you for your participation.

Wendy Stoltz Partee, Buyer
Department of Procurement Services
SECTION B - SCOPE OF SERVICES
1.0 THE SERVICES.

1.1 The Services. SCBE hereby solicits submissions of written Proposals, from qualified Respondents to provide for SCBE the services described herein, all in accordance with the terms and conditions detailed herein. In particular, the services sought by SCBE will require the Respondent to: Support a comprehensive system of school/student services, working with teachers, leaders, parents and community members, and students, as appropriate, across grade bands to address academic and/or socio-emotional learning needs, and enhance the overall school climate. Throughout this Scope of Services section, there are requests for detailed responses as part of the proposal response.

1.2 Proposer must have content expertise and experience that is applicable to the proposed Services. Proposed Services must align to one or more of the identified areas below:

1.2.1 Academic and socio-emotional support for students in grades K-12, focusing on English, Language and/or Mathematics by:
   - Collaborating with the school leadership teams to address needs of at-risk students regularly; and
   - Providing students instructional support based on identified needs.

1.2.2 Professional learning opportunities for teachers and leaders by:
   - Providing site-based support, including professional development, as appropriate, via administrative, technical, or personnel assistance for teachers and students, before, during and/or after school; and
   - Providing classrooms and school-wide support based on identified needs.

1.2.3 Extended learning opportunities for students by:
   - Providing tutoring services during the day, before school, and/or after school. Proposal must describe delivery models for tutorial services; and
   - Providing academic support to increase achievement in core instruction.

1.3 All respondents must convey in their proposal a clear understanding, including detailed responses of how their Services will meet the requirements listed below:

1.3.1 Key Content Knowledge – Services included in the proposal will be supplemental to what is taught in the classroom. Therefore, this solicitation is not a request for core instructional programs (e.g., textbooks, basals) or online courses for credit recovery (e.g., courses to fulfill core course requirements, elective course requirements, etc.). Respondents’ proposed services must:
   - Identify support for test preparation services for state and/or college entrance exams; and
   - Detail College and Career aligned supplemental teacher materials (e.g., online or consumable products) designed to close achievement gaps.

1.3.2 Research-Based Strategies – Proposed services are to be research-based. Respondents must provide evidence that the proposed service is research-based and describe the effectiveness of the proposed services. Proposals must contain evidence of effectiveness on Socioemotional Learning, Academics, School Climate & Culture, or College and Career Readiness and proven track record of success in a similar (i.e., size, demographic) school district. Respondents proposals must:
• Describe early implementation strategies in a similar (i.e., size, demographic) school district;
• Explain research method and results based on (e.g., semi-annually, annually, and/or 3-5 year) trends;
• Define necessary conditions for effectiveness and/or site readiness (e.g., implementation timeline, student/teacher ratio, and access to relative data);
• Describe regular on-going process of evaluation to determine the effectiveness of services (e.g., coordinate data collection, tracking and analysis); and
• Contain a brief description of the proposed core curriculum, highlighting evidence that the proposed curriculum is research-based and has been effective in supporting student outcomes.

1.3.3 Targeted Support – Proposed services must describe how the respondents will assist students with meeting and/or exceeding academic goals. Therefore, proposed services must be adaptable aligning to the local needs at the classroom and/or school levels in response to District priorities. Proposals must:

• Describe activities for supporting students at-risk for academic failure;
• Include strategies for targeted support (e.g., mentoring, advising, tutoring) based on student needs; and
• Indicate the maximum number of students and/or teachers the program can support.

1.3.4 Communication: Respondents will commit to regular progress updates between school leaders, classroom teachers, counselors, social workers and/or other school-based staff as needed, to ensure students meet their academic goals. Respondents proposals must:

• Describe real time progress monitoring and program evaluation of proposed solution; and
• Appropriately access and leverage existing school and district resources, including student data, to improve student support. Proposals must outline necessary resources needed to comply with this requirement.

1.3.5 Technology: Respondents proposing a web-based or web-enhanced product as a part of the service, the proposal/Respondent must:

• Include a list of ALL the browsers with version information that your system will support (both PC and Mac) if applicable;
• State if SCBE needs to install any plugins for your system to work properly? If “Yes” please provide details;
• Explain or give detail description on Data Integration services to your system from District Student Management System (PowerSchool SMS). If applicable, explain or give detail description on Data Integration services from your system to District;
• Indicate the number of user roles/user types available in your system, and explain the functionality of each user role/user type;
• Explain or give detail description on report capability, type of reports available at the school, school administration, and District administration levels, provide examples with screen shots, details information on each type of the report and format (pdf, excel, csv) of the reports. State the system’s ability to provide reports with graphs? Please explain and provide samples;
• Indicate the email notifications/reminders available in the system for an individual user,
department/school location, for whole district? Please explain how this will work: how users will get email messages/notifications/reminders;

- Describe in detail the following support types, the services are to be included in the total contract amount: Application Support, Maintenance & Support, Customer Service Helpdesk Support for reasonable business hours, and Multi-platform;

- Explain in the proposal the training, on site and online, the District would receive without additional cost to the District;

- Provide access to the test system with all needed functionality (multiple user roles, reports, email communication), so that SCS Business team can assess the product before finalizing the Scoring for the product. If “Yes” please provide URL, demo account usernames and passwords for all available user roles;

- State that if the Respondent is chosen for demonstration of product, the Respondent will be able to demo the actual product (not in the power point presentation) at least for an hour with all needed functionality with multiple user roles, all available reports (at the school, school administration, and District administration levels), email notification between multi user levels (individual user, school administration, and District administration levels); and

- Include/describe the implementation services SCBE would receive without additional cost to the District, if the Respondent’s Proposal is approved by SCBE.
  - Proposal is to list two technical contacts (other than Account manager and/or Project Manager) who can respond to and resolve system technical issues quickly; and
  - To resolve system issues vendor technical contact must respond at least within 2 business days and reasonable business hours to discuss the issue, set a timeline to resolve the issue without additional cost to the district.

2.0 JOINT VENTURES. Respondents are encouraged to enter into joint ventures for the purposes of responding to this RFP and providing the Services. The Respondent is encouraged to enter into Joint Ventures with Local Business, Minority Owned Businesses, Women Owned Businesses, any other businesses that would be classified as Disadvantaged Businesses.

3.0 DURATION OF THE AGREEMENT. The term of the Agreement shall commence on the date that the Agreement is executed by all parties thereto. Thereafter, unless earlier terminated, the term of the Agreement shall continue for an initial term of one (1) year. The Agreement shall reserve for SCBE the unilateral option of extending the term of the Agreement for three (3) additional terms of one (1) year(s) each, provided that the maximum duration of the Agreement shall not exceed three (3) years. The Agreement shall also contain a provision granting to SCBE the right to terminate the Agreement, with or without cause, upon thirty (30) days’ notice. (Hereinafter, the period from the time of commencement of the term of the Agreement until the time of expiration of the term of the Agreement shall be referred to as the “Agreement Term”).

4.0 FORMAT OF PROPOSAL. The Proposal submitted by the Respondent must contain the following information, which information collectively constitutes the Proposal.

4.1 Cover Letter Referencing the RFP;

4.2 Table of Contents;

4.3 Description of the Respondent. The Proposal must contain a thorough description of the background of the Respondent and sufficient evidence showing that the Respondent is capable of providing the Services. All requests included in this RFP for information describing the Respondent should be included in this part of the Proposal, including but not necessarily limited to the following:

4.3.1 A brief description of the history and mission of the Respondent, including the Respondent’s background
and mission statement, the length of time the Respondent has been in business, a description of the Respondent’s organizational structure and a description of the Respondent’s customer make-up;

4.3.2 Disclosure of the Respondent’s Dunn and Bradstreet number;

4.3.4 Disclosure of the volume of sales the Respondent has had in each of its past two fiscal years;

4.3.5 Proof that the Respondent’s employees who will be assigned to the project possess the certification, technical skills, and knowledge to provide Services indicated. This includes but is not limited to employees’ resumes.

4.3.6 A description of any other resources available to the Respondent that will be useful in providing the Services;

4.3.7 A description of the business design of the Respondent, including the number and locations of facilities and offices of the Respondent and specification of the location of the home office of the Respondent;

4.3.8 A description of the methods used by the Respondent to measure the satisfaction of its clients;

4.3.9 Describe the Respondent’s involvement, within the last five (5) years, in any lawsuits or litigation relating to the services the Respondent is proposing to provide to SCBE.

4.3.10 Any other relevant information about the capabilities of the Respondent deemed to be material.

4.3 Experience of the Respondent. A sufficient description of the experience and knowledge base of the Respondent to show the Respondent’s capabilities must be included in the Proposal. The Respondent must be able to convey its ability and experience in providing Resources for Educational Services for large K-12 school districts and/or public sector. SCBE prefers a Respondent who has K-12 experience of similar complexity, but will consider responses from others that have managed large-scale contracts similar in scope.

At a minimum, the description of the experience and knowledge base of the Respondent included in the Proposal should include, but not necessarily be limited to, the following:

4.4.1 A statement of how long the Respondent has provided services similar to the Services requested herein;

4.4.2 A general description of the Respondent’s experience and background in providing services similar to the Services requested herein;

4.4.3 Any other relevant information about the experience and knowledge base of the Respondent, which is deemed to be material.

4.4.4 References of the Respondent, including at least five (5) other non SCBE clients for whom the Respondent has provided services similar to the Services (with preference given to clients comparable to SCBE) and, for each such reference, the business name, the identification of a contact person, the title of the contact person, email address and a telephone number;

4.4.5 A statement regarding previous experience, if any, in providing “Services” to SCBE.

4.5 Description of the Services. The Proposal must contain a thorough description of the Services being offered in response to this RFP. The Proposal must show that the Services being provided, at a minimum, meet the specifications set forth in this RFP. All requests included in this RFP for information regarding the Services must be included in this part of the Proposal, including but not necessarily limited to the following:

4.5.1 A clear understanding, including detailed responses of how their Services will meet the requirements listed in this RFP and the needs of SCBE:
• Describe your understanding of SCS, the work to be done, and the objectives to be accomplished.

• Provide a detailed description of the approach and methodology to be used to accomplish the Services of this RFP. The Methodology should include:
  ° An implementation plan that describes in detail (i) the methods, including controls by which the Respondent manages projects of the type sought by this RFP; (ii) methodology for soliciting and documenting views of internal and external stakeholders; (iii) and any other project management or implementation strategies or techniques that the respondent intends to employ in carrying out the work.
  ° Detailed description of efforts the Respondent will undertake to achieve client satisfaction and to satisfy the requirements of the Services.
  ° Detailed project schedule, identifying all tasks and deliverables to be performed, durations for each task, and overall time of completion, including a complete transition plan.
  ° Detailed description of specific tasks the Respondent will require from SCS. Explain what the respective roles of SCBE and the Respondent would be to complete the tasks specified in the Services.
  ° Quality and feasibility of the proposed solution and services. Does the proposed solution satisfy the requirements and any other related needs as described herein?

4.5.2 A description of any additional services the Respondent believes are necessary to fully provide the Services or which the Respondent believes would be beneficial to SCBE within the context of the Services requested in this RFP; and

4.5.2 Any other relevant information about the proposed Services deemed to be material. The Respondent is encouraged to provide additional innovative and/or creative approaches for providing the Services that will maximize efficient, cost-effective operations or increased performance capabilities.

4.6 SCBE Contract Form. For all contracts totaling less than $100,000, a form contract contained in Section F of this RFP, entitled “Forms and Documents”, must be signed and included in the Proposal along with any additional documentation required or permitted thereby.

4.7 Pricing Schedule. The pricing schedule contained in Section E of this RFP, entitled “Pricing Schedule”, if any, must be completed and included in the Proposal along with any additional documentation required or permitted thereby.

5.0 COMPENSATION. The successful respondent will be compensated upon the completion of the project’s objectives and upon meeting or exceeding the District’s Scope of Services requirements. To the extent the provisions of this paragraph contradict any provision regarding compensation set forth in Section C of this RFP, the provisions set forth in this paragraph shall govern.

6.0 BONDING REQUIREMENTS. The successful contractor shall be required under the Contract to comply with the bonding requirements listed below, if any.

7.0 QUESTIONS REGARDING THIS RFP. Questions or requests for clarification of technical issues and terms pertaining to this RFP must be submitted in writing via e-mail to parteews@scsk12.org, and must be received by SCBE no later than 2:00PM/CT on March 15, 2017. Subject line of email shall read “RESOURCES FOR EDUCATIONAL SERVICES”. Questions must include a return e-mail address and specifically reference the section of the RFP to which the question pertains. All questions must be submitted in writing. IN ORDER TO PREVENT AN UNFAIR ADVANTAGE TO ANY RESPONDENT, VERBAL QUESTIONS WILL NOT BE ANSWERED. All questions and answers will be posted on the Procurement’s website at the end of the business day on March 21, 2017. These guidelines for communication have been established to ensure a fair and equitable evaluation process for all Respondents. Any attempt to bypass the above lines of communication may be perceived as establishing an unfair or biased process and will lead to disqualification.
SECTION C - INSTRUCTIONS TO RESPONDENTS
INSTRUCTIONS TO RESPONDENTS
RESOURCES FOR EDUCATIONAL SERVICES

1.0 PURPOSE. Shelby County Board of Education (“SCBE”) hereby solicits submission of written proposals (“Proposals”), from qualified companies (the “Respondents”) capable of providing the scope of products or services described in Section B hereof (the “Services”). These instructions provide detailed legal and technical requirements for the acquisition of the Services. This Request for Proposal (this “RFP”) will become part of any final contract entered between SCBE and the Respondent for the provision of the Services.

2.0 PERIOD OF CONTRACT PERFORMANCE. The period of performance for the Services to be provided to SCBE by the Respondent as a result of this RFP and any resulting contract or agreement shall be as agreed and/or negotiated. It is the intent of SCBE to award a contract, or agreement, for the term, or duration, defined in Section B of this RFP. The contract or agreement resulting from this RFP shall also contain a provision granting to SCBE the right to terminate the Agreement, with or without cause, upon thirty (30) days’ notice.

3.0 PRE-PROPOSAL CONFERENCE. Pre-proposal conference if required, will be outlined in Section A (Announcement) for date and time.

4.0 MINIMUM STANDARDS. The successful contractor shall be capable of providing the Services in accordance with the minimum standards, specifications and performance requirements, as well as in accordance with all of the terms and conditions, stated in this RFP. The standards, specifications, performance requirements, terms and conditions set forth in this RFP reflect the primary considerations of SCBE concerning the minimum services and capabilities expected, but may not necessarily reflect all the services and capabilities required. Additional standards, specifications, performance requirements, terms and conditions may be set forth in the final contract. In this regard, the successful contractor shall furnish all management and resources (including but not limited to personnel, technical support, computerized and other systems support, equipment, materials and miscellaneous supplies) necessary to provide the Services in a thorough, comprehensive, timely, efficient and effective manner.

5.0 SPECIFICATIONS. The Respondent, if and when it is awarded a contract, shall provide all the Services described in Section B of this RFP, entitled “Scope of Services”.

6.0 PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS.

6.1 General Requirements. In order to be considered for selection, successful Respondents must submit a complete response to this RFP. One (1) original, one (1) CD/ USB (with Proposal formatted into a single pdf file) and fifteen (15) copies of each Proposal, including all attachments, forms and other related documents, must be submitted to SCBE at the place and in the manner indicated below. No other distribution of the Proposal shall be made by the Respondent. Proposals submitted by telegraphic or facsimile will not be considered.

6.1.1 Signatures; Completeness. Proposals shall be manually signed by an authorized representative of the Respondent. The printed name and title of the person signing the Proposal must appear on the signature page of the Proposal. Proposals must concisely set forth all of the information requested by this RFP in a full, accurate and complete manner, including all required attachments. If any required information is not contained in the Proposal, the proposal will be considered non-responsive and, consequently, will not be considered.

6.1.2 Simplicity. Proposals should be prepared simply and economically, providing a straightforward, concise description of the Respondent’s capability of satisfying the requirements of this RFP. Emphasis should be on completeness and clarity of content. Responses should focus on efficient and cost effective systems, which ensure cost management, timely services and minimized paperwork.

6.1.3 Binding. All documentation submitted with the Proposal should be contained in that single volume.

6.2 Place and Time for Submission. Proposals will be received by SCBE at its Procurement Services office located at 160 South Hollywood Street, Room 126, Memphis, Tennessee 38112, until 2:00 P.M. LOCAL TIME ON MARCH 28, 2017 (THE “SUBMISSION DEADLINE”). PROPOSALS RECEIVED AFTER THIS DATE AND TIME WILL BE REJECTED AND WILL BE RETURNED TO THE RESPONDENT UNOPENED.
6.2.1 **Delivery.** All Proposals shall be deemed received when delivered to the above address. Each Respondent is solely responsible for ensuring that its Proposal is timely delivered. Any Respondent who relies on overnight delivery services, the United States mail, private mail services, local couriers or any other delivery service remains solely responsible for the timely delivery of its Proposal and assumes all risk of late delivery, mis-delivery and non-delivery. Respondents may verify delivery of Proposals by contacting SCBE at (901) 416-5376.

6.2.2 **Receipt by SCBE; Markings.** Upon receipt, all Proposals will be date-stamped, time-stamped, logged and deposited by SCBE staff. Respondents are reminded that all Proposals must be securely sealed and clearly marked.

6.3 **Pricing.** Pricing information shall be provided on the pricing schedule form attached to this RFP. Pricing should include all costs, overhead, profit, etc. In determining its pricing proposal, the Respondent should take into account the following considerations.

6.3.1 **Tax Exemption.** SCBE is a tax-exempt entity and, as such, is exempt from the payment of taxes, including but not limited to sales and use taxes, federal excise taxes and federal high use taxes.

6.3.2 **Extra Charges.** Unless agreed by the parties in writing, charges in excess of the amounts agreed upon in the final contract shall not be allowed.

6.4 **Forms.** Along with the Proposal, the Respondent will provide signed copies of all forms required by this RFP to be submitted. Information required by any forms must be submitted on the forms furnished. If erasures or other changes appear on the forms, such erasures or changes shall be initialed by the person(s) signing the form and the Proposal.

6.5 **Identity of the Respondent.** The Proposal must reveal the full name and business address of the Respondent. SCBE will enter an agreement only with the person or entity named as the Respondent in the Proposal of the successful contractor.

6.6 **Modifications Following Submission.** Modifications of Proposals following submission will be allowed, provided the modification is received by the SCBE at the place designated for submission of Proposals prior to the Submission Deadline.

6.7 **Duration of Validity.** Proposals shall be valid for a minimum period of six (6) months subsequent to the Submission Deadline. Proposals expiring less than six (6) months from Submission Deadline will be considered non-responsive and, consequently, will not be considered.

7.0 **CHANGES TO THE SPECIFICATIONS.** Any modification, amendment or other change to this RFP will be made by SCBE via written addendum and will be forwarded to all persons and firms to whom the RFP has been transmitted. Any unapproved deviation, exception, substitute, alternate or conditional qualification contained in a Proposal may be cause for rejection of the Proposal.

8.0 **EVALUATION PROCESS.**

8.1 **Evaluation Committee.** SCBE will appoint an evaluation committee, consisting of representatives of SCBE, to evaluate submitted Proposals and recommend a Respondent for a final contract with SCBE for provision of the Services. The committee will apply the evaluation criteria set forth in this RFP, or in any addenda hereto that may be issued by SCBE, in order to identify a Respondent for a final contract. An evaluation criterion is deemed to include any unstated, “sub criterion” that logically might be included within the scope of the stated criterion.

8.2 **Evaluation.** The evaluation committee shall consider a number of criteria in determining with which Respondent and SCBE will enter a final contract. SCBE reserves the right to negotiate fees and other terms with the selected Respondent and, if no agreement is reached, including desired fees and terms, the right to select and negotiate with another Respondent. SCBE may request additional information from any Respondent at any time after the Submission Deadline. However, unsolicited information may not be accepted from any Respondent after the Submission Deadline. SCBE will assume that all Proposals are complete as received.
Finalists’ Proposals shall be evaluated based upon the following criteria:

8.2.1 The extent to which the Services offered in response to this RFP meet or exceed the minimum specifications required of the Services;

8.2.2 The ability of the Respondent to provide the Services requested or offered;

8.2.3 The quality of the Services being offered by the Respondent;

8.2.4 The price for which the Services are offered; and

8.2.5 Any and all other factors the evaluation committee deems reasonably applicable.

<table>
<thead>
<tr>
<th>Experience</th>
<th>Major Weights</th>
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<tbody>
<tr>
<td>The Proposal must include, but not limited to, business tenure, customer references, experience with similar type and scope of projects (including K-12 and other public sector organizations, financials and company commitments).</td>
<td>25%</td>
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<table>
<thead>
<tr>
<th>Services</th>
<th>Major Weights</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Proposal must describe the Services being provided, and at a minimum, show that the Services meet the specifications set forth in this RFP. To include but not limited to, objectives to be accomplished, proposed action plan and timeline schedule for implementation of proposed solution/services, and quality and feasibility of the proposed solution/services. Does the proposed solution satisfy the requirements and any other related needs as described herein?</td>
<td>30%</td>
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<table>
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<tr>
<th>Financial Stability, Credit Rating, and/or Risk Assessment</th>
<th>Major Weights</th>
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<tbody>
<tr>
<td></td>
<td>10%</td>
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</table>

<table>
<thead>
<tr>
<th>Total Cost of Project</th>
<th>Major Weights</th>
</tr>
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<tbody>
<tr>
<td>Total</td>
<td>35%</td>
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</table>

<table>
<thead>
<tr>
<th>Total</th>
<th>Major Weights</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>100%</td>
</tr>
</tbody>
</table>

8.3 **Oral Presentation.** SCBE reserves the right to interview, or require an oral presentation from, any Respondent for clarification of information set forth in the Respondent’s Proposal. In this regard, at the discretion of the evaluation committee, some or all Respondents who submit an Proposal in response to this RFP may be asked submit to an interview or give an oral presentation of their respective Proposals to the evaluation committee. If so, this is not to be a presentation restating the Proposal, but rather an in-depth analysis of certain qualifications of the Respondent. The interview or oral presentation, if utilized, is intended to provide an opportunity for the Respondent to clarify or elaborate on its qualifications without restating the Proposal. The interview or oral presentation is to be a fact finding and explanation session only and is not to be used to negotiate any terms of contract. If required, the time and location of such interview or oral presentation will be scheduled by the Procurement Director of SCBE. Interviews and oral presentations are strictly an option of SCBE or its evaluation committee and, consequently, may or may not be conducted. All travel expenses to and from the interview or oral presentation shall be the responsibility of the Respondent.

8.4 **Qualifications of the Respondent.** SCBE may make such reasonable investigations as deemed proper and necessary to determine the ability of the Respondent to provide the Services. The Respondent shall furnish to SCBE all such information and data as may be requested for this purpose. SCBE further reserves the right to reject any Proposal if the evidence submitted by, or investigation of, the Respondent fails to satisfy SCBE that the Respondent is properly qualified to carry out the obligations required in this RFP, the final contract and to provide the Services contemplated therein.

8.5 **Inspections.** SCBE reserves the right, at reasonable times, to inspect the part of the plant or place of business of the Respondent or any subcontractor thereof which is related to the performance of any contract awarded or proposed to be
awarded by SCBE. SCBE further reserves the right, at reasonable times and places, to audit the books and records of any Respondent who has submitted a Proposal to the extent that such books and records relate to cost or pricing data contained in the Proposal.

9.0 AWARD OF CONTRACT. The final contract for provision of the Services will ultimately be awarded to the Respondent deemed by SCBE in its sole discretion to be the most responsive and responsible Respondent. In determining which Respondent is the most responsive and responsible Respondent, SCBE will consider which Respondent is fully qualified and best suited, offers the best Services for the most reasonable price and is altogether most advantageous to SCBE among those submitting Proposals in response to this RFP, as determined based upon evaluation of the criteria set forth in this RFP and upon the results of negotiations. Terms of engagement will be negotiated with the selected Respondent, and the final contract will be awarded in the manner deemed by SCBE to be fair and most advantageous to the District.

9.1 Rejection of Proposal. SCBE reserves the right to reject any or all Proposals and to waive informalities and irregularities in any or all Proposals submitted. In this regard, SCBE, at its own discretion and at any time prior to award, may cancel this RFP or reject any Proposal, in whole or in part, and is not required to furnish a statement of the reason why a particular Proposal was rejected or was not deemed to be the most advantageous.

9.2 Negotiation and Approval of Contract. Should, at any time, SCBE determine in its sole discretion that only one Respondent is fully qualified or that one Respondent is clearly more qualified than the others under consideration, a proposed contract may be negotiated for award to that successful Respondent. SCBE shall have no obligation to include in any such proposed contract any part of any sample contract submitted by the Respondent. The proposed contract must be presented to the Board Members of the SCBE (the “Board”) for final approval of award. Provision of the Services may not commence until: (i) a contract between SCBE and the successful Respondent is properly negotiated, executed and entered; (ii) the contract is approved by the Board, as required; and (iii) SCBE issues to the successful Respondent a written notice to proceed. In the event that a contract is not successfully negotiated within 30 days of the notification of the recommendation of award, and/or if the contract is not approved by the Shelby County Board of Education for awards totaling $100,000 or more, the vendor may no longer be considered, and the district reserves the right to contact the Respondent with the next highest ranking or issue a new RFP.

9.3 Compensation. The successful respondent will be compensated upon the completion (of each phase) of the project’s objectives and have met or exceeded the District’s Scope of Services requirements. More specific guidance regarding compensation may be set forth in Section B of this RFP.

9.4 Price Adjustment. The price to SCBE, including fee, profit or any other portion of the compensation payable to the Respondent, shall be adjusted to exclude any significant sums by which SCBE finds that the price was increased because the fees, costs or pricing data furnished by the Respondent were inaccurate, incomplete or not current as of the date of the contract.

9.5 Charges Not Required. The successful contractor and SCBE both shall agree that SCBE shall not be required to pay to the successful contractor any cost, fee or charge which is not specifically required to be paid by the contract.

9.6 Performance. SCBE and the successful contractor each shall agree to fully perform all of their respective obligations under the Agreement. However, failure of SCBE to perform such obligations shall not automatically relieve the successful contractor of its obligation to perform under the contract.

9.7 Protests. SCBE will consider all protests filed in a timely manner regarding the award of a contract, or the process of awarding a contract, in relation to this RFP, whether submitted before or after award. All protests are to be submitted in writing.

10.0 GENERAL TERMS AND CONDITIONS.

10.1 No Commitment. This RFP does not commit SCBE to award a contract, pay any costs incurred in the preparation of any Proposal submitted, procure or contract for Services from any Respondent or any other person. Accordingly, each Respondent shall be responsible for all costs incurred in the preparation and submission of its Proposal or in any part of its
participation in the pre-award process.

10.2 **Conditions and Assumptions.** All Proposals and related documents submitted shall be based on the same conditions and assumptions that will underlie any prospective final contract between SCBE and the successful Respondent. Thus, in establishing the terms of any resulting contract, SCBE may assume the conditions and assumptions underlying the Proposal submitted by the successful Respondent are accurate.

10.3 **Termination.** Failure by the successful contractor to comply with the terms and conditions of this RFP or to deliver the Services identified in this RFP or the contract at the prices quoted shall void the contract award. In the case of the successful contractor’s failure to deliver the Services in accordance with the contract terms and conditions, SCBE, after due oral or written notice, may procure such Services from other sources and hold the successful contractor responsible for any resulting additional purchase and administrative costs. If termination is due to the successful contractor’s failure to comply with the terms and conditions of this RFP or failure to satisfactorily complete the Scope of Services, SCBE reserves the right to seek reimbursement of all or portions of payments made to the contractor.

SCBE reserves the unilateral right to cancel and terminate any resulting contract, in part or in whole, without penalty, whenever SCBE in its sole discretion determines that such a termination is in the best interest of SCBE. Any such termination shall be enacted by delivery to the successful contractor by certified mail, at least thirty (30) calendar days prior to the termination date, a notice of termination specifying the extent to which performance shall be terminated and the date upon which such termination shall become effective. After receipt of a notice of termination, the successful contractor must stop all work or deliveries under the contract on the effective date and to the extent specified in the notice of termination. However, any such contract termination notice shall not relieve the successful contractor of the obligation to deliver and perform on all outstanding orders issued prior to the effective date of termination. No payment shall be made for anticipated profit on unperformed services.

10.4 **Ethics in Public Contracting.** By submitting its Proposal, Respondent certifies that its Proposal is submitted without collusion or fraud, that it has not offered or received any kickback or inducement from any other Respondent, supplier, manufacturer, subcontractor, customer or other person in connection with its Proposal and that it has not conferred on any public employee or official having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, employment, service or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

10.5 **Prohibited Contact.** Registered and non-registered lobbying of SCBE staff members or Board members with respect to a pending project or award is prohibited during the time period between the date the RFP is advertised and the date a final contract is awarded. ANY CONTACT BETWEEN SCBE STAFF MEMBERS OR BOARD MEMBERS AND ANY REPRESENTATIVE OF A RESPONDENT RELATING TO A PENDING PROJECT OR AWARD (WHETHER BY WRITING, TELEPHONE, E-MAIL OR OTHERWISE) OUTSIDE OF PROPERLY SCHEDULED MEETINGS, OTHER THAN AS INTENDED AND INITIATED BY AN SCBE STAFF MEMBER, SHALL BE GROUNDS FOR DISQUALIFICATION OF THE RESPONDENT FROM THE PROCESS. By submitting a Proposal, the Respondent represents and warrants that it has not made, and will not make, any contact prohibited by this paragraph.

10.6 **Conflict of Interest.** Respondent certifies that no SCBE Board member, staff member or any SCBE employee has a financial or beneficial interest in the Respondent.

10.7 **Mandatory Use of Form and Modification of Terms and Conditions.** Failure to submit a Proposal on any official form provided for that purpose may be cause for rejection of a Proposal. Return of the complete form is required. Modification of, or additions to, the general terms and conditions of this RFP may be cause for rejection of the Proposal. Notwithstanding, the SCBE Director of Purchasing reserves the right to decide, on a case by case basis, in his or her sole discretion, whether to reject such a Proposal.

10.8 **Errors or Omissions.** The Respondent shall not be allowed to take advantage of any errors or omissions in the specifications set forth in this RFP. Where errors or omissions occur in this RFP, the Respondent shall promptly notify the contact person listed in this RFP and report the identified error or omission. Inconsistencies in the specifications are to be reported before Proposals are submitted to SCBE.
10.9 Liability for Improper Date or Time Processing. By submitting a Proposal, the Respondent agrees that, if it becomes the successful contractor, the Respondent will indemnify and hold harmless SCBE and the officers, employees, Board members and agents of SCBE against any claim of, or liability for, breach of any contract related to the Services that is caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort or otherwise process dates or times.

10.10 Audit. Unless the contract is a firm fixed price contract, SCBE shall be entitled to audit the books and records of the successful contractor or any subcontractor thereof to the extent that such books and records relate to the performance of the successful contractor’s contract with SCBE. Accordingly, the successful contractor agrees, and any subcontractor thereof will agree, to retain all books, records and other documents relative to this RFP and the related contract for a period of three (3) years from the date of final payment under the contract for the contractor and for a period of three (3) years from the date of final payment under the subcontract for the subcontractor, unless a shorter period is otherwise authorized in writing the SCBE. By submitting a Proposal, the successful contractor grants to SCBE the right to perform, or have performed by its authorized agents and/or auditors, an audit of the books and records of the successful contractor. Consequently, SCBE will have full access to, and the right to examine, any of said materials following the giving of reasonable notice during said period. RESPONDENTS ARE HEREBY NOTIFIED THAT ALL RECORDS OF ALL PERSONS CONTRACTING WITH THE SCBE MAY BE SUBJECT TO THE TENNESSEE PUBLIC RECORDS ACT.

10.11 Compliance with Procedures. The successful contractor will comply with all procedural instructions that may be issued from time to time by SCBE. However, the substantive terms and conditions of the contract shall not change without the written consent of all parties thereto.

10.12 Obligation of Successful Contractor. By submitting a Proposal, the successful contractor covenants and agrees, based upon its own investigation of the conditions to be met, that it fully understands its obligation and that it will not make any claim under, or have any right to cancellation or relief from, the contract because of any misunderstanding or lack of information.

10.13 Format of Services; Satisfaction of SCBE. The Respondent agrees that, if it becomes the successful contractor, the Respondent will fully provide to SCBE, to the best of its capabilities, the Services in substantially the format, quality and scope required by, or indicated in, this RFP, including any modifications and additions hereto. Furthermore, the Respondent agrees to be responsible for providing the Services in a manner and to an extent satisfactory to SCBE.

10.14 Delivery. By submitting a Proposal, the Respondent agrees that, if it becomes the successful contractor, the Respondent will deliver to SCBE all items required to be delivered by this RFP and the Agreement in a form, which is complete and ready for use.

10.15 Taxes. The successful contractor shall determine, be responsible for and pay any applicable taxes related to the Services or the Agreement, including but not limited to any property tax, sales tax, federal excise tax or federal highway use tax. SCBE is a tax-exempt organization and shall not be billed for, nor be expected to pay, any taxes applicable to the Services. A COPY OF DOCUMENTATION VERIFYING THE “TAX EXEMPT” STATUS OF SCBE IS AVAILABLE AND WILL BE FURNISHED TO THE SUCCESSFUL CONTRACTOR UPON REQUEST.

10.16 Support. If it becomes the successful contractor, the Respondent agrees and affirms that, throughout the Agreement Term, it will utilize its best efforts to assist and support SCBE in addressing any problem whatsoever relating to the Services or the Agreement.

10.17 Deviation from Specification. Accountability for the Services will rest solely with the successful contractor. Any inaccuracy in or other deviation of the Services from the required specifications will be corrected by the successful contractor within two (2) weeks after the successful contractor is notified of the inaccuracy or discrepancy.

10.18 Time for Performance. In order to minimize the disruption of schools and other SCBE facilities, the successful contractor will perform the Services during hours, which will be determined by SCBE.

10.19 Non-Discrimination. The Respondent is obligated not to discriminate against any employee of, or applicant for employment with, the Respondent on the basis of race, color, religion, handicap, national origin, sex or socio-economic
status. This obligation shall include, but not be limited to the following matters: employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The Respondent is obligated to comply with all requirements of the Americans with Disabilities Act. In addition, all vendors wishing to do business with Respondent shall be afforded the same equal opportunity and non-discrimination. By submitting a response to this RFP, the Respondent confirms and asserts that it is not currently discriminating, and will not discriminate, against any person in any manner related to this RFP or to any Proposal or contract related hereto, including in the performance under any such contract.

10.20 MWBE Reporting. For projects with a value of $250,000 or greater, SCBE requires majority-owned contractors to report all Direct Tier 2 Spend (spend directly related to the contract resulting from this process) with disadvantaged subcontractors (minority-owned, women-owned, veteran-owned, etc.) to SCBE on a quarterly basis. Reports will be submitted in a spreadsheet format to SCBE Procurement Services at ProcurementServices@scks12.org.

10.21 Bonding or Other Security. If the Services include any type of construction or maintenance of a public building, work or other project to be provided under a contract having a contract price of more than One Hundred Thousand Dollars and No/100 Dollars ($100,000.00), then, prior to the commencement of work under the contract, the successful contractor will execute and provide to SCBE a good and solvent bond to the effect that the successful contractor will pay for all the labor and materials used by the successful contractor or by any subcontractor, immediate or remote, in connection with the contract, in lawful money of the United States, as required by Section 12-4-201 of the Tennessee Code Annotated. The bond shall be for at least twenty-five (25%) of the contract price. The bond shall provide that the successful contractor shall promptly make payment when due of all taxes, licenses, assessments, contributions, penalties and interest on the project.

10.22 Insurance. By submitting a Proposal in response to this RFP, the Respondent certifies that, if awarded a contract, it will have the insurance coverage required for performance of the Services, if any, at the time the work commences. Additionally, the Respondent certifies that it will maintain this insurance coverage throughout the entire term of the contract and that all insurance coverage shall be provided by insurance companies authorized to sell insurance in Tennessee. During the term of the contract, SCBE reserves the right to require the successful Respondent to furnish certificates of any required insurance for the coverage required by SCBE, if any is required.

10.23 Confidential and Proprietary Information. SCBE is subject to the Tennessee “Public Records Act.” Accordingly, no claim of confidentiality or proprietary information in all or any portion of any Proposal submitted in response to this RFP will be honored unless a specific exemption from the Public Records Act exists and such exemption is cited in the Proposal. Any claimed exemption must be specifically cited by page and paragraph number(s). An incorrectly claimed exemption does not disqualify the Respondent.

10.24 Ownership of Computer Programs and Data. Ownership of all computer systems, programs, software, data, materials, documentation or similar products purchased, created or compiled in connection with the performance of the Services or the performance of obligations under any contract resulting from or related to this RFP, now or hereafter, shall vest completely and exclusively with SCBE. Upon expiration of the term of the contract, the successful contractor will relinquish and convey to SCBE any right it may have in such computer systems, programs, software, data, materials, documentation or similar products.

10.25 Assignment of Contract. Upon execution, the contract shall not be assigned or subcontracted by the successful contractor, in whole or in part, without the prior written consent of SCBE.

10.26 Binding Nature of This RFP. By submitting a Proposal, the Respondent agrees to be bound by all of the provisions of this RFP. The Respondent further agrees that, if it becomes the successful contractor, the Respondent and its heirs and assigns will continue to be bound by the provisions of the RFP for the duration of the Agreement Term except to the extent any provision hereof is explicitly waived in the Agreement.

10.27 Applicable Laws and Courts. This RFP and any related Proposal and resulting contract shall be governed in all respects by the laws of the State of Tennessee. Jurisdiction over any matter arising in connection with this RFP or any related Proposal or resulting contract hereunder shall be held by the federal and state courts having jurisdiction in Shelby County, Tennessee. Furthermore, the Respondent shall comply with all applicable federal, state and local laws and
regulations.

10.28 **Self-Disclosure.** The respondent shall disclose any litigation, lawsuits and/or court rulings, it is currently involved in or has previously been party to for any products or services it provides that are related to the Scope of Services of this RFP/RFQ.
SECTION D - PRICING SCHEDULE
Please indicate your price for the aforementioned services. Total contract amount must include travel and related expenses, detailed miscellaneous expenses, as well as reflect all services and deliverables described within this proposal, which can be revised should Shelby County Schools Board of Education (“SCBE”) decide not to move forward with specific deliverables. Also, the total contract must be calculated on an annual basis, as well as cost per user/student/teacher.

The proposed costs submitted shall remain valid for at least 120 days subsequent to the date of the RFP Proposal opening and thereafter in accordance with any resulting contract between the Respondent and SCBE. All monetary amounts are United States currency.

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<tr>
<th>If a Fee is Not Applicable to the Total Cost, please indicate N/A.</th>
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<tr>
<td>Site License/Subscription Fee $ per user/student/teacher</td>
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<tr>
<td>Professional Development Fee $</td>
</tr>
<tr>
<td>Help Desk Support Fee $</td>
</tr>
<tr>
<td>Technical Support Fee $</td>
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<tr>
<td>Remote Access Fee $</td>
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<tr>
<td>Maintenance Fee $</td>
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<tr>
<td>Professional Educational Services Fee $</td>
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<tr>
<td>Implementation Fee $</td>
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<tr>
<td>Administration Fee $</td>
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<tr>
<th>Total Contract Amount must be calculated annually and per user cost.</th>
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<tr>
<td><strong>Annual Total Contract Amount</strong></td>
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<tr>
<td>Year 1</td>
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<tr>
<td>Year 2, optional renewal</td>
</tr>
<tr>
<td>Year 3, optional renewal</td>
</tr>
<tr>
<td>Total Cost for all 3 Years</td>
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SECTION E - FORMS AND DOCUMENTS
SECOND TIER PURCHASING

Shelby County Board of Education utilizes a race neutral program for all purchases and contracts. In order to set benchmarks for all MWBE and Local Business Enterprises, we ask that our vendors review and actively participate per Policy 2010 and 2011 in Section D of this RFP.

In order to track the purchases and contracts issued to MWBE's (Minority Women Business Enterprises), we ask our vendors to indicate their level of second tier purchasing commitment. Second tier purchasing is defined below:

Second-tier purchasing is the process through which a first-tier (or prime) supplier utilizes a minority supplier either directly or indirectly.

Please indicate below the level of participation, in both dollars and percentage that would define the level of minority business enterprise participation for this project.

Second Tier Commodity

(Example: Office supply vendors may purchase subsets from minority owned companies. Manufacturers may purchase a certain percentage from minority suppliers. This line asks for the commodity.)

M/WBE category for second tier supplier - PLEASE CHECK ONE:

□ Hispanic
□ Black
□ Asian American
□ Native American Indian
□ Woman Owned

Dollars expended for this commodity, this project $________________________________________________

Percentage of this project ____________________________________________%

Name of Business (Please Print)

_______________________________

Print Authorized Representative Name

_______________________________

Signature of Authorization Representative

_______________________________

Date
1. By signing and submitting this proposal, the prospective primary and/or lower tier participant ("participant") is providing the certification set out below. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction, however failure of the prospective participant to furnish a certification or explanation shall disqualify such person from participation in this transaction. The certification or explanation will be considered in connection with the department or agency’s determination whether to enter into this transaction.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including termination for cause or default, suspension and/or debarment.

3. The prospective participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all covered transactions and in all solicitations for covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including termination of this transaction for cause or default, suspension and/or debarment.
Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Primary and/or Lower Tier Covered Transactions

(1) The prospective participant certifies to the best of its knowledge, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) The prospective participant and its principals have not, within a three (3) year period preceding this proposal, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

(3) The prospective participant and its principals are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses in Paragraph 2 of this certification.

(4) The prospective participant and its principals have not, within a three (3) year period preceding this application/proposal, had one (1) or more public transactions (Federal, State or local) terminated for cause or default.

(5) Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Agency: ________________________________

Signature: ______________________________

Date: ________________________________
SECTION F - APPENDICES
MASTER CONSULTING SERVICES AGREEMENT

THIS MASTER CONSULTING SERVICES AGREEMENT (“Agreement”) is made as of the ___ day of September (the “Effective Date”) by and between Cook Systems International, Inc. (“Consultant”), a Tennessee corporation, with offices at 6799 Great Oaks Road, Atrium II, Suite 200, Memphis, Tennessee 38138 and Sara Lee Corporation (“Company”), a Maryland corporation, with offices at 8000 Centerview Parkway, Suite 400, Cordova, Tennessee 38018.

WHEREAS, Company is interested in obtaining professional consulting services from Consultant as described below; and

WHEREAS, Consultant is interested in providing such consulting services as may be mutually agreed upon by the parties.

NOW, THEREFORE, the parties agree as follows:

1. SERVICES; STATEMENTS OF WORK.

1.1 Services. Services shall be provided to Company on an as-needed basis, upon written request by Company for such services (the “Services”). Consultant understands that Company has made no promises or representations whatsoever as to the amount or potential amount of business Consultant can expect at any time during the term of this Agreement.

1.2 Statements of Work. Each project to be performed by Consultant at Company’s request shall be described in a statement of work, substantially in the form attached hereto as Exhibit A (“Statement of Work”), signed by both parties. Each Statement of Work shall be subject to the terms of this Agreement, and shall, at a minimum, include: (a) the approach and objectives of the project; (b) a description of the Services to be performed and the deliverables to be provided by Consultant (the “Deliverables”); (c) the start date, location and scheduled completion dates for the Services and the Deliverables; (d) any applicable milestone dates or other assessment points; (e) the acceptance criteria, testing procedures, specifications and requirements for the Services and the Deliverables; (f) any additional warranties applicable to the Services or the Deliverables; (g) the fees applicable to the Services and the Deliverables (i.e., time and materials, fixed price, time and materials not-to-exceed); (h) the names of all Key Personnel (as defined in Section 3.2), if any; (i) any terms and conditions which expressly supercede any terms and conditions of this Agreement for purposes of the Statement Work only, and (j) such other information as may be agreed to by the parties. In the event of any conflict or inconsistency between the terms of this Agreement and any Statement of Work, the terms of the Statement of Work shall prevail; provided, however, that (a) such terms shall prevail only with respect to the transactions contemplated by such Statement of Work, and (b) the parties shall disregard any terms and conditions (including any pre-printed terms) on or contained in any of Consultant’s documents which are used, in whole or in part, as Statements of Work under this Agreement. Company shall not be required to compensate Consultant for any work not described in a Statement of Work.

1.3 Performance and Schedule. Consultant shall perform the Services and provide the Deliverables in accordance with the specifications and requirements included in the applicable Statement of Work, including, without limitation, all scheduled completion and milestone dates or assessment points set forth in the applicable Statement of Work. Consultant shall notify Company as soon as practicable if Consultant determines that any scheduled completion or milestone date or assessment point will be missed.

1.4 Required Reports. Unless otherwise agreed in the Statement of Work, Consultant shall provide Company a report at the beginning of each month in a form acceptable to Company which specifies, for each active project: (a) the activities during the previous month on that project; (b) the time spent to date and during the previous month on that project by each employee, agent and contractor of Consultant; and (c) Consultant’s current work plan for completion of that project and Consultant’s progress toward completion of that project.

1.5 Changes. Company may, at any time, by written notice to Consultant, request changes to a Statement of Work. Consultant shall provide Company with an estimate of the impact, if any, of such requested change on the payment terms, completion schedule and any other applicable provision of the Statement of Work. If the parties mutually agree to such
changes, a written description of the agreed change (a “Change Authorization”) shall be prepared which both parties must sign. In the event of any conflicts or inconsistency, the terms of a Change Authorization prevail over those of the Statement of Work. No verbal agreement shall have any effect until a Change Authorization is signed by both parties.

2. PAYMENT FOR SERVICES AND REIMBURSABLE EXPENSES.

2.1 Fees and Expenses. Company shall pay Consultant as specified in the applicable Statement of Work. Unless otherwise specified in the applicable Statement of Work, in addition to the rates described in the applicable Statement of Work, Company shall reimburse Consultant for reasonable travel and living expenses of Consultant incurred on approved travel and living authorized by Company; provided, however, that all travel and living expenses of Consultant are incurred in accordance with Company’s travel and living expense policy in effect at the time such travel occurs.

2.2 Payment. Unless otherwise specified in the applicable Statement of Work, all fees and reimbursable expenses shall be invoiced by Consultant to Company on a monthly basis and Company shall pay such invoices within thirty (30) days after receipt of a proper and correct invoice.

2.3 Acceptance. Consultant acknowledges that the Services and the Deliverables (and Company's obligation to pay Consultant any amounts due in respect thereof) are subject to Company's acceptance. If Company, in its sole and reasonable discretion, determines that the Services performed or the Deliverables provided by Consultant do not conform to the applicable Statement of Work or this Agreement, Company shall notify Consultant thereof, specifying in reasonable detail the respects in which the Services or Deliverables are unsatisfactory or unacceptable. Within five (5) days (or such time as is agreed in writing by the parties) following receipt of any such notice, Consultant shall, at no additional cost to Company, take all steps necessary to render the Services and the Deliverables satisfactory and acceptable to Company. If Consultant fails to make the Services and the Deliverables satisfactory and acceptable to Company within such time period, Company may, without prejudice to its other rights under this Agreement, at law or in equity, terminate the applicable Statement of Work and this Agreement with respect to the non-conforming Services and Deliverables by written notice given at any time after the end of such time period, in which case Consultant shall promptly refund to Company all fees paid hereunder for such non-conforming Services and Deliverables.

2.4 Records. Consultant shall keep and maintain complete and accurate accounting records in accordance with generally accepted accounting principles to support and document all amounts becoming payable to Consultant hereunder. Upon request from Company, Consultant shall provide to Company (or a representative designated by Company) access to such records for the purpose of auditing such records during normal business hours. Consultant shall retain all such records for four (4) years after the amounts documented in such records become due.

3. PERSONNEL; INDEPENDENT CONTRACTORS.

3.1 Staffing. Consultant shall consult with Company on all personnel decisions which relate to each project, and shall staff each project with personnel with sufficient skill, experience and ability to complete the project on the schedule specified in the Statement of Work. Company may at any time require Consultant to remove from any Company related activity any personnel objectionable to Company, and may require Consultant to replace any such personnel with other personnel meeting the requirements of Company. Company’s right hereunder to require Consultant to remove and/or replace any personnel shall not in any way limit Consultant’s obligation to perform under this Agreement.

3.2 Key Personnel. If requested by Company, key individuals (including Consultant's employees, agents and subcontractors (“Key Personnel”)) shall be specified in the Statement of Work. Company reserves the right to approve the appointment of and replacements for all Key Personnel. Key Personnel shall not be removed from the project by Consultant without Company’s consent. In the event that any of the Key Personnel leave the project, and are not replaced within five (5) days by personnel acceptable to Company, Company may replace such Key Personnel with a Company employee or another consultant, in which case Consultant shall reimburse Company for the cost incurred for such replacement for ninety (90) days.
3.3 **Consultant Project Manager.** Consultant shall designate a Project Manager who shall be responsible for ensuring that Consultant's personnel properly perform their obligations under this Agreement, shall act as liaison with Company and shall be responsible for the performance of the Services and provision of the Deliverables. Consultant's project manager shall be available, as reasonably required, to be on-site at the appropriate Company location during progress and review meetings and at other times reasonably requested by Company.

3.4 **Company Project Coordinator.** Company shall designate a Project Coordinator who shall act as liaison with Consultant on behalf of Company with respect to each project.

3.5 **Subcontractors.** Consultant shall not engage any subcontractors to perform any obligation of Consultant under this Agreement without obtaining Company’s prior written consent. Any subcontractors engaged by Consultant must agree in writing to be bound by the terms of this Agreement. If Consultant subcontracts any of its obligations hereunder after obtaining Company’s prior written consent, Consultant shall remain liable for the performance of all of its obligations, and shall be liable for any breach of this Agreement by any such subcontractor.

3.6 **Independent Contractor.** The relationship of Consultant and its personnel to Company shall be that of independent contractors. All persons Consultant furnishes to provide Services to Company shall be the employees or subcontractors of Consultant and shall be neither the employees nor agents of Company. Consultant and its personnel are not eligible to participate in any employment benefit plans or other benefits or conditions of employment available to Company employees. Consultant shall have exclusive control over its personnel and over the labor and employee relations, and policies relating to wages, hours, working conditions or other conditions of its personnel. Consultant shall have the exclusive right to hire, transfer, suspend, lay off, recall, promote, assign, discipline, discharge and adjust grievances with its personnel.

3.7 **Employment.** Consultant shall be solely responsible for all salaries and other compensation of its personnel who provide Services to Company. Consultant shall be solely responsible for making all deductions and withholdings from its employee's salaries and other compensation, and for the payment of all contributions, taxes and assessments and shall comply with all other requirements of federal or state laws or regulations regarding conditions of employment including federal or state laws or regulations regarding minimum compensation, unemployment compensation, Social Security, overtime, hours of work and equal opportunities for employment.

4. **TERM.** The initial term of this Agreement shall be for the balance of the calendar year in which it was executed, and shall thereafter be automatically renewed for successive terms of one calendar year each unless earlier terminated by either party at any time upon thirty (30) days prior written notice. Such a termination shall not affect any Statement of Work then subject to this Agreement (and the terms of this Agreement shall survive with respect to each such Statement of Work), but no additional Statement of Work may be made subject to this Agreement.

5. **CONFIDENTIALITY; OWNERSHIP OF DEVELOPMENTS.**

5.1 **General.** “Confidential Information” shall mean all information, whether in written, verbal, graphic, electronic or any other form, which is disclosed to or observed by the Consultant in the course of its performance of Services hereunder. Confidential Information shall include Deliverables, business plans, forecasts, projections, analyses, Company employee, customer and vendor information, software (including all documentation and codes), hardware and system designs, architectures and protocols, specifications, manufacturing, logistic and sale processes.

5.2 **Agreement Confidential.** Consultant shall treat the terms of this Agreement as Confidential Information.

5.3 **Use of Confidential Information.** Consultant (a) shall use Confidential Information only in connection with Consultant's performance of its obligations under a Statement of Work, and (b) shall not disclose Confidential Information except to Consultant's employees, agents, and contractors who have first agreed to be bound by the terms and conditions of this Article 5 and who have a need to know such Confidential Information in connection with the performance of Consultant's obligations under this Agreement or any Statement of Work and then only to the extent they need to know. If
requested by Company, Consultant's employees, agents and contractors who are assigned to work on a Company project shall execute a document satisfactory to Company acknowledging and agreeing to be bound by the terms of this Article 5. In any case, Consultant shall be responsible and liable for any unauthorized disclosure, publication or dissemination by any of Consultant's employees, agents or contractors of any Confidential Information. This Article 5 does not apply to any information that (a) Consultant can demonstrate that it possessed prior to the date of this Agreement without obligation of confidentiality, (b) Consultant develops independently without use of any confidential information, (c) Consultant rightfully receives from a third party without any obligation of confidentiality to such third party, (d) is or becomes publicly available without breach of this Agreement, or (e) must be disclosed as required under applicable law or regulation; provided, however, that Consultant must give Company reasonable notice prior to such disclosure and shall reasonably cooperate with any efforts requested by Company to limit the nature or scope of the disclosure.

5.4 Removal of Documents. Consultant shall not remove from Company’s premises the original or any reproduction of any notes, memoranda, files, records, writings or other documents, whether on tangible or electronic media, containing any Confidential Information or any document prepared by or on behalf of Consultant which contains or is based on any Confidential Information, without the prior written consent of an authorized representative of Company, and any such document(s) in Consultant's possession or under its custody or control shall be immediately turned over to Company or certify as having been destroyed upon the request of Company or the termination of this Agreement.

5.5 Ownership; Proprietary Rights. All concepts, works, information, data, computer programs and other ideas and materials developed, invented, prepared or discovered by Consultant or any of its employees, agents or contractors, either alone or in collaboration with others, which relate to the actual or anticipated activities, business or research of Company, which result from or are suggested by any work Consultant may do for Company, or which result from use of Company’s premises or property, including, without limitation, the Deliverables (collectively, the “Developments”) and any trademark, trade secret, copyright, patent, common law right, title or slogan or any other proprietary right (“Proprietary Rights”) in such Developments shall be the sole property of Company. Consultant shall, and hereby does, assign to Company all right, title and interest in all such Developments and the Proprietary Rights therein, and shall execute any documents in connection therewith that Company may reasonably request; provided that to the fullest extent permissible by applicable law, any and all copyrightable aspects of the Developments shall be considered “works made for hire”. Consultant agrees to enter into agreements with all of its employees, agents and contractors necessary to establish Company’s sole ownership in the Developments and the Proprietary Rights therein, and Consultant agrees to provide Company with copies of such agreements as they are executed. Consultant hereby grants to Company a perpetual, irrevocable, non-exclusive right and license, with the right to sublicense, to use all materials, software, technology, data or other goods or services, that are not Developments but that are required to use fully and completely the Services and the Developments. Consultant shall not provide to Company any materials that are not Developments for which Consultant does not have the right to grant the foregoing license.

5.6 General Knowledge. This Agreement shall not preclude Consultant from using its general knowledge, skills and experience for its other clients, provided that Consultant does not use in connection therewith any Developments or Confidential Information.

5.7 Incomplete Developments. At all times during the term of this Agreement, upon request from Company and upon termination or expiration of this Agreement, Consultant shall provide immediately to Company the then-current version of any Developments in Consultant's possession.

5.8 Online Access. If Consultant is given access, whether on-site or through remote facilities, to any Company computer or electronic data storage system, in order for Consultant to accomplish the work called for in a Statement of Work, Consultant shall limit such access and use solely to perform work within the scope of such Statement of Work and shall not attempt to access any computer system, electronic file, software or other electronic services other than those specifically required to accomplish the work required under such Statement of Work. Consultant shall limit such access to those of its employees with an express requirement to have such access in connection with this Agreement or the Statement of Work, shall advise Company in writing of the name of each such employee who shall be granted such access, and shall strictly follow all Company’s security rules and procedures for use of Company’s electronic resources. All user
identification numbers and passwords disclosed to Consultant and any information obtained by Consultant as a result of Consultant's access to, and use of, Company’s computer and electronic storage systems shall be deemed to be, and shall be treated as, Company Confidential Information under applicable provisions of this Agreement. Consultant shall cooperate with Company in the investigation of any apparent unauthorized access by Consultant to Company’s computer or electronic data storage systems or unauthorized release of Company Confidential Information by the Consultant.

6. INDEMNIFICATION.

6.1 Indemnification. Consultant shall, at its own expense defend, indemnify and hold harmless Company and its shareholders, directors, officers, employees, agents, successors and assigns from and against any and all claims, demands, suits, or causes of action (hereinafter “Claims”) (and all damages, costs, fees and expenses (including reasonable attorneys’ fees) arising therefrom) that result or are claimed to result in whole or in part from (a) any third-party claim, action or allegation that, if true, would cause Consultant to be in breach of any of its representations, warranties, agreements or covenants in this Agreement, (b) any negligent or willful acts or omissions of Consultant, its employees, subcontractors or agents, (c) injury (including death) to any persons or damage to any property arising out of any Services furnished by Consultant under this Agreement, or (d) any violation by Consultant of any applicable law, statute or ordinance or any applicable governmental administrative order, rule or regulation in effect as of the date of the action or inaction giving rise to such Claim and related to any products or materials (including the Developments) or Services provided by Consultant hereunder or to the performance by Consultant of its obligations hereunder.

6.2 Infringement. In the event any products or materials provided hereunder by Consultant (including the Developments) are held or are likely to be held to constitute an infringement, Consultant, at its expense, shall first use reasonable and prompt efforts either (a) to procure for Company the right to continue to use such products or materials, or (b) to modify the products or materials so that they are non-infringing and of at least equivalent performance and functionality, or (c) upon adequate showing to Company that both of the foregoing options are not commercially feasible, provide functionally equivalent replacement products or materials, or offer to reimburse Company’s cost of doing so.

6.3 Procedures. Consultant may control the defense of any Claim. Upon Consultant’s request, Company shall reasonably cooperate in such defense and Consultant shall reimburse Company for its reasonable out-of-pocket expenses in providing such defense. Company shall provide prompt notification of any Claim; provided, however, that any delay by Company in giving such notice shall not relieve Licensor of its obligations pursuant to this Article 6, except to the extent that Consultant demonstrates actual damage caused by such delay. If Consultant has not previously provided Company with the remedy set forth in Section 6.2, then Consultant shall not, without first obtaining Company’s prior written consent, settle any Claim in any manner that restricts or limits Company’s ability to use the products or materials in the manner provided for in this Agreement.

7. INSURANCE.

7.1 Required Insurance. Consultant agrees to keep in full force and effect and maintain at its sole cost and expense the following policies of insurance during the term of this Agreement:

(a) Workers’ compensation and employer's liability insurance, with the following minimum requirements:

(i) Statutory workers’ compensation including occupational disease in accordance with the law.

(ii) Employer's liability insurance with minimum limits of $1,000,000 per employee, $1,000,000 per accident and $1,000,000 per disease.

(b) Commercial general liability insurance covering Services performed under this Agreement providing limits of not less than:
(i) Bodily injury and property damage liability - $1,000,000 per occurrence

(ii) Personal injury and advertising injury liability - $1,000,000 per person or per organization

(iii) Medical payments - $10,000 per person

(iv) General policy aggregate - $1,000,000

(c) Commercial business automobile liability insurance including coverage for all owned, nonowned and hired vehicles providing coverage for bodily injury and property damage liability with combined single limits of not less than $1,000,000

(d) Professional liability insurance covering acts, errors and omissions arising out of Consultant’s operations or Services in a limit of not less than $1,000,000 per occurrence and $1,000,000 aggregate.

7.2 Policies; Procedures. Consultant’s insurance policies shall be primary insurance and any other valid insurance existing for Company’s benefit shall be excess of such primary insurance. Consultant shall amend the insurance policies set forth in Section 7.1(b) and Section 7.1(c) to name Company as an additional insured on such policies. Consultant shall provide Company with certificates of insurance signed by authorized representatives of the respective carriers within thirty (30) days following the Effective Date of this Agreement.

8. NO LIENS. No mechanics' or other lien, or notice creating such lien, or claim or action thereon shall be filed by Consultant, or any person or entity acting through Consultant, for Services or Developments under this Agreement. Where applicable, Consultant shall, upon request of Company, deliver to Company, contemporaneously with any payment, recordable partial waivers of lien for any partial payments, and recordable final waiver of lien for the final payment.

9. TERMINATION.

9.1 Termination Without Cause. Company may terminate Services under any Statement of Work, without cause, without penalty and without liability for damages as a result of such termination by giving written notice of termination to Consultant.

9.2 Termination for Material Breach. If either party commits a material breach of this Agreement, and such breach is not cured within a period of thirty (30) days after written notice of such breach by the other party, then the non-breaching may immediately terminate this Agreement.

9.3 Liability Upon Termination. Upon termination of a Statement of Work then in process, Company shall only be liable for payment of fees earned as a result of Services actually performed and the Deliverables actually provided under such Statement of Work prior to the date of termination.

10. WARRANTY. Consultant represents and warrants as follows:

10.1 Workmanship. That all Services shall comply with all applicable federal, state and local laws, rules, regulations and orders, and that all such Services shall be performed in a good, workmanlike, timely and professional manner by qualified persons fully familiar with the requirements for the Services and the materials and technology to be used to perform the same.

10.2 Original Development. That all Developments shall be of original development by Consultant or Consultant has obtained all rights necessary to transfer such Developments to Company pursuant to the terms of this Agreement and to perform its obligations hereunder.

10.3 Infringement. That the Services and the Developments do not and shall not infringe upon or misappropriate any Proprietary Rights of Company or any third party.
10.4 **Performance.** That the Services and Deliverables shall conform to, and perform in accordance with, any applicable specifications (including the descriptions and requirements set forth in the applicable Statement of Work) and shall otherwise be free from any material defects. If Consultant receives notice from Company of any breach of the foregoing warranty, Consultant shall, as Company’s non-exclusive remedy, render all services necessary at no charge to Company to cause the Services and the Deliverables to conform to the foregoing warranty as soon as possible.

11. **LIMITATION OF LIABILITY.** EXCEPT FOR LIABILITY ARISING FROM CONSULTANT’S OBLIGATIONS SET FORTH IN ARTICLE 6, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS.

12. **ADVERTISING.** Consultant agrees that without Company’s prior written consent, Consultant shall not use the names, service marks and/or trademarks of Company or any of its affiliated companies, or reveal the existence of this Agreement or its terms and conditions in any manner, including in any advertising, publicity release or sales presentation.

13. **NOTICES.** All notices required or permitted to be given by one party to the other under this Agreement shall be sufficient if sent by (a) hand delivery, (b) certified mail, return receipt requested, or (c) by a nationally recognized courier service, to the parties at the respective addresses set forth below or to such other address as the party to receive the notice has designated by notice to the other party:

   If to Company:        Company’s Name
                           Address 1
                           Address 2
                           City, State Zip
                           Attention: Name

   If to Consultant:     Consultant’s Name
                           Address 1
                           Address 2
                           City, State Zip
                           Attention: Name
                           Company Name

   The parties may change such address by giving notice to the other party of such change in accordance with the foregoing procedures, provided, however, that such notice shall be effective only on receipt.

14. **GENERAL.**

14.1 **Assignment; Agreement Binding.** Neither party shall assign this Agreement or subcontract or delegate any of its obligations hereunder, without the prior written consent of the other party; provided however, that Company may, without acquiring the consent of Consultant, assign this Agreement to any of its affiliates or subsidiaries or in connection with a merger, reorganization or sale of all or substantially all the assets of the portion of its business to which this Agreement relates. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns.

14.2 **Applicable Law.** This Agreement shall be construed and enforced in accordance with the internal laws of the State of Tennessee, without regard to conflict of law principles.

14.3 **Security Policies.** Consultant and Company agree that their personnel, while working at or visiting the premises of the other party, shall comply with all the internal rules and regulations of the other party, including security procedures, and all applicable federal, state, and local laws and regulations applicable to the location where said employees are working or visiting.
14.4 **Severability.** If any covenant set forth in this Agreement is determined by any court to be unenforceable by reason of its extending for too great a period of time or over too great a geographic area, or by reason of its being too extensive in any other respect, such covenant shall be interpreted to extend only for the longest period of time and over the greatest geographic area, and to otherwise have the broadest application as shall be enforceable. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, which shall continue in full force and effect.

14.5 **Signatures.** This Agreement may be executed in counterparts, which together shall constitute one and the same agreement. Each party may rely on a facsimile signature on this Agreement, and each party shall, if the other party so requests, provide an originally signed copy of this Agreement to the other party.

14.6 **No Waiver; Cumulative Remedies.** The failure of either party to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this Agreement or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of the future performance of any rights, and the obligations of the party with respect to such future performance shall continue in full force and effect. All remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either party at law, in equity or otherwise.

14.7 **Entire Agreement.** This Agreement and the Statements of Work, together with all documents referenced herein and therein, constitute the complete and exclusive statement of the terms of the agreement among the parties pertaining to the subject matter hereof and supersede all prior agreements, understandings, negotiations and discussions of the parties. No modification or rescission of this Agreement shall be binding unless executed in writing by the party to be bound thereby.

14.8 **Interpretation.** The descriptive headings of this Agreement and of any Statements of Work under this Agreement are for convenience only and shall not affect the construction or interpretation of this Agreement. As used herein, “include” and its derivatives (including, “e.g.”) shall be deemed to mean “including but not limited to”.

14.9 **Time Of the Essence.** Consultant acknowledges that time is of the essence in performing its obligations hereunder.

14.10 **Survival.** The following provisions shall survive termination of this Agreement: Articles 5, 6, 8, 11, 12, 13, and Sections 14.1, 14.2, 14.4, 14.6, 14.8, and 14.9.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered as of the day and year first above written.

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FORM OF STATEMENT OF WORK

STATEMENT OF WORK NO. ___

TO MASTER CONSULTING SERVICES AGREEMENT

THIS STATEMENT OF WORK NO. ___ (this "Statement of Work") is made and entered as of ______________, 20__ (the "Statement of Work Effective Date") by and between Cook Systems International, Inc. ("Consultant"), a Tennessee corporation, with offices at 6799 Great Oaks Road, Atrium II, Suite 200, Memphis, Tennessee 38138 and Sara Lee Corporation ("Company"), a Maryland corporation, with offices at 8000 Centerview Parkway, Suite 400, Cordova, Tennessee 38018.

Consultant and Company are parties to that certain Master Consulting Services Agreement dated as of September __, 2000 (the "Agreement"). This Statement of Work is a schedule to the Agreement and is subject to the terms and conditions set forth in the Agreement. Capitalized terms used but not defined in this Statement of Work shall have the meanings given in the Agreement. In the event of any conflict or inconsistency between the terms of the Agreement and this Statement of Work, the terms of this Statement of Work shall prevail; provided, however, that (a) such terms shall prevail only with respect to the transactions contemplated by this Statement of Work, and (b) the parties shall disregard any terms and conditions (including any pre-printed terms) on or contained in any of Consultant’s documents which are used as part of this Statement of Work.

Each Statement of Work shall, at a minimum, include:

(a) the approach and objectives of the project;
(b) a description of the Services to be performed and the Deliverables to be provided by Consultant;
(c) the start date, location and scheduled completion dates for the Services and the Deliverables;
(d) any applicable milestone dates or other assessment points;
(e) the acceptance criteria, testing procedures, specifications and requirements for the Services and the Deliverables;
(f) any additional warranties applicable to the Services or the Deliverables;
(g) the fees applicable to the Services and the Deliverables (i.e., time and materials, fixed price, time and materials not-to-exceed);
(h) the names of all Key Personnel, if any;
(i) any terms and conditions which expressly supersede any terms and conditions of the Agreement for purposes of this Statement of Work only, and
(j) such other information as may be agreed to by the parties.

Note: Any terms and conditions that are intended to supersede the Agreement must be included in an amendment to the Agreement prepared by the Law Department.

IN WITNESS WHEREOF, the parties have caused this Statement of Work to be duly executed and delivered as of the day and year first above written.

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