



**FLOYD COUNTY BOARD OF EDUCATION**  
**Stephen A. Trimble, Interim Superintendent**  
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**[www.floyd.kyschools.us](http://www.floyd.kyschools.us)**

**Sherry Robinson- Chair - District 5**  
**Dr. Chandra Varia, Vice-Chair - District 2**  
**Linda C. Gearheart, Member - District 1**  
**William Newsome, Jr., Member - District 3**  
**Rhonda Meade, Member - District 4**

**Date: April 9, 2018**


**Consent Agenda Item (Action Items): Approve the Agreement between STEP CG LLC and Floyd County Schools**

**Applicable Statute or Regulation: BOE Policy 01.11 General Powers and Duties of the Board.**

**Fiscal/Budgetary Impact: Technology Budget/Plan**

**Recommended Action: Approve as presented.**

**Contact Person(s): Courtney DeRossett, Chief Information Officer**

  
CIO

  
Superintendent

**STEPcg LLC**  
407 Vine Street, Suite 210  
Cincinnati, OH 45202

**Quote**  
Quote Date: 03/28/2018  
Valid Till:  
Quote Number : Q-3051

**BILL TO:**

**Floyd County Schools**

**SHIP TO:**

**Floyd County Schools**

Contact Name: Wesley Turner

Quote Stage: Draft

S.No.	Product Details	Qty	List Price	Total
1.	STEP CG Advanced Monitoring Service STEP CG Dashboard - One Year Pre-Paid Service	1	\$ 4,800.00	\$ 4,800.00
2.	STEP CG Installation STEP CG Dashboard installation, configuration, & setup	1	\$ 2,000.00	\$ 2,000.00
Sub Total				\$ 6,800.00
Tax				\$ 0.00
Grand Total				\$ 6,800.00

**Terms and Conditions**

Shipping and state/local sales tax may apply.

ACCEPTED INCLUDING TERMS AND CONDITIONS AS EXPRESSED BELOW:

\_\_\_\_\_  
(Signed) (Date)

\_\_\_\_\_  
(Print Name)

## TERMS AND CONDITIONS OF SALE

### 1. Agreement

- A. The "Quotation" is the document from STEP CG, LLC ("Seller") indicating the features, specifications, options, and prices applicable to the goods and related services offered for sale by it ("Products"). The Quotation, these Terms and Conditions of Sale ("Terms and Conditions"), and any document(s) to which Seller has attached these Terms and Conditions, is a contract (the "Agreement") for the sale of Products by Seller to the buyer ("Buyer") (Buyer and Seller are the "Parties").
- B. Seller's offer is expressly limited to the terms of the Agreement. Any terms or conditions proposed by Buyer (including those in Buyer's purchase order or proposed terms and conditions) that are different from or in addition to these Terms and Conditions are hereby expressly rejected by Seller and are not part of the Agreement.
- C. Unless the context requires otherwise, words importing the singular include the plural and vice versa. Any reference to a section in these Terms and Conditions, or in the document(s) to which Seller has attached them, means the relevant section of these Terms and Conditions or said attached document(s).

### 2. Payment Terms

Unless otherwise agreed to in writing by Seller, the terms of payment for this order are stated in the Quotation. Any other payment terms are hereby expressly rejected. Payment is made when Buyer's funds have been received in Seller's account. Late payment will automatically extend any delivery or service completion date agreed upon by the Parties by an amount of time equivalent to the delay in payment and Seller's obligations to Buyer will automatically be based on such a revised schedule. Unless otherwise stated in the Quotation, amounts owed by Buyer remaining unpaid 30 days following Buyer's receipt of an invoice shall accrue interest at the lesser of the maximum rate permitted by law or 1.5% per month from the due date.

### 3. No Set-off Right

Buyer shall not have any right, in any way, to set-off any amounts owed by it to Seller under this Agreement.

### 4. Start of Production

Seller will not ship, order shipment of, or install any Product until Buyer has made any advance payment as specified in the Quotation.

### 5. Taxes.

Unless expressly stated in the Quotation, prices quoted do not include any excise, sales, occupational, use, value-added or similar taxes, levies, governmental charges, or surcharges applicable to the Products or the sale or use thereof. Any and all such charges are the responsibility of Buyer.

### 6. Currency of Payment

All payments due under this contract shall be made in the currency stated in the Quotation. If no currency is specified, the currency shall be U.S. Dollars.

### 7. Product Appearance

Buyer acknowledges and agrees that the Products may not be exactly as illustrated in any photographs, illustrations, brochures, manuals, or advertising materials relating to the Products and are subject to variations in design. Any minor deviation(s) shall not invalidate the sale of the Products or entitle Buyer to any price adjustment.

### 8. Product Specifications

Buyer acknowledges and agrees that all weights, measurements, and power requirements given by Seller for the Products are approximate and are subject to reasonable variation. Any reasonable variation(s) shall not invalidate the sale of the Products or entitle Buyer to any price adjustment.

### 9. Shipment and Acceptance

- A. Unless otherwise specified in the Agreement, Products will be shipped by the manufacturer or manufacturer's distributor to the address listed as the principal place of business for Buyer on the first page of this Agreement. Products will be shipped FOB manufacturer's or distributor's warehouse. Any shipping charges incurred by Seller will be passed through to Buyer. For any Products shipped directly from Seller to Buyer, standard shipment is by UPS Ground, FOB Seller's warehouse. Shipping charges for products shipped directly from Seller to Buyer will be prepay and add. Buyer may request expedited delivery for an additional charge. Title and risk of loss passes to Buyer upon delivery of Products to the carrier.
- B. Buyer shall inspect Products upon delivery and notify Seller within 15 days of delivery of any damaged Products received. It shall be Buyer's responsibility to file any damage claim with the carrier.
- C. Buyer shall file claims for defective Products in accordance with the manufacturer's policy. Seller will assist Buyer if requested.
- D. Seller will accept return of new, unopened, unconfigured Product for 30 days following delivery, subject to a 20% restocking fee. Custom made products and special order items cannot be returned. Software shall be deemed accepted by Buyer upon installation.

### 10. Security Interest

Seller hereby reserves a security interest in all Products and Software provided to Buyer to secure payment of the purchase price, license fees and any related charges. The security interest shall continue in effect until such amounts are paid in full by Buyer.

### 11. Installation

In cases where the Agreement includes installation of Products by Seller, the on-site period begins when Seller's representative has arrived at Buyer's premises to begin installation. Seller will invoice Buyer for any delay on the part of Buyer in meeting its obligations as set forth in the Agreement, if a delay results in an extension of the on-site period beyond what is contemplated in the Agreement.

### 12. Limited Warranty

- A. Seller warrants that all installation services provided by Seller to Buyer in connection with the Agreement will be free of defects in workmanship for a period of 30 days ("Warranty Period").
- B. Warranty Period begins from the last date on which Seller's employee performed installation services. This warranty covers only defects arising under normal use ("Covered Defect") and does not include malfunctions or failures resulting from usage not in accordance with product instructions, abuse, neglect, alteration, acts of nature, or improper installation, alteration, modification, or repairs made by anyone other than Seller.
- C. Buyer's sole and exclusive remedy for breach of the warranty set forth in this section 12(A) will be performance by Seller of services necessary to rectify Covered Defects at no expense to Buyer. Buyer must notify Seller in writing within 30 days after discovering a suspected Covered Defect.

### 13. Warranty Limitations

- A. Except as expressly provided elsewhere in this Agreement, Seller disclaims all express, implied, and statutory warranties regarding Products provided to Buyer. This disclaimer includes but is not limited to all warranties of performance, non-infringement, merchantability or fitness for a particular purpose of any Product.

B. The limited warranty described in section 12(A) of these Terms and Conditions does not cover services required to repair damages, malfunctions or failures caused by any of the following:

- i. Buyer's failure to follow Seller's or the manufacturers' written operation or maintenance instructions as applicable and provided to Buyer or published on the manufacturer's website;
- ii. Reconstructed, repaired, or altered by Buyer or persons other than Seller or its authorized representative;
- iii. Used with any product or hardware that has not been previously approved in writing by Seller.

#### 14. Limitation of Liability.

A. Buyer agrees that the entire liability of Seller, its officers, employees and agents shall be limited in the aggregate to the price paid to Seller for Products under this Agreement.

B. Buyer agrees that Seller may be held liable only for direct compensatory damages proximately caused by Seller's negligence in providing the Products contemplated in the Quotation. Buyer releases Seller from any liability caused by defective Products procured from, by, or through Seller. In addition, Buyer hereby releases Seller from liability for any incidental, consequential, cover, or punitive damages suffered by Buyer or third parties resulting from a loss caused by Seller's Products. Such losses include without limitation:

- i. Damages arising out of the use of or the inability to use any Product;
- ii. Any loss of data or inaccuracy of data produced by any Product;
- iii. Impairments to interoperability of Buyer's technological systems;
- iv. Buyer's inability to access or interact with other providers or their services through the internet;
- v. The cost of procurement of substitute goods, services, or technology.

#### 15. Indemnity

Buyer hereby agrees to indemnify, defend and hold harmless Seller, its officers, employees and agents from and against all claims, damages, liability and costs (including reasonable attorney's fees) resulting from:

- i. Buyer's use of the Products for other than their intended purpose, as described in the Quotation;
- ii. Buyer's failure to follow the instructions for installation, maintenance and use of the goods and equipment;
- iii. Buyer's unauthorized modification or alteration of the goods and equipment; or
- iv. Buyer's failure to properly train its employees and agents concerning the proper installation, maintenance, and use of the goods and equipment.

#### 16. Choice of Law and Venue

The rights and obligations of the parties under this Agreement shall not be governed by the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods; rather these rights and obligations shall be governed exclusively by the laws of the State of Ohio, USA, without regard to its conflicts of law principles. Buyer agrees that any claim or dispute arising against Seller under this Agreement must be resolved by the United States District Court for the Southern District of Ohio or a court of competent jurisdiction located in Hamilton County, Ohio. Buyer agrees to submit to the personal jurisdiction of the courts located within Hamilton County, Ohio for the purpose of litigating all such claims or disputes.

#### 17. Authority; No Conflicts

Buyer warrants that

- A. Buyer has full organizational power and authority to enter into and perform its obligations under the Agreement;
- B. The Agreement constitutes a legal, valid and binding obligation of Buyer;
- C. The Products purchased from Seller are not for resale purposes but are purchased for Buyer's own use; and
- D. Seller's acceptance and performance of the Agreement will not conflict with, or result in any violation or breach of any provision of Buyer's organizational documents, any material contract of Buyer, or any applicable Law.

#### 18. Notices; Communications

All notices required or permitted under the Agreement will be made in writing and be effective only upon receipt. Notices to Buyer will be provided at its address set forth in the Agreement.

#### 19. Interpretation; Language

For purposes of the Agreement, whenever the word "including" (or any variation thereof) is used, it is deemed to be followed by the words "without limitation." A rule of construction will not apply to the disadvantage of Seller because of Seller's preparation of the Agreement or any part of it. If these Terms and Conditions or other purchasing documents are made available in any language other than English, they are for information purposes only, and the English-language version will control.

#### 20. Headings.

The division of the Agreement into sections and paragraphs, and the insertion of headings, is for convenience of reference only and will not affect the construction or interpretation of this Agreement.

#### 21. Waiver

Seller's failure at any time to require Buyer's performance will in no way affect Seller's right to require such performance at any time thereafter, nor will Seller's waiver of any breach constitute a waiver of any succeeding breach. Any waiver of a right by Seller under the Agreement on any one occasion will not be construed as a bar to any right or remedy that Seller would otherwise have had on a subsequent occasion.

#### 22. Severability

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and will be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

#### 23. Assignability

This Agreement will inure to the benefit of, and be binding on, Buyer and its successors and permitted assigns and will inure to the benefit of, and be binding on, Seller and its successors and assigns. Buyer may not assign this Agreement, or any of its rights or obligations under this Agreement, without the prior written consent of Seller.

#### 24. Force Majeure

Seller shall not be held responsible for any delays or failures in performance due to a Force Majeure. The term "Force Majeure" means an occurrence that is beyond the reasonable control of Seller and occurs without its fault or negligence, including but not limited to acts of God, riots, vandalism, governmental regulations, national emergencies, terrorism, manufacturer/supplier shortages, fire, war, strikes, explosion, earthquake, flood, storm, lightning, or other similar catastrophe.

## **25. Entire Agreement**

Agreement, which constitutes the entire agreement between Seller and Buyer pertaining to the subject matter of the Quotation and supersedes all purchase orders, and all other agreements, understandings, negotiations and discussions, whether oral or written, regarding this subject matter. There are no conditions, warranties, representations or other agreements between the parties relating to the subject matter of the Quotation (whether oral or written, express or implied, statutory or otherwise) except as specifically set out in the Agreement. Any amendment to the Agreement shall only be binding and enforceable if in writing and signed by the Parties.