



# GENERAL PURCHASE TERMS AND CONDITIONS

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## ARTICLE 1. GENERAL

The equipment, materials, supplies (“Goods”), services (“Services”) and/or licenses (“Licenses”) furnished by Supplier (together, the “Goods and Services”) and covered by the District’s Purchase Agreement (“Purchase Agreement”), Purchase Order (“PO”) and/or other agreement (which, when combined with these Terms and Conditions and any other documents incorporated by reference, will constitute the “Agreement”) are governed by the terms and conditions set forth herein. As used herein, the term "Supplier" includes Supplier and its sub-suppliers at any tier. As used herein, “District” refers to the Rancho Santiago Community College District or Rancho Santiago Community College District on behalf of Santa Ana College or Santiago Canyon College (hereinafter the “Colleges”) identified in the Agreement and/or the PO. District and Supplier individually will be referred to as “Party” and collectively as “Parties.” Any defined terms not defined in these General Purchase Terms and Conditions will have the meaning ascribed to such term in any of the other documents incorporated in and constituting the Agreement. No other terms or conditions will be binding upon the Parties unless accepted by them in writing. Supplier accepts all of the Agreement’s terms and conditions either in writing, by shipping any portion of the Goods, or performing any portion of the Services, or issuing access to any portion of a License. The terms of any proposal referred to in the Agreement are included and made a part of the Agreement only to the extent the proposal specifies the Goods and/or Services ordered, the price therefor, and the delivery thereof, and then only to the extent that such terms are consistent with the terms and conditions of the Agreement. No Agreement shall be binding on the District until ratified or approved by the District’s Board of Trustees.

## ARTICLE 2. TERM AND TERMINATION

A. As applicable, the term of the Agreement (“Initial Term”) will be stated in the Agreement. Following the Initial Term, the Agreement may be extended by written mutual agreement and approved by the District’s Board of Trustees but under no circumstance will the term of the Agreement, whether the Initial Term or by extension, exceed five (5) years in accordance with Education Code section 81644.

B. District may, by written notice stating the extent and effective date thereof, terminate the Agreement for convenience in whole or in part, at any time. The effective date of such termination shall be consistent with any requirements for providing notice specified in the Agreement, or immediate if no such terms are set forth in the Agreement. As specified in the termination notice, District will pay Supplier as full compensation all Goods and/or Services received or provided in accordance with the Agreement and approved by the District or the pro rata Agreement price for performance through the later of the date that:

1. District provided Supplier with notice of termination or
2. Supplier’s provision of Goods and/or Services will terminate.

C. District may by written notice terminate the Agreement for Supplier’s breach of the Agreement, in whole or in part, at any time, if Supplier refuses or fails to comply with the provisions of the

Agreement, or so fails to make progress as to endanger performance and does not cure such failure within fifteen (15) days, or fails to supply the Goods and Services within the time specified or any written extension thereof. In such an event, Supplier shall be responsible for all damages and costs associated with such termination and the District may purchase or otherwise secure Goods and/or Services and, except as otherwise provided herein, Supplier will be liable to District for any excess costs District incurs thereby.

D. In the event that Supplier files for protection under bankruptcy laws, makes an assignment for the benefit of creditors, appoints or suffers appointment of a receiver or trustee over its property, files a petition under any bankruptcy or insolvency act or has any such petition filed against it which is not discharged within thirty (30) days of the filing thereof, then District may terminate this Agreement effective immediately upon written notice to Supplier.

E. District reserves the right to immediately terminate or otherwise suspend this Agreement without notice if District's Board of Trustees determines that funding for the Services is insufficient.

### ARTICLE 3. PAYMENT

Pricing is set forth in the Agreement or PO, and the amount District is charged and responsible for shall not exceed the amount specified in the Agreement without prior written approval in accordance with the terms of the Agreement. District will pay Supplier, upon submission of acceptable invoices, for Goods and Services provided and accepted. Invoices must be itemized and reference the Agreement or PO number. Supplier shall submit detailed billing information not more than once per month, and, if applicable, District-authorized expenses incurred during the billing period. Any invoices must include:

1. Invoice date;
2. Date(s) of service(s) and/or description, quantity, catalog number, and manufacturer number of the item ordered;
3. California sales tax as a separate line item;
4. Shipping costs as a separate line item;
5. District's Purchase Order number;
6. Net cost of each item;
7. Any pay/earned/dynamic discount;
8. If applicable, the associated Agreement number;
9. Reference to the original order number for all credit memos issued; and
10. Supplier's taxpayer Identification Number.

Payment terms are Net 30 for Goods and Services accepted pursuant to the Agreement. District will not pay shipping, packaging, or handling expenses, unless specified in the Agreement or PO. Unless otherwise provided, freight is to be FOB destination. Any of Supplier's expenses that District agrees to reimburse will be reimbursed under the District's Travel Policy in accordance with Board Policy 7400 and Administrative Regulation 7400 found at <https://rscdd.edu/Trustees/Documents/ARs/ARs-Chapter%207/AR%207400%20Travel.pdf>. Where applicable, Supplier will pay all taxes imposed on Supplier in connection with its performance under the Agreement, including any federal, state, and local income, sales, use, excise and other taxes or assessments. Notwithstanding any other provision to the contrary, District will not be responsible for any fees, interest or surcharges Supplier wishes to impose. The District is exempt from federal excise taxes.

#### **ARTICLE 4. INSPECTION AND ACCEPTANCE**

The Goods and/or Services furnished will be exactly as specified in the Agreement, free from all defects in Supplier's performance, design, skill, and materials, and, except as otherwise provided in the Agreement, will be subject to inspection and testing by District at all times and places. If, prior to final acceptance, any Goods and/or Services furnished are found to be incomplete, or not as specified, District may reject them, require Supplier to correct them at the sole cost of Supplier, or require provision of such Goods and/or Services at a reduction in price that is equitable under the circumstances. If Supplier is unable or refuses to correct such deficiencies within a time District deems reasonable, District may terminate the Agreement in whole or in part. Supplier will bear all risks as to rejected Goods and/or Services and, in addition to any costs for which Supplier may become liable to District under other provisions of the Agreement, will reimburse District for all transportation costs, other related costs incurred, or payments to Supplier in accordance with the terms of the Agreement for unaccepted Goods and/or Services and materials and supplies incidental thereto. Notwithstanding final acceptance and payment, Supplier will be liable for latent defects, fraud, or such gross mistakes as amount to fraud.

#### **ARTICLE 5. INTELLECTUAL PROPERTY AND DATA RIGHTS**

A. Supplier agrees that all work products created or developed for District by Supplier pursuant to this Agreement shall become the exclusive property of District. If any such work products contain Supplier's intellectual property that is or could become protected under federal copyright, patent, or trademark laws, Supplier hereby grants District a perpetual, royalty-free, fully-paid, non-exclusive, and irrevocable license to copy, reproduce, deliver, publish, perform, dispose of, and use or re-use, in whole or in part, and to authorize others to do so, all such work products. District claims no right to any pre-existing work product of Supplier provided to District by Supplier in the performance of this Agreement, except to copy, use, or re-use any such work product for District use only.

B. Should the Goods and/or Services become, or in Supplier's opinion be likely to become, the subject of a claim of infringement of any patent, copyright, trademark, trade name, trade secret, or other proprietary or contractual right of any third party, Supplier will provide written notice to District of the circumstances giving rise to such claim or likely claim. In the event that District receives notice of a claim of infringement or is made a party to or is threatened with being made a party to any claim of infringement related to the Goods and/or Services, District will provide Supplier with notice of such claim or threat. Supplier shall fully indemnify and defend the District from any such claims covered in this paragraph. Following receipt of such notice, Supplier will either (at Supplier's sole election) (i) procure for District the right to continue to use the affected portion of the Goods and/or Services, or (ii) replace or otherwise modify the affected portion of the Goods and/or Services to make them non-infringing, or (iii) obtain a reasonable substitute product for the affected portion of the Goods and/or Services, provided that any replacement, modification or substitution under this paragraph does not effect a material change in the Goods and/or Services' functionality. If none of the foregoing options is reasonably acceptable to District, District will have the right to terminate the Agreement without damage, penalty, cost or further obligation.

C. District Information shall belong exclusively to District and unless expressly provided, this Agreement shall not be construed as conferring on Supplier any patent, copyright, trademark, license right or trade secret owned or obtained by District. Any right for Supplier to use District Information is solely provided on a non-exclusive basis, and only to the extent required for Supplier to provide the Goods or Services under the Agreement. As used herein, "District Information" means any information

or data created, received, and/or collected by District or on its behalf, including but not limited to application logs, metadata and data derived from such data.

D. Supplier will not use the District name, abbreviation of the District name, trade names and/or trademarks (i.e., logos and seals) or any derivation thereof, in any form or manner in advertisements, reports, or other information released to the public, or place the District name, abbreviations, trade names and/or trademarks or any derivation thereof on any consumer goods, products, or services for sale or distribution to the public, without District's prior written approval. Supplier agrees to comply, at all times, with California Education Code Section 72000, subsection (b)(4). District will, upon its approval, will furnish Supplier with camera-ready artwork for such use. District may limit or otherwise place conditions on Supplier's use of District's name and/or logos in which case such limitations will be incorporated in this Agreement. Supplier agrees to not revise, change, or otherwise alter any material related to District's name and/or logo without District's prior written consent.

## ARTICLE 6. INDEMNITY AND LIABILITY

A. To the fullest extent allowed by law, Supplier shall indemnify, defend, and hold harmless District, its Board, officers, agents, and employees ("Indemnitees") from any and all, actual and alleged, claims, demands, suits, actions, proceedings, loss, cost, and damages of every kind and description, including attorney's fees and/or litigation expenses, which may be brought or made against or incurred on account of breach, or loss of or damage to any property, or for injuries to or death of any person, or financial loss incurred by Indemnitees, caused by, arising out of, or contributed to, in whole or in part, by reasons of any act, omission, professional error, fault, mistake, or negligence of Supplier, its employees, agents, representatives, or subcontractors, their employees, agents, or representatives in connection with or incident to the performance of or founded upon the Agreement, or arising out of Workers Compensation claims, Unemployment Compensation claims, or Unemployment Disability Compensation claims of employees of Supplier and/or its subcontractors of claims under similar such laws and obligations. Supplier's obligation under this provision shall not extend to any liability caused by the sole negligence, willful misconduct or unlawful acts of the District. Such indemnification shall specifically include infringement claims made against any and all intellectual property supplied by Supplier and third-party infringement under the Agreement.

B. Supplier's defense obligations (with counsel approved by District), shall arise immediately upon tender of any of the Indemnitees, and the defense shall be paid at Supplier's own cost, expense and risk, for any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against any of the Indemnitees, notwithstanding whether liability is, can be or has yet been established. District agrees to provide Supplier with prompt notice of any such claim or action and to permit Supplier to defend any claim or action, and that District will cooperate fully in such defense. District retains the right to participate in the defense against any such claim or action, and the right to consent to any settlement, which consent will not unreasonably be withheld.

C. In the event the Data Protection Exhibit applies, Supplier's indemnification obligations includes any Loss sustained by Indemnitees, and each of them, whether resulting from claims brought by third parties or sustained directly by any of the Indemnitees, as a result of 1) Supplier or any subcontractor's failure to implement and maintain appropriate data security or cybersecurity measures; 2) any data breach in which the District's Confidential Information or privileged and confidential information is released, exposed, lost, or stolen as a result of Supplier's performance of Services or otherwise arising from this Agreement; 3) computer viruses, denial of service attacks, and other technologically harmful

materials that harm or infect any of the Indemnitee's electronic equipment, software, data, or other proprietary material as a result of Supplier's performance of Services or otherwise arising from this Agreement, and 4) infringement of copyright, trademark, trade dress, invasion of privacy violations as a result of Supplier's performance of Services or otherwise arising from this Agreement. Supplier shall reimburse or otherwise be responsible for any costs, fines or penalties imposed against District as a result of Supplier's Breach of District Information and/or failure to cooperate with District's response to such Breach. As used herein, "Breach" means:

1. Any disclosure of District Information to an unauthorized party or in an unlawful manner;
2. Unauthorized or unlawful acquisition of information that compromises the security, confidentiality, or integrity of District Information and/or IT Resources; and
3. The acquisition, access, use, or disclosure of Protected Health Information or medical information in a manner not permitted under the Health Insurance Portability and Accountability Act (HIPAA) or California law.

"IT Resources" means IT infrastructure, cloud services, software, and/or hardware with computing and/or networking capability that is Supplier owned/managed, or District-owned, or a personally owned device that stores District Information, is connected to District systems, is connected to District networks, or is used for District business.

## ARTICLE 7. INSURANCE

A. Supplier (and all subcontractors) agrees to maintain, in full force and effect, at Supplier's expense, the following insurance coverage from an admitted carrier in the State of California with an AM Best Rating of A-VII or higher:

1. Commercial General Liability insurance, with limits of not less than One Million Dollars (\$1,000,000) per occurrence / Two Million Dollars (\$2,000,000) aggregate and must include coverage for property damage, bodily injury, personal & advertising injury, products and completed operations, liability assumed under an insured contract (including tort of another assumed in a business contract), and independent contractor's liability, written on an "occurrence" form;
2. Business Automobile Liability covering all owned, non-owned and hired vehicles with combined single limit for bodily injury and/or property damage of not less than One Million Dollars (\$1,000,000). (Business Auto Liability is required when Supplier is operating a vehicle on District premises for other than commute purposes or the vehicle is an integral part of their services).
3. Workers' Compensation insurance. This coverage is required unless Supplier provides written verification it has no employees. Coverage must be at least as broad as that which is required by the State of California, with Statutory Limits. Supplier must also maintain Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. as required by statutory insurance requirement of the State of California;
4. Errors and Omissions/Professional Liability: (If applicable) For financial loss or harm caused to the District that arise out of Supplier's negligence \$1,000,000 per occurrence / \$1,000,000 annual aggregate.
5. Cyber Liability: (If applicable) For financial loss or harm caused to the District that arises out of loss or theft of data, breach of data, disruption of networks, intrusion of virus, malware, disclosure of private information, notification, credit monitoring, breach response costs, regulatory fines and penalties, and infringement of intellectual property \$2,000,000 per

occurrence / \$2,000,000 annual aggregate.

6. Sexual Abuse/Molestation Coverage: (required if Supplier will be supervising activities of minors) Sexual Abuse/Molestation coverage must be included under General Liability or obtained in a separate policy and identified under "Other" coverage of Certificate of Insurance or by indicating in Description of Operations/Special Provisions that Sexual Abuse/Molestation coverage is not excluded and provide policy exclusion pages. If Sexual Abuse/Molestation coverage is added by Endorsement to the General Liability policy, Supplier must provide proof of Endorsement. Such coverage shall be in an amount of not less than \$1,000,000 per occurrence; \$2,000,000 general aggregate.

B. Supplier agrees to:

1. Name District, District's Board of Trustees, its officers, agents, and employees as additional insured under its general liability and auto policy(ies);
2. Ensure that the Certificate(s) of Insurance shall provide thirty (30) days prior written notice of cancellation;
3. Ensure that Supplier's Insurance to be Primary and any insurance or self-insurance maintained by the District, its Board of Trustees, officials, employees, volunteers, and agents shall be excess of the Supplier's insurance and shall not contribute with it;
4. Deliver Certificate(s) of Insurance and Additional Insured Endorsement(s) evidencing the required coverages to the District, which shall be subject to the District approval for adequacy of protection. All certificates must be delivered before the Goods and Services are to commence. However, failure to obtain the required documents prior to the work beginning shall not waive the Supplier's obligation to provide them;
5. Hereby grant to District, its Board of Trustees, employees, volunteers, and agents a waiver of any right to subrogation which any insurer of said Supplier may acquire against the District, its Board of Trustees, officials, employees, volunteers, and agents by virtue of the payment of any loss under such insurance. Supplier shall obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not District, its Board of Trustees, officials, employees, volunteers, and agents have received a waiver of subrogation endorsement from the insurer.

An Umbrella Liability policy (or Excess Liability) may be used to provide additional Commercial General Liability, Automobile Liability, and Employers' Liability limits to meet District's minimum coverage requirements provided all requirements set forth herein are fully satisfied with respect to such policy. If Supplier maintains broader coverage and/or higher limits than the minimums required herein, District shall be entitled to the broader coverage and/or higher limits maintained by the Supplier.

C. If the Data Protection Exhibit is incorporated into this Agreement, or if the scope of this Agreement requires Supplier to develop a system, website, web or mobile application or other software technology for the District, Supplier shall maintain Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Supplier in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, disruption of networks, intrusion of virus(es), malware, release of private information, alteration of electronic information, extortion and network

security. The policy shall provide coverage for breach response costs, regulatory fines, penalties, as well as notification and credit monitoring expenses with limits sufficient to respond to these obligations. District, its Board of Trustees, employees, agents, and volunteers must be named as additional insureds with respect to liability arising out of work or operations performed by or on behalf of Supplier under this Agreement.

D. If the Data Protection Exhibit is incorporated into this Agreement, or if the scope of this Agreement requires Supplier to develop a system, website, web or mobile application or other software technology for the District, Supplier shall maintain Technology Professional Liability (Errors and Omissions) Insurance appropriate to Supplier's profession, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Supplier in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, disruption of networks, intrusion of virus(es), malware, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs, regulatory fines, penalties as well as notification and credit monitoring expenses with limits sufficient to respond to these obligations. District, its Board of Trustees, employees, agents, and volunteers must be named as additional insureds with respect to liability arising out of work or operations performed by or on behalf of Supplier under this Agreement.

## ARTICLE 8. CONFIDENTIALITY

A. Under the terms of this Agreement, Supplier may receive or obtain access to student data, pupil records, or other information that is privileged, confidential, not publicly available, which is covered by federal or state privacy laws, rules, and regulations, or which is otherwise considered confidential and protected from disclosure by the policies and procedures of District ("Confidential Information"). Without limiting the generality of the foregoing, "Confidential Information" shall be defined as any information which is (i) marked as "Confidential" at the time of disclosure; (ii) if disclosed orally, identified at the time of such oral disclosure as confidential, and reduced to writing as "Confidential" within thirty (30) days of such disclosure; and (iii) if not marked as "Confidential", information that would be considered by a reasonable person in the relevant field to be confidential given its content and the circumstances of its disclosure. Supplier understands and agrees that all Confidential Information shall be preserved and protected as privileged or confidential, that Confidential Information shall be held strictly in accordance with District's policies and procedures, that Confidential Information shall be preserved and held in compliance with all applicable state or federal laws, rules, or regulations, that Supplier will not access, use or disclose Confidential Information other than to carry out the purposes for such disclosure, and that Confidential Information shall not be shared with any third party without the expressed written authorization of District or as required by applicable law. Any such disclosure of Confidential Information by Supplier to its employees shall only be as is necessary for the performance of its obligations under this Agreement and employees receiving Confidential Information shall be informed of the obligations governing the access, use, and disclosure of Confidential Information prior to Supplier's disclosure. Supplier shall be liable for any breach of this Agreement by its employees and shall fully indemnify and defend the District and Indemnitees from any claims, liability, costs, or damages arising from or related to any such breach. For avoidance of doubt, this provision prohibits Supplier from using for its own benefit Confidential Information and any information derived therefrom. For the

avoidance of doubt, the sale of Confidential Information is expressly prohibited.

B. Compliance with Applicable Laws and Industry Best Practices. Supplier agrees to comply with all applicable state, federal, and foreign laws, as well as industry best practices, governing the collection, access, use, disclosure, safeguarding and destruction of Confidential Information. Supplier agrees to protect the privacy and security of Confidential Information according to all applicable laws and industry best practices, and no less rigorously than it protects its own information, but in no case less than reasonable care.

C. Notwithstanding Supplier's obligation to hold Confidential Information and any information derived therefrom in strict confidence, information received from the District will not be considered confidential to the extent that: (i) Supplier can demonstrate by written records was known to Supplier prior to the effective date of the Agreement; (ii) is currently in, or in the future enters, the public domain other than through a breach of the Agreement or through other acts or omissions of Supplier; (iii) is obtained lawfully from a third party; or (iv) is disclosed under the California Public Records Act or legal process. For the avoidance of doubt, as applicable to Supplier's Services, Confidential Information may include any information that identifies or is capable of identifying a specific individual, including but not limited to:

1. Personally identifiable information,
2. Protected Health Information as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the HIPAA regulations (including, but not limited to 45 C.F.R. § 160.103),
3. Medical information as defined by California Civil Code § 56.05,
4. Cardholder data,
5. Student records not defined as directory information in District's Board Policy 5040, found here: <https://rscdd.edu/Trustees/Documents/Board%20Policies/BPs-Chapter%205/BP%205040%20Student%20Records,%20Directory%20Information%20and%20Privacy.pdf>, or
6. Individual information that is subject to laws restricting the use and disclosure of such information, including but not limited to.
  - i. Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.);
  - ii. The federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2));
  - iii. The federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g);
  - iv. The federal Fair and Accurate Credit Transactions Act (15 U.S.C. § 1601 et seq.);
  - v. The Fair Credit Reporting Act (15 U.S.C. § 1681 et seq), and
  - vi. Applicable international privacy laws, including, but not limited to the General Data Protection Regulation.

D. If Supplier is required by a court of competent jurisdiction or an administrative body to disclose Confidential Information, Supplier will notify District in writing immediately upon receiving notice of such requirement and prior to any such disclosure (unless Supplier is prohibited by law from doing so), to give District an opportunity to oppose or otherwise respond to such disclosure. To the extent Supplier still required to disclose Confidential Information, Supplier will furnish only that portion that is legally required and will exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be afforded to any Confidential Information.

E. Supplier's transmission, transportation or storage of Confidential Information outside the United States, or access of District Information from outside the United States, is prohibited except with prior written authorization by District.

F. Supplier acknowledges that for the purposes of this Agreement, if Supplier has access to non-directory student information as defined by District Board Policy 5040, found [here](#), it is designated as a "school official" with a "legitimate educational interest" in the non-directory student information, as those terms have been defined under the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations at 34 CFR 99. Supplier acknowledges that non-directory student information is classified as Confidential Information and agrees to abide by the limitations and requirements imposed by 34 CFR 99.33 (a) on school officials and District Board Policy 5040. Supplier shall use the non-directory student information only for the purposes of fulfilling its duties under the Agreement and it will not monitor or share such data with or disclose it to any third party except as provided for in this Agreement, as required by law, or authorized in writing by District or subject student. By way of illustration and not of limitation, Supplier will not use such data for Supplier's own benefit and, in particular, will not engage in "data mining" of District's data or communications, whether through automated or human means, except as necessary to fulfill its duties under this Agreement, which includes providing and improving the Supplier's Goods and/or Services, as defined in this Agreement, or as specifically and expressly provided for in this Agreement, an Addendum, as required by law, or authorized in writing by District.

G. Supplier acknowledges that remedies at law would be inadequate to protect District against any actual or threatened breach of this Article by Supplier, and, without prejudice to any other rights and remedies otherwise available to District, Supplier agrees to the granting of injunctive relief in District's favor without proof of actual damages.

IF SUPPLIER BECOMES AWARE OF A POSSIBLE UNAUTHORIZED RELEASE OR DISCLOSURE OF CONFIDENTIAL INFORMATION, SUPPLIER SHALL IMMEDIATELY NOTIFY DISTRICT IN WRITING.

## **ARTICLE 9. EXPENSES**

Supplier shall furnish at its own expense all necessary overhead, administrative and support services, equipment, clerical personnel, facilities, communications and related facilities and personnel necessary to provide the Goods, perform the Services, or issue its License. All fees and expenses for services of Supplier under this Agreement, and District's obligations to compensate Supplier for services, shall solely be governed by the Agreement. Should Supplier incur additional or unanticipated expenses, District shall not be obligated to pay for, or reimburse, said expenses to the extent such expenses are not included within the compensation specifications set forth in the Agreement. District shall be entitled, at its sole and unrestricted discretion, to refuse to amend this Agreement or to otherwise voluntarily pay such additional and unanticipated expenses.

## **ARTICLE 10. W-9**

Supplier agrees to provide a completed "Request for Taxpayer Identification Number and Certification" (Form W-9) with this signed Agreement and understands that the District will report payment information to the Internal Revenue Service under the name and TIN or SSN, whichever is applicable, provided by Supplier.

## **ARTICLE 11. NON-CALIFORNIA RESIDENT TAX WITHHOLDING**

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If Supplier is a nonresident of California, including but not limited to California Nonresidents, corporations, limited liability companies, non-profits, and partnerships that do not have a permanent place of business in the State of California (hereinafter "Nonresident"), the District is obligated to abide by California Franchise Tax Board (FTB) withholding requirements and is required to withhold from all payments or distributions of California source income made to a Nonresident when payments or distributions are greater than One Thousand Five Hundred Dollars (\$1,500) for the calendar year unless District receives authorization for a waiver or a reduced withholding rate from the Franchise Tax Board. As of January 1, 2023, the standard withholding amount for all payments to Nonresident California Contractors is Seven Percent (7%). District will deduct the amount ordered by the State of California from the payment hereunder and will pay such amount directly to the Nonresident's California State Income Tax Account, settlement of which must be made by Nonresident directly with the State of California through Withholding Coordinator, Franchise Tax Board, PO Box 651, Sacramento, California, 95812-0651; telephone (888) 792-4900. Completion and submission of the appropriate form shall be the obligation of the Nonresident and Supplier shall defend, indemnify and hold harmless District against any loss, expense, or liability arising out of Supplier's acts or omissions with respect to this nonresident requirement. Supplier shall provide all necessary documentation and information to help District comply with all tax requirements related to California nonresidents.

## **ARTICLE 12. PERMITS AND/OR LICENSES**

If applicable, Supplier and all Supplier's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the Goods and Services pursuant to this Agreement.

## **ARTICLE 13. WARRANTIES**

A. Supplier warrants that all Goods and Services provided in accordance with this Agreement shall be provided in a manner consistent with the standard of care, diligence, and skill ordinarily exercised by professionals in similar fields and circumstances in accordance with sound professional practices.

B. Supplier warrants that the Goods and Services to be provided under this Agreement complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C §794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, Part 1194. Supplier agrees to promptly respond to and resolve any complaint regarding accessibility of its products brought to its attention. Supplier agrees to indemnify and hold harmless District from any claim arising out of its failure to comply with the aforesaid requirements. Failure to comply with these requirements shall constitute a breach and be grounds for termination of this Agreement.

C. Supplier warrants that it has and will comply with District's gift ban policy (Board Policy 3821) located here:  
<https://rscdd.edu/Trustees/Documents/Board%20Policies/BPsChapter%203/BP%203821%20Gift%20Ban%20Policy.pdf>.

D. Supplier warrants that the signatory of this Agreement is duly and fully authorized to execute this Agreement on behalf of Supplier and to bind the Supplier to each and every term, condition, and covenant of this Agreement.

## **ARTICLE 14. COMPLIANCE WITH APPLICABLE LAWS**

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The Parties agree to comply with all federal, state, and local laws, rules, regulations, and ordinance that are now or may in the future become applicable to either party, Supplier's business, equipment and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

## ARTICLE 15. MISCELLANEOUS

A. Supplier represents that it is an equal opportunity employer and acknowledges that it shall not subject any person to unlawful discrimination based on race, color, gender, age, religion, national origin, U.S. military veteran status, marital status, sexual orientation, disability, or political affiliation in programs, activities, services, benefits, or employment in connection with this Agreement. Supplier agrees not to discriminate on any of these bases in its employment or personnel policies, including but not limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

B. The failure of District or Supplier to seek redress for violation of, or to insist upon, the strict performance of any term or condition of this Agreement, shall not be deemed a waiver by that Party of such term or condition, or prevent a subsequent similar act from again constituting a violation of such term or condition.

C. In interpreting this Agreement, it shall be deemed to have been prepared by the Parties jointly, and no ambiguity shall be resolved against District on the premise that it or its attorneys were responsible for drafting this Agreement or any provision hereof. The captions or heading set forth in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any Sections/Articles or other provisions of this Agreement. Any reference in this Agreement to a Section/Article, unless specified otherwise, shall be a reference to a Section/Article of this Agreement.

D. Supplier hereby represents, warrants and covenants that (i) at the time of execution of this Agreement, Supplier has no interest and shall not acquire any interest in the future, whether direct or indirect, which would conflict in any manner or degree with the performance of its obligations under this Agreement; (ii) Supplier has no business or financial interests which are in conflict with Supplier's obligations to District under this Agreement; and (iii) Supplier shall not employ in the performance of Work under this Agreement any person or entity having any such interests.

E. Time is of the essence and Supplier shall perform the services required by this Agreement in an expeditious and timely manner so as not to unreasonably delay the purpose of this Agreement.

F. As used in this Agreement, "failure to perform" means failure, for whatever reason, to deliver Goods and/or perform Services as specified and scheduled in this Agreement. If Supplier fails to perform its obligations under this Agreement, then District, after giving seven days' written notice and opportunity to cure to Supplier, has the right to complete Supplier's obligations itself, to obtain the contracted Goods and/or Services from other suppliers, or a combination thereof, as necessary to complete the work. Both Parties agree that Supplier shall bear any reasonable cost difference, as measured against any unpaid balance due Supplier, for these substitute Goods or Services.

G. Except as to any payment due hereunder, Supplier may not assign or subcontract the Agreement without District's written consent. In case such consent is given, the assignee or subcontractor will be subject to all of the terms of the Agreement.

H. Unless otherwise agreed upon and in compliance with state, federal, local law, and District policy, during the term of this Agreement and for a period of three years after termination, Supplier shall permit District and its authorized representatives to review all Supplier books, documents, papers, plans, and records, electronic or otherwise (“Supplier Records”), related to this Agreement. Supplier shall maintain all of Supplier Records in accordance with generally accepted accounting principles so as to document clearly Supplier’s performance of the Services. Following final payment and termination of this Agreement, Supplier shall retain and keep accessible all Records for a minimum of three years, or such longer period as may be required by law, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Agreement, whichever date is later.

I. If the scope of this Agreement requires Supplier to store, retain or otherwise hold District Records (District Records shall be defined as including but not limited to: District’s documents, papers, plans, records, electronic or otherwise, actual or in a system) on behalf of the District, District Records shall be held and retained in accordance with and in compliance with state, federal, local law, and District policy, including Board Policy 3310 and Administrative Regulation 3310, Found here <https://rscdd.edu/Trustees/Pages/policies-and-regulations.aspx>.

## **ARTICLE 16 – NOTICE**

All notices or demands to be given under this Agreement by either Party to the other Party shall be in writing as noted in the Agreement and given either by: (a) personal service, (b) by overnight courier, or (c) by U.S. Mail, mailed either by certified or registered mail, return receipt requested, with postage prepaid to the address listed in this Agreement. Service shall be considered given when received, if personally served, or, if mailed, on the third day after deposit in any U.S. Post Office. The address to which notices or demands may be given by either Party may be changed by written notice given in accordance with the notice provisions of this Article. A Party may change its/his/her designated representative and/or address for the purpose of receiving notices and communications under this Agreement by notifying the other Party of the change in writing and in the manner described in this Article.

## **ARTICLE 17 – SEVERABILITY**

If any term, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

## **ARTICLE 18 – FORCE MAJUERE**

Neither Party shall be responsible for delays or failure in performance resulting from acts beyond the control of such Parties. Such acts shall include, but not be limited to, Acts of God, labor disputes, civil disruptions, acts of war, epidemics, fire, electrical power outages, earthquakes, or other natural disasters. In claiming a delay or failure to perform under this clause, the delay or failure to perform must be without the fault or negligence of the Party claiming excusable delay or failure to perform and the Party claiming excusable delay must promptly notify the other Party of such delay. Performance under this Agreement shall be considered extended for a period of time equivalent to the time lost due to the force majeure occurrence; however, if such delay continues for a period of more than 30 days, District shall have the option of terminating this Agreement upon written notice to Supplier. Upon such termination for force majeure, the District will pay Supplier for any Goods and/or Services provided in

accordance with the Agreement and approved by the District up through the notice of termination. Supplier shall not be entitled to any other costs or damages.

## **ARTICLE 19 – INELIGIBILITY**

If this Agreement is funded in part or whole with federal funds, Supplier certifies to the best of its knowledge and belief that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency and have not, within a three-year period preceding the execution of this contractual instrument, been convicted of, or had a civil judgment rendered against them, for:

1. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) or private transaction or contract;
2. Violation of Federal or State antitrust statutes;
3. Commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or
4. Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects Supplier's present responsibility.

## **ARTICLE 20 – PARTIES RELATIONSHIP**

Supplier will provide the Goods and/or Services as an independent contractor and furnish all equipment, personnel, and supplies sufficient to provide the Services expeditiously and efficiently, during as many hours per shift and shifts per week, and at such locations as District may so require. Supplier will devote only its best-qualified personnel to work under the Agreement. Should District inform Supplier that anyone providing the Services is not working to this standard, Supplier will immediately remove such personnel from providing Services and those individuals will not again be assigned to provide Services without District written permission. At no time will Supplier or Supplier's employees, sub-suppliers, agents, or assigns be considered employees of District for any purpose, including but not limited to workers' compensation provisions. Supplier shall not have the power nor right to bind or obligate District, and Supplier shall not hold itself out as having such authority. Supplier shall be responsible to District for all Services performed by Supplier's employees, agents and subcontractors, including being responsible for ensuring payment of all unemployment, social security, payroll, contributions and other taxes with respect to such employees, agents and subcontractors.

## **ARTICLE 21 – COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement. Any such counterpart containing an electronic, digital, or facsimile signature shall be deemed an original. Execution of this Agreement signifies the Parties' mutual consent to conduct transactions electronically. Pursuant to the California Uniform Electronic Transactions Act ("UETA") (Cal. Civ. Code § 1633.1 et seq.) and California Government Code 16.5, the District reserves the right to conduct business electronically, unless otherwise communicated by the District to stop such electronic transactions, including without limitation to the use of electronic or digital signatures.

## **ARTICLE 22 – AMENDMENTS**

This Agreement may be amended only by written instrument signed by both District and Supplier and

approved by the District's Board of Trustees which writing shall state expressly that it is intended by the Parties to amend the terms and conditions of this Agreement.

#### **ARTICLE 22 – GOVERNING LAW AND VENUE**

The terms and conditions of this Agreement shall be governed by the laws of the State of California with exclusive jurisdiction and venue in Orange County, California.

#### **ARTICLE 23 - SUPPLIER TERMS**

Any additional terms that Supplier includes, whether in whole or in reference, in an order form, an End User Agreement, clickwrap, click through agreement or similar document will be of no force and effect unless District expressly agrees in writing to such terms.

#### **ARTICLE 24 – SURVIVAL CLAUSE**

Upon expiration or termination of the Agreement, the following provisions will survive: WARRANTIES; INTELLECTUAL PROPERTY AND DATA RIGHTS; INDEMNITY AND LIABILITY; INSURANCE; CONFIDENTIALITY; and GOVERNING LAW AND VENUE.

---END---

Version	Owner	Date	Action
V1_09NOV23	Andrew Lim	11.09.2023	Released