



GENERAL TERMS AND CONDITIONS

1. **DEFINITIONS.** MiraCosta Community College District shall be hereinafter referred to as “District”, and the entity identified on the Order, as defined below, shall hereinafter be referred to as “Supplier”. District and Supplier are individually referred to as “Party” and collectively referred to as “Parties”.
2. **AGREEMENT.** The Supplier accepts the Order on the basis of these General Terms and Conditions. Additional or conflicting terms on the Supplier’s form, proposal or any confirmation notice are rejected and shall be deemed a material alteration hereof, unless such terms are incorporated by direct reference into the Order and approved by the appropriate District personnel in writing. The Parties agree that if any terms on any Supplier provided form, proposal or notice conflict with the Order or these General Terms and Conditions, the terms of the Order and these General Terms and Conditions will prevail.
3. **CHANGES.** The Order and these General Terms and Conditions shall not be altered, amended, supplemented, or cancelled without approval by the appropriate District personnel in writing. The District shall have the right to make changes hereunder any time and the Supplier agrees to accept such changes. In the event such changes result in additional costs, the District shall make an equitable adjustment in the purchase price provided such additional costs are itemized and justified in writing, agreed to by the District, and submitted to the District within 10 days of receipt of the change notification
4. **TERMINATION.** The District reserves the right to terminate the Order for its own convenience with liability limited to the services or goods delivered prior to the Supplier’s receipt of the District’s termination notice.
5. **TIME IS OF THE ESSENCE.** Supplier agrees that time is of the essence and Supplier shall perform the services in an expeditious and timely manner so as not to unreasonably delay the purpose of the Order. Supplier acknowledges that its failure to comply with any requirement, including but not limited to any time requirement, of the Order or these General Terms and Conditions shall constitute a material breach of the Order by the Supplier. Supplier shall promptly notify the District of any expected delay in the performance of services.
6. **LIMITATION OF PAYMENTS.** Prices and amounts shown on the Purchase Order that the District issued to the Supplier (“Order”) are the maximum amounts authorized pursuant to the Order.
7. **VARIATION IN QUANTITY OR QUALITY.** All goods and services must be as specified in the Order. No substitutions, variance from the specifications, or variations in the quality or quantity of any goods or services set forth in the Order, shall be allowed without prior written approval from the District’s Purchasing Department.
8. **PURCHASE AND PAYMENT DISCOUNTS.** In connection with any discount offered, the payment discount period shall begin on the date of delivery and acceptance at destination. The District shall be entitled to the maximum educational or any other discount offered.
9. **INVOICES.** Separate invoices are required for each Order. Supplier shall submit invoices to the Requester and/or its Point of Contact of the Purchase Order and shall ensure all invoices contain the following information as applicable: Order number, item number and description, services performed, quantity, unit price, and extended totals for items delivered. Sales tax, where applicable, shall be shown separately. Shipping/handling/delivery charges shall also be shown separately and shall include the original or a copy of the prepaid bill of lading. The District may also require additional information or documentation related to or supporting the invoices. Failure to enter the above information on the invoice, or to provide any additional information or documentation, may cause a delay in payment. District shall make payments on undisputed invoices on a Net 30 basis unless otherwise specified on the Order. The District can offset payments owed pursuant to an invoice by any monies due from the Supplier to the District, whether or not under the Order.



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10. **TAXES.** Supplier will fully complete, and provide to the District as required, the Internal Revenue Service W-9 form or other required reporting forms. Supplier acknowledges and agrees that it is Supplier's sole responsibility to make the requisite tax filings and payment to the appropriate federal, state, or local tax authorities. The District will not withhold any part of the Supplier's compensation for the payment of social security, unemployment, or disability insurance or any other similar state or federal tax obligations. Supplier is solely responsible for all tax consequences and obligations related to the Services and the District's payment for the Services, and Supplier agrees to indemnify, defend, and hold the District harmless from any tax consequences.
11. **SHIPPING.** Unless otherwise specified in the Order, Supplier shall be responsible for delivery and shall pay all related shipping charges, including prepaid freight charges, and all goods are to be shipped prepaid, F.O.B. Destination. Time and manner of delivery are material factors in proper performance under the Order. Where the District has given specific written authorization to ship goods F.O.B. Shipping Point, the Supplier shall prepay all shipping charges, route goods the cheapest way (unless authorized by the District to use other means) and bill the District for the actual shipping/handling/delivery charges paid by the Supplier. The District will not pay claims or invoices for shipping/handling/delivery charges that are not properly supported by either the original or a copy of the prepaid bill of lading. The Order number shall be clearly referenced on each parcel and packing slip. Failure to include this information may cause a delay in inspection and acceptance of the Order, resulting in a delay of payment. All items shall be prepared and packed for shipment in a manner that will prevent damage in transit. The District reserves the right to reject any shipment that appears to have suffered damage in transit.
12. **EXPENSES AND EQUIPMENT.** Supplier is solely and fully responsible for all costs and expenses incident to the performance of the Services, including any and all licensing or permit fees, instrumentalities, supplies, tools, equipment, or materials needed to perform the Services. If the District furnishes any goods, materials, or other equipment to Supplier, Supplier assumes complete liability for those goods, materials, or other equipment. Supplier agrees to promptly pay the District the repair or replacement costs for such goods, materials, or other equipment not returned to the District in a satisfactory condition, as solely determined by the District.
13. **INSPECTION AND ACCEPTANCE.** Inspection and acceptance will be at the receiving destination, unless otherwise provided by the District. Regardless of the F.O.B. designation, the Supplier agrees to bear all risks of loss, injury, delay, or destruction of goods and materials ordered in the Order that occur prior to delivery, and such loss, injury, delay, or destruction shall not release the Supplier from any of its other obligations.
14. **HEALTH AND SAFETY.** The Supplier certifies, by shipment, that all goods and equipment furnished under the Order shall meet or exceed all applicable federal and state health and safety regulations, including CAL-OSHA codes. All shipments of hazardous and toxic material must include Material Safety Data Sheets (MSDS) pursuant to OSHA's Hazard Communication Rule 29 CFR 1919.1200, with copies sent to the District's Purchasing Department referencing the Order number.
15. **WARRANTY.** The Supplier agrees that all supplies, equipment, or services furnished under the Order shall be covered by the most favorable commercial warranties the Supplier provides any customer for such goods or services, and that the rights and remedies provided therein are in addition to and do not limit any rights afforded to the District by any other provisions of the Order. If upon inspection any item is found defective or of inferior quality, the District may return such item to the Supplier at the Supplier's expense. The District's payment for any item prior to inspection shall not be construed to be an acceptance by the District of an unsatisfactory or defective item. The Supplier shall promptly reimburse the District for any amount paid to the Supplier, and any shipping charges incurred by the District, for such returned items.
16. **INDEPENDENT CONTRACTOR.** While providing the goods or services set forth in the Order, the Supplier and its employees, agents, and contractors are independent contractors and are not officers, employees, or agents of

the District. Supplier shall perform its obligations under the Order according to the Supplier's own means and methods of work which shall be in the exclusive charge and under the control of the Supplier, and which shall not be subject to control or supervision by the District, except as to the results of the delivery of the goods or the services. The Supplier acknowledges that: (1) the Supplier is free from the control and direction of the District in connection with the performance of its obligations; (2) the Supplier delivers the goods or provides the services set forth in the Order outside the usual course of the District's business; and (3) the Supplier is customarily engaged in an independently established trade, occupation, or business of the same nature as its obligations set forth in the Order. To the furthest extent provided by law, the Supplier agrees to defend, indemnify, and hold the District harmless from any claims, demands, liabilities, damages, penalties, or taxes resulting from any misclassification of the Supplier's employees (as independent contractors) who provide any goods or services under the Order.

17. **COMPLIANCE WITH LOCAL, STATE AND FEDERAL REGULATIONS.** The Supplier shall comply with all applicable laws, regulations, and requirements of the United States, the State of California, the District, and all applicable municipalities and local agencies, including securing and maintaining all required licenses or permits related to the goods or services set forth in the Order. The Supplier further agrees to comply with all applicable federal, state, local, and District laws, orders, and guidelines related to preventing occupational or other exposure to COVID-19, or other viral or bacterial agents as may be identified by local, state, or federal authorities, or the District, as requiring specific mitigation and remediation procedures, that are now or may in the future become applicable to the Supplier or the goods or services. To the furthest extent provided by law, the Supplier further agrees to defend, indemnify and hold District harmless from any claims, demands, or liabilities (including attorneys' fees and costs), brought by the Supplier's employees, agents, consultants, or subcontractors, for claims of injury or illness while present at the District's facilities or performing services for the District, including exposure to COVID-19 or other viral or bacterial agents, or in any way arising out of or related to being present or performing services at District's property. Supplier, its employees, and/or its subcontractors will, at all times, comply with the District's COVID-19 protocols while at any of the District's property locations: <http://miracosta.edu/contractor-covid-protocols>
18. **LIMITATION OF LIABILITY.** The District's financial obligations under the Order are limited to the payment of the compensation provided in the Order. Notwithstanding any other provision of the Order or these General Terms and Conditions, the Parties agree that to the fullest extent permitted by law, in no event shall the District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect, or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with the Order or for the goods or services performed in connection with the Order.
19. **INDEMNIFICATION AND HOLD HARMLESS.** To the fullest extent permitted by law, and as a material part of the Order, the Supplier shall indemnify, hold harmless and defend, the District, its Board of Trustees, officers, agents, employees, and volunteers against any and all liability, claims, suits, demands, causes of action, damages, losses, injuries, and expenses of any kind, including reasonable attorneys' fees and costs, whether actual or alleged, in law or equity, to persons or property, including, but not limited to, personal injury, damages or injuries/illnesses, including COVID-19, wrongful death, contractual liability, infringement of a third party's intellectual property rights, or damage to property ("Claim") arising from or related to any act or omission of the Supplier or its officers, agents, employees, volunteers, consultants, or subcontractors, except to the extent that a Claim is caused by the District's gross negligence or willful misconduct. Supplier assumes complete liability for any goods, materials, or other equipment furnished by the District to the Supplier in connection with the Order, if any. Supplier agrees to promptly pay the District the repair or replacements costs for such goods, materials, or other equipment not returned to the District in a satisfactory condition, as solely determined by the District. The District's furnishing to Supplier of any goods or materials in connection with the Order shall not be construed to vest title thereto in Supplier. The provisions of this section will survive the termination or expiration of the Order.



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20. **INSURANCE REQUIREMENTS.** The Supplier and its officers, employees, agents and subcontractors shall, at their expense, maintain and comply with the following Insurance Requirements during the term set forth in the Order.
- a. **Commercial General Liability.** Minimum limits of \$1,000,000 per occurrence and \$2,000,000 general aggregate for personal injury, bodily injury, death, and property and other damage including coverage for contractual liability, personal injury, broad form property damage, independent contractors, and products and completed operations.
 - b. **Automobile Liability.** Minimum limits of \$1,000,000 per accident or occurrence for bodily injury and property damage, including coverages for owned, non-owned, and hired vehicles for all activities of the Supplier or its employees, agents, consultants, or subcontractors.
 - c. **Workers' Compensation and Employers' Liability Insurance.** In accordance with Section 3700 of the California Labor Code, the Supplier shall be required to secure workers' compensation coverage for its employees in the amount required by law. The Supplier shall maintain required Employers' Liability Insurance with limits of not less than \$1,000,000 per occurrence (accident) and \$1,000,000 per employee (disease).
 - d. **Professional Liability Insurance (If applicable to type of service).** Professional Liability insurance with limits not less than \$1,000,000 each claim and \$2,000,000 aggregate, with respect to coverage for errors and omissions arising from professional services rendered under the Order by the Supplier or any of the Supplier's employees, agents, consultants, or subcontractors.
 - e. **Cyber Liability (If applicable to type of service as determined by the District).** Minimum limits not less than \$1,000,000 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 the Order and these General Terms and Conditions 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, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.
 - f. **Proof of Insurance and Insurance Terms.** The Supplier shall not commence and services or any work under the Order until it provides the District Certificates of Insurance with original endorsements evidencing the insurance coverage required herein. Each policy required herein, except workers' compensation and professional liability, shall be endorsed with specific language naming the MiraCosta Community College District and its trustees, officers, agents, employees, and volunteers ("Additional Insureds") as additional insured parties and waiving subrogation rights against the Additional Insureds, and each Certificate of Insurance shall so specify. Such certificates shall evidence all coverages and limits required by the District in the Order and these General Terms and Conditions and shall specify that insurers will give the District thirty (30) days prior written notice of non-renewal or cancellation. Each policy required herein shall be primary to any other insurance or self-insurance available to the District, its officers, trustees, agents, employees, and volunteers, and shall apply separately to each. The Supplier is solely responsible for the payment of any and all premiums, deductibles, or self-insurance retentions. The Supplier will ensure insurance is placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the District. The Supplier's provision of the required insurance hereunder shall not act as a potential limitation on the Supplier's liability.
21. **CONFIDENTIAL INFORMATION.** Supplier understands and acknowledges that during its performance of the Services it or its employees, agents, consultants, or subcontractors may have access to private and confidential information in the District's possession, custody, or control, including but not limited to private information regarding students, families, faculty, employees, staff, donors, alumni, or other personnel data or information, including a student's education records as defined by 20 USC section 1232g, and other District related trade secrets, business plans, and other proprietary information ("Confidential Information"). Supplier will not disclose, copy, or modify any Confidential Information without the District's prior written consent unless



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otherwise required by law. Supplier will immediately notify the District if it becomes aware of any possible unauthorized disclosure or use of the Confidential Information. Supplier agrees to promptly return all copies of Confidential Information to the District upon expiration or termination of this Agreement. If the Supplier has access to Confidential Information, Supplier shall limit its employees', agents', consultants', and subcontractors' access to the records to those persons for whom access is essential to the performance of the Services. At all times during and after the term of this Agreement, Supplier shall comply with the applicable terms of the Family Educational Rights and Privacy act of 1974 (FERPA). Supplier may be required to execute supplemental confidentiality and non-disclosure agreements as solely determined by the District. This section shall survive the termination or expiration of this Agreement.

22. **NON-DISCRIMINATION.** Supplier and District mutually agree that they will comply with all applicable Federal and California state anti-discrimination laws and regulations and agree not to unlawfully discriminate against any prospective or active employee engaged in the work, or against any other person, on the basis of race, color, age, ancestry, national origin, sex, gender, gender identity, gender expression, religious creed, marital status, medical condition, genetic information, physical or mental disability, sexual orientation, veteran or military status, or any other category protected by law, including but not limited to, the California Fair Employment Practice Act, beginning with Labor Code Section 1410, and Labor Code Section 1735. In addition, the Supplier agrees to require like compliance by all hired agents, consultants, and subcontractors.
23. **PROVISIONS REQUIRED BY LAW DEEMED INSERTED:** Each and every provision of law and clause applicable to the Order, or required by law to be inserted in the Order, shall be deemed to be inserted therein and the Order shall be read and enforced as though the provision(s) were included therein.
24. **ELECTRONIC AND INFORMATION TECHNOLOGIES.** Supplier hereby warrants that any goods or services, including any hardware or software products or services, to be provided under the Agreement comply 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 or services which is brought to its attention and will designate a contact person for expediting any complaints applicable to California Government Code §11135. Supplier further agrees to indemnify, defend, and hold harmless the District, the Chancellor's Office of the California Community Colleges, and any California community college using the Supplier's products or services from any claim arising out of its failure to comply with these requirements. Failure to comply with these requirements shall constitute a breach and be grounds for termination of the Agreement. Supplier and any of its agents, consultants, and subcontractors shall provide credible, third-party verification demonstrating compliance of product accessibility per current requirements of the revised US Section 508 Standards or Web Content Accessibility Guidelines 2.0, Level AA (WCAG 2.0, AA) upon initial deployment and with each major subsequent release prior to production use by faculty, staff, or students. Appropriate documentation detailing the testing, including evaluation results, will be current and maintained.
25. **CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR OTHER INELIGIBILITY.** (applicable to all Orders funded in part or in whole with federal funds) - The Supplier agrees to comply with applicable federal suspension and debarment regulations, including, but not limited to, regulations implementing Executive Order 12549 (29 C.F.R. Part 98). The Supplier certifies to the best of its knowledge and belief that it and its principals:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
 - b. Have not, within a three-year period preceding the receipt of the Order, 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;
- c. Are not presently indicted for, or otherwise criminally or civilly charged by any government entity (federal, state or local), with commission of any of the offenses enumerated above;
 - d. Have not, within a three-year period preceding the receipt of the Order, had one or more public transactions (federal state or local) terminated for cause or default;
 - e. Shall not, except as otherwise provided under applicable federal regulations, knowingly enter into any lower tier covered transaction with a person who is proposed for debarment, debarred, suspended, declared ineligible, or voluntarily excluded by any federal department or agency from participation in such transaction; and
 - f. Include in all lower tier covered transactions, and all solicitations for covered transactions, provisions substantially similar to those set forth herein.
26. **REGISTRATION FOR PUBLIC WORKS.** If Supplier is performing a public work, as defined by California Labor Code Section 1720, Supplier must comply with all applicable rules and regulations, including adhering to the requirements of California Labor Code Section 1725.5 (Department of Industrial Relations Contractor Registration), as a prerequisite to performing any services under the Order.
27. **STORM WATER MANAGEMENT.** The District has adopted a Storm Water Management Plan (SWMP). The SWMP was prepared in accordance with waste discharge requirements for storm water discharges from small municipal separate storm sewer systems (General NPDES Permit No. CAS000004) adopted by the State Water Resources Control Board. The Supplier shall comply with the District's SWMP requirements and include all costs for compliance in the contract amount, as applicable. The Supplier shall also comply with the lawful requirements of other agencies regarding discharges to the storm drain system or other watercourses, including all applicable City, County, State and Federal storm water requirements.
28. **AUDIT.** The Supplier agrees that the District has the right to review, audit, and to copy any of Supplier's or Supplier's employees', agents', consultants', or subcontractors' records and supporting documentation relating to the goods or services and any expenses or compensation incurred, charged, or requested by the Supplier. The Supplier agrees to maintain such records for possible audit for a minimum of four (4) years after final payment, unless a longer period of records retention is required or stipulated. The Supplier agrees to allow the District access to these records during normal business hours and to allow interviews of any employees, agents, consultants, or subcontractors who might reasonably have information related to such records. The Supplier agrees to include a similar right of the District to audit records and interview staff in any subcontract related to performance of the Order. This section shall survive the termination or expiration of the Order.
29. **ADVERTISING.** Supplier shall not use the name of the District, its officers, trustees, directors, employees, or agents, in advertising, social marketing campaigns, publicity releases, or otherwise without securing the prior written consent of the District in each instance.
30. **FORCE MAJEURE.** The Supplier or the District shall be excused from performance hereunder during the time and to the extent that it is prevented from performing by act of God, fire, strike, lockout, or commandeering of materials or facilities by the government, epidemics or pandemics, such as COVID-19, or other events that are outside of a Party's reasonable control, when satisfactory evidence thereof is presented to the other Party, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of the Party not performing. For avoidance of doubt, the District's obligation to pay Supplier's invoices or other fees is excused to the extent the Supplier is not performing its obligations or providing the goods or services during a force majeure event.



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31. **DISPUTES.** Except in the event of the District's failure to make earned and undisputed payments to Supplier, if the District and Supplier have a dispute, each will continue to perform its respective obligations, including Supplier's duty to provide and perform the services, during all attempts to resolve the dispute. For avoidance of doubt, the Supplier agrees to continue providing services in the event that the District disputes any portion of Supplier's invoices or other requests for payment.
32. **MEDIATION; ARBITRATION.** The Parties agree that if any dispute or controversy arises between them in any way arising out of, related to, or connected with the Order or these General Terms and Conditions, they will participate in good faith in mediation and agree to equally share all mediator fees. Mediation shall be conducted under the Commercial Mediation Rules of the American Arbitration Association in effect at the time of the filing of a demand for mediation. If the Parties are unable to resolve the dispute or controversy through mediation, the Parties agree to submit the pending dispute or controversy to final and binding arbitration conducted under the Commercial Arbitration Rules of the American Arbitration Association in effect at the time of the filing of a demand for arbitration. Arbitration proceedings shall be conducted at a location in the County of San Diego, California. By agreeing to this binding arbitration provision, the Parties understand that they are waiving certain rights and protections which may otherwise be available if a claim were determined by litigation in court, including, without limitation, the right to seek or obtain certain types of damages precluded by this arbitration provision, the right to a jury trial, certain rights of appeal, the right bring a claim as a class member in any purported class or representative proceeding; and a right to invoke formal rules of procedure and evidence. The prevailing party shall be awarded all reasonable attorneys' fees, expert witness fees, and other litigation expenses, expended or incurred in such arbitration or litigation, unless the laws related to the claim that the party prevailed on preclude a court from awarding attorneys' fees and costs to the prevailing party. The provisions of this section will apply during the term of the Order and survives after the termination or expiration of the Order.
33. **ASSIGNMENT.** The Supplier shall not assign or transfer by operation of law or otherwise any of its rights, burdens, duties, or obligations without the prior written consent of the District.
34. **NON-WAIVER.** The failure of the District or Supplier to seek redress for violation of, or to insist upon, the strict performance of any term or condition of the Order or these General Terms and Conditions, shall not be deemed a waiver by the Party of such term or condition, or prevent a subsequent similar act from again constituting a violation of such term or condition.
35. **SEVERABILITY.** If any term, condition or provision of the Order or these General Terms and Conditions 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.
36. **GOVERNING LAW.** The Order is governed and interpreted in accordance with the laws of the State of California. The Parties agree that any action brought to enforce the Order, or any other dispute or claim arising under the Order between the Parties, shall be brought in San Diego Superior Court.