

## ATTACHMENT II

### UNIFORM GENERAL TERMS AND CONDITIONS

#### 1. Definition of Terms

As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:

- A. **"Attachment"** means any item the Solicitation requires an Offeror to submit as part of the Offer.
- B. **"Contract"** means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement of Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments; and any terms applied bylaw.
- C. **"Contract Amendment"** means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
- D. **"Contractor"** means any person who has a Contract with the School District/ public entity.
- E. **"Days"** means calendar days unless otherwise specified.
- F. **"Exhibit"** means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
- G. **"Gratuity"** means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value present or promised, unless consideration of substantially equal or greater value is received.
- H. **"Offer"** means bid, proposal or quotation.
- I. **"Offeror"** means a vendor who responds to a Solicitation.
- J. **"Procurement Officer"** means the person duly authorized by the school district/ public entity to enter into and administer Contracts and make written determinations with respect to the Contract or their designee.
- K. **"Solicitation"** means an Invitation for Bids (IFB), a Request for Proposals (RFP), or a Request for Quotations (RFQ).
- L. **"Solicitation Amendment"** means a written document that is authorized by the Procurement Officer and issued for the purpose of making changes to the Solicitation.
- M. **"Subcontract"** means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishings of any material or any service required for the performance of the Contract.

- N. **"School District/Public Entity"** means the School District or public entity that executes the Contract.

## 2. Contract Interpretation

- A. Arizona Law. The law of Arizona applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona School District Procurement Code, Arizona Revised Statutes (A.R.S.) 15-213, and its implementing rules, Arizona Administrative Code (A.AC.) Title 7, Chapter 2, Articles 10 and 11.
- B. Implied Contract Terms. Each Provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- C. Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee agent of the other party to the Contract.
- D. Severability. The provisions of this contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
- E. No Parol Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document.
- F. No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

## 3. Contract Administration and Operation

- A. Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each Subcontractor to retain all data and other records ("records") relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- B. Non-Discrimination. The Contractor shall comply with State Executive Order No. 99-4, 2000-4 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- C. Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any Subcontractor's books and records shall be subject to audit by the School District/public entity and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- D. Inspection and Testing. The Contractor agrees to permit access to its facilities, Subcontractor facilities and the Contractor's processes for producing the

materials, at reasonable time for inspection of the materials and services covered under this Contract. The School District/public entity shall also have the right to test at its own cost the materials to be supplies under this Contract. Neither inspection at the Contractor's facilities nor testing shall constitute final acceptance of the materials. If the School District/public entity determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the School District/public entity for testing and inspection.

- E. Notices. Notices to the Contractor required by this Contract shall be made by the School District/public entity to the person indicated on the Offer and Acceptance Form submitted by the Contractor unless otherwise stated in the Contract. Notices to the School District/public entity required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notices shall be given by written notice and an Amendment to the Contract shall not be necessary.
- F. Advertising and Promotion of Contract. The Contractor shall not advertise or publish information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- G. Property of the School District/Public Entity. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the School District/public entity. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the School District/public entity.

#### 4. Costs and Payments

- A. Payments. Payments shall comply with the requirements of A.R.S. Titles 35-342 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the School District/public entity within thirty (30) days. The Purchase Order number must be referenced on the invoice.
- B. Applicable Taxes
  - 1. Payment of Taxes by the School District/Public Entity. The School District/public entity will pay only the rate and/or amount of taxes identified in the Offer and in any resulting Contract.
  - 2. State and Local Transaction Privilege Taxes. The School District/public entity is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect taxes from the buyer does not relieve the seller from its obligation to remit taxes.
  - 3. Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state, and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all Subcontractors to hold the School District/public entity harmless from any responsibility for taxes,

damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

4. IRS W-9. In order to receive payment under any resulting Contract, Contractor shall have a current I.R.S. W-9 Form on file with the School District/public entity.
- C. Availability of Funds for the Next Fiscal Year. Funds may not presently be available for performance under this Contract beyond the current fiscal year. No legal liability on the part of the School District/public entity for any payment may arise under this Contract beyond the current fiscal year until funds are made available for performance of the Contract. The School District/public entity will make reasonable efforts to secure such funds.

## 5. Contract Changes

- A. Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract signed by the Procurement Officer. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by an unauthorized employee or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments, shall be void and without effect, and the Contractor shall not be entitled to any claim and this Contract based on those changes.
- B. Subcontracts. The Contractor shall not enter into any Subcontract under this Contract without the advance written approval of the Procurement Officer. The Subcontract shall incorporate by reference the terms and conditions of this Contract.
- C. Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The School District/public entity shall not unreasonably withhold approval.

## 6. Risk and Liability

- A. Risk of Loss. The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.
- B. General Indemnification. To the extent permitted by A.R.S. § 41-621 and § 35-154, the School District/public entity shall be indemnified and held harmless by the Contractor for its vicarious liability as result of entering into this Contract. Each party to this Contract is responsible for its own negligence.
- C. Indemnification - Patent and Copyright. To the extent permitted by A.R.S. § 41-621 and § 35-154, the Contractor shall indemnify and hold harmless the School

District/public entity against any liability, including costs and expenses, for infringement of any patent, trademark, or copyright arising out of Contract performance or use by the School District/public entity of materials furnished or work performed under this Contract. The School District/public entity shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph.

D. Force Majeure.

1. Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injections-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.
2. Force Majeure shall not include the following occurrences:
  - a. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market; or
  - b. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or
  - c. Inability of either the Contractor or any Subcontractor to acquire or maintain any required insurance, bonds, licenses, or permits.
3. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt requested, and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.
4. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and that such delay or failure is caused by force majeure.

E. Third Party Antitrust Violations. The Contractor assigns to the School District/public entity any claim for overcharges resulting from antitrust violation the extent that those violations concern materials or services supplied by third parties to the Contractor toward fulfillment of this Contract.

## 7. Warranties

- A. Liens. The Contractor warrants that the materials supplied under this Contract are free of liens.
- B. Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that for two years after acceptance by the School District/public entity of the materials or services, they shall be:
  - 1. A quality to pass without objection in the trade under the Contract description;
  - 2. Fit for the intended purposes for which the materials or services are used;
  - 3. Within the variations permitted by the Contract and are of even kind, quality, and quality within each unit and among all units;
  - 4. Adequately contained, packaged and marked as the Contract may require; and conform to the written promises or affirmations of fact made by the Contractor.
- C. Fitness. The Contractor warrants that any material or service supplied to the School District/public entity shall fully conform to all requirements of the Solicitation and all representations of the Contractor and shall be fit for all purposes and uses required by the Contract.
- D. Inspection/Testing. The warranties set forth in subparagraphs A through C of this paragraph are not affected by inspection/testing of or payment for the materials or services by the School District/public entity.
- E. Exclusions. Except as otherwise set forth in this Contract, there are no express or implied warranties or merchant ability fitness.
- F. Compliance with Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable federal, state and local laws, and the Contract shall maintain all applicable licenses and permits.
- G. Survival of Rights and Obligations after Contract Expiration or Termination.
  - 1. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the School District/public entity is not subject to or barred by any limitations of actions prescribed in A.R.S. Title 12, Chapter 5.
  - 2. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, an purchase orders received prior to but not fully performed and satisfied at the expiration or

termination of this Contract.

#### **8. School District/Public Entity's Contractual Remedies**

- A. Right to Assurance. If the School District/public entity in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing the Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent or ability to perform. Failure by the Contractor to provide written assurance within the number of days specified in the demand may, at the School District/public entity's option, be the basis for terminating the Contract under the Uniform General Terms and Conditions.
  
- B. Stop Work Order.
  - 1. The School District/public entity may, at any time, by written order to the Contractor, require the Contractor to stop an or any part, of the work called for by this Contract for a period of up to ninety (90) days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
  
  - 2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
  
- C. Non-exclusive Remedies. The rights and the remedies of the School District/public entity under this Contract are not exclusive.
  
- D. Nonconforming Tender. Materials supplied under this Contract shall fully comply with the Contract. The delivery of materials or a portion of the materials in an installment that do not fully comply constitutes a breach of Contract. On delivery of nonconforming materials, the School District/public entity may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its remedies under the Uniform Commercial Code or pursue any other right or remedy available to it.
  
- E. Right to Offset. The School District/public entity shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the School District/public entity or damages assessed by the School District/public entity concerning the Contractor's nonconforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform General Terms and Conditions.

## 9. Contract Termination

- A. Cancellation for Conflict of Interest. Per A.R.S. § 38-511 the School District/public entity may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract on behalf of the School District/public entity is, or becomes at any time while the Contract or an extension of the Contract is in effect, an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time.
- B. Gratuities. The School District/public entity may, by written notice, terminate this Contract, in whole or in part, if the School District/public entity determines that employment or gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the School District/public entity for the purpose of influencing the outcome of the procurement or securing the Contract, an Amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about Contract performance. The School District/public entity, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three (3) times the value of the gratuity offered by the Contractor.
- C. Suspension or Debarment. The School District/public entity may, by written notice to the Contractor, immediately terminate this Contract if the School District/public entity determines that the Contractor has been disbarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a Subcontractor of any public procurement unit or other governmental body.
- D. Termination for Convenience. The School District/public entity reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the School District/public entity without penalty recourse. Upon receipt of the written notice, the Contractor shall immediately stop all work, as directed in the notice, notify all Subcontractors of the effective date of the termination and minimize all further costs to the School District/public entity. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the School District/public entity. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed, and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R7-2-1 125 shall apply.
- E. Termination for Default.
1. In addition to the rights reserved in the Uniform Terms and Conditions, the School District/public entity reserves the right to terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.



2. Upon termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the School District/public entity.
  3. The School District/public entity may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials and services to replace those under this Contract. The Contractor shall be liable to the School District/public entity for any excess costs incurred by the School District/public entity re-procuring the materials or services.
- F. Continuation of Performance through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

#### **10. Contract Claims**

All Contract claims and controversies under this Contract shall be resolved according to A.R.S. Title 15-213 and AAC R7-2-11 55 through R7-2-118 I, and rules adopted thereunder.

#### **11. Contractor's Employment Eligibility**

By entering the contract, Contractor warrants compliance with ARS subsection 41-4401, ARS subsection 23-214, the Federal Immigration and Nationality Act (FINA), and all other federal immigration laws and regulations. The District may request verification of compliance from any Contractor or subcontractor performing work under this Contract. The District reserves the right to confirm compliance in accordance with applicable laws. Should the District suspect or find that the Contractor or any of its subcontractors are not in compliance, the District may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Contract for default, and suspension and/or debarment of the Contractor. All costs necessary to verify compliance are the responsibility of the Contractor.

#### **12. Fingerprint & Background Checks**

Each individual contracted to provide services on a regular basis at an individual school shall obtain a valid fingerprint clearance card pursuant to title 41, chapter 12, and article 3.1 in accordance with ARS 15-512. An exception to this requirement may be made as authorized in Governing Board policy for those persons who, as part of the normal job duties of the persons, are not likely to have independent access to or unsupervised contact with pupils as identified by the District. Contractor, subcontractors, vendors and their employees shall not provide services on school district properties until authorized by the District.

#### **13. Registered Sex Offender Restriction**

Pursuant to any order resulting from this solicitation, the named vendor agrees by acceptance of that order that no employee of the vendor or a subcontractor of the vendor, who has been adjudicated to be a registered sex offender, will perform work on District premises or equipment at any time when District students are, or are reasonably expected to be, present. The vendor further agrees by acceptance of that order that a violation of this condition shall be considered a material breach and may result in a cancellation of the order at the District's discretion development or modification of software for the State

shall be performed within the borders of the United States. Unless specifically stated otherwise in the specifications, this definition does not apply to indirect or "overhead" services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

#### **14. Israeli Boycott Provisions**

Per A.R.S. § 35-393, the School District/public entity is prohibited from purchasing from a company that requires a boycott of Israel.

#### **15. Clarifications**

Clarification means communication with Offeror for the sole purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the Offer. It is achieved by explanation or substantiation, either in a written response to an inquiry from the District or as initiated by Offeror. Clarification does not give Offeror an opportunity to revise or modify its Offer, except as to the extent that correction of apparent clerical mistakes results in a revision.

#### **16. Confidential/Proprietary Information**

Confidential information request: If Offeror believes that its Offer contains trade secrets or proprietary information that should be withheld from public inspection as required by A.R.S. § 39-121, a statement advising the School District/public entity of this fact shall accompany the Offer, and the information shall be so identified wherever it appears. The School District/public entity shall review the statement and shall determine in writing whether the information shall be withheld. If the School District/public entity determines to disclose the information, the School District/public entity shall inform Offeror in writing of such determination.

Contract terms and conditions, pricing and information generally available to the public are not considered confidential information under this section.

Public record: All Offers submitted in response to this solicitation shall become the property of the School District/public entity. They will become a matter of public record available for review, subsequent to award notification, under the supervision of the Procurement Officer at 2618 West El Paseo, Oracle, AZ 85623 by appointment.