NORTH ORANGE COUNTY
COMMUNITY COLLEGE DISTRICT
CYPRESS COLLEGE | FULLERTON COLLEGE
NORTH ORANGE CONTINUING EDUCATION

GENERAL CONTRACT TERMS AND CONDITIONS

1. INDEPENDENT CONTRACTOR: While engaged in carrying out and complying with the terms of this agreement, the Contractor is an independent contractor, and not an officer, employee, partner, joint venturer, or agent of the District.

2. INVOICES AND PAYMENTS: Payment shall be made by the District's Accounts Payable Office upon provision of the goods and/or services described herein, and upon submittal of invoice(s) approved by the College President or appropriate designee; or appropriate District Office administrator, or designee. Payment by the District shall constitute full and final payment, unless the Contractor files a claim for error or omission within ninety (90) days of the date of invoice.

3. WARRANTY: Contractor warrants that all goods or services furnished under this agreement shall be in accordance with District specifications. All work and services shall be done and completed in a thorough, workmanlike manner. All goods shall be new, merchantable, fit for their intended purposes, free from all defects in materials and workmanship, free from defects in design, in good working order and shall perform in accordance with the manufacturer's standard specifications. All goods furnished and all work performed shall be subject to the District's inspection. Goods and services which are not in accordance and conformity with the above specifications, shall be rejected and, in the case of goods, promptly removed from the District premises at the Contractor's expense. When a sample if taken from a shipment and sent to a laboratory for testing and the test shows that the sample does not comply with the specifications, the cost of such test shall be paid by the Contractor. On all questions concerning the acceptability of the goods and services, the decision of the District shall be final and binding upon the parties. The District shall not unreasonably exercise its judgment.

4. DEFAULT BY CONTRACTOR: The District shall hold the Contractor liable and responsible for all damages which may be sustained because of failure or neglect of the Contractor to comply with any term or condition herein, it being specifically provided that time shall be of the essence in the delivery of the purchased goods or services. If the Contractor fails or neglects to furnish or deliver any of the goods or services at the prices named and at the times and places herein stated or otherwise fails or neglects to comply with the terms of the purchase, the District may cancel the purchase in its entirety, or cancel or rescind any or all items affected by such default, and may, whether or not the purchase is canceled in whole or in part,

purchase the goods or services elsewhere without notice to the Contractor. The District shall retain all other rights and remedies under law.

5. TERMINATION OF AGREEMENT: The District may terminate this agreement upon thirty (30) calendar days' prior written notice to the Contractor. In the event of such termination, each party shall be liable for all obligations in favor of the other party accruing prior to the date of such termination, but shall be released from all obligations or performance that would otherwise accrue subsequent to the date of such termination. In addition, this agreement may be subject to termination as provided in Section 18.

6. EXPENSES. The Contractor shall assume all expenses incurred in connection with performance except as otherwise provided in this agreement.

7. INDEMNIFICATION/LIMITATION OF LIABILITY: The Contractor shall indemnify, hold harmless, and defend the District, its Board of Trustees, officers, employees, agents, and representatives from and against all claims, liability, loss, cost, and obligations on account of, or arising from, the acts or omissions of the Contractor, or of persons acting on behalf of the Contractor, however caused, in the performance of the services specified herein. Contractor hereby waives and releases the District from any claims Contractor may have at any time arising out of or relating in any way to this agreement, whether or not caused by the negligence or breach of the District, its employees, or agents, except to the extent caused by the Districts willful misconduct. Notwithstanding the foregoing, the parties agree that in no event shall the District be liable for any loss of Contractor's business, revenues or profits, or special, consequential, incidental, indirect or punitive damages of any nature, even if the District has been advised in advance of the possibility of such damages. This shall constitute the District's sole liability to Contractor and Contractor's exclusive remedies against the District.

8. AMENDMENT OF AGREEMENT: This agreement is the entire agreement between the parties as to its subject matter and supersedes all prior or contemporaneous understandings, negotiations, or agreements between the parties, whether written or oral, with respect thereto. All modifications and amendments to this agreement shall be in writing and signed by the authorized representatives of the District and the Contractor.

9. ASSIGNMENT OF AGREEMENT: This agreement may not be assigned or otherwise transferred, in whole or in part, by either the District or the Contractor without prior written consent of the other.

10. GOVERNING LAW: This agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the parties hereunder, and any action arising from or relating to this agreement, shall be construed and enforced in accordance with, and governed by, the laws of the State of California or United States law, without giving effect to conflict of laws principles. Any action or proceeding arising out of or relating to this agreement shall be brought in the county of Orange, State of California, and each party hereto irrevocably consents to such jurisdiction and venue, and waives any claim of inconvenient forum.

11. NON-DISCRIMINATION: The Contractor hereby certifies that in performing work or providing services for the District, there shall be no discrimination in its hiring or employment practices because of age, sex, race, religious creed, color, ancestry, national origin, physical disability, mental disability, medical condition, marital status, or sexual orientation, except as provided for in section 12940 of the Government Code. The Contractor shall comply with applicable federal and California anti- discrimination laws, including but not limited to, the California Fair Employment and Housing Act, beginning with Section 12900 of the California Government Code. The Contractor agrees to require compliance with this nondiscrimination policy by all subcontractors employed in connection with this agreement.

12. EQUAL OPPORTUNITY EMPLOYER: Contractor, in the execution of this agreement, certifies that it is an equal employment opportunity employer.

13. COMPLIANCE WITH LAW/PERMITS AND LICENSES: The Contractor and all of its employees or agents shall comply with all applicable laws, ordinances, rules and regulations, including but not limited to all applicable laws and regulations governing the bidding process, and shall secure and maintain in force such licenses and permits as are required by law, in connection with furnishing of goods, services, or installation hereunder.

14. ATTORNEYS' FEES AND COSTS: If either party shall bring any action or proceeding against the other party arising from or relating to this agreement, each party shall bear its own attorneys' fees and costs, regardless of which party prevails.

15. TAXES: California Sales Tax and Use Tax, where applicable, shall be separately identified on each invoice to the District. The federal excise tax, and state and local property taxes, are not applicable, as college districts are exempt therefrom.

16. NON-WAIVER: A waiver of a breach or default by the District under this agreement shall not be deemed a waiver of any subsequent breach or default. Failure of the District to enforce compliance with any term or condition of this agreement shall not constitute a waiver of such term or condition.

17. SEVERABILITY: The Contractor and the District agree that if any part, term, or provision of this agreement is found to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect other parts, terms, or provisions of this agreement, which shall be given effect without the portion held invalid, illegal, or unenforceable, and to that extent the parts, terms, and provisions of this agreement are severable.

18. TERMINATION FOR NON-APPROPRIATION OF FUNDS: If the term of this agreement extends into fiscal years subsequent to that in which it is approved, such continuation of the agreement is contingent on the appropriation and availability of funds for such purpose, as determined in good faith by the District. If funds to effect such continued purpose are not appropriated or available as determined in good faith by the District, this agreement shall automatically terminate and the District shall be relieved of any further obligation.

19. DEBARMENT AND SUSPENSION: In accordance with Executive Orders 12549 & 12689 (Debarment and Suspension), Seller certified by entering into this transaction, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

20. SOFTWARE, LICENSING AGREEMENTS, OR EQUIPMENT WITH SOFTWARE PRE-LOADED: For purchase orders dealing with software applications, operating systems, web-based intranet and internet information and applications, telecommunications products, video or multimedia products, self-contained closed products such as copiers, and desktop and portable computers the vendor hereby warrants that the products or services to be provided under this PO comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended, and its implementing regulations. Vendor agrees to respond promptly to and resolve any complaints regarding accessibility of its products or services that are brought to its attention. Vendor further agrees to indemnify and hold harmless the District from and against 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 this agreement.

21. PREVAILING WAGES: For public works projects greater than $1000, the Supplier shall pay the general prevailing rate of per diem wages to all workers employed on contracted project as established by the California Department of Industrial Relations (Labor Code 1771).

22. INSURANCE: Contractor shall, at all times, maintain in full force and effect the following insurance: Worker's Compensation, Comprehensive General Liability, Auto Liability, Professional Liability if licensed professional, and Cyber Liability and Tech E&O for technology services and/or products if licensed professional. Policy limits for each shall be at least $1,000,000. The District shall be named as an additional insured on Contractors' policies. The contractor shall provide a certificate of insurance. The certificate shall state that the District will be given 30 days notice of any material change or cancellation in coverage. The District may waive this requirement for good cause demonstrated. Such waiver must be set forth in writing, including the "good cause", and signed by an authorized District administrator.

23. HEALTH & SAFETY: All materials, equipment, and supplies must meet or exceed all Federal, State, and local requirements regarding Health and Safety. All shipments of chemicals, hazardous and toxic material must include Safety Data Sheets (SDS) pursuant to OSHA's Hazard Communication Standard (29 CFR 1910.1200).

24. DIR REGISTRATION: As of March 1, 2015, any District vendors engaging in a public works project must meet the requirements of Labor Code section 1725.5 and register with the Department of Industrial Relations. As of April 1, 2015, vendors will be prohibited from proceeding with public works projects unless registered with DIR.

25. SITE EXAMINATION: Contractor must examine the site and certify all measurements, specifications and conditions affecting the work to be performed at the site. By submitting their quote a contractor warrants that they have made such site examinations as they deem necessary as to the condition of the site, its accessibility for materials, workmen and utilities and ability to protect existing surface and subsurface improvements. No claim for allowance of time or money will be allowed as to such matters or for any other undiscovered conditions of the site.

26. SUBSTITUTIONS: No substitutions of materials or service from those specified in the Scope of Work shall be made without the prior written approval of the District.

27. DAMAGE OF DISTRICT PROPERTY: In the event of damage caused by any operation associated with the activities of the Contractor, Contractor agrees immediately to make all repairs and replacements necessary to the approval of the District, and at no additional cost