



PURCHASE ORDER GENERAL TERMS AND CONDITIONS

1. **DEFINITIONS.** MiraCosta Community College District shall be hereinafter referred to as “District”, and the entity identified on the Purchase Order issued by the District (“Order”), shall hereinafter be referred to as “Supplier”. District and Supplier are individually referred to as “Party” and collectively referred to as “Parties”. All work, materials, labor, and services necessary to complete and fulfill the requirements of the Order shall be referred to as the “Services.”
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 govern and prevail. If these General Terms and Conditions are included as part of a Basic Services Agreement, the Parties agree that in case of any conflict, inconsistency or ambiguity between any Basic Services Agreement and these General Terms and Conditions, the Basic Services Agreement shall govern and 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 may 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.**
 - a. **Termination for Cause.** The District may give ten (10) days’ written notice to the Supplier of the District’s intent to terminate the Supplier’s Services under the Order for failure to satisfactorily perform or provide prompt, efficient or thorough Services or the Supplier’s failure to complete its Services or otherwise comply with the terms of the Order. In the event of termination due to a breach of the Order by the Supplier, the compensation due the Supplier upon termination shall be reduced by the amount of damages sustained by District due to such breach. Supplier will refund to the District a pro rata share of any prepaid costs or fees within 20 days of the effective date of termination. In the event a termination for cause by the District is determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience in accordance with Section 4.b below, and Supplier shall have no greater rights than it would have had if a termination for convenience had been effectuated by the District in the first instance. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by the Supplier.
 - b. **Termination for Convenience.** The Order may be terminated without cause by District upon twenty (20) days’ written notice to the Supplier. In the event of a termination without cause, the District shall pay the Supplier for all approved undisputed Services performed and all approved undisputed expenses incurred under the Order supported by documentary evidence, including payroll records, time sheets, and expense reports up until the date of notice of termination plus any sums due the Supplier for approved undisputed extra Services. Supplier will refund to the District a pro rata share of any prepaid costs or fees within 20 days of the effective date of termination.
 - c. Upon or prior to the effective date of termination, Supplier shall provide the District with all documents, including final or draft documents, produced or collected by Supplier related to the Services. The Order shall immediately terminate if Supplier or District’s funding, licenses, accreditations, or certifications required for the Program are terminated, revoked, reduced, or any type of disciplinary action is taken against Supplier or District by any accreditation or regulatory agency



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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 Order that the District issued to the Supplier 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 District 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 approved and undisputed invoices on a Net 30 days basis unless otherwise specified on the Order and approved in writing by the District. 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.
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. **TARIFF-RELATED COST ADJUSTMENTS.** If after execution and approval of the Order by the District, federal government executes and implements a tariff that results in an overall increase in the Supplier's cost of performance under the Order, the Supplier may submit a written request for a temporary price adjustment for the actual cost increase for the District's approval. The request must include specific identification of the applicable tariffs, verifiable documentation of the alleged actual cost impact directly attributable to resulting from those such tariffs, and itemized calculations demonstrating the alleged increase. The District, at its sole discretion, may approve such an temporary price adjustment only if: (1) the aforementioned required documentation supports the requested temporary price adjustment; (2) the increase exceeds twenty percent (20%) of the affected contract item's value; (3) the Supplier incurs this cost increase after the Order amount is established by the Supplier and approved by the District; (4) the cost increase is not the result of the failure of the Supplier to meet an obligation under the Order including, but not limited to, timely ordering and



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procurement of goods and materials; (5) the Supplier provides documents to show it made reasonable efforts to obtain the materials subject to tariffs from other sources including domestic sources or other sources not subject to tariffs, and that there are no equivalent materials that are not subject to tariffs; and (6) the cost increase could not have been avoided through placing an order for materials and/or commodities at an earlier point in time after award of the Order to the Supplier. Any approved temporary price adjustment shall be subject to quarterly review by the District and must be reversed retroactively if the tariffs are later reduced, rescinded, or eliminated. The Supplier shall notify the District within seven (7) business days of any such change and adjust pricing accordingly. The District reserves the right to audit all related documentation. If the District's quarterly review and/or audit discloses overcharges by the Supplier, the amount of the overcharges and actual cost of the District's audit shall be reimbursed to the District by the Supplier either directly or via a deduction of the Order amount. This provision does not permit recovery of general cost escalations unrelated to tariffs and requires the Supplier to exercise commercially reasonable efforts to mitigate such impacts.

12. **SHIPPING.** Unless otherwise specified in the Order, the Supplier shall be responsible for delivery and shall pay all related shipping charges, including prepaid freight charges. 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 adequately supported by either the original or a copy of the prepaid bill of lading. The Order number shall be 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.
13. **EXPENSES AND EQUIPMENT.** Supplier is solely and entirely responsible for all costs and expenses incident to the performance of the Services, including any 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.
14. **TRAVEL EXPENSES.** All travel, lodging, and meal per diem expenses in connection with the Order for which the Supplier may claim reimbursement under the terms of the Order must be approved in writing by the District prior to incurring any expenses, and will be reviewed against the District's Employee Travel Policy. Current United States GSA Domestic Per Diem Rates (the "Rates") for meals are available at: <https://www.gsa.gov/travel/>. Current IRS mileage reimbursements rates are available at: <https://www.irs.gov/tax-professionals/standard-mileage-rates>. No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy and hotel rooms other than standard will not be reimbursed. Lodging charges are for reasonable, single occupancy, standard room rates. Lodging charges in excess of standard room rates will not be reimbursed.
15. **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.



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16. **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.
17. **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.
18. **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 Indemnitees (as defined in Section 21 below) 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.
19. **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 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 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 health and safety protocols while at any of the District's property locations.
20. **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.

21. **INDEMNIFICATION AND HOLD HARMLESS.** To the furthest extent provided by law, Supplier shall indemnify, defend, and hold the District, its Board of Trustees, officers, agents, employees, and volunteers (collectively, "Indemnitees") harmless against any and all liability arising from:
- a. Workers' Compensation and Employers Liability. Any and all claims under Workers' Compensation acts and other employee benefit acts with respect to Supplier's employees or Supplier's subconsultant's employees arising out of Supplier's Services or work under the Order; and
 - b. General Liability. Liability for 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 property or persons, including personal injury, damages or injuries/illnesses, including wrongful death, contractual liability, infringement of a third party's intellectual property rights, or damage to property (collectively, "Claim"), arising from, founded upon, or in connection with the Supplier's Services or work under the Order, except for liability resulting from the sole negligence, willful misconduct, or unlawful acts of Indemnitees; and
 - c. Professional Liability. Any Claim caused by any act, neglect, default or omission of Supplier, or any person, firm or corporation employed by Supplier, either directly or by independent contract, arising from, founded upon, or in connection with the Supplier's Services or work under the Order, including injury or damage either on or off District property; but not for any Claims caused by the sole negligence, willful misconduct, or unlawful acts of Indemnitees.
 - d. Duty to Defend and Indemnify. Supplier, at its own expense, cost, and risk, shall defend and indemnify any and all Claims, actions, suits, or other proceedings that may be brought or instituted against the Indemnitees arising from, founded upon, or in connection with any Claims and shall pay or satisfy any judgment that may be rendered against the Indemnitees in any action, suit or other proceedings as a result thereof.
 - e. The provisions of this Section 21 shall survive the termination or expiration of the Order.
22. **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 any 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.
23. **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 otherwise required by law. Supplier will immediately notify the District in writing if it becomes aware of any possible unauthorized disclosure or use of the Confidential Information. Supplier shall fully indemnify, defend, and hold all Indemnitees harmless from any Claims arising from or related to the Supplier's failure to comply with the requirements set forth in this Section. Supplier agrees to promptly return all copies of Confidential Information to the District upon expiration or termination of the Order. 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 the Order, 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 the Order.
24. **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.
25. **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.



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26. **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 Order 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 Indemnitees, 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 Order for cause. 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.
27. **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.
28. **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.
29. **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



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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.

30. **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.
31. **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.
32. **FORCE MAJEURE.** Supplier may be excused from performance during the time and to the extent it is prevented from obtaining, delivering, or performing the Services or any other obligations set forth in the Order due to an act of God, fire, strike, loss, shortage of transportation facilities, lock-out, commandeering of materials, products, plants or facilities by the government, epidemics or pandemic, or other reasonably unforeseen events that are outside of the Supplier's reasonable control as determined by the District, when satisfactory evidence thereof is presented by the Supplier to the District, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of the Supplier. For avoidance of doubt, the District's obligation to pay Supplier's invoices or other fees is excused to the extent Supplier is not performing the Services during the District's determination of a force majeure event. The Supplier shall not be entitled to any additional costs or fees during a force majeure event, but the Supplier shall be granted a non-compensable extension of time.
33. **DISPUTES.** Except in the event of the District's failure to make approved and undisputed payments to Supplier in accordance with the Order, 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.
34. **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



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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.

35. **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.
36. **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.
37. **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.
38. **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.