

CANYONS SCHOOL DISTRICT STANDARD TERMS & CONDITIONS FOR PROFESSIONAL SERVICES

1. **DEFINITIONS:** The following definitions apply: (a) “CSD” – Canyons School District; (b) “PO” – Purchase Order/Contract; (c) “Contractor” – Contractor, Independent Contractor, Consultant, Provider – any individual providing Professional Services; the legal person authorized to bind the company contracting with the Buyer and universally used throughout this document; (d) “Buyer” – CSD authorized Purchasing Agent.
2. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in 63G-6a-101, et seq, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33) or CSD Purchasing Policy in accordance with the laws of the State of Utah, and related statutes which permit CSD to purchase certain specified services, and other approved purchases for CSD.
3. **CONTRACT JURISDICTION, CHOICE OF LAW AND VENUE:** The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
4. **LAWS AND REGULATIONS:** The Contractor and any and all supplies, services, equipment, and construction furnished under this contract will comply fully with all applicable Federal and State laws and regulations.
5. **BACKGROUND CHECK:** All persons who will be placed in direct contact with students may be subject to the requirements set forth in Utah Code 53A-3-410. Where applicable, access to CSD property may be granted to Contractor’s employees only after appropriately cleared by the Board of Education. All costs associated for clearance of Contractor’s personnel shall be included in the Contractor’s pricing.
6. **ACCEPTANCE:** PO acceptance constitutes the entire agreement. This order constitutes Buyer’s offer and may be accepted by Contractor only in accordance with the terms hereof. No agreement or understanding varying or extending the terms or conditions of the PO, including but not limited to Contractor provided terms and conditions included within a quote or proposal, will be binding unless in writing and agreed to and signed by an authorized CSD Buyer. This PO may be accepted by Contractor by written acknowledgment, commencement of work, shipment of goods or furnishing of services. No addition, oral agreement or any instructions, terms and conditions that may be contained in any acknowledgment of this PO shall be binding upon CSD, if in conflict with CSD terms and conditions, unless authorized in writing by the CSD Buyer.
7. **CHANGES IN SCOPE:** Any changes in the scope of the services to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by duly authorized representatives of both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of services.
8. **DOCUMENT OWNERSHIP:** Contractor agrees that any work/services and all deliverables prepared for CSD, to the extent to which it is eligible under copyright law in any county shall be deemed a work made for hire, such that all right, title and interest in the work and deliverables reside with the CSD. To the extent any work or deliverable is deemed not to be, for any reason whatsoever, work made for hire, Contractor agrees to assign and hereby assigns all right, title, and interest, including but not limited to, copyright, patent, trademark, and trade secret, to such work and deliverables, and all extensions and renewals thereof, to the CSD. Contractor further agrees to provide all assistance reasonably requested by State in the establishment, preservation and enforcement of its rights in such work and deliverables, or subsequent amendments or modifications to such work and deliverables, without any additional compensation to Contractor. Contractor agrees to waive, and hereby, to the extent permissible, waives, all rights relating to such work and deliverables, or subsequent amendments or modifications to such work and deliverables, including without limitation any and all rights of identification of authorship and any and all rights of approval, restriction or limitation on use.
9. **TIME:** The Contractor shall complete the scope of services work in a manner to achieve any milestones identified in the procurement documents related to this Contract and the attachments to this Contract. The full scope of services work shall be completed by any applicable deadline stated in the solicitation.
10. **TIME IS OF THE ESSENCE:** For all work and services under this Contract, time is of the essence and Contractor shall be liable for all damages to the CSD and anyone for whom the CSD may be liable, as a result of the failure to timely complete the scope of work required under this Contract.
11. **SHIPPING:** Buyer reserves the right to route all shipments. Delays in shipment shall be reported immediately by Contractor to Buyer. Every package, bill of lading, shipping memorandum and invoice must be marked with CSD’s PO number. All shipments will include an itemized packing slip of each package’s content.

12. **DELIVERY/TITLE:** Unless otherwise agreed, delivery shall be F.O.B. Destination and title shall pass to CSD upon acceptance at the final delivery point. Risk of damages or loss following shipment and prior to acceptance by CSD shall be the responsibility of Contractor. Deliveries will be made even in the event of a strike at Contractor's location, unless otherwise authorized by CSD Buyer. If the Contractor fails to deliver in accordance with the schedule, Buyer will be entitled to either a price reduction for late deliveries or the right to terminate the PO for default in performance of this PO, Contractor will immediately notify the Buyer in writing of the reasons for the delay and what action is being taken to minimize the delay.
13. **INSPECTION:** All work and/or supplies on this PO are subject to inspection and testing by an authorized CSD employee at times and places determined by CSD. If CSD finds the goods to be incomplete, non-conforming or damaged, CSD may reject the supplies and require Contractor to correct them with no additional charges. If Contractor refuses to correct such goods, within a reasonable time, the Buyer may cancel the order in whole or in part.
14. **STANDARD OF CARE:** The services of Contractor and its subcontractors and subconsultants at any tier, if any, shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude and complexity of the services that are the subject of this Contract. The Contractor shall be liable to the CSD for claims, liabilities, additional burdens, penalties, damages or third party claims (i.e. another Contractor's claim against the CSD), to the extent caused by wrongful acts, errors or omissions that do not meet this standard of care.
15. **STATE REVIEWS, LIMITATIONS:** The right of the CSD to perform plan checks, plan reviews, other reviews and/or comment upon the services of the Contractor, as well as any approval by the CSD, shall not be construed as relieving the Contractor from its professional and legal responsibility for services required under this Contract. No review by the CSD or any entity/user, approval or acceptance, or payment for any of the services required under this Contract shall be construed to operate as a waiver by the CSD of any right under this Contract or of any cause of action arising out of the performance or nonperformance of this Contract, and the Contractor shall be and remain liable to the CSD in accordance with applicable law for all damages to the CSD caused by the wrongful acts, errors and/or omissions of the Contractor or its subcontractors or subconsultants at any tier, if any.
16. **HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA:** Contractor will provide one set of the appropriate Material Safety Data Sheet and container label upon delivery of hazardous material to CSD.
17. **INDEMNITY CLAUSE:** The Contractor agrees to release, protect, indemnify and hold CSD's officers directors, representatives and its employees harmless from and against any damage, cost or liability, including reasonable attorney's fees for any and all injuries to persons, damage to property or claims for money; for damages arising from any and all supplies, services, equipment, and construction furnished under this contract, as well as acts, errors or omissions of the Contractor, Contractor's employees, subcontractors, representatives or volunteers.
18. **INSURANCE FOR WORK PERFORMED ON CSD PROPERTIES:**
- a. If Contractor, its agents, and/or employees are required to perform this PO or any part of this PO on CSD premises, Contractor shall provide insurance coverage as follows:
 - 1) Worker's Compensation Insurance or qualification as a self-insurer to satisfy the laws of the State of Utah.
 - 2) Employee's liability insurance for Bodily Injury per accident limits not less than \$1,000,000 per occurrence.
 - 3) Comprehensive General Liability \$2,000,000 combined single limit any one occurrence and shall include coverage for bodily injury and property damage.
 - 4) Comprehensive Automobile Liability Insurance \$1,000,000 (owned and hired vehicles) combined single limit per occurrence for personal injury and property damage.
 - 5) Umbrella or Excess Liability Coverage \$5,000,000.The above policies shall include CSD as additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations or performance on this contract. Contractor shall provide thirty (30) days advance written notice of changes in or cancellation of any such insurance. Contractor will be required to furnish a Certificate of Insurance prior to the commencement of work. Failure to maintain insurance during the performance of this PO shall cause the Contractor to be in default under this PO.

- b. The following are minimum coverages that may be supplemented by additional requirements contained in the solicitation for this Contract or provided in an Attachment to this Contract:
 - 1) Professional liability insurance in the amount as described in the solicitation for this Contract, if applicable.
 - 2) Any other insurance described in the solicitation for this Contract, if applicable.
 - c. Any type of insurance or any increase of limits of liability not described in this Contract which the Contractor requires for its own protection or on account of any statute, rule, or regulation shall be its own responsibility, and shall be provided at Contractor's own expense.
 - d. The carrying of insurance required by this Contract shall not be interpreted as relieving the Contractor of any other responsibility or liability under this Contract or any applicable law, statute, rule, regulation, or order.
19. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of CSD, unless disclosure has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended. Further, Contractor certifies that it has not offered or given any gift or compensation prohibited by 67-16-5, U.C.A., 1953, as amended, or any other state or federal law, to any officer or employee of CSD to secure favorable treatment with respect to being awarded this PO.
20. **CONTRACTOR, AN INDEPENDENT CONTRACTOR:** The Contractor, Contractor's employees and agents shall be independent contractors, and as such, shall have no authorization, express or implied, to bind CSD to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for CSD, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the Contractor by CSD. The Contractor shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from CSD for these contract services. Employees of Contractor shall be subject to the administration, supervision and control of Contractor. Contractor, in its sole discretion, shall have the power and authority to hire, discharge, and discipline the employees of Contractor. Persons employed by CSD and acting under the direction of CSD shall not be deemed to be employees or agents of the Contractor.
21. **SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.
22. **DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by CSD. The Contractor must notify CSD Director of Purchasing within 30 days if debarred by any governmental entity during the Contract period.
23. **TERMINATION:**
- a. Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon sixty (60) days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.
 - b. In the event of such termination, the Contractor shall be compensated for services properly performed under this Contract up to the effective date of the notice of termination. The Contractor agrees that in the event of such termination for cause or without cause, Contractor's sole remedy and monetary recovery from the CSD is limited to full payment for all work properly performed as authorized under this Contract up to the date of termination as well as any reasonable monies owed as a result of the Contractor having to terminate contracts necessarily and appropriately entered into by the Contractor pursuant to this Contract. Contractor further acknowledges that in the event of such termination, all work product, which includes but is not limited to all manuals, forms, contracts, schedules, reports, and any and all documents produced by Contractor under this Contract up to the date of termination are the property of the State and shall be promptly delivered to the CSD.
24. **DEFAULT AND REMEDIES:** Any of the following will constitute cause for CSD to declare the Contractor in default of the contract: 1. Nonperformance of contractual requirements; 2. A material breach of any term of condition of the PO. CSD will issue a written notice of default providing a specified period of time for Contractor to cure. If the default remains, CSD may do one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate the PO and any related contracts or portions thereof; 3. Impose liquidated damages, if liquidated damages are listed in the contract; 4. Suspend Contractor from receiving future bid/proposal solicitations.

25. **FORCE MAJEURE:** Neither party to this contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. CSD may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract
26. **NONAPPROPRIATION OF FUNDS:** The Contractor acknowledges that CSD cannot contract for the payment of funds not yet appropriated by the Board of Education. If funding to CSD is reduced due to an order by the Board of Education, or is required by State law, or if federal funding (when applicable) is not provided, CSD may terminate this contract or proportionately reduce the services and purchase obligations and the amount due from CSD upon 30 days written notice. In the case that funds are not appropriated or are reduced, CSD will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and CSD will not be liable for any future commitments, penalties, or liquidated damages.
27. **SALES TAX EXEMPTION:** Prices will be exclusive of state sales, use and federal excise taxes. CSD's sales and use tax exemption number is 12389689002STC. The tangible personal property or services being purchased are being paid from CSD funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.
28. **WARRANTY:** The Contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to CSD under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The Contractor (Contractor) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the Contractor are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the Contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that CSD has relied on the Contractor's skill or judgment to consider when it advised CSD about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which CSD has not been warned. Remedies available to CSD include the following: The Contractor will repair or replace (at no charge to CSD) the product whose nonconformance is discovered and made known to the Contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies CSD may otherwise have under this contract.
29. **PUBLIC INFORMATION:** Contractor agrees that the contract, related sales orders, and invoices will be public documents, and may be available for distribution. Contractor gives CSD express permission to make copies of the contract, related sales orders, and invoices in accordance with the State of Utah Government Records Access and Management Act (GRAMA). Except for sections identified in writing and expressly approved by CSD Department of Purchasing, Contractor also agrees that the Contractor's response to the solicitation will be a public document, and copies may be given to the public under GRAMA laws. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.
30. **ORDERING AND INVOICING:** All orders will be shipped promptly in accordance with the delivery schedule. The Contractor will promptly submit invoices to CSD within thirty (30) days of shipment or delivery of goods/services. CSD contract number and/or the agency PO number shall be listed on all invoices, freight tickets, and correspondence relating to the contract order. The prices paid by CSD will be those prices listed in the contract. CSD has the right to adjust or return any invoice reflecting incorrect pricing.
31. **PAYMENT:** Payments are normally made within thirty (30) days following the date the order is delivered or the date a correct invoice is received, whichever is later. All payments to the Contractor will be remitted by mail unless paid by CSD Purchasing Card (major credit card).
32. **PATENTS, COPYRIGHTS, ETC.:** The Contractor will release, indemnify and hold CSD, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this contract.
33. **ASSIGNMENT/SUBCONTRACT:** Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of CSD.

34. **PROCUREMENT ETHICS:** The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to CSD is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of CSD, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (§63G-6a-2404, Utah Code Annotated, 1953, as amended).
35. **CONFLICT OF TERMS:** Contractor Terms and Conditions that apply must be in writing and attached to the contract. No other Terms and Conditions will apply to this contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be: 1. CSD Standard Terms and Conditions; 2. CSD Contract Signature Page(s); 3. CSD Additional Terms and Conditions; 4. Contractor Terms and Conditions.
36. **PRICE GUARANTEE, ADJUSTMENTS:** The contract pricing resulting from this PO/bid/proposal will be guaranteed for the period specified. Following the guarantee period, any request for price adjustment must be for an equal guarantee period, and must be made at least thirty (30) days prior to the effective date. Requests for price adjustment must include documentation supporting the request and demonstrating a logical mathematical link between the current price and the proposed price. Any adjustment or amendment to the contract will not be effective unless approved by the CSD Director of Purchasing. The District will be given the immediate benefit of any decrease in the market, or allowable discount.
37. **CONTRACTORS COMPLIANCE WITH APPLICABLE EMPLOYMENT PRACTICES AND LAWS:** CSD will not have any responsibility to ensure or enforce any employment practices or laws with respect to Contractor's employees, agents or contractors. Contractor warrants and certifies that it abides by the provisions of the Utah Anti-Discrimination Act, Title 34 Chapter 35, U.C.A., 1953 as amended, and Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, and/or the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the workplace. Contractor must include this provision in every subcontract or PO relating to purchases made by CSD to ensure that the subcontractors and suppliers are bound by this provision.
38. **STATUS VERIFICATION SYSTEM:** The Contractor verifies that they are in compliance with Utah Code Annotated, §63G-12-302 to verify the work eligibility of contractor's employees. The law makes it unlawful for a Utah employer to terminate a U.S. citizen and replace that individual with an undocumented worker hired after July 1, 2009. Utah Code Annotated, §63G-12-302 requires Contractors who perform physical services within the State to register and participate in a Status Verification System before entering into contracts with public employers. Contracts awarded through a request for proposal process require a clause mandating the prime and subcontractor to use an approved Status Verification System.
39. **DISPUTES:** In the event of any dispute relating to the PO, the Contractor agrees to make diligent and reasonable attempts to resolve disputes through negotiations.

(Revision Date: Nov 12, 2014)