

PO Terms and Conditions
Maricopa County Community College District
Purchase Order Terms and Conditions

1. **PURCHASE ORDER DEFINED:** The term "purchase order" as used in these terms and conditions means the document entitled "Purchase Order" that the Maricopa County Community College District ("MCCCD") issues to the contractor ("Contractor") (collectively, "Parties").

2. **CONTRACT DEFINED:** The term "Contract" as used in these Purchase Order Terms and Conditions means one of the following, as applicable:

2.1 Where the Purchase Order is the sole document that MCCCD authorizes to describe the terms of the contract between the Contractor and MCCCD (such as scope of work, deliverables, price), the Purchase Order will be the sole document constituting the contract between the Parties;

2.2 Where MCCCD issues a solicitation (request for proposals, invitation for bids, or request for quotations), the solicitation and amendments to it, the Contractor's response (proposal, bid or quote), any statements of work or other similar documents, and these Purchase Order Terms and Conditions along with any engagement letter, if applicable;

2.3 Where MCCCD and the Contractor sign an MCCCD-template contract, that contract, any amendments to it and these Purchase Order Terms and Conditions;

2.4 Where MCCCD signs a contract template that the Contractor provides, that contract template, as MCCCD may modify it, any amendments to it, and these Purchase Order Terms and Conditions. If a Contractor supplies a contract template in its bid or proposal in response to a formal competition (that is, under an invitation for bids or request for proposals), or after MCCCD notifies it that it has been selected for contract award, that contract template is subject to and must explicitly incorporate the solicitation terms and conditions into it.

3. **ORDER OF PRECEDENCE:** A solicitation, amendments to it, and these Purchase Order Terms and Conditions take precedence over any inconsistent or materially different terms in the Contractor's response to a solicitation or other Contractor-supplied contract documents. Additionally, MCCCD does not agree to, and will not be bound by, Contractor terms and conditions that a representative of MCCCD authorized to sign contracts has approved and signed. MCCCD authorized signers are specified at: <https://legal.maricopa.edu/business-law-contracts/creating-and-signing-agreements>

4. **CONFIDENTIALITY PROVISIONS:** Unless MCCCD and the Contractor agrees to stricter provisions relating to Confidential Information, defined in Paragraph 25, Paragraphs 23 through 32 of these Purchase Order Terms and Conditions will govern any written solicitation, quote, bid, proposal, written contract and will prevail over any provisions in any solicitation, quote, bid, proposal, or written contract that may conflict or appear inconsistent with any Confidential Information provision in this Purchase Order, notwithstanding any other terms of the Contract relating to security and privacy.

5. **"DAYS" DEFINED:** The term "days" as used in these Purchase Order Terms and Conditions means calendar days, unless otherwise specified.

6. **PURCHASE ORDER REQUIRED:** *Contractor is not authorized to begin work or supply goods to MCCCD unless it has received a Purchase Order from MCCCD to do so.*

TERMS AND CONDITIONS APPLICABLE TO CONTRACTS INVOLVING THE PURCHASE OF GOODS

7. **ACCEPTANCE AND REJECTION:** Regardless of any terms or conditions to the contrary in Contractor forms or documents, MCCCCD shall have the all the rights and remedies specified in this paragraph. MCCCCD shall have a reasonable time after delivery of goods to inspect them. MCCCCD is not obligated to pay for those goods until it has had the opportunity to inspect them, and has accepted them. MCCCCD may reject goods if, prior to final acceptance, the goods are found to be defective or not as specified. In the case of services, MCCCCD is not obligated to pay for them until it has finally accepted the services and, in the case of construction, is occupying or otherwise using the facility where the construction occurred. MCCCCD is entitled to all other remedies under applicable law, including the right to revoke acceptance of nonconforming goods. Contractor shall reimburse MCCCCD for all direct, indirect, incidental and consequential costs related to nonconforming goods or services. Notwithstanding final acceptance and payment, Contractor shall be liable for latent defects, fraud, or such gross mistakes as amount to fraud. Acceptance of performance shall not waive the right to claim damages for breach, negligence, product liability, or any other act or omission covered by the indemnity provisions of these Purchase Order Terms and Conditions.

8. **TITLE AND DELIVERY:** Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all delivery and unloading at the destination identified in the Contract. Title to the goods shall pass to MCCCCD upon acceptance at the F.O.B. point specified, subject to the right of MCCCCD to reject For any exception to the delivery date specified, Contractor shall give prior notification and obtain approval from MCCCCD's Purchasing Department. Time is of the essence and the Contract is subject to termination for failure to deliver on time.

9. **WARRANTIES:**

9.1 Liens: The Contractor warrants that the goods supplied under this Contract are free of liens.

9.2 Quality: Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by MCCCCD of the goods, they shall be:

- 9.2.1 Of a quality to pass without objection in the trade under the Contract description;
- 9.2.2 Fit for the intended purposes for which the goods are used.
- 9.2.3 Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
- 9.2.4 Adequately contained, packaged and marked as the Contract may require; and
- 9.2.5 Conform to the written promises or affirmations of fact made by the Contractor.

9.3 Fitness. The Contractor warrants that any material supplied to the MCCCCD shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.

9.4 Inspection/Testing. Inspection or testing of or payment for the goods does not affect the warranties set forth in subparagraphs 9.1 through 9.3 of this paragraph by MCCCCD.

10. **SUBSTITUTIONS:** Contractor may not substitute goods required under this Contract. Providing substitutions or any attempt to do so will be considered a breach of the Contract.

11. INSPECTIONS: The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes for producing the goods, at reasonable times for inspection of the goods covered under this Contract. MCCCCD shall also have the right to test at its own cost the goods to be supplied under this Contract. Neither inspection at the Contractor's facilities nor testing shall constitute final acceptance of the goods. If MCCCCD determines non-compliance of the goods, the Contractor shall be responsible for the payment of all costs incurred by MCCCCD for testing and inspection.

12. 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 Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming goods shall remain with the Contractor regardless of receipt.

TERMS AND CONDITIONS APPLICABLE TO CONTRACTS INVOLVING THE PURCHASE OF SERVICES

13. PERFORMANCE STANDARDS: Contractor shall, at all times during this Contract, provide the services within the highest standards of its profession. Contractor certifies that it shall maintain all applicable licenses/certifications and must provide notice immediately to MCCCCD of any change in any license/certification. Contractor warrants that the services provided shall conform to the Contract.

14. DOCUMENTATION OF ANALYSES TO SUPPORT FINDINGS, CONCLUSIONS AND RECOMMENDATIONS: To the extent that the work under the Contract requires the Contractor to make findings, conclusions or recommendations to MCCCCD, the Contractor shall retain during performance and provide to MCCCCD detailed analyses relating to each of its findings, conclusions or recommendations, whether or not the analyses support or are inconsistent with the findings, conclusions or recommendations. Unless specified otherwise by MCCCCD, Contractor shall provide that documentation separately but at the same time that it presents its findings, conclusions and recommendations. MCCCCD reserves the right to withhold or deduct payments otherwise due to Contractor if it fails to provide the detailed analyses. In some instances, Contractor may be directed to prepare its findings, conclusions and recommendations under the direction of the Office of the General Counsel. In those instances, Contractor will submit its findings, conclusions and recommendations in a manner that maximizes the extent to which attorney-client privilege and work product protections apply to such deliverables.

15. FINANCIAL TRANSACTIONS: If the Contractor is responsible for handling any type of financial transaction for MCCCCD, the Contractor shall demonstrate annually, as applicable, that it complies with the Statement on Standards for Attestation Engagements (SSAE) No. 16, known as SSAE 16, established by the Auditing Standards Board (ASB) of the American Institute of Certified Public Accountants (AICPA). The Contractor shall provide its annual report, as applicable, on a reporting form or forms adopted as part of SSAE No. 16 no later than 30 days after MCCCCD requests it in writing.

TERMS AND CONDITIONS APPLICABLE TO ALL CONTRACTS

16. LIABILITY FOR TAXES: The Contractor is responsible for paying all taxes applicable to its operations, business property and income. MCCCCD shall not be liable for any tax imposed either directly or indirectly upon the Contractor, except that MCCCCD will pay as part of the Contract price any transaction privilege or use tax assessed on Contractor's provision of the services or goods under the Contract.

17. FORCE MAJEURE: If the performance of a party under this Contract is interrupted or suspended due to riots, war, public emergencies or calamities, fires, earthquakes, Acts of God, government restrictions, labor disturbances or strikes, or other condition beyond any control of that party ("Force Majeure"), performance by that party will be suspended for the reasonable duration of the Force Majeure. The party

claiming that its performance is interrupted or prevented must promptly deliver notice to the other party identifying the Force Majeure and use its best efforts to perform to the extent that it is able. If the Force Majeure does not abate within a reasonable amount of time, then either party may terminate this Contract by providing written notice to the other party. Alternatively, the parties may agree to extend the term of the Contract for a period of time equal to the time equal to the Force Majeure.

18. CONTRACT ASSIGNMENT: Contractor may not, in part or in whole, subcontract (except as otherwise specified in Contractor's proposal to the RFP), delegate or assign this Contract without the prior written permission of a representative of MCCCCD authorized to sign contracts.

19. NO WAIVER: MCCCCD's failure to notify the Contractor or to object to the Contractor's non-compliance with the terms of the Contract shall not be deemed a waiver of MCCCCD's right to demand compliance with the Contract or to terminate the Contract for breach for the Contractor's subsequent non-compliance with any term of the Contract, or its repeated failure to perform according to the Contract.

20. FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT: If Contractor has access to students' educational records, Contractor shall safeguard those records and limit its employees' and/or agents' access to the records to those persons for whom access is essential to the performance of this Contract. Contractor is prohibited from disclosing those records without the prior written authorization of the student and/or the parent of a student who is a minor permitting MCCCCD and Contractor to release the information according to the authorization. At all times during this Contract, Contractor shall comply with the terms of the Family Educational Rights and Privacy Act of 1974 ("FERPA") in all respects and shall be responsible for ensuring that any subcontractors involved in the Contract work also comply.

21. INDEMNIFICATION: To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless MCCCCD, its agents, officers, officials, employees, and volunteers from and against all claims, damages, losses, and expenses (including but not limited to attorney fees and court costs) arising from breach of a material term of this Contract, or from the negligent or intentional acts or omissions of the Contractor, its agents, employees, or any tier of Contractor's subcontractors in the performance of the Contract. The amount and type of insurance coverage requirements set forth above will in no way be construed as limiting the scope of indemnification in this paragraph.

If applicable, Contractor shall also indemnify, defend and hold harmless MCCCCD and its officers, officials, employees and agents against any claim (including but not limited to attorney fees and court costs) that their authorized use of Contractor's services or goods under this Contract violates the claimant's property rights. Contractor shall be responsible for obtaining any intellectual property consents for goods or services that it provides under this Contract.

22. INSURANCE: The insurance requirements herein are minimum requirements for this contract and in no way limit the indemnity covenants contained in this contract. MCCCCD in no way warrants that the minimum limits contained herein are sufficient to protect Contractor from liabilities that arise out of the performance of the work under this contract by the contractor, its agents, representatives, employees, or subcontractors and the contractor is free to purchase additional insurance.

Contractor shall maintain during the term of this Agreement insurance policies described below issued by companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an A.M. Best rating of A:VIII or better. At the signing of this Agreement, Contractor shall furnish the MCCCCD with certificates of insurance evidencing the required coverages, conditions, and limits required by this Agreement. Certificate of Insurance shall be sent to:

Representative's Name (person who is collecting the certificate)
College or District Office and address
Phone number and email address

The insurance policies, except Worker's Compensation, shall be endorsed to name MCCCCD and its agents, officers, officials, employees, and volunteers as additional insureds with the following language or its equivalent:

The Maricopa County Community College District and its agents, officers, officials, employees, and volunteers are hereby named as additional insureds as their interest may appear.

The insurance policies shall contain a waiver of subrogation endorsement in favor of Maricopa County Community College District, its agents, officers, officials, employees, and volunteers for losses arising from work performed by or on behalf of the contractor.

Contractor and, if applicable, any subcontractors will notify the MCCCCD Risk Manager by certified mail promptly if it receives notice of the expiration, cancellation, suspension, or material change in its insurance coverage, but in no case fewer than 30 days before the action specified in the notice. The Contractor's insurance must be primary, and any insurance or self-insurance maintained by MCCCCD will not contribute to it. If any part of the Agreement is subcontracted, these insurance requirements also apply to all subcontractors.

Any modification or variation of the insurance requirements in this Contract shall be made by the MCCCCD Risk Management Department, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

In the event any professional liability insurance required by this Contract is written on a "claims made" basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning at the time work under this Contract is completed. Contractor's work or services and must be evidenced by annual certificates of insurance. Contractor shall notify the MCCCCD Risk Manager by certified mail promptly if it receives notice of the expiration, cancellation, suspension, or material change in its insurance coverage, but in no case fewer than 30 days before the action specified in the notice. The Contractor's insurance must be primary, and any insurance or self-insurance maintained by MCCCCD shall not contribute to it. If any part of the Contract is subcontracted, these insurance requirements also apply to all subcontractors.

22.1 Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage, and broad form contractual liability coverage, including but not limited to, the liability assumed under the indemnification provisions of this Contract. •General Aggregate \$2,000,000

- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Damage to Rented Property \$50,000
- Each Occurrence \$1,000,000

22.2 Commercial Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000.00 each occurrence with respect to the Contractor's and, if applicable, the sub-contractor's owned, hired, and non-owned vehicles.

22.3 Worker's Compensation insurance with limits statutorily required by any Federal or State law and Employer's Liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee, and \$1,000,000 disease policy limit.

22.4 If applicable, **Professional Liability** insurance covering acts, errors, mistakes, omissions rising out of the work or services performed by the Contractor, or any person employed by the Contractor, with a limit of not less than:

- Each Claim \$2,000,000
- Annual Aggregate \$2,000,000

22.5 If applicable, **Network Security and Privacy Liability** coverage in an amount not less than \$2,000,000 per claim and annual aggregate, covering all acts, errors, omissions, negligence, infringement of intellectual property (except patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, breach of privacy perils, wrongful disclosure, collection, or other negligence in the handling of confidential information, privacy perils, and including coverage for related regulatory defense and penalties; data breach expenses, in an amount not less than \$2,000,000 and payable whether incurred by MCCCCD or Contractor including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services in the performance of services for MCCCCD or on behalf of MCCCCD hereunder. The policy shall include coverage for third party claims. The policy shall contain an affirmative coverage grant for contingent bodily injury and property damage emanating from the failure of the technology services or an error or omission in the content/information provided. Such insurance shall be maintained in force at all times during the term of the agreement and for a period of three years thereafter for services completed during the term of the agreement. MCCCCD shall be given at least 30 days' notice of the cancellation or expiration of the aforementioned insurance for any reason.

23. CONFIDENTIAL INFORMATION/BUSINESS ASSOCIATE AGREEMENT: If and to the extent that this Contract includes Contractor access to Protected Health Information (PHI) and MCCCCD is, or subsequently acts as, a Covered Entity (as defined in HIPAA¹), or Contractor is, or acts as, a Business Associate (as defined in HIPAA), this Contract shall constitute a Business Associate Agreement between the Parties.

24. PERPETUAL OBLIGATIONS TO PROTECT CONFIDENTIAL INFORMATION AND OTHER ASSETS: MCCCCD information that is required to be kept confidential under this Contract will be kept so in perpetuity.

25. CONFIDENTIAL INFORMATION DEFINED:

25.1 For purposes of this Contract, Confidential Information, including data, is defined as any and all MCCCCD information and data whose collection, sharing, dissemination, use, preservation, disclosure, protection, storage, destruction and/or disposition is governed by federal, state, local and/or international law or regulation, . Confidential Information includes, but is not limited to, Social Security Numbers, student records, student financial records regarding students (or their parents or sponsors), financial and personal information regarding MCCCCD employees and students, protected health information (as defined by the Health Information Portability and Accountability Act), and other personally identifiable information protected by applicable law or regulation. In addition, Confidential Information includes data and other information that is proprietary to or developed by MCCCCD such as institutional financial and performance records.

25.2 Confidential Information does not include:

¹ Health Insurance Portability and Accountability Act of 1966 as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH).

- 25.2.1 Information the receiving Party already knows,
- 25.2.2 Information that becomes generally available to the public except as a result of disclosure by the receiving Party in violation of this Contract, and
- 25.2.3 Information that becomes known to the receiving Party from a source other than the disclosing Party on a non-confidential basis.

26. USE OF CONFIDENTIAL INFORMATION:

26.1 Contractor agrees that Confidential Information provided to it during the Contract or to which it may potentially have access, during the provision of services related therein, shall be used only and exclusively to support this Contract, service and service execution and not for any other purpose. Such use shall not include examining data for targeted marketing either within the confines of this Purchase Order, service or external to the service (e.g., keyword indexing). The Contractor may use aggregate statistics on service usage in order to enhance or optimize the functionality of the Product and/or service provided under this Purchase Order.

26.2 The receiving Party will limit access to Confidential Information to its employees whom need to know the Confidential Information in order to carry out the activities under this Purchase Order and will instruct those employees to keep the information confidential. It is understood, however, that Contractor may disclose the MCCCCD Confidential Information on a need to know basis to its agent(s)² who are performing services, provided those agent(s) have executed confidentiality agreements and have agreed to materially the same or greater security obligations as Contractor provides with respect to MCCCCD data hereunder, and further provided that Contractor shall remain liable for any unauthorized disclosure of the MCCCCD Confidential Information (including MCCCCD data) by those agent(s).

26.3 If a Contractor staff person or Contractor agent(s) potentially will have access to MCCCCD's network, facilities, data, Confidential and/or Sensitive Information³ (collectively, MCCCCD Assets), they may not perform any work involving such access until they have received MCCCCD's privacy and security training, and/or accepted and agreed to adhere to MCCCCD's privacy and security policies and procedures⁴. If exigent circumstances are presented, all or part of this requirement may be waived in writing by MCCCCD's Chief Privacy Officer or General Counsel.

26.4 In accordance with the Family Educational Rights and Privacy Act of 1974 (FERPA), Contractor shall safeguard those records from improper disclosure and limit access to those records to only those its employees and/or agents whose access to them is essential to the performance of this Purchase Order. Furthermore, Contractor will not disclose those records without the prior written authorization of

² Agent(s) includes "Person(s) of Interest" which are "individuals ...who are not considered part of the MCCCCD workforce but who are still of interest to the organization." See Statement on Privacy at <https://chancellor.maricopa.edu/public-stewardship/governance/administrative-regulations/4-auxiliary-services/4.22-statement-on-privacy>

³ Sensitive Information is information that is so deemed under applicable law. Personally identifiable information, personally identifiable education records, individually identifiable health information, personally identifiable financial information and payment card information are examples of Sensitive Information covered under the Arizona Revised Statutes (ARS), Family Educational Rights and Privacy Act (FERPA), Health Insurance Portability and Accountability Act of 1996 (HIPAA), Gramm–Leach–Bliley Act (GLBA aka Financial Services Modernization Act of 1999) and Payment Card Industry Data Security Standard (PCI DSS), respectively.

⁴ See, e.g., MCCCCD Statement on Privacy at <https://chancellor.maricopa.edu/public-stewardship/governance/administrative-regulations/4-auxiliary-services/4.22-statement-on-privacy>; MCCCCD Written Information Security Program at <https://chancellor.maricopa.edu/public-stewardship/governance/administrative-regulations/4-auxiliary-services/4.23-written-information-security-program>; and MCCCCD Information Security Incident Response Plan at <https://chancellor.maricopa.edu/public-stewardship/governance/administrative-regulations/4-auxiliary-services/4.24-information-security-incident-response-plan>.

the student and/or the parent of a student who is a minor permitting MCCCDC and Contractor to release the information according to the authorization.

27. CONTRACTOR SAFEGUARDS: At all times during this Purchase Order, Contractor will maintain appropriate administrative, technical and physical safeguards to protect the security and privacy of the Confidential Information in use, in motion and at rest. These safeguards include, but are not limited to, implementation of adequate privacy and security policies and data breach response plans that comply with industry standards and the requirements of applicable laws and the regulatory agencies responsible for enforcing them, as long as they:

27.1 Meet or exceed MCCCDC's information security and privacy policies and procedures as described herein.

27.2 Do not conflict with MCCCDC incident response requirements and, to the extent that they do, Contractor agrees to match and comply with MCCCDC's requirements, and

27.3 Retain the level of protection provided for MCCCDC's Confidential Information at a level that is materially the same or greater than the level of protection provided at the outset of the term of this Purchase Order.

Contractor will supply the appropriate MCCCDC representative with copies of those policies and plans upon request.

28. CONTRACTOR PERSONNEL POLICIES: Contractor will maintain personnel policies that appropriately check the backgrounds of its employees who will be providing services to Customer on site in accordance with MCCCDC policy. Contractor will supply the appropriate MCCCDC representative with copies of those policies upon request.

29. REPORTING INCIDENTS:

29.1 Contractor shall inform MCCCDC's Chief Privacy Officer and the Office of the General Counsel by sending an e-mail to protectprivacy@maricopa.edu immediately, and in no event later than within one (1) business day if Contractor and/or its agents have reason to believe that an actual or suspected security incident or any other circumstance has occurred in which MCCCDC may be required to perform a risk assessment and/or provide a notification under applicable law, at which point MCCCDC internal and/or external legal counsel will determine any additional information needed or steps to be taken, and will make a legal determination regarding its course of action. Any such notice will provide a description about the Confidential Information that was accessed as Contractor has available at the time of the notice.

29.2 Contractor will promptly update the MCCCDC Office of General Counsel as additional details about the nature of the Confidential Information become available, and will communicate in a manner that maximizes the extent to which the attorney-client privilege and/or work product attaches to these communications. Furthermore, any such notice and all communications concerning a situation for which notice is provided are part of the confidential joint response of MCCCDC and Contractor.

29.3 Contractor agrees to mitigate, to extent practicable, any harmful effect that is known to Contractor of a use or disclosure of Confidential Information in violation of this Purchase Order by Contractor or its agent(s).

29.4 For purposes of this Purchase Order, “security incident” means the unauthorized access and/or misappropriation of Confidential Information. In the event that applicable law requires notification to individuals or others of such a security incident or such incident places individuals at an actual risk of harm, Contractor will:

- 29.4.1 Be completely accountable and responsible, financially and otherwise, at no cost to MCCCCD,
- 29.4.2 Provide assistance with the drafting and mailing of such notifications,
- 29.4.3 Retain a mutually agreed upon vendor to provide notification and call centering services, and
- 29.4.4 Offer to provide two (2) years of industry standard credit monitoring, identity theft restoration services and identity theft insurance to each affected individual at no cost to MCCCCD or such affected individual.

The requirement to offer such monitoring and insurance will only exist for individuals in those jurisdictions where such products are available.

29.5 If as a result of the Contractor’s systems, actions, and/or omissions, a suspected or actual breach involving Confidential Information occurs, Contractor will obtain a mutually agreed upon vendor to provide at no cost to MCCCCD forensic services, including, but not limited to, the collection of information in connection with a forensic and risk analysis. Contractor shall indemnify, defend and hold MCCCCD, its agents, officers, officials, employees and volunteers harmless from and against all claims, damages, losses, and expenses (including, but not limited, to attorney fees and court costs) of any kind relating to the disclosure of Confidential Information caused by the negligent or intentional acts or omissions of the Contractor, its employees, or any tier of Contractor’s agent(s) in the performance of this Purchase Order. Contractor will indemnify, defend and hold MCCCCD harmless from claims of any kind relating to the disclosure of MCCCCD Confidential Information caused by a possible or actual security infiltration or exfiltration involving technology of the Contractor, its employees, or any tier of Contractor’s agent(s).

30. TRANSMISSION OUTSIDE OF THE UNITED STATES: To the extent that Contractor transmits or processes MCCCCD Confidential Information outside of the United States, it agrees to comply with the data security and privacy laws of each country through which such information is transmitted or processed, as well as the data security and privacy laws of the jurisdictions of residence for the individuals whose data is used by Contractor. If Contractor, employees, or any tier of Contractor's agent(s) in the performance of this Purchase Order hosts or maintains MCCCCD Confidential Information on its technology, Contractor warrants and confirms that the hosting or maintenance of that information meets applicable legal and industry security standards, including qualifying for “safe harbor” rules under applicable data breach laws.

31. RECORD AND DATA RETENTION, OWNERSHIP, ACCESS AND DECOMMISSIONING: As a political subdivision of the state of Arizona, MCCCCD is subject to applicable laws related to the inspection and production of public records. A public record entails any record, either paper or electronic, made by a public officer (including members of the Governing Board, faculty, staff and administrators) and kept as a memorial of an official transaction. Pursuant to Arizona Revised Statutes §41-151.12, MCCCCD must retain records according to established retention periods. Records required for ongoing or foreseeable official proceedings such as audits, lawsuits or investigations must be retained until released from such official proceedings. Thus, if applicable, the Contractor’s hosted system shall have the ability to:

- 31.1 Archive records according to variable time periods/life cycles;

- 31.2 Search and retrieve records based upon content;
- 31.3 Place a litigation hold on records to ensure that they are not deleted;
- 31.4 Grant direct access to MCCCDC for its own search and production of records;
- 31.5 Preserve meta data;
- 31.6 Produce electronic records in their native format; and
- 31.7 Comply with the Americans with Disabilities Act.

32. OWNERSHIP AND DISCLOSURE OF RECORDS:

32.1 MCCCDC owns all of the MCCCDC records and data of which Contractor may have custody on MCCCDC's behalf. Contractor shall not disclose, use, destroy, transfer or otherwise manage those records and data except as provided in this Purchase Order or, if this Purchase Order is silent, without the express written approval of an authorized MCCCDC representative. Contractor shall work with MCCCDC to transfer all of MCCCDC's records and data to MCCCDC on the termination or expiration of this Purchase Order.

32.2 Contractor agrees to provide MCCCDC access to records and Confidential Information that Contractor holds or uses on behalf of MCCCDC upon written request of MCCCDC with reasonable advance notice. Further, Contractor agrees to make amendments to Confidential Information as directed by MCCCDC and will maintain a record of those changes.

32.3 Contractor agrees to maintain, and provide to MCCCDC if requested, a record or when and to whom Confidential Information is disclosed.

32.4 MCCCDC agrees to provide Contractor with adequate notice of any further limitations or restrictions on the use of Confidential Information, and modifications to the amendment of records or accounting of disclosures.

32.5 Confidential Information of the disclosing Party will be returned to the disclosing Party or securely destroyed promptly upon request of the disclosing Party without retaining any copies thereof, with any destruction confirmed in writing by receiving Party, with any destruction confirmed in writing by receiving Party, except to the extent copies are required by law to remain with Contractor.

33. PROVISION OF SUPPLIES, MATERIALS AND LABOR: The Contractor shall furnish all supplies, equipment, and all management and labor necessary for the efficient and sound provision of the services or goods it supplies under this Contract, or in subsequent extensions or amendments.

34. CONFLICT OF INTEREST: Notice is given of Arizona Revised Statutes §38-511 under which MCCCDC may cancel a contract without recourse for any conflict of interest described in that law. See: <http://www.azleg.gov/FormatDocument.asp?inDoc=/ars/38/00511.htm&Title=38&DocType=ARS>

35. SAFEKEEPING OF RECORDS: Contractor shall keep in a safe place all financial and performance records and statements pertaining to this Contract for a period of three (3) years from the close of each term of the Contract.

36. AUDITS: Contractor shall make available during normal business hours and with advance notice from MCCCDC all records pertaining to the Contract for purposes of audit by MCCCDC staff or other public agencies having jurisdiction over or audit rights involving the expenditure of MCCCDC funds.

37. UNAUTHORIZED COSTS OR COSTS OUTSIDE SCOPE OF AGREEMENT; TRAVEL: Costs or expenses of the Contractor relating to its performance of this Contract that are not included in the Contract price or are not authorized by the Contract are the sole responsibility of the Contractor and not of

or reimbursable by MCCCCD. If the Contract specifies that MCCCCD will reimburse the Contractor a specific cost, Contractor may not charge MCCCCD that cost without MCCCCD approving a prior estimate of it. Additionally, MCCCCD reimburses travel and related expenses only at the rate that it reimburses its employees.

38. NON-DISCRIMINATION: Contractor will comply with all applicable state and federal law, rules, regulations and executive orders governing equal employment opportunity, immigration, and nondiscrimination, including the Americans With Disabilities Act. If applicable, the parties will abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, age, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national original, protected veteran status or disability. MCCCCD also prohibits discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity, national origin, citizenship status (including document abuse), disability, veteran status or genetic information.

39. COMPLIANCE WITH IMMIGRATION LAWS; LEGAL WORKER'S ACT: The Contractor shall at all times comply with the Federal Immigration Reform and Control Act of 1986 (and by any subsequent amendments) and shall indemnify, hold harmless, and defend MCCCCD from any and all costs or expenses whatsoever arising out of Contractor's noncompliance. To the extent applicable to this Contract under Arizona Revised Statutes § 41-4401, Contractor warrants on behalf of itself and its subcontractors that it verifies the employment eligibility through the e-verify program of any employee it hires and complies with federal immigration laws and regulations relating to their employees. The Contractor shall at all times comply with the Federal Immigration Reform and Control Act of 1986 (and by any subsequent amendments to it) and shall indemnify, hold harmless, and defend MCCCCD from any and all costs or expenses whatsoever arising out of Contractor's compliance or noncompliance with that law. Additionally, Contractor agrees to abide by all applicable laws that apply to it and this Contract, including executive orders of the Governor of the State of Arizona.

40. CONTRACT TERMINATION:

40.1 MCCCCD may terminate this Contract for convenience by giving Contractor 15 days written notice of termination.

40.2 The Contractor shall perform all requirements of the Contract in a manner consistent with the highest industry or professional standards. If MCCCCD provides the Contractor with a 10-day written notice, Contractor must take immediate action to correct the deficiency identified in the notice. Contractor's failure to cure the deficiency within 10 days of receipt of the written notice will result in termination of the Contract. If, in MCCCCD's sole discretion, the Contractor diligently pursues correction of the default and correction cannot be completed in 10 days, MCCCCD may extend the time for curing the default by providing the Contractor with written notice of the extension before the end of the 10-day period. MCCCCD is entitled to exercise all of its remedies under applicable law and in equity relating to Contractor's breach.

40.3 In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency, by, or against the Contractor, or for the appointment of a receiver or trustee or an assignee for the benefit of creditors, MCCCCD shall be entitled to cancel the Contract without liability.

40.4 MCCCCD may, by written notice, terminate this Contract, in whole or in part, if MCCCCD determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of MCCCCD 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. MCCCCD, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.

41. INTERPRETATION: The parties intend this Contract to express their complete and final agreement.

42. RISK: The Contractor assumes all risks due to any unfavorable conditions within its indirect or direct control except Force Majeure. Additionally, the Contractor assumes all risk for difficulties in the nature of the project or the work that the Contractor knew or should have known before entering submitting its proposal on which this Contract is based, under a scope of work issued under this Contract, or, if applicable, at the time of individual purchases under this Contract.

43. WORK TO BE PERFORMED BY OTHERS: MCCCCD reserves the right to perform any and all services in-house or to utilize the services of other firms on unrelated projects.

44. PAYMENT:

44.1 MCCCCD will pay for services or goods under the Contract after the Contractor has supplied them and only after the Contractor submits a detailed invoice referencing a Contract, itemizing the services/deliverables or goods provided and specifying the dates that they were provided. MCCCCD may request supporting documentation for an invoice.

44.2 Where the Contractor is to provide services or goods over a period of time, such as for a project, an authorized representative of MCCCCD may agree to pay progress payments. If approved, progress payments will be paid in arrears and require that the Contractor submit the detailed invoice specified in this clause.

44.3 MCCCCD reserves the right to dispute an invoice or make partial payment based on the Contractor's failure to perform the Contractor's work according to the Contract, including for lack of timeliness or failure to provide deliverables.

44.4 CONTRACTOR MAY NOT BEGIN WORK UNDER THE CONTRACT NOR WILL ANY PAYMENT BE MADE WITHOUT THE CONTRACTOR RECEIVING A SIGNED PURCHASE ORDER FROM THE MCCCCD PURCHASING DEPARTMENT.

44.5 If prompt payment discounts apply to this purchase, any discount time will not begin until the goods or services have been received and accepted and correct invoice received by the appropriate MCCCCD department. In the event testing is required prior to acceptance, the discount time shall begin upon completion of the tests.

44.6 MCCCCD is exempt from Federal Excise Tax.

44.7 MCCCCD pays out-of-state use tax directly to the State of Arizona.

45. BILLING: If MCCCCD permits the Contractor to receive progress payments, Contractor may only invoice in increments of 30 days or more. The monthly billings should be submitted to the “BILL TO” address or “E MAIL” address shown on the Contract.

46. ADVERTISING AND PROMOTION: The name or logos of the MCCCCD or those of any of the colleges, skill centers, or programs under MCCCCD’s jurisdiction shall not be used by Contractor except as may be required to perform this Contract and only as approved under MCCCCD’s “Use of MCCCCD Marks” regulation at: http://www.maricopa.edu/publicstewardship/governance/adminregs/auxiliary/4_19.php

47. UNAVAILABILITY OF FUNDS: MCCCCD may terminate this Contract, without penalty, if its Governing Board fails to appropriate funds in subsequent fiscal years to support the specific program that is the subject of this Contract. MCCCCD shall give Contractor prompt written notice after it knows that funding will not be available.

48. NO WAIVER OF SOVEREIGN IMMUNITY: Nothing in this Contract shall be interpreted or construed to waive MCCCCD’s sovereign immunity under the laws of the State of Arizona.

49. APPLICABLE LAW: The laws of the State of Arizona apply to every aspect of this Contract. Any provision required to be included in a contract of this type by any applicable and valid Executive order, federal, state or local law, ordinance, rule or regulation shall be deemed to be incorporated into this Contract.

50. PROPERTY RIGHTS: Except for pre-existing works of the Contractor or works of third parties for which Contractor has the permission to supply to MCCCCD under this Contract, MCCCCD shall, at all times, retain ownership in and the rights to any creative works, research data, reports, designs, recordings, graphical representations, or works of similar nature (“Works”) to be developed and delivered under this Contract. Contractor agrees that the Works are “works for hire” and assigns all of the Contractor’s right, title, and interest to MCCCCD.

51. NOTICES: Notices to MCCCCD under this Contract shall be made in writing, and sent via certified mail, return receipt requested, or any other commercially reasonable method by which MCCCCD is required by the deliverer to acknowledge receipt to: Purchasing Manager, Maricopa Community Colleges, 2411 West 14th Street, Tempe, Arizona 85281-6942.

52. REVISIONS TO THE CONTRACT WORK OR PRICE: Contractor is on notice that the only MCCCCD representatives who may authorize revisions to the Contract are employees at MCCCCD’s District Office who are authorized to sign contracts. Revisions include deletions of or additions to the work, alterations of performance time, or changes in pricing. Any revision must be reflected in a written amendment to the Contract that is signed by a representative of MCCCCD authorized to sign contracts. The person requesting a revision in the Contract, whether it is the Contractor or an MCCCCD employee, must provide the authorized MCCCCD representative with documentation to support the requested change. It is the Contractor’s responsibility to ensure that revisions of the Contract have been appropriately authorized before proceeding with the revised work.

53. GIFTS, GRATUITIES, UNRELATED COMPENSATION AND CONFLICTS OF INTEREST: In the interest of public stewardship, MCCCCD holds its employees, officers, and vendors to high ethical standards. Arizona state law prohibits an MCCCCD employee or officer from participating in any way in any MCCCCD decision, contract, sale or purchase if he or she has received something of value from an outside party whose interests are involved in that MCCCCD decision, contract, sale or purchase. Additionally, Arizona state law precludes any MCCCCD employee or officer from obtaining compensation of any kind for performing his or her responsibilities other than the compensation provided by MCCCCD.

MCCCD also has adopted a regulation that prohibits any employee from accepting any cash, currency, item with a value of more than \$50 (from a single source in a fiscal year), meal, beverage or cost of entertainment if it could be interpreted as an enticement to receive MCCCD business (whether or not paid for by a vendor or by a vendor's personal funds) or if there is an expectation of future financial benefit to the vendor. In keeping with these policies, Contractor certifies that neither it nor, if applicable, its subcontractors, suppliers, or distributors, has offered anything of value, and will not offer anything of value so long as it does business with MCCCD, to an MCCCD employee or officer responsible for MCCCD decisions, contracts, sales or purchases that may benefit Contractor or its subcontractors, suppliers or distributors.

54. DISABILITY STANDARDS: If applicable to the work of the Contractor under this Contract, Contractor warrants that it complies with Arizona and federal disabilities laws and regulations. Contractor warrants that the products or services to be provided under this Contract comply with the accessibility requirements of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §12101 *et seq.*) and its implementing regulations set forth at Title 28, Code of Federal Regulations, Parts 35 and 36, 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; and maintain, if applicable, Web Content Accessibility Standards 2.0 at Level AA. Contractor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services. Contractor must provide, on request, accessibility testing results and written documentation verifying accessibility. Contractor further agrees to indemnify and hold harmless MCCCD from any claims arising out of its failure to comply with the aforesaid requirements. Failure to comply with these requirements shall constitute a material breach and be grounds for termination of this Contract,

55. CERTIFICATION: Contractor certifies that it is an independent contractor; provides services to other customers; maintains insurance; sets its own priorities on time and hours of work; provides its own supplies; and determines the means of delivering services.

56. NO DEBARMENT OR SUSPENSION: By accepting this purchase order, Contractor certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from transactions by any Federal department or agency.