

Vendor Contract
TERMS AND CONDITIONS OF PURCHASE

1. Acceptance. This Contract is conditional upon, and can be accepted only upon, the terms and conditions specified in this Contract. If Seller has previously proposed or subsequently proposes any terms that add to, vary from, or conflict with the terms of this Contract, Board hereby objects to and rejects such terms. Other than as specifically provided in any separate written agreement between Seller and Board, these terms and conditions may not be altered, supplemented, or amended without the specific written consent of both Seller and Board. These terms and conditions constitute the final, complete and exclusive agreement between the parties concerning the purchase of Products from Seller, and all matters related to this purchase. These terms and conditions supersede all previous and contemporaneous proposals, negotiations, warranties, promises and any other communications between the parties, oral and written, concerning the purchase of Products from Seller.

2. Payment Terms. Payment to Seller is subject to compliance with the following requirements:
 - A. Seller will only be paid for goods actually delivered in accordance with this contract. In no event, shall the total amount to be paid to Seller exceed the total amount stated in the agreed upon Budget.

 - B. Seller must submit its invoice for payment within twelve (12) calendar months from the date of delivery as defined in Section 6 below. The invoice shall list type of Product(s) delivered, the quantity of each Product(s) and the per unit price of said Product(s), any discount that has been provided per the terms of this Contract and the balance due, and when applicable the invoice and packing slip shall contain, Seller's part number, description, and Purchase Order number. Payment to Seller is conditioned upon submission of the invoice and the submission of any other documentation as may be requested by the Board or its representatives.

 - C. Board shall pay according to discount terms Contracted and accepted. If no terms or discounts are Contracted, Board will pay within thirty (30) days of receipt and acceptance of Products.

3. Products. These terms are intended to cover the various types of purchases of equipment, materials, supplies, or services as shown to any or to each of the various public schools, offices, or to any designated warehouse or warehouses in Baltimore City, Maryland, whichever is specified, in quantities to be determined subsequent to the award. The Products offered by the Vendor shall be new, not used, and the latest version of the Products. Should a Product be discontinued and/or upgraded during the course of the contract, the Vendor shall offer to City Schools a new alternate product that meets and/or exceeds the established specifications, under the same terms, conditions, and prices as the originally offered item.

4. Price. Prices specified on this Contract shall be firm. No changes will be permitted without Board's specific consent and written authorization. Unless otherwise specified, the Vendor will not be allowed to offer more than one price on each item even though the vendor may feel that it has two or more types or styles that will meet specifications. If said Vendor should submit more than one price on any item, all but the lowest price for that item will be rejected.
5. Compliance. The Seller represents and warrants that the Products covered by this Contract were not manufactured and are not being sold or priced in violation of any federal, state, national or local law, executive order or administrative ruling. Seller shall defend, indemnify and hold Board harmless of and from, and shall reimburse Board for any and all costs, damages and expenses (including attorney's fees) incurred or resulting directly or indirectly by, or to the Board as a direct or indirect result of breach of any representation or warranty of this Contract.
6. Delivery. Shipments are to be made per this Contract. All items shall be shipped DAP (Deliver At Place), the delivery shall be complete when the goods are placed at the Board's disposal on the arriving means of transport ready for unloading at the named place of destination. The Seller bears all risks involved in bringing the goods to the named place. Board may accept or return to Seller at Seller's expense items received in advance of date specified on this Contract. Retention of goods shipped early shall not accelerate time for payment. Over shipments may be returned at Seller's expense or retained at no increase in price. Board reserves the right to charge Seller with any damages incurred as a result of Seller's failure to make delivery within time specified on this Contract. Board may return to Seller within thirty (30) days of delivery any Product that remains in its packaging as delivered, without any liability to Board.
7. Routing. Method of shipment per shipping instructions in this Contract.
8. Drawings, Etc. All materials, drawings, samples, dyes, tools, molds, fixtures and other items supplied or paid for by Board shall remain property of Board and are subject to removal by Board at any time. Seller shall retain no reproductions unless authorized in writing by Board. Such items shall not be used or disclosed to third parties by the Seller or anyone under its control without the prior written consent of the Board.
9. Inspection. All Products shall be received subject to Board's right of inspection and rejection by its designee at any time after receipt. Board shall have the right to perform adequate tests to determine if the Products conform to the contract. In the event that defects not discoverable on reasonable inspection are later found, Board shall have no liability for non-conforming Products. The prices shall be credited or refunded (along with any transportation costs) by Seller to Board.
10. Remedies and Indemnity. All warranties and remedies identified by Article 2 of the Uniform Commercial Code are incorporated herein, including the warranties of merchantability and fitness for particular purpose, and the availability of special, indirect and consequential damages. The Seller shall defend, indemnify, and hold harmless the

Board and their respective elected/appointed officials, employees, departments, agencies, agents and volunteers from any and all claims, demands, suits, and actions, including attorney's fees, litigation expenses and court costs, connected therewith, brought against the Board and their respective elected/appointed officials, employees, departments, agencies, agents, and volunteers, arising as a result of any direct or indirect, willful, or negligent act or omission of the Seller or its employees, agents, or volunteers. Seller shall at its expense defend any action against Board based in any part on a claim that a Product infringes any patent or copyright in any jurisdiction. Seller shall pay all attorneys fees, costs, expenses associated with such claims and all damages awarded against Board in any such action. Board shall notify Seller in writing of any such action and Board shall give Seller control of the defense of any such action (and all negotiations for its settlement or compromise), provided that Seller shall not settle any such action without Board's written consent. If any Product becomes, or in Board's opinion is likely to become, the subject of a such a claim, then Board may require Seller, at Seller's option and expense, to: (A) procure for Board the right to continue using the Product; (B) replace or modify the Product so that it becomes non-infringing; or (C) accept return of the Product and refund to Board all sums paid Seller in exchange for such Product. The foregoing indemnity is in addition to any other remedies Board may have at law or equity.

11. Liquidated Damages. In the event the Vendor fails to deliver the goods or services of the contract in accordance with the specifications, City Schools reserves the right to purchase the goods/services on the open market in sufficient quantities to assure the continued operation of City Schools. All additional expenses incurred by City Schools as a result of such purchases will be deducted from the monies owed or monies that may become due the Vendor.
12. Withholding Payment. In addition to any other available remedies, if, in the opinion of the Board, the Seller fails to perform in accordance with the terms of this Contract or any other Contract with the Board, the Procurement Officer or a department designee responsible for paying invoices may refuse or limit approval of any invoices for payment, and may cause payments to the Seller to be reduced or withheld until such time as the Board determines that the Seller has met the performance terms as established by the Contract or may retain said funds in satisfaction of any portion of a claim for damages or liquidated damages.
13. Accounts and Records.
 - A. Seller shall retain, and upon request, make available to the Board, all accounts and records relating to this Contract for at least three years after final payment is made and all other pending matters are concluded. The Board reserves the right to audit and inspect all accounts and records maintained by Seller in connection with this Contract.
 - B. Public and private nonprofit contractors are required to comply with the requirements of the Office of Management and Budget (OMB) Circular A-133. The nonprofit contractor is responsible for having an audit performed in accordance with and when required by OMB A-133 and for sending a copy of the report issued as a result of the audit to the Board within 30 days of the audit report's issuance. Furthermore, the Board

must approve any independent auditor engaged to assure that the auditor is qualified and meets Government Accounting Office standards as well as to evaluate the scope of the audit engagement to assure it complies with OMB requirements. **(Not Applicable if Federal funds are not used in the purchase of goods and/or services).**

14. Independent Contractor. The Board and Seller recognize and agree that Seller is an independent contractor, and that neither Seller nor any of Seller's employees or agents is an employee of the Board or of the City.
15. Subcontract or Assignment. Seller shall give full personal attention to the faithful execution of this Contract. Seller shall not subcontract or assign any part of this Contract without the prior written consent of the Board.
16. Employment. Within one (1) year following separation from the Board or City Schools, a former employee, official or Board member may not assist or represent Seller other than the Board or City Schools for compensation in any case, controversy, dispute, contract or other specific matter involving the Board or City Schools if that case, controversy, dispute, contract or other specific matter is one in which the former employee, official or Board member significantly participated as an employee, official or Board member of the Board or City Schools. Failure to adhere to or comply with this requirement constitutes a material breach in which the Board reserves the right to impose sanctions, up to and including suspension of this Contract, withholding of payment, rescission or termination of this Contract.
17. Insurance.
(If the total amount of this Contract is under \$25,000.00, these insurance requirements do not apply).
 - A. The Seller shall procure and keep in force the following required insurance coverage:
 1. Commercial General Liability Insurance at limits of not less than One Million Dollars (\$1,000,000) per occurrence for claims arising out of bodily injuries or death, and property damages, subject to a minimum limit of Three Million Dollars (\$3,000,000) aggregate. Such insurance shall include contractual liability insurance.
 2. Business Automobile Liability at limits of not less than One Million Dollars (\$1,000,000) per occurrence for all claims arising out of bodily injuries or death and property damages. The insurance shall apply to any owned, non-owned, leased, or hired automobiles used in the performance of this Contract.
 3. Workers' Compensation coverage as required by the State of Maryland, as well as any similar coverage required for this work by applicable Federal or "Other States" State Law.
 4. Professional Liability, Errors and Omissions Insurance at a limit of not less than One Million Dollars (\$1,000,000.00) in the event the service delivered pursuant to

this Contract, either directly or indirectly, involves or requires professional services. "Professional Services" for the purpose of this Contract shall mean any services provided by a licensed, certified or otherwise documented professional.

- B. The City, the Board, and their respective elected/appointed officials, employees, departments, agencies, agents and volunteers shall be covered, by endorsement, as additional insured as respect to liability arising out of activities performed or to be performed by or on behalf of the Seller in connection with this Contract.
 - C. The Seller's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit brought.
 - D. The Seller's insurance coverage shall be primary. Any insurance and/or self-insured program maintained by the City or the Board and their respective elected/appointed officials, employees, departments, agencies, agents and volunteers, shall not contribute with the Seller's insurance or benefit the Seller in any way. The Seller acknowledges that it is not entitled to any sovereign immunity rights and protections that may be available to the City or the Board pursuant to § 5-518, Cts. & Jud. Proc., Md. Code.
 - E. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, except by the reduction of the applicable aggregate limit by claims paid, until after forty-five (45) days prior written notice has been given to the City and the Board. There will be an exception for non- payment of premium, which is ten (10) days notice of cancellation.
 - F. Insurance is to be placed with insurers with a Best's rating of no less than A:VII, or, if not rated with Best's with minimum surpluses the equivalent of Bests' surplus size VII and must be licensed/approved to do business in the State of Maryland.
 - G. The Seller shall furnish the City and the Board's Director of Materials, a "Certificate of Insurance" with a copy of the additional insured endorsement as verification that coverage is in force. The City and the Board reserve the right to require complete copies of Insurance policies at any time.
 - H. Failure to obtain insurance coverage as required or failure to furnish Certificate(s) of Insurance as required may render this Contract null and void; provided, however, that no act or omission of the City or the Board shall in any way limit modify or affect the obligations of Seller under any provision of this Contract.
18. Responsibility for payment of taxes. Seller shall be responsible for all federal and/or state tax, and Social Security liability that may result from the performance of and compensation for these services. The Board assumes no responsibility for the payment of any compensation, wages, benefits, or taxes by, or on behalf of Seller, its employees and/or others by reason of this Contract. Seller shall defend, indemnify and save harmless the Board, the City and the State of Maryland, (when any funds for this Contract are provided by the State of Maryland or the Federal Government), their officials, officers, agents, and

employees from and against any and all claims, costs, and/or losses whatsoever occurring or resulting from:

- A. Seller's failure to pay any such compensation, wages, benefits, or taxes; and/or
 - B. The supplying to Seller of work, services, materials, or supplies in connection with or in support of the performance of this Contract.
19. Force Majeure. Neither Seller nor Board shall have liability for delays of failures to perform due to strikes, fires, government restrictions or other such circumstance reasonably beyond the control of the parties.
20. Termination of Contract. Upon Vendors receipt of written notice of termination and unless otherwise directed by the Board's Contract Monitor, Seller shall immediately stop delivery of any products or performance of services under this Contract on the date and to the extent specified in the notice but shall complete deliver of Product(s) or performance of any services not terminated by the notice and shall take any other action directed in the notice or by the Board's Contract Monitor.
- A. *Termination for Non-appropriation of Funds*. City Schools may terminate this contact, in whole or in part, due to insufficient funding or non-appropriation of funds upon 10 days written notice of termination to the Vendor. City Schools shall pay for all of the purchases, if any, incurred up to the date of the termination notice.
 - B. *Termination for Default*. This Vendor shall be in default of this contract, when the Vendor has not performed or has unsatisfactorily performed the contract. In the event of a default by the vendor, this Contract may be terminated. City Schools may terminate this contract by sending written notice of default to the Vendor; if Vendor fails to cure said default within 15 days of the date of the notice default then the contract may be terminated, at any time, by written notice of termination. Failure on the part of a Vendor to fulfill contractual obligations shall be considered just cause for termination of the contract, and the Vendor is not entitled to any costs incurred up to the date of termination. Payment to Vendor shall be withheld at the discretion of City Schools, pursuant to section 12 above.
 - C. *Termination for Convenience*. The Board or its designee shall have the right in its absolute discretion to terminate this Contract for its convenience, in whole or in part, at any time and for any reason or for no reason, without incurring any liability, upon no less than ten (10) days prior written notice of termination to Vendor. If the Board terminates this Contract for its convenience, then Vendor shall have no other right to compensation or payment except for actual Product(s) delivered or services, rendered prior to the notice of termination issued hereunder.
21. Governing Law. This Contract shall be construed by and governed under the laws of the State of Maryland and subject to the jurisdiction of its courts. Furthermore, the parties agree that any suits or actions brought by either party against the other shall be filed in a court of competent jurisdiction in Baltimore City.

22. Compliance with Laws. Consultant shall comply with all federal, state, and local laws, statutes, ordinances, rules, and regulations applicable to the services to be rendered under this Agreement. Consultant's violation of any of these laws, statutes, ordinances, rules, or regulations constitutes a breach of this Agreement and entitles the Board to terminate this Agreement immediately upon delivery of written notice of termination to Consultant.
23. Non-Discrimination. Consultant shall not, in its conduct and performance under this Agreement, discriminate against any employee, applicant for employment, independent professional or any other person because of race, color, religious creed, ancestry, national origin, age, sex, sexual orientation, sexual identity, disability or handicap. Consultant shall comply with all state and federal laws prohibiting discrimination in hiring or employment opportunities. In the event of the Consultant's noncompliance with this non-discrimination clause or with any such laws, City Schools may be terminated or suspended this agreement in whole or in part, and the Consultant may be declared temporarily ineligible for further contracts. City Schools reserves the right to impose any and all other legal sanctions and remedies available for violating this clause.
24. Entire Contract. This Contract supersedes all prior oral and written proposals and communications between Seller and the Board related to Seller's services to be performed. The terms of the associated solicitation, the Vendor's response to the solicitation and validly executed Amendments are herein incorporated by reference to this Contract. This Contract may not be modified orally, and no modification or any claimed waiver of any of the provisions hereof shall be binding unless in writing and signed by the party against whom enforcement of such modification or waiver is sought. In the event of a conflict between the terms and conditions of any of the Contract Documents, the controlling terms and conditions shall be, in this order, those of:
 - A. This Agreement; then
 - B. IFB/RFP-_____, including any attachments, exhibits, and addenda; then
 - C. The Response.
25. Waiver. No waiver of any breach of any provision of this Contract shall operate as a waiver of such provision of this Contract or as a waiver of subsequent or other breaches of the same or any other provision of this Contract, nor shall any action or non-action by either party be construed as a waiver of any provisions of this Contract or of any breach thereof unless the same has been expressly declared or recognized as a waiver by such party in writing.
26. Late Submission of Invoices. The parties acknowledge and agree that the Consultant's invoices are to be submitted to the Board in a timely manner, per the terms of the purchase order, after the Product(s) have been delivered to the Board. If invoices are submitted after one calendar year after the Seller's delivery of Product(s) to the Board, then the Board shall have no obligation to pay the stale invoice.

27. Recitals. The Recitals are incorporated herein by reference.
28. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument.
29. Interpretation. The Agreement shall not be construed or interpreted for or against any party hereto because the party drafted or caused that party's legal representative to draft any of its provisions.

ATTACHMENT I

QUOTES, PROPOSALS, AND INVOICE GUIDANCE

The following information provides guidance pertaining to City Schools' documentation requirements when vendors prepare Quotes or Invoices for services.

A **quote** or **proposal** is defined as a document provided to City Schools that 1) details the description of services to be provided, 2) the associated cost for each of those services, and 3) when the services are to be provided. The quote or proposal is prepared and provided prior to the commencement of work and is a part of documentation used when a purchase order is prepared.

An **invoice** is defined as the document provided to City Schools following the completion of services. The invoice details 1) the services that were provided, 2) when the services were provided and 3) the cost for those services. The invoice needs to correspond to the information provided in the quote or proposal submitted by the vendor earlier. Specific requirements for quotes, proposals, and invoices are outlined below.

VENDOR QUOTES / PROPOSALS

Quotes or Proposals are submitted to the school or department in accordance with their request for services and the contract the vendor has with City Schools. Quotes must contain the following information:

- a. The document must be titled "Quote" or "Proposal" and reflect the date of the quote/proposal and contain a quote/proposal number.
- b. The document must reference the applicable City Schools' contract (if applicable).
- c. Reflect vendor name including contact name, phone, address, and email.
- d. The name of the school in which services are being provided along with the Principals name, address and phone number of the school.
- e. Dates of service (start and end date for services being provided).
- f. Detailed scope of work that includes the services to be provided. If the vendor has a current contract on file, the scope of services must be aligned with the contract.
- g. Pricing – pricing should be broken out to include either hourly, per student, daily, program rates, etc. If the vendor has a current City Schools contract, pricing **MUST** be consistent with the contract. Failure to reflect the contracted rate(s) will result in the return of the quote or proposal for correction.

INVOICES

The Vendor shall submit an invoice on a monthly basis detailing the services provided and the actual costs incurred. The invoice must be aligned to the quote or proposal. City Schools' payment terms are Net 30 days. City Schools will not pay for any service that has not been delivered.

Invoices should be forwarded directly to the school or department with a copy to our Accounts Payable office. The invoice at a minimum must include the following information:

- a. The document must be titled “Invoice,” and include the date of the invoice as well as vendor name including contact name, phone, address, and email.
- b. The document must reflect a unique invoice number the vendor has never used before with City Schools.
- c. The document must also reflect the Purchase Order number. Failure to include a Purchase Order number will result in the invoice not being paid.
- d. The name of the school in which services were provided along with the Principals name, address and phone number of the school.
- e. Dates of service for the invoice (start and end date for services that were provided).
- f. Brief description of work that lists the services provided under this invoice.
- g. Total Amount Due – Invoice amount should contain a breakout of the rate used to arrive at the total amount due. Breakout must be consistent with the hourly, per student, daily, program rate, etc. listed in the vendor’s quote or proposal. Failure to align the invoice with the rates listed in the original quote or proposal will result in non-payment of the invoice.