Newport Mesa Unified School District
Supplies, Equipment, Services (not Public Works)
Terms and Conditions-Purchase Order

1. **PRECEDENCE.** If an agreement is referred to in a Purchase Order, then those terms & conditions prevail over the terms & conditions below.
2. **DEFINITIONS**: The Newport Mesa Unified School District shall be hereinafter referred to as NMUSD and the Vendor - the person, firm, or corporation from whom the item(s) or service(s) has been ordered, shall be hereinafter referred to as Vendor.
3. **ACCEPTANCE OF PURCHASE ORDER:** This Purchase Order is NMUSD's offer to Vendor. Acceptance is strictly limited to its terms. NMUSD shall not be bound by and specifically objects to any term or condition whatsoever that is different from or in addition to the terms and conditions of this Purchase Order, whether or not such term or condition will materially alter this Purchase Order. Vendor's commencement of performance or acceptance of this Purchase Order in any manner shall conclusively evidence agreement to this Purchase Order as written.
4. **PURCHASE ORDER NUMBER**: The Purchase Order Number must appear on all invoices, packing slips, packages, and correspondences. Orders for merchandise without a written Purchase Order shall be considered unauthorized by NMUSD. NMUSD will not be held responsible for any item delivered without a Purchase Order.
5. **INVOICES**: Separate invoices are required for each Purchase Order. Invoices shall contain the following information: purchase order number, item number, item description, quantity, unit price, and extended totals for items delivered. Sales tax, where applicable, shall be shown separately. Failure to enter the above information on the invoice may cause a delay in payment. NMUSD shall only pay complete invoices which have been received by NMUSD within one (1) year of Vendor providing the item(s) and/or service(s) that are subject to a particular Purchase Order. Payment shall only be made after goods/services have been received and approved. NMUSD shall endeavor to pay Vendor for product or service net 30 days from the date of acceptance of undisputed invoice. Invoices must be emailed to invoice@nmusd.us or mailed to the Newport Mesa Unified School District, Attn: Accounts Payable, 2985 Bear St Costa Mesa CA 92626.
6. **DISCOUNTS**: Please indicate discount(s) offered on the invoice. In connection with any discount(s) offered, time will be computed from date of delivery of the supplies or equipment as specified, or from the date the correct invoice(s) is received by NMUSD if the latter date is after the date of delivery. Payment is deemed to be made, for purpose of earning discount(s), on the date of mailing the warrant.
7. **CHANGES**: NMUSD shall have the right to revoke, amend, or modify this Purchase Order at any time. To the extent such change causes an increase or decrease in the cost or time required for the performance of this Purchase Order, equitable adjustments to this Purchase Order may be made. Any claim by Vendor for adjustment must be asserted within 15 days of receipt of the change. Failure to agree to an adjustment shall not excuse the Vendor from proceeding with this Purchase Order as changed, but shall time bar Vendor from presenting any further claim. Substitutions, changes, and prices other than specified must be authorized in writing in advance by NMUSD.
8. **DELIVERY/SHIPPING**: All equipment, supplies, and materials, products MUST be new unless otherwise specified by NMUSD. All items MUST be delivered to the location specified on this Purchase Order, unless otherwise authorized by NMUSD's Purchasing Department. Vendor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Purchase Order. Vendor is responsible for any and all loss or damage to the item(s) until delivered to NMUSD at the F.O.B. point specified.
9. **AVAILABILITY OF FUNDS:** In the event that federal, state, NMUSD or grant related funding for this Purchase Order ceases, this Purchase Order is terminated immediately upon written notice, without penalty to NMUSD.
10. **TERMINATION:**
    A. NMUSD may, by written notice stating the extent and effective date, cancel and/or terminate this Purchase Order for convenience in whole or in part, at any time. NMUSD shall pay Vendor as full compensation for performance upon such termination: (1) the unit or pro rata order price for the performed and accepted portion; and (2) A reasonable amount, not otherwise recoverable from other sources by Vendor as approved

by NMUSD, with respect to the unperformed or unaccepted portion of this Purchase Order, provided compensation hereunder shall in no event exceed the total order price. Vendor shall have no claim for any damages, or loss of profit, arising out of any termination for convenience.

B. NMUSD may by written notice terminate this Purchase Order for Vendor's default, in whole or in part, at any time, if Vendor refuses or fails to comply with the provisions of this order, or so fails to make progress as to endanger performance and does not cure such failure within a reasonable period of time, or fails to perform the services within the time specified or any written extension thereof. In such event, NMUSD may purchase or otherwise secure services and, except as otherwise provided herein, Vendor shall be liable to NMUSD for any excess costs occasioned NMUSD thereby. If, after notice of termination for default, NMUSD determines that the Vendor was not in default or that the failure to perform this Purchase Order was due to causes beyond the control and without the fault or negligence of Vendor (including, but not restricted to, acts of God or of the public enemy, acts of NMUSD, acts of Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, and delays of a subcontractor or supplier due to such causes and without the fault or negligence of the subcontractor or supplier), termination shall be deemed for the convenience of NMUSD, unless NMUSD shall determine that the services or deliver property covered by this Purchase Order were obtainable by Vendor from other sources in sufficient time to meet the required performance schedule.

C. If NMUSD determines that Vendor has been delayed in the services due to causes beyond the control and without the fault or negligence of Vendor, NMUSD may extend the time for completion of the services called for by this Purchase Order, when promptly applied for in writing by Vendor; any extension granted shall be effective only if given in writing. If such delay is due to failure of NMUSD, not caused or contributed to by Vendor, to perform services or deliver property in accordance with the terms of the Purchase Order, the time and price of the Purchase Order shall be subject to change under the Changes Article. Sole remedy of Vendor in event of delay by failure of NMUSD to perform shall, however, be limited to any money actually and necessarily expended in the work during the period of delay, solely by reason of the delay. No allowance will be made for anticipated profits.

D. The rights and remedies of NMUSD provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Purchase Order.

E. As used in this section, the word "Vendor" includes Vendor and its sub-suppliers at any tier.

11. **INSPECTION AND ACCEPTANCE**: All items are subject to NMUSD's inspection within a reasonable time after arrival at the ultimate destination. If upon inspection any item is found to be unsatisfactory, defective, or of inferior quality or workmanship, or fail to meet the specifications or any other requirements of this order, NMUSD may return such item to Vendor at Vendor's expense. Payment for item prior to inspection shall not be construed to be an acceptance of unsatisfactory or defective item. Vendor shall reimburse NMUSD for the purchase price of such returned item paid by NMUSD and any costs incurred by NMUSD in connection with the delivery or return of such item.
12. **CAL-OSHA**: Vendor certifies, by shipment, that all equipment furnished under this order meets or exceeds applicable Cal/OSHA regulations, Title 8 of the California Code of Regulations.
13. **SDS**: Safety Data Sheets (SDS) must accompany all hazardous substances materials and supplies.
14. **WARRANTY**: Vendor agrees that all supplies, equipment, or services furnished under this Purchase Order shall be covered by the most favorable commercial warranties the Vendor provides any customer for such supplies, equipment, or services, and that the rights and remedies provided therein are in addition to and do not limit any rights afforded to NMUSD by any other provision of this Purchase Order.
15. **EXCUSABLE DELAYS**: Vendor shall be excused from performance hereunder during the time and to the extent that he is prevented from obtaining, delivering, or performing by acts of God, fire, strike, lockout, or commandeering of materials, products, plants, or facilities by the government, when satisfactory evidence thereof is presented to the NMUSD, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of the party not performing.

16. **INDEPENDENT CONTRACTOR** – Vendor is, and shall at all times, be deemed to be an independent contractor, and is not an officer, agent, or employee of NMUSD. Vendor is responsible for complying with California Labor Code §§2750.3–2750.5 (AB 5 / AB 2257). Vendor bears responsibility for compliance with the **ABC test** and potential **professional services exemptions**, and indemnifies NMUSD for misclassification liability.
17. **DEFAULT BY VENDOR**: Failure to comply with any of the terms and/or conditions of this Purchase Order shall constitute default by the Vendor.
18. **INDEMNIFICATION**: Vendor shall fully defend, hold harmless and indemnify the NMUSD, the NMUSD Board of Education, and its officers, agents, and employees from and against any and all claims, action, liability, and costs of whatsoever kind and nature for injury to or death of any person(s) and for loss or damage of an property arising out of, or in connection with, the performance of this services under the terms of this Purchase Order by Vendor, except for injuries and damages caused by the sole negligence of NMUSD.
19. **INSURANCE**: Applicable if Vendor is providing any services, Vendor shall procure and maintain for the duration of the Purchase Order, at its sole expense, insurance against claims for injuries to persons or damages to property which may arise from or be connected with the products, materials, and services supplied to NMUSD. Vendor's maintenance of insurance, as required by the Purchase Order, shall not be construed to limit the liability of Vendor to the coverage provided by such insurance, or otherwise limit NMUSD's recourse to any remedy available at law or in equity.
    A. Commercial General Liability insurance: $1,000,000 for each occurrence and $2,000,000 general aggregate with Products and Completed Operations Coverage;
    B. Automobile Liability-Any Auto: combined single limit of $1,000,000 (if Vendor's autos are used to perform any services);
    C. Workers Compensation: Statutory limits; and Employers' Liability: $1,000,000 (if Vendor's employees work on NMUSD property).
    D. Errors and Omissions/Professional Liability: $1,000,000 per occurrence / $2,000,000 annual aggregate (if Vendor provides any professional services, advice, design specifications, drawings, etc.)
    E. Sexual Abuse or Molestation (SAM) Liability: $1,000,000 per occurrence (if Vendor's employees have contact with minors)
    F. Contractor shall provide District certificate(s) of insurance and endorsements satisfactory to District. Policy(ies) shall not be modified or terminated, and coverage amounts shall not be reduced without thirty (30) days' written notice to District.
    G. Contractor's policy(ies) shall be primary; insurance carried by District shall be secondary.
    H. Contractor shall not allow any subcontractor, employee, or agent to commence Work until required insurance has been obtained.
20. **ASSIGNMENT**: The Vendor shall not assign, transfer, convey, sublet, or otherwise dispose of this Purchase Order or any part thereof, or accruing thereunder, title or interest therein, funds to be received thereunder, or any power to execute the same without the consent in writing from NMUSD.
21. **NON-DISCRIMINATION**: The Vendor shall comply with any and all applicable state, federal, and other laws that prohibit discrimination and retaliation including, without limitation, Government Code §§12900–12996 (FEHA), Americans with Disabilities Act (ADA), Title VI and Title VII, Age Discrimination in Employment Act (ADEA), Rehabilitation Act §504, and Government Code §12940 as amended.
22. **FERPA**: Applicable if Vendor may have access to student records, Vendor agrees to comply with the Family Educational Rights and Privacy Act of 1974, 34 CFR Part 99 and all requirements imposed by or pursuant to regulation of the Department of Education and NMUSD to the end that the rights and privacy of the students enrolled in NMUSD and of their parents are not violated or invaded. This assurance is given to obtain access to individual student data for the purpose of using said data to fulfill contractual obligations with NMUSD. The provisions of the Family Educational Rights and Privacy Act of 1974 include, but are not limited to, ensuring that:

A. No identification of students or their parent/guardians by persons other than representatives of Vendor is permitted;
B. The individual student data will be destroyed when no longer needed for the purpose(s) for which they were obtained;
C. No access to individual student data shall be granted by Consultant/Professional to any other person, persons, agency or organization without the written consent of the pupil's parent/guardian, except for sharing with other persons within the NMUSD or representatives of Vendor so long as those persons have a legitimate interest in the information.
D. Vendor recognizes and agrees that such access will be extended in reliance on representations made in this assurance, and that NMUSD shall have the right to enforcement of this assurance, or revocation of such access (including return of all physical forms of such data and destruction of all such electronic data) immediately upon evidence of noncompliance by Vendor. This assurance is binding Vendor on, and such persons as may be employed by Consultant/Professional to assist in any phase of the contractual obligation to NMUSD.

23. **FINGERPRINT CLEARANCE**: Applicable if Vendor may perform any services on NMUSD's property, Vendor shall ensure that any persons performing such services have not been convicted of a serious or violent felony as defined in Education Code section 44830.1(c)(1), or sex offense as defined in Education Code 44011. Vendor shall be required to comply with the applicable requirements of Education Code sections 45125.1 and 45125.2 with respect to fingerprinting of employees who may have contact with NMUSD's pupils and shall complete the Criminal Background Check Certification form provided by NMUSD. NMUSD will determine whether fingerprinting is required based on the nature of services and Vendor access.
24. **TUBERCULOSIS EXAMINATION:** Applicable if Vendor and its subcontractors will be working at an NMUSD school site; Vendor will ensure that it and its subcontractors will not place any person at a school without a valid TB Risk Assessment or test on file showing their employee was examined and found to be free from active tuberculosis, as defined in Education Code Section 49406.
25. **DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS:** Vendor certifies, to the best of his/her knowledge and belief, that the Vendor and its principals:
    A. presently are not debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any federal department or agency;
    B. within the three-year period preceding the parties entering into this Agreement have not been convicted or had a civil judgement rendered against them for (i) commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction, (ii) violation of federal or state antitrust statutes, or (iii) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making a false statement, or receiving stolen property.
    C. presently are not indicted or otherwise criminally charged by a governmental entity (federal, state, or local) with commission of any of the offences described in paragraph B or this section; and
    D. within the three-year period preceding the parties entering into this Agreement have not had one or more public transactions (federal, state, or local) terminated for cause or default.
26. **ANTI-LOBBYING**: Applicable if Purchase Orders amount exceeds $100,000, Vendor, by acceptance and fulfillment of this Purchase Order shall be deemed and construed to have thereby certified that the Vendor will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee or any agency, a member of congress, officer or employee of congress, or an employee of a member of congress in connection with obtaining any federal contract, grant, or any other award covered by the Byrd-Anti-Lobbying Amendment (31 U.S.C. 1352). Vendor shall disclose in writing to NMUSD any lobbying with non-federal funds, by or on behalf of the Vendor that takes place in connection with obtaining or attempting to obtain any federal award.

27. **CLEAN AIR ACT**: Applicable if Purchase Orders amount exceeds $100,000, per (42 U.S.C. 7401 et. seq.) THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. 1251 et. seq.) Vendor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et. seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et.seq.) Violations shall be reported to the federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
28. **RIGHT TO AUDIT-FEDERAL SPONSORING AGENCY:** Applicable if Purchase Orders amount exceeds $10,000, and if it is established based on negotiation and is issued using Federal Grant Funds. NMUSD, the Federal Sponsoring Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, or records of the Vendor which are directly pertinent to this Purchase Order for the purpose of making audits, examinations, excerpts and transcriptions.
29. **ASSEMBLY BILL NUMBER 1584 (AB 1584):** Applicable if Vendor provides services, including cloud-based services, for the digital storage, management, and retrieval of pupil records or; provide digital educational software that authorizes a third-party provider of digital educational software to access, store, and use pupil records, Vendor shall comply with all requirements provided under Assembly Bill No. 1584.
30. **RIGHTS TO INVENTIONS**: For the performance of experimental, developmental, or research work, the federal government and NMUSD shall retain rights to any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements". The Vendor shall hold the NMUSD, the NMUSD Board of Education and its officers, agents, and employees harmless from liability of any nature or kind, including costs and expenses for infringement or use of any copyrighted or non-copyrighted composition, secret process, patented or unpatented inventions, regarding any items, article or appliance furnished or used in connection with the purchase order. Vendor may be required to furnish a bond or other indemnification to NMUSD against claims or liability for patent infringement.
31. **TAXES**: Vendor shall pay all contributions, taxes and premiums payable under federal, state, and local laws measured upon the payroll of employees engaged in the performance of work under this Purchase Order, and all applicable sales, use, excise, transportation privilege, occupational and other taxes applicable to materials and supplies furnished or work performed hereunder and shall save NMUSD harmless form liability for any such contributions, premiums, and taxes.
32. **RECORD RETENTION**: Vendor will give NMUSD, Comptroller General of the United States, and if appropriate, the state, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to this Purchase Order. When federal funds are expended by NMUSD for any contract resulting from this procurement process, the Vendor certifies that Vendor will retain all records as required by 2 CFR 200.334 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports as applicable, and all other pending matters are closed.
33. **FEDERAL FUNDS**: Applicable if Purchase Order is issued using federal funds are in accordance with the terms of the federal grand award as described in 2 CFR Part 200 - Contract Provisions for Non-Federal Entity Contracts under Education Department General Administrative Regulations (EDGAR) regulations and other grant regulations related to written procedures for determining micro purchases (2 CFR § 200.320) , small purchase threshold (aka Simplified Acquisition Threshold) and formal purchase procedures 2 CFR §§ 200.317 – 200.327) including contract provisions/certifications including contract administration/oversight and procedures (2 CFR §200.318).
34. **EQUAL OPPORTUNITY AFFIRMATIVE ACTION:** Vendor shall not maintain or provide racially segregated facilities for employees at any establishment under its control. Vendor agrees to adhere to the requirements set forth in Executive Orders 11246 and 11375, and with respect to activities occurring in the State of California, to the California Fair Employment and Housing Act (Government Code section 12900 et seq.). Expressly, Vendor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, medical condition as defined by Gov. Code §12926(i), marital

status, age, or disability in regard to any position for which the employee or applicant for employment is qualified, or because such person is a disabled veteran. Vendor shall further specifically undertake affirmative action regarding the hiring, promotion and treatment of minority group persons, women, people with disabilities, and disabled veterans and veterans of the Vietnam era. Vendor shall communicate this policy in both English and Spanish to all persons concerned within its company, with outside recruiting services, and the minority community at large. Vendor shall provide NMUSD on request a breakdown of its labor force by groups, specifying the above characteristics within job categories, and shall discuss with NMUSD its policies and practices relating to its affirmative action programs.

35. **BUY AMERICAN. Under 7 CFR 210.21:** State agencies and school food authorities shall comply with the requirements of this part and 2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415, as applicable, which implement the applicable requirements, concerning the procurement of all goods and materials that are produced or manufactured in the United States and which are comprised of materials produced in the United States. The entity may waive this provision if it determines that such American goods or materials are not manufactured or produced in sufficient or reasonably available commercial quantities and not of a satisfactory quality; the cost of the acquisition is not reasonable; or the acquisition is not consistent with the public interest. This provision is not applicable to purchases that do not exceed the micro-purchase threshold. Vendor must follow directives set forth in USDA Memo SP 24-2024.
36. **COMPLIANCE WITH LAW:** Any provision required to be included in a contract of this type by any applicable and valid federal, state, or local law, ordinance, rule, or regulation shall be deemed to be incorporated herein. Vendor warrants that it will comply with all federal, state, and local laws, including, but not limited to, any statute, rule, regulation, judgment, decree, order or permit applicable to its performance under this Purchase Order including any employment, health, or safety agency regulations.
37. **INTEGRATION CLAUSE:** This Purchase Order is limited to the terms and conditions contained herein. Any additional or different terms in the Vendor's forms or contracts are hereby deemed to be material alterations of this Purchase Order and notice of objection and rejection of them is hereby given.
38. **GOVERNING LAW AND VENUE**: This Purchase Order shall be governed by the, construed and enforced in accordance with the laws of the State of California. The Superior Courts of the County of Orange shall have exclusive jurisdiction and venue over any proceedings arising out of or involving the interpretation or enforcement of, or other matters relating to this Purchase Order of the performance thereunder. Disputes must proceed without mandatory arbitration unless required by law.
39. **ENTIREMENT AGREEMENT:** This Purchase Order is intended by NMUSD and Vendor as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement. No amendment or change of any kind shall be binding upon NMUSD unless previously agreed upon in writing and signed by an authorized representative of NMUSD.
40. **PUBLIC WORKS PROJECTS, DEPARTMENT OF INDUSTRIAL RELATIONS (DIR) REGISTRATION, DAVIS-BACON ACT**: Public works projects over $1,000.00 are subject to Districts Public Works Projects Terms and Conditions as posted on the District's website.
41. **BYRD ANTI-LOBBYING AMENDMENT (31 U.S.C. 1352):** Applicable if federally funded, Contractors that apply or bid for an award exceeding $100,000 must file the required certification. (2 CFR, Appendix II to Part 200[I]).
42. **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. 3701-3708):** Applicable if contract awarded by NMUSD is in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, whereby each contractor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. (2 CFR, Appendix II to Part 200[E]).
43. **IRAN CONTRACTING ACT:** Applicable if Contract for goods or services of one million dollars ($1,000,000) or more, pursuant to Public Contract Code 2204: (a) a public entity shall require a person that submits a bid or

proposal to, or otherwise proposes to enter into or renew a contract with, a public entity with respect to such a contract to certify, at the time the bid is submitted or the contract is renewed, that the person is not identified on a list created pursuant to subdivision (b) Section 2203 as a person engaging in investment activities in Iran described in subdivision a) of Section 2202.5, or as a person described in subdivision (b) of Section 2202.5, as applicable. The state agency shall submit the certification information to the Department of General Services.

44. **DRUG-FREE WORKPLACE REQUIREMENTS.** Pursuant to 7 CFR Part 3017, Subpart F, Section 3017.600 , the Vendor shall certify that it will provide a drug-free workplace, drug-free awareness program and make it a requirement that each employee be engaged in the performance of the grant be given a copy of the following statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Vendor's workplace and specify the actions that will be taken against employees for violation of such prohibition.