

POUDRE SCHOOL DISTRICT R-1
PURCHASE ORDER TERMS AND CONDITIONS

1. **Offer/Acceptance.** This Purchase Order (“PO”) is an offer to buy any products or services listed on the PO, as provided by the named organization, party or individual (“Vendor”) subject to the Vendor’s acceptance, which may be demonstrated by the Vendor’s performance of the PO. If the PO refers to an awarded solicitation, then the PO is an acceptance of Vendor’s offer to sell. Any counteroffer by the Vendor with respect to the PO, including but not limited to these terms and conditions, shall not be accepted unless formally approved in writing by the District through the issuance of an amended PO.
2. **Change Orders.** Any change in the goods, services, quantity, price, time of delivery, or any other specification in the PO must be reflected in writing by the District through the issuance of an amended PO, prior to being effective.
3. **Prices.** The Vendor agrees to furnish the goods, products or services covered by the PO in strict accordance with the District's specifications as identified in the PO and at the price noted for each item. In the case of error in extension of price, the unit price shall prevail. If the price is omitted on the PO, the Vendor's price shall be the lowest prevailing market price.
4. **Delivery.** The District’s acceptance of any offer is made in reliance on the Vendor’s promised delivery date, installation or service performance time, as material and basic to the acceptance. Unless otherwise agreed in writing by the District, delivery shall be F.O.B. destination with all transportation and handling charges paid by the Vendor. Time is of the essence in the Vendor’s performance under the PO. If the Vendor fails to deliver any goods, products or provide services as warranted, the District may cancel the PO with notice to the Vendor, without liability, and in addition to the District’s other rights and remedies of law or in equity. If a Vendor’s PO is cancelled, the District reserves the right to purchase substitute goods, products or services from a different vendor, and charge the current Vendor with any loss incurred. For the purposes of cancellation, notice is deemed received by the Vendor within three (3) days from mailing of notice or upon receipt of email notice.
5. **Inspection.** Payment for Services furnished under the PO shall not constitute acceptance thereof. The District shall have the right to inspect all goods, products or services provided or the product of such services, and to reject any or all of which are in the District’s judgment to be defective or nonconforming. The District may charge the Vendor all expenses of examining, repairing and correcting such goods, products or services.
 - a. In addition to the District’s other rights, goods, products or services which have been rejected or supplied in excess of quantities specified in the Contract may be returned to Vendor at Vendor’s expense.
 - b. In the event the District receives any goods, products or services where defects or nonconformity are not apparent upon examination, the District may require replacement and/or payment of damages upon discovery of the defects or nonconformity. Nothing contained herein shall relieve, in any way, Vendor from the obligation of testing, inspection, and quality control.
6. **Materials Delays and Substitutions.** If the Vendor experiences a back order of goods, products, or services from its distributor or manufacturer, or reduction in staffing, the

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Vendor shall notify the District immediately upon identification of the back order and ensure that such delays are completed within a reasonable period of time, which do not delay the timeline for delivery.

- a. The Vendor shall not invoice the District for delayed goods, products, or services until all are delivered and accepted by an authorized District representative.
- b. The District shall determine what constitutes a reasonable period of time and may cancel back orders, seek the items from another Vendor, and may charge the original Vendor for any difference in costs.
- c. The District Representative and other designees shall have access to view the catalog of items, view order history reports, and copies of invoices.
- d. The Vendor must notify District Representative in writing of all goods, products, services that are discontinued and provide a recommendation in writing for a comparable substitute.
 - i. District Representative must be notified no less than thirty (30) days for any discontinued goods, products, or services and be allowed to review recommended substitute/s for approval or denial of such substitute/s.
 - ii. The substitute/s must be approved in writing by the District representative before offering to sites.
 - iii. In the event the substitute is denied by the District representative, the District retains the right to request alternate goods, products, or services.

7. **Warranties.** Notwithstanding prior acceptance of any goods, products, or services by the District, the Vendor shall expressly warrant all goods, products or services provided under the PO, will be of good quality, new and properly functioning at the start of operations and conform to any sample and any specifications, drawings or other description furnished or adopted by the District and will be fit and sufficient for their intended purpose, of merchantable quality, of good material and workmanship and free from defect.

The Vendor warrants that all goods, products or services furnished under the PO shall be new unless otherwise specified by the District, and that the title conveyed regarding such goods, products or services shall be complete and its transfer rightful. The warranty period will begin at the time the goods, products or services have been received by the District, notwithstanding the provisions as outlined in section 5.

- a. The Vendor shall assign to the District all manufacturers' warranties and guarantees upon acceptance of goods, products or services. Nothing contained in this section shall affect the warranties provided by the Vendor through any proposal submissions, product literature, exhibits or other warranties provided as part of the scope of the terms of the PO.
- b. Vendor further warrants that the processes and methods employed to perform the work shall be suitable for the results required and expected. If the Vendor proposes

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to use an unproved and untried method, process or product, the District must be advised of the proposal in writing by the District through the issuance of an amended PO.

- c. During the warranty period, the Vendor will correct all defects and/or deficiencies associated with the PO and replace incorrect or defective goods, products or services within five (5) business days, or an alternate time otherwise approved in writing by the District through the issuance of an amended PO. If, within five (5) business days after written notice by the District to the Vendor, the Vendor has not corrected all defects and/or deficiencies, the District may correct all defects and/or deficiencies at the Vendor's expense. The Vendor shall be responsible and bear all costs to correct any problems, defects and/or deficiencies which do not meet the specifications set forth in the PO.
- d. The Vendor shall be responsible for filing, processing and collecting all damage claims. Defects and/or deficiencies properly noted in writing to the Vendor before expiration of the warranty period will be fully covered regardless of such subsequent expiration. In the case of emergency, repairs and/or replacement may be made without notice being given to the Vendor, if determined by the District that delay would cause certain loss or damage. The Vendor shall pay the cost of these emergency repairs and/or replacements.

8. **Invoicing.** Invoices shall be submitted directly accounts payable in the District's Finance Department at ap@psdschools.org within thirty (30) days of delivery of goods or completion of services and shall include: (a) the date, (b) the applicable District location(s), (c) detailed description, (d) and purchase order number.

- a. As a political subdivision of the State of Colorado, the District is considered a governmental entity for tax classification purposes and is exempt from sales tax. The District's state tax exempt number is 98-03335 and the District's Federal Tax Identification Number (TIN) is 84-6013733.
- b. The District utilizes the PaymentWorks Vendor portal to collect, validate, and manage Vendor information. The Vendor must complete the registration process in the portal and be approved by the District prior to invoice payment. The Vendor is responsible for keeping the vendor portal up to date. The District is not responsible for delays in payment resulting from inaccurate or out-of-date information in the vendor portal.
- c. If payment term discounts are applicable, the discount period will start from the date of the District's receipt of an acceptable invoice or from the date of receipt of acceptable goods, products or services at destination, whichever occurs later.

9. **Termination.** The District may terminate without penalty at any time in its sole discretion for any reason, with or without cause, by giving thirty (30) days' advance written notice of the termination. The District will pay incurred costs up to the point of termination as long as the termination is not due to any fault or negligence on the part of the Vendor.

- a. Notwithstanding any other term or provision, the District's obligations hereunder are

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expressly subject to its budgeting and appropriation of sufficient funds for each fiscal year (July 1 - June 30) an Agreement is in effect. In no event, shall the District's obligations in an Agreement constitute a multiple-fiscal year direct or indirect debt or other financial obligation under Article X, Section 20(4)(b) of the Colorado Constitution.

- 10. Safety.** All chemicals, equipment and materials proposed or used by the Vendor in satisfaction of the terms of the PO shall conform to the standards required by the U.S. Department of Labor Occupational Safety and Health Administration (OSHA), and any other applicable state, federal or local laws. Globally harmonized system safety data sheets (SDS) shall accompany each shipment, where applicable.
- 11. Independent Contractor.** Vendor shall provide the goods and/or services under this PO as an independent contractor of the District. As such, Vendor shall have the right to determine how and by whom the goods and/or services will be provided and the right to provide the goods and/or services free from the direction and control of the District, subject to and consistent with these PO terms and conditions.
- a. Vendor shall be exclusively responsible for: (a) all compensation, employment tax withholdings and payments, and all fringe benefits for its employees (if any) in full compliance with all applicable federal, state and local laws; (b) all insurance coverages and benefits for its employees (if any) in full compliance with all applicable federal, state and local laws, including but not limited to pension or retirement benefits, workers' compensation, unemployment compensation, and Social Security benefits; and (c) all payments to its contractors and subcontractors for goods and/or services directly or indirectly related to this PO.
 - b. Nothing in this PO shall be construed as creating a single enterprise, partnership, joint venture or employer-employee relationship between Vendor and the District. Vendor is not a partner, agent or representative of the District and shall not represent itself to be a partner, agent or representative of the District. The District is not a partner, agent or representative of Vendor and shall not represent itself to be a partner, agent or representative of Vendor.
 - c. Vendor shall not attempt or purport to extend the faith and credit of the District to any third party, person or entity. Vendor acknowledges and agrees that it has no authority to enter into any contract with a third party that would bind or in any way obligate the District. The District shall not attempt or purport to extend the faith and credit of Vendor to any third party, person or entity. The District acknowledges and agrees that it has no authority to enter into any contract with a third party that would bind or in any way obligate Vendor.
- 12. Primary Contractor and Subcontractors.** Vendor may not use subcontractors to perform any services under this PO without prior approval from a District Authorized Representative. The Vendor shall assume all responsibility for performance of all Services in this PO, whether or not the Vendor uses subcontractors. Any consequences resulting from non-performance under the terms of this PO are the sole responsibility and liability of the Vendor. The Vendor shall be responsible to the District for the acts and omissions of all its agents and employees and shall further be responsible for the acts and omissions of all

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subcontractors, their agents and employees, and all other persons acting on behalf of the Vendor or subcontractors. The Vendor shall be the sole point of contact with the District with regard to all matters covered by this PO. The District shall not initiate or maintain contact with any subcontractor unless such contact becomes necessary to mitigate the District's damage in the event the Vendor is in default or breach of any term or obligation of this PO.

13. Individuals Providing Services for Vendor Under this PO. The Vendor shall not utilize any laborer or employee who has been convicted of a violent crime or a crime of such nature (e.g., child related offenses) as to categorize the person as being unsuitable for working around school children, or has engaged in such conduct as to be similarly categorized. In the event the District has reasonable grounds to believe that any individual assigned to perform work under this PO has a criminal record, is a registered sex offender, has exhibited violent behavior or is under the influence of alcohol or an illegal substance, including marijuana, while performing the services or based upon other information the District deems reliable, the District may exclude such individual from any District property or impose reasonable conditions upon such individual's presence at any District Location unless the Vendor submits a copy of a completed security/background check on the employee. In the judgement of the District, if the services cannot be performed as a result of such action, the PO may be terminated in accordance with section 9 of these PO terms and conditions. Removal of a specific person(s) will not relieve the Vendor from timely performance of work completion and will not be considered grounds for a request for additional funds or time extension to complete the services or deliver the goods.

- a. The Vendor, its laborers and employees shall not fraternize or otherwise communicate with any District students except in cases of safety and like necessities.

14. Confidential Information.

- a. **Fingerprinting and Background Checks.** Vendor's employees, volunteers, and other individuals delivering goods or providing services associated with this PO will not be required to submit to fingerprinting or background checks conducted by the District, provided that they are under the supervision of District staff while delivering goods or providing services and submit to the school visitor check-in system, Raptor Technologies, every time they enter a school building.
- b. **Press Contacts/News Releases.** The Vendor shall not initiate any press, media, or social media contact nor respond to press, media or social media requests regarding this Agreement and/or any related matters concerning the District without the prior written approval of the District's Executive Director of Communications or designee.
- c. **Colorado Open Records Act.** Information and materials submitted under this Agreement may be considered public records subject to disclosure under the Colorado Open Records Act, (C.R.S. §§ 24-72-200.1 to -205.5) ("CORA"). Information and materials that the Vendor believes are confidential and not subject to disclosure under CORA must be submitted separately with a citation to the section of CORA and any other relevant law under which the Vendor believes they are confidential. The District, not the Vendor, shall determine whether information and

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materials so identified will be withheld as confidential, but will inform the Vendor in advance of disclosure to give it an opportunity to take legal action to protect its interests vis-à-vis the party making the CORA request.

- 15. Insurance.** Unless other coverage or limits are specified in a written agreement, contract or other formalized written instrument, the Vendor shall maintain, as a minimum, Commercial General Liability Insurance written on an occurrence bases for limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. All questions regarding insurance coverage requirements should be directed to COI@psdschools.org.

If after issuance of the PO, the Vendor does not provide requested insurance, the PO will be terminated immediately.

- 16. Conflict of Interest.** The Vendor avers to their knowledge of no employee of the District having any personal or beneficial interest whatsoever in the service or property described in the PO. The Vendor has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the Vendor's goods, products or services and Vendor shall not employ any person having such known interest.
- 17. Conflict of Terms.** In the event of any conflict of terms and provisions found between these PO terms and conditions or as specified in the body of the PO, a written agreement, contract or other formalized written instrument, any conflicts between any other terms and conditions, proposal, quotes, end user license agreements or Vendor policies, the terms and provisions of the PO or otherwise written agreement, contract or other formalized written instrument shall prevail.
- 18. Attorney Fees and Costs.** In the event it becomes necessary for either party to institute litigation to enforce any provision of the PO, the substantially prevailing party in such litigation shall receive, as part of any judgment or award entered, its reasonable attorney fees and costs, including expert witness fees.
- 19. Indemnification.** The Vendor shall indemnify and hold harmless the District and the District's Board members, employees, representatives and agents from and against any and all liability arising from any suit, action, grievance, charge or proceeding brought in connection with or related to: (a) the Vendor's operations; (b) the Vendor's provision of any goods, products or services; (c) the Vendor's actual or alleged infringement of any third party's patent or copyright; and/or (d) the conduct of any of the Vendor's employees, volunteers, agents or representatives. The indemnification and hold harmless obligation hereunder shall include all attorney fees, costs and expenses incurred by the District and/or the District's Board members, employees, representatives and/or agents in defense of said suits, actions, grievances, charges and/or proceedings.
- 20. Governmental Immunity.** It is specifically understood and agreed that nothing contained in the PO shall be construed as an express or implied waiver by the District (or Vendor, if Vendor is a government entity) of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 et seq, as now or hereafter amended.

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If both parties are government entities, the following language supersedes sections 19 and 20:

- a. **Indemnification.** To the extent permitted by the parties' respective state laws, each Party will be responsible for its own negligent acts or omissions and that of its officers, employees, agents and contractors.
 - b. **Governmental/Sovereign Immunity.** The parties acknowledge they are both governmental entities subject to certain legal protections in their respective states. It is specifically understood that nothing contained in this Agreement shall be construed as an express or implied waiver by Poudre School District of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 et seq. or by Las Cruces Public Schools ("LCPS") of any of the immunities, rights, benefits, protections, or other provisions of LCPS's respective state law.
21. **Equal Opportunity.** It is agreed that no otherwise qualified Contractor shall be excluded from participating in, be denied the benefits of, or be subject to discrimination, including harassment, under any provision of this Agreement on the basis of race; creed; color; national origin; age; sex; pregnancy; physical recovery from childbirth or a related condition; sexual orientation; marital status; veteran status; religion; genetic information; gender expression; gender identity; ancestry; or disability.
22. **Governing Law and Venue.** All issues regarding the formation, performance and/or legal enforcement of the PO shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for the resolution of any disputes arising out of or relating to the PO shall be in Larimer County, Colorado.
23. **No Assignment.** The Vendor shall not assign the PO or any of its rights, interests or obligations under the PO must be approved in writing by the District through the issuance of an amended PO. Such approval may be withheld for any reason or no reason as determined by the District in its sole discretion.
24. **No Waiver.** The parties agree that no assent or waiver, express or implied, to any breach of any one or more of the covenants of the PO shall be construed as or deemed to be an assent to or a waiver of any subsequent breach.