

## **TIMPANOGOS SCHOOL DISTRICT STANDARD TERMS AND CONDITIONS**

1. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in 63G-6a, U.C.A., 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit Timpanogos School District to purchase certain specified services, and other approved purchases for Timpanogos School District.
2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this contract shall be governed by the laws of the State of Utah, without regard to its conflict of laws principles. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. No provision in this contract shall require Timpanogos School District to submit to dispute resolution outside of Utah courts, to a venue outside the State of Utah, or to the laws of another jurisdiction. Any such unauthorized provisions are void and unenforceable.
3. **LAWS AND REGULATIONS:** The Contractor and any and all supplies, services, equipment, and construction furnished under this contract will comply fully with all applicable Federal and State laws and regulations.
4. **RECORDS ADMINISTRATION:** The Contractor shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records shall be retained by the Contractor for at least six years after the contract terminates, or until all audits initiated within the six years, have been completed, whichever is later. The Contractor agrees to allow Timpanogos School District, State and Federal auditors, and Timpanogos School District employees, access to all the records relating to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
5. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of Timpanogos School District, unless disclosure has been made in accordance with 67-16-8, U.C.A., 1953, as amended.
6. **CONTRACTOR, AN INDEPENDENT CONTRACTOR:** The Contractor shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind Timpanogos School District to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for Timpanogos School District, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the Contractor by Timpanogos School District. The Contractor shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from Timpanogos School District for these contract services. Persons employed by Timpanogos School District and acting under the direction of Timpanogos School District shall not be deemed to be employees or agents of the Contractor.
7. **INDEMNITY CLAUSE:** The Contractor agrees to indemnify, save harmless, and release Timpanogos School District, and all its officers, agents, volunteers, and employees from and against any and all third-party loss, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the acts or gross negligence of the Contractor's officers, agents, or employees, but not for claims arising from Timpanogos School District's sole negligence. Nothing in this Agreement shall be construed to require Timpanogos School District to indemnify, defend, or hold harmless any other party. No provision of this Agreement shall restrict the District's rights, protections, or remedies under the Governmental Immunity Act of Utah (U.C.A. Title 63G, Chapter 7), Notwithstanding any provision of a procurement contract to the contrary, under no circumstance may the state or a procurement unit be held liable for any special, incidental, indirect, or consequential damages arising from or relating to a procurement contract.
8. **EMPLOYMENT PRACTICES CLAUSE:** The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah Governor's Executive Order 2006-0012, which prohibits unlawful harassment in the work place.
9. **SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.
10. **RENEGOTIATION OR MODIFICATIONS:** Except as otherwise set forth herein, this contract may be amended, modified, or supplemented only by written amendment to the contract, executed by authorized persons of the parties hereto, and attached to the original signed copy of the contract. Automatic renewals will not apply to this contract.
11. **DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by Timpanogos School District. The Contractor must notify Timpanogos School District Director of Purchasing within 30 days if debarred by any governmental entity during the Contract period.
12. **TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon sixty (60) days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.
13. **NONAPPROPRIATION OF FUNDS:** The Contractor acknowledges that Timpanogos School District cannot contract for the payment of funds not yet appropriated by the Board of Education. If funding to Timpanogos School District is reduced, due to an order by the Board of Education or as required by State law, or if federal funding (when applicable) is not provided, Timpanogos School District may terminate this contract or proportionately reduce the services and purchase obligations and the amount due from Timpanogos School District upon 30 days written notice. In the case that funds are not appropriated or are reduced, Timpanogos School District will reimburse

Contractor for products delivered or services performed through the date of cancellation or reduction, and Timpanogos School District will not be liable for any future commitments, penalties, or liquidated damages.

14. **SALES TAX EXEMPTION:** Timpanogos School District's sales and use tax exemption number is 16595994-002-STC. The tangible personal property or services being purchased are being paid from Timpanogos School District funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.

15. **WARRANTY:** The Contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to Timpanogos School District under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The Contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the Contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that Timpanogos School District has relied on the Contractor's skill or judgment to consider when it advised Timpanogos School District about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which Timpanogos School District has not been warned. Remedies available to Timpanogos School District include the following: The Contractor will repair or replace (at no charge to Timpanogos School District) the product whose nonconformance is discovered and made known to the Contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies Timpanogos School District may otherwise have under this contract.

16. **PUBLIC INFORMATION:** Contractor agrees that the contract, related Sales Orders, and Invoices will be public documents, and may be available for distribution. Contractor gives Timpanogos School District express permission to make copies of the contract, related Sales Orders, and Invoices in accordance with the State of Utah Government Records Access and Management Act (GRAMA). Except for sections identified in writing and expressly approved by Timpanogos School District Department of Purchasing, Contractor also agrees that the Contractor's response to the solicitation will be a public document, and copies may be given to the public under GRAMA laws. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.

17. **DELIVERY:** Unless otherwise specified in this contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to Timpanogos School District except as to latent defects, fraud and Contractor's warranty obligations.

18. **ORDERING AND INVOICING:** All orders will be shipped promptly in accordance with the delivery schedule. The Contractor will promptly submit invoices (within 30 days of shipment or delivery of services) to Timpanogos School District. Timpanogos School District contract number and/or the agency purchase order number shall be listed on all invoices, freight tickets, and correspondence relating to the contract order. The prices paid by Timpanogos School District will be those prices listed in the contract. Timpanogos School District has the right to adjust or return any invoice reflecting incorrect pricing.

19. **PAYMENT:** Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. All payments to the Contractor will be remitted by mail unless paid by Timpanogos School District Purchasing Card (major credit card).

20. **PATENTS, COPYRIGHTS, ETC.:** The Contractor will release, indemnify and hold Timpanogos School District, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this contract. Unless otherwise agreed in writing by the parties, the Contractor acknowledges and agrees that all intellectual property, including but not limited to inventions, patents, copyrights, trademarks, trade secrets, and technical information developed by Timpanogos School District in connection with the Contractor's performance of its obligations under this contract shall be the sole and exclusive property of Timpanogos School District. Contractor hereby assigns all right, title, and interest in and to such intellectual property to Timpanogos School District, and further agrees to take such steps as Timpanogos School District may reasonably require in order to identify such intellectual property and document its assignment to Timpanogos School District.

21. **ASSIGNMENT/SUBCONTRACT:** Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of Timpanogos School District.

22. **DEFAULT AND REMEDIES:** Any of the following events will constitute cause for Timpanogos School District to declare Contractor in default of the contract: 1. Non-performance of contractual requirements; 2. A material breach of any term or condition of this contract. Timpanogos School District will issue a written notice of default providing a ten (10) business day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, Timpanogos School District may do one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this contract and any related contracts or portions thereof; 3. Impose liquidated damages, if liquidated damages are listed in the contract; 4. Suspend Contractor from receiving future solicitations.

23. **FORCE MAJEURE:** Neither party to this contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. Timpanogos School District may terminate this contract after reasonably determining such delay or default will be likely to prevent successful performance of the contract.

24. **MATERIAL CHANGES TO PRODUCT OR SERVICE:** Contractor acknowledges and agrees that any material changes, modifications, or substitutions to the underlying product or services to be provided hereunder shall constitute a modification to this contract, and that Contractor shall not affect such a modification without the prior notice and consent of Timpanogos School District, pursuant to Section 10, herein. For the avoidance of doubt and pursuant to 53G-4-402 U.C.A., 1953, as amended, this notice and consent requirement

shall not apply to regular informational updates on current events made by Contractor to any online or digital materials, in the event that such materials are provided hereunder. No provision of this contract permits the Contractor to unilaterally modify the contract or impose legal effects solely by providing notice. Any such clause is void under U.C.A. 63G-6a-1203.

25. **PROCUREMENT ETHICS:** The Contractor represents that none of its officers or employees are officers or employees of Timpanogos School District, unless disclosure has been made in accordance with 67-16-8, U.C.A., 1953, as amended. Further, Contractor certifies that it has not offered or given any gratuity or kickback as prohibited by 63G-6a-2404, U.C.A., 1953, as amended, to any officer or employee of Timpanogos School District to secure favorable treatment with respect to being awarded this contract.

26. **CONFLICT OF TERMS:** Contractor Terms and Conditions that apply must be in writing and attached to the contract. No other Terms and Conditions will apply to this contract including terms listed or incorporated by reference, terms listed in a Contractor quotation/sales order, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be: 1. Attachment. A: Timpanogos School District Standard Terms and Conditions; 2. Timpanogos School District Contract Signature Page(s); 3. Timpanogos School District Additional Terms and Conditions; 4. Contractor Terms and Conditions.

27. **ENTIRE AGREEMENT:** This Agreement, including all Attachments, and documents incorporated hereunder, and the related State Solicitation constitutes the entire agreement between the parties with respect to the subject matter, and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written. The terms of this Agreement shall supersede any additional or conflicting terms or provisions that may be set forth or printed on the Contractor's work plans, cost estimate forms, receiving tickets, invoices, or any other related standard forms or documents of the Contractor that may subsequently be used to implement, record, or invoice services hereunder from time to time, even if such standard forms or documents have been signed or initialed by a representative of Timpanogos School District. The parties agree that the terms of this Agreement shall prevail in any dispute between the terms of this Agreement and the terms printed on any such standard forms or documents, and such standard forms or documents shall not be considered written amendments of this Agreement.

28. **PRICE GUARANTEE, ADJUSTMENTS:** The contract pricing resulting from this bid/proposal will be guaranteed for the period specified. Following the guarantee period, any request for price adjustment must be for an equal guarantee period, and must be made at least 30 days prior to the effective date. Requests for price adjustment must include documentation supporting the request and demonstrating a logical mathematical link between the current price and the proposed price. Any adjustment or amendment to the contract will not be effective unless approved by the Timpanogos School District Director of Purchasing. Timpanogos School District must be given the immediate benefit of any decrease in the market, or allowable discount. The Contractor represents and warrants that the prices, terms, and conditions of sale or license provided under this contract are at least as favorable as those offered to any other customer for the same or substantially similar quantity or type of products or services, as applicable. If, at any time during the term of this contract, the Contractor offers a lower price or more favorable terms and conditions to any other customer for the same or substantially similar quantity or type of products or services, as applicable, the Contractor shall promptly notify Timpanogos School District, and this contract shall be deemed amended to reflect such lower price or more favorable term or conditions, retroactive to the date which the Contractor first offered the more favorable price, term, or condition to the other customer.

29. **DISPUTE RESOLUTION:** The parties agree to resolve any dispute, controversy, or claim arising out of or relating to this contract, including the breach, termination, or validity thereof (collectively, a "Dispute") as follows:

**Negotiation:** The parties shall first attempt in good faith to resolve the Dispute through informal negotiations, which may be initiated by written notice, provided by either party, outlining the nature of the Dispute;

**Litigation:** Notwithstanding the foregoing, Timpanogos School District reserves the right, at its sole discretion, to seek judicial resolution of any Dispute, at any time prior to the final resolution thereof, in the jurisdiction and venue set forth in Section 2, herein.

**Continued Performance:** While the final resolution of any Dispute is pending, the Contractor shall continue to fully perform its obligations under this contract in accordance with its terms.

30. **CHANGE ORDER:** Timpanogos School District reserves the right to make changes to the scope of work, specifications, or any other aspect relating to the products or services to be provided hereunder, through written change orders. Such changes may include, but are not limited to, additions, deletions, substitutions, or modifications to the quantities, delivery schedule, or other terms of the contract. No change order shall be binding or effective until it is documented in writing and executed by both parties; provided, however, that if the parties are unable to agree upon the terms of a change order, Timpanogos School District may either (i) terminate the contract without regard to such cure or notice periods as are contemplated in Section 12, herein, or (ii) direct Contractor to perform the contract under the additional terms specified in the change order, and the Contractor shall document its costs associated with the disputed change order terms and may seek resolution of the resulting Dispute under the terms outlined in Section 29, herein.

31. **BOYCOTTS:** In accordance with U.C.A. 63G-27 et. seq., Contractor certifies that it is not currently engaged in any "economic boycott" nor a "boycott of the State of Israel" as those terms are defined in Section 102 therein. Contractor further certifies that it has read and understands U.C.A. 63G-27 et. seq., that it will not engage in any such boycott action during the term of this contract, and that it shall promptly notify Timpanogos School District in writing in the event that it engages in any such boycott; provided, however, that this Section 31 shall not apply in the event that the total value of this contract is less than \$100,000 or Contractor has fewer than 10 full-time employees, and shall not prohibit Contractor from engaging in economic boycotts that are required in order for Contractor to comply with federal law.

32. **RESTRICTIONS UNDER UTAH LAW – VOID PROVISIONS** In accordance with U.C.A. 63G-6a-1203 and 63G-7-101 et seq., any term that (1) limits the District's governmental immunity, (2) requires indemnification by the District, (3) mandates dispute resolution outside Utah courts or laws, (4) exceeds state-required insurance, (5) imposes unilateral modifications, (6) restricts legal disclosures, (7) includes automatic renewals not allowed under procurement law, or (8) limits vendor liability for negligence, shall be void and unenforceable unless explicitly authorized in writing.

