

PURCHASE ORDER TERMS & CONDITIONS – SERVICES OR SERVICES AND GOODS

1. Definition and Acceptance of Terms NCTD shall mean the North County Transit District. Contractor shall mean the person and/or company from whom the merchandise, goods, equipment (“Goods”) or services (“Services”) are ordered as shown on the face of this Purchase Order (“PO”). This PO constitutes an offer by NCTD to Contractor upon the terms and conditions stated herein and shall become a binding contract upon acceptance thereof either by acknowledgement or performance.

2. Entire Agreement This PO, which incorporates all applicable terms and conditions, specifications, scope and any other included attachments, constitutes the entire agreement and understanding between NCTD and Contractor. Any amendments to this PO must be in writing and executed by both parties.

3. Pricing The total price herein specified shall include all taxes which either party is required to pay with respect to the sale of the Goods and Services covered by this PO, including sales and use taxes, and shall include all charges for customs duties, freight charges and shipping unless specifically excluded. NCTD is exempt from Federal Excise and Transportation Taxes. On out-of-state purchases, Contractor must show their Use Tax Permit Number issued by the California State Board of Equalization, which authorizes them to charge and collect California sales tax. Any fuel surcharges or charges for cartage, pallets, boxing or packaging shall not be allowed unless expressly disclosed in Contractor’s response to a solicitation or request for quote.

4. Payment NCTD will pay Contractor only upon satisfactory delivery or receipt of Goods or Services. NCTD will review each payment request as soon as practicable after receipt. If any payment request is determined to be unsuitable for payment, NCTD shall notify Contractor as soon as practicable. NCTD shall not pay any interest charges for late payments of invoices unless permitted by law. Payments may be withheld, or portions thereof may be withheld, or set-offs made against Contractor if Contractor’s performance is not in accordance with the PO requirements.

5. Delivery Timely performance and deliveries are essential to this PO. Contractor must immediately advise NCTD if there is any delay or shortage in shipment or of a partial shipment and date full shipment will be delivered. All Goods or Services described herein must be delivered within the time specified on this PO. Delivery of Goods shall be made between 8:00 a.m. and 4:00 p.m. local time on weekdays unless otherwise agreed to by NCTD. Unless otherwise specified, all Goods acquired under this PO are sold Free on Board (FOB) location specified by NCTD. An original copy of the freight bill must be attached to the invoice. Contractor is not authorized to ship the Goods under a reservation and no tender of a bill of lading shall operate as a tender of the Goods. Cash on delivery (COD) shipments are expressly prohibited. Shipment in greater or lesser quantity than ordered may be returned at Contractor’s expense unless authorized by NCTD.

6. Excusable Delays / Force Majeure Contractor will not be liable for delays in performing its obligations under this PO to the extent such delays are caused by unforeseeable events beyond Contractor’s reasonable control and not due to Contractor’s fault or negligence. Examples of such events include, but are not limited to: Acts of God (e.g., storms or floods); government commandeering of materials, products, plants or facilities; acts of civil or military authorities; fires; labor strikes; epidemics; war; or civil disturbances (e.g., riots). To qualify as an excusable delay under this provision, Contractor must satisfy the following requirements: (a) within seven (7) calendar days of the commencement of the delay, Contractor must provide NCTD with written notice detailing the cause and extent of the delay, along with a request for a schedule extension specifying the estimated duration of the delay; and (b) upon conclusion of the delay, Contractor must provide NCTD with written notice of the actual delay incurred, specifying the duration of the delay and the impact on performance. Upon receipt and approval of such notices, the date of promised delivery or performance shall be extended for the period of time reasonably necessary to address the delay. NCTD reserves the right to verify the cause and impact of any claimed excusable delay and to require additional information as reasonably necessary to evaluate Contractor’s request for a schedule extension.

7. Inspection Acceptance or Rejection of Goods Inspections and acceptance or rejection of Goods will occur at the delivery location unless otherwise specified in writing. NCTD will inspect the Goods within 30 calendar days of delivery and will notify Contractor in writing of acceptance or rejection. If the Goods require specific inspections or tests to confirm compliance with the specifications, Contractor must perform such inspections or tests at its sole cost before delivery to NCTD. Goods that are damaged, non-conforming, or fail to meet the requirements of the PO will be rejected and returned to Contractor at Contractor’s risk and expense. NCTD will notify Contractor in writing stating the reason(s) for rejection. NCTD will provide written notification specifying the reasons for rejection. Contractor must deliver conforming Goods within 10 business days or another mutually agreed timeline. Rejected Goods must be removed by Contractor at its sole cost within 30 calendar days of notification. If Contractor fails to remove the rejected Goods within this period, NCTD may dispose of the Goods at Contractor’s expense. Acceptance of Goods by NCTD does not waive NCTD’s right to enforce any remedies related to latent defects, non-conformity, or other breaches of the PO.

8. Risk of Loss Contractor shall bear all costs, losses, or damages and assume all risk and liability associated with manufacture, transportation, and delivery of the Goods or Services, regardless of the cause, until NCTD has inspected and formally accepted the Goods or Services in writing. Title to the Goods shall pass to NCTD only upon NCTD’s formal written acceptance of the Goods, provided that such acceptance does not constitute a waiver of any claims for latent defects, non-conformity, or breaches of the PO. Contractor shall remain liable for any loss or damage to the Goods resulting from Contractor’s negligence or willful misconduct, regardless of whether title has passed to NCTD.

9. Material Safety Data Sheet (MSDS) Contractor must provide a MSDS with the shipment of any Goods containing Hazardous Material, as defined under California Health and Safety Code section 25501. If the MSDS is updated or revised at any time, Contractor must promptly provide the updated information to NCTD, ensuring compliance with all applicable laws and regulations governing hazardous materials.

10. Audit/Inspection of Records Contractor and any subcontractor shall retain complete and readily accessible records related to this PO, including but not limited to data, documents, reports, statistics, agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials. Contractor and any subcontractor must comply with applicable record retention requirements, including those specified under California law. Contractor shall maintain all books, records, accounts, and reports required under this PO for a period of no less than three (3) years after the termination or expiration of this PO. In the event of litigation, claims, or audit findings arising from the performance of this PO, records shall be maintained until the final disposition of such matters, including any appeals. Contractor shall allow NCTD and its authorized representatives reasonable access to inspect and audit records related to this PO. If applicable, Contractor shall also permit access to sites of performance under this PO as required to facilitate audits or inspections. Contractor agrees to include provisions substantially similar to this clause in any subcontract entered into in connection with this PO.

11. Changes (A) **Changes to the Goods or Services:** NCTD reserves the right to make changes to this PO within its general scope by providing written notice to Contractor. Such changes may include, but are not limited to: (1) scope of work modifications, drawings, designs or specifications; (2) method of shipping or packing; (3) place of delivery; or (4) delivery schedule. If any such change causes an increase or decrease in the cost or time required for performance, Contractor shall be entitled to an equitable adjustment in the price and/or schedule. Contractor must submit a written request for such an adjustment within 30 calendar days of receiving NCTD’s written notice of change. If Contractor requests an adjustment to the PO, the change must be authorized by NCTD in writing and Contractor must provide notice to NCTD prior to the time

Contractor performs the work and an equitable adjustment will be made where appropriate. Failure to comply with these notification requirements may result in the denial of any requested adjustment. (B) **Substitutions:** No substitution of any specified item, product, material or system ("Specified Items") will be considered unless Contractor submits a request to substitute Specified Items along with data substantiating the equivalency of the proposed substitution with the Specified Items not more than seven (7) days after the date of award of the contract to Contractor. Contractor shall reimburse NCTD for all costs and expenses incurred by NCTD to review a proposed substitution for Specified Items. NCTD's acceptance or rejection of a proposed substitution shall be final. No substitution accepted by NCTD shall increase the price or time to provide such Specified Items as set forth in the PO; provided, however, if the cost to furnish/install an approved substitution of is less than the Specified Item, the price shall be reduced by such cost difference.

12. Termination for Convenience NCTD may terminate performance under this PO, in whole or in part, at any time and for any reason, by providing written notice to Contractor ("Notice of Termination"). The Notice of Termination shall specify the extent of termination and the effective date. Upon receipt of such notice, Contractor shall: (1) immediately discontinue performance on the date and to the extent specified in the notice; (2) cease placing further orders for materials, except as necessary to complete any portion of the PO not terminated; (3) promptly make every reasonable effort to cancel orders to its suppliers on terms satisfactory to NCTD or, with NCTD's concurrence, assign such orders to NCTD; and (4) assist NCTD, upon request, in maintaining, protecting, and disposing of property acquired by NCTD under this PO. If Contractor submits a written claim within 30 calendar days after receiving the Notice of Termination, NCTD will make an equitable adjustment (without duplication of any item) to compensate Contractor for: (1) amounts due and unpaid for Goods or Services completed and accepted in accordance with this PO prior to the termination date; (2) a reasonable amount for Goods and materials in production, provided that such Goods and materials are not Contractor's standard stock and can be delivered to NCTD in a usable condition; (3) costs reasonably incurred in settling and paying claims from suppliers arising out of the canceled orders; and (4) a reasonable profit on costs incurred for the portion of the PO performed and terminated, provided that no profit shall be allowed if it appears Contractor would have sustained a loss on the entire PO if completed. The total compensation under this clause shall not exceed the total PO price, reduced by amounts previously paid, the value of work not terminated, and any amounts attributable to the terminated portion of the PO. Contractor expressly waives any claims for anticipated profits or other damages related to the terminated portion of the PO.

13. Termination for Default If Contractor breaches or fails to perform its obligations under this PO, NCTD reserves the right to terminate the PO for default. Upon termination, NCTD may, at its sole discretion, award the contract to the next lowest responsive and responsible bidder, solicit new bids, or pursue any other remedy authorized by law. In addition to any remedies authorized by law, NCTD may retain money due to Contractor under this PO as necessary to address claims or damages resulting from Contractor's breach. Such retention of funds shall be subject to the following conditions: (1) NCTD will provide Contractor 10 business days' notice of its intent to withhold funds from any partial payment due prior to NCTD's acceptance of the Goods or Services under the PO. For any payment made after acceptance, no prior notice is required; (2) No additional retention will be made if the withheld amount does not exceed the amount already retained from partial payments; and (3) If funds are retained and it is later determined that NCTD is not entitled to indemnification or damages, NCTD will remit the retained amount to Contractor along with any interest earned during the retention period. NCTD may terminate the PO by serving a Notice of Termination on Contractor. The notice will specify the default and provide Contractor with 10 business days to cure the default to NCTD's satisfaction. This cure period may be adjusted upon mutual agreement in writing. If NCTD determines, after the cure period, that the default remains uncured, NCTD will issue a "show cause" letter requesting Contractor to provide written justification for why the PO should not be terminated. If Contractor fails to provide sufficient justification or remedy, NCTD may proceed with termination. Upon termination for default, Contractor shall only be entitled to payment for Goods delivered and accepted or Services performed in compliance with the PO's terms up to the termination date. If NCTD determines that Contractor's failure to perform was due to an excusable event beyond Contractor's control—such as a strike, fire, flood, or other unforeseeable circumstances—NCTD may, at its sole discretion, allow Contractor to continue performance or terminate the PO for convenience instead of default.

14. Insurance Contractor will include the PO/contract number on all insurance-related correspondence, i.e., the insurance certificate itself. All policies required shall be issued by companies who are licensed or approved to do business in the State of California and hold a current policyholder's alphabetic and financial-size category rating of not less than A-VI, in accordance with A.M. Best. As a condition of the PO award, Contractor shall submit, at the request of NCTD, any required insurance policies to NCTD's third-party insurance monitoring service provider, MyCOI. Unless higher limits are requested by NCTD, Contractor shall obtain: (A) **COVERAGE REQUIRED - ALL PURCHASE ORDERS:** (1) **Liability:** (a) **Commercial General Liability:** At all times during this PO and, with respect to Products and Completed Operations Liability, for 12 months following the acceptance of the Goods or Services by NCTD, Contractor agrees to maintain Commercial General Liability Insurance utilizing Insurance Services Office (ISO) coverage form CG0001, edition date 10/01 or later, or an equivalent form and with insurance companies acceptable to NCTD. The coverage shall be on an "occurrence" basis, shall include all elements of Coverages A, B and C and contain no restricting or exclusionary endorsements with respect to the performing of Services described in the scope of work; limits no less than \$1,000,000 – per occurrence for bodily injury, personal injury and property damage. The general aggregate limit shall be twice the required occurrence limit and issued on a policy basis. (b) **Automobile Liability:** At all times during this PO, Contractor agrees to maintain Automobile Liability Insurance for bodily injury and property damage utilizing ISO form CA0001 covering any auto (Code 1); limits no less than \$300,000 – per accident and issued on a combined single limit and issued on a combined single limit. (c) **Workers' Compensation/Employer Liability:** At all times during this PO, Contractor agrees to maintain Workers' Compensation and Employers' Liability Insurance in compliance with the applicable statutory requirements. Contractor waives any rights of subrogation against NCTD, and the policy form must permit and accept such waiver. (B) **ADDITIONAL COVERAGES MAY BE REQUESTED BY NCTD BASED ON PROJECT PURCHASE REQUIREMENTS.** All such policies shall name in the endorsement North County Transit System, their directors, officers, agents, and employees as additional insureds as their interests may appear. Contractor's policies shall be primary. The specified limits are minimum amounts to be provided, and any insurance maintained by Contractor above such limits shall provide protection to NCTD to the same extent as provided to Contractor. The requirements as to the types and limits of insurance coverage to be maintained by Contractor are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by Contractor including, but not limited to, indemnification.

15. Indemnification Contractor shall defend, indemnify, and hold harmless NCTD, its directors, officers, agents, and employees from and against any and all claims, losses, damages, liabilities, charges, or expenses (including reasonable attorney's fees and costs) arising out of or resulting from any damage, injury, or loss to persons or property caused by, resulting from, or in connection with any negligent act, omission, or willful misconduct by Contractor, its officers, agents, employees, subcontractors, or anyone directly or indirectly employed by them in the performance of this PO, or any failure by Contractor or its subcontractors to comply with applicable laws, ordinances, rules, or regulations. In addition to any other remedy authorized by law, NCTD may withhold payment of amounts due to Contractor under this PO as deemed necessary to satisfy or address any pending claims or damages. **Infringement Indemnity:** Contractor shall, at its sole expense, defend, indemnify, and hold harmless NCTD from and against any claims, suits, or proceedings brought against NCTD alleging that any Goods or Services provided under this PO, or the use or sale thereof, infringe any U.S. patent, copyright, trade secret, or other proprietary right. Contractor shall pay all costs, damages, and attorney's fees awarded in such claims or suits, provided that NCTD (1) promptly notifies Contractor in writing of the claim or suit; 2) provides Contractor with reasonable assistance at Contractor's expense; and 3) grants Contractor the authority to defend or settle the claim or suit. If the use or sale of any Goods or Services is enjoined or restricted, Contractor shall, at its expense and NCTD's option:

1) procure for NCTD the right to continue using or selling the affected Goods or Services; 2) replace the Goods or Services with non-infringing equivalents acceptable to NCTD; or 3) modify the Goods or Services to render them non-infringing while maintaining equivalent functionality and performance. Contractor's obligations under this provision shall survive the expiration or termination of this PO.

16. Warranties Contractor warrants that: (A) Goods Quality and Fitness: All Goods delivered under this PO: (1) will be of merchantable quality as defined in Section 2-314 of the Uniform Commercial Code, free from defects in materials and workmanship (including damage resulting from inadequate or improper packaging by Contractor); (2) will strictly conform to NCTD's specifications, drawings, and any approved samples; and (3) will be free from defects in design, even if the design has been approved by NCTD. (B) Commercial Warranties: The Goods shall be covered by the most favorable commercial warranties provided by Contractor to any customer for the same or similar Goods, provided that no such warranty period shall be less than one (1) year. If a third-party warranty extends beyond this period, Contractor may substitute that third-party warranty to NCTD's benefit. (C) Title and Ownership: Title to all Goods furnished under this PO shall pass to NCTD upon acceptance and will be free and clear of all liens, claims, security interests, or encumbrances. (D) Defective Goods: If any Goods fail to meet the above warranties, NCTD may, at its option and without prejudice to its other rights or remedies: (1) reject and return the Goods at Contractor's risk and expense, with Contractor responsible for all costs incurred by NCTD in connection with the return, replacement, or repair of such Goods; (2) require Contractor to promptly repair or replace the defective Goods at no additional cost to NCTD; or (3) accept the defective Goods with an equitable adjustment to the PO price. Contractor shall promptly reimburse NCTD for any prior payments related to rejected Goods or associated costs, including shipping, handling, and inspection. NCTD's rights and remedies under this provision are cumulative and in addition to any other rights or remedies available under this PO, at law, or in equity. Contractor's obligations under this section shall survive delivery, acceptance, and payment.

17. Governing Law & Choice of Forum Contractor's quote, the resulting PO and the work performed under it shall be governed by these Terms and Conditions and the laws of the State of California. Contractor warrants that in the performance of this PO it shall comply with all applicable federal, state and local laws, ordinances, orders, rules and regulations thereunder. Any action or proceeding to enforce or relating to this PO shall be brought exclusively in the federal or state courts located in San Diego County, California; and venue is proper in the North County Division of the San Diego Superior Court.

18. Disputes Claims and Resolution NCTD and Contractor agree to make every reasonable effort to resolve disputes arising under this PO informally through their designated representatives. If informal resolution is unsuccessful, either party may request mediation by submitting a written request signed by an officer with authority to bind the requesting party. Within five (5) business days of receiving such a request, the parties shall mutually agree on a mediator or alternative dispute resolution agency. If the parties cannot agree, the initiating party may arrange for the American Arbitration Association (AAA) office in San Diego, California, to appoint a mediator. Once the mediator is appointed, the initiating party shall coordinate with all parties and the mediator to schedule the mediation, ensuring that it takes place no later than 15 business days after the mediator's appointment. Costs and fees of the mediation shall be borne by the initiating party unless otherwise agreed in writing. Any dispute not resolved through mediation may proceed to litigation in a court of competent jurisdiction in the County of San Diego, State of California, unless both parties agree in writing to submit the dispute to binding arbitration. If binding arbitration is selected, the process shall be conducted in accordance with mutually agreed-upon rules or those of the AAA if no agreement is reached. If Contractor or any party for whom Contractor is legally responsible suffers injury or damage due to NCTD's alleged act or omission, Contractor shall file a written claim for damages with NCTD's Office of Chief General Counsel in accordance with California Government Code sections 900 et seq. The duties and obligations imposed by this PO, and the rights and remedies available hereunder, are in addition to and not a limitation of any rights or remedies otherwise provided by law. No action or inaction by either party shall constitute a waiver of any rights or duties under this PO, nor approval of or acquiescence to a breach, except where explicitly agreed to in writing. Should litigation or arbitration be necessary to enforce any term or provision of this PO or to collect any amounts due, the prevailing party shall be entitled to recover reasonable attorney's fees, court costs, witness fees, and other litigation-related expenses.

19. Survival Notwithstanding NCTD's acceptance of the Goods or Services and payment thereof, Contractor shall remain obligated under all clauses of this PO which expressly, or by their nature, extend beyond and survive such acceptance and payment.

20. Severability If any term, provision, or condition of this PO is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this PO shall not be affected thereby, and each term, provision, or condition of this PO shall be valid and enforceable to the fullest extent permitted by law.

21. Independent Contractor In the performance of any Services or delivery of any Goods to be provided hereunder, Contractor's relationship to NCTD shall be that of an independent contractor and not an employee, agent or other representative of NCTD.

22. Standard of Performance Contractor's Services shall be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of Contractor's profession currently practicing under similar conditions. By delivery of completed Goods or Services, Contractor certifies that the Goods or Services conform to the requirements of this PO and all applicable federal, state and local laws. If Contractor is retained to perform Services requiring a license, certification, registration or other similar requirement under California law, Contractor shall maintain that license, certification, registration or other similar requirement throughout the term of this PO.

23. California Political Reform Act Contractor acknowledges that the California Political Reform Act ("Act"), California Government Code section 81000 et seq., provides that contractors hired by a public agency, such as NCTD, may be deemed to be a "public official" subject to the Act if Contractor advises NCTD on decisions or actions to be taken by NCTD. The Act requires such public officials to disqualify themselves from participating in any way in such decisions if they have any one of several specified "conflicts of interest" relating to the decision. To the extent the Act applies to Contractor, Contractor shall abide by the Act and the conflict-of-interest restrictions imposed on public officials by California Government Code section 1090 et seq.

24. Assignments Any attempt by Contractor to assign, subcontract, or transfer all or part of this PO shall be void and unenforceable without NCTD's prior written consent, which consent shall not be unreasonably withheld. Any such consent shall not relieve Contractor from full and direct responsibility for all Services performed prior to the date of assigning, subcontracting, or transferring this PO. In the event of an authorized assignment by NCTD or applicable law, all terms, conditions, and provisions of this PO shall apply to and bind the respective heirs, executors, administrators, successors, and assigns of the parties.

25. Third Party Beneficiaries No provisions of the PO shall in any way inure to the benefit of any third party, including the public at large, so as to constitute such person a third-party beneficiary of the PO or of any one or more of the terms and conditions of the PO or otherwise give rise to any cause of action in any person not a party to the PO, except as expressly provided elsewhere in the PO.

26. Subcontractors Contractor agrees to bind every subcontractor to the terms of the PO as far as such terms are applicable to subcontractor's portion of the Services. Contractor shall be as fully responsible to NCTD for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by its subcontractors, as Contractor is for acts and omissions of persons directly employed by Contractor. Nothing contained in this PO shall create any contractual relationship between any subcontractor and NCTD. NCTD reserves the right to approve all subcontractors. NCTD's approval of any subcontractor shall not in any way relieve Contractor of its obligations.