



Yavapai College
Department of Procurement and Contract Services
Purchase Order Terms and Conditions

1. **CONTRACT DEFINED:** The term "Contract" as used in the Purchase Order Terms and Conditions means one of the following, as applicable:
 - 1.1 Where the Purchase Order is the sole document that Yavapai College (hereinafter referred to as "YC") authorizes to describe the terms of the contract between the Contractor and YC (such as scope of work, deliverables, price) the Purchase Order will be the sole document constituting the contract between the Parties;
 - 1.2 Where YC issues a solicitation (request for proposal (RFP), invitation for bids (IFB), request for qualifications (RFQu), or request for quotations (RFQ)), the solicitation and amendments to it, the Contractor's response (proposal, bid, or quote), any statements of work or other similar documents and the Purchase Order Terms and Conditions along with any engagement letter, if applicable;
 - 1.3 Where YC and the Contractor sign a YC-template contract, that contract, any YC executed amendments to it and the Purchase Order Terms and Conditions;
 - 1.4 Where YC signs a contract template that the Contractor provides, the contract template, as YC may modify it, any YC executed amendments to it, and these Purchase Order Terms and Conditions. If a Contractor supplies a contract template in its bid or proposal in response to a formal solicitation (that is, under an IFB, RFP, RFQu or RFQ), or after YC notifies it that it has been selected for contract award, the contract template is subject to and must explicitly incorporate the solicitation terms and conditions outlined herein.
2. **"DAYS" DEFINED:** The term "days" as used in the Purchase Order Terms and Conditions means calendar days, unless otherwise specified by YC.
3. **ORDER OF PRECEDENCE:** The executed contract (if applicable), and the Purchase Order Terms and Conditions take precedence over any inconsistent or materially different terms in the Contractor's response to a solicitation or other Contractor-supplied contract documents or URL terms. Additionally, YC does not agree to, and will not be bound by, Contractor terms and conditions that a representative of YC not authorized to sign contracts has approved and/or signed.
4. **PURCHASE ORDER DEFINED:** The term "purchase order" as used in these terms and conditions means the document entitled "Purchase Order", signed by the Director of Procurement & Contract Services, that the Yavapai County Community College District dba Yavapai College ("YC") issues to the contractor ("Contractor") (collectively, "Parties").

TERMS AND CONDITIONS APPLICABLE TO CONTRACTS INVOLVING THE PURCHASE OF GOODS

5. **ACCEPTANCE AND REJECTION:** Regardless of any terms or conditions to the contrary in Contractor forms or documents, YC shall have all the rights and remedies specified in this paragraph. YC shall have a reasonable time after delivery of goods to inspect them. YC is not obligated to pay for those goods until it has had the opportunity to inspect them and has accepted them. YC may reject goods if, prior to final acceptance, the goods are found to be defective or not as specified. In the case of services, YC is not obligated to pay for them until it has finally accepted the services and, in the case of construction, is occupying or otherwise using the facility where the construction occurred. YC is entitled to all other remedies under applicable law, including the right to revoke acceptance of nonconforming goods.

Contractor shall reimburse YC for all direct, indirect, incidental, and consequential costs related to nonconforming goods or services. Notwithstanding final acceptance and payment, Contractor shall be liable for defects, fraud, or such gross mistakes that amount to fraud. YC acceptance of performance shall not waive the right to claim damages for breach, negligence, product liability, or any other act or omission attributable to Contractor.

6. **INSPECTIONS:** The Contractor agrees to permit YC or its delegee access to its facilities, subcontractor facilities and the Contractor's processes for producing the goods, at reasonable times for inspection of the goods covered under this Contract. YC shall also have the right to test at its own cost the goods to be supplied under this Contract. Neither inspection at the Contractor's facilities nor testing shall constitute final acceptance of the goods. If YC determines non-compliance of the goods, the Contractor shall be responsible for the payment of all costs incurred by YC for testing and inspection.
7. **RISK OF LOSS:** The risk of loss from any casualty to the goods, regardless of the cause, shall be on Contractor up to the time of receipt of the goods by YC at the place of delivery, but only after any proper inspection has been completed by YC without rejection of the goods.
8. **SUBSTITUTIONS:** Contractor may not substitute goods required under this Contract. Providing substitutions or any attempt to do so will be considered a breach of the Contract.
9. **TITLE AND DELIVERY:** Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all delivery and unloading at the destination identified in the Contract. Title to the goods shall pass to YC upon acceptance at the F.O.B. point specified, subject to the right of YC to reject. For any exception to the delivery date specified, Contractor shall give prior notification and obtain written approval from YC's Procurement and Contract Services. Time is of the essence, and the Contract is subject to termination for failure to deliver on time.
10. **WARRANTIES:**
 - 10.1 **Liens:** The Contractor warrants that the goods supplied under this Contract are free of liens.
 - 10.2 **Quality:** Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by YC of the goods, they shall be:
 - 10.2.1 Of a quality to pass inspection without objection in the trade under the Contract description;
 - 10.2.2 Fit for the intended purposes for which the goods are used.
 - 10.2.3 Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
 - 10.2.4 Adequately contained, packaged and marked as the Contract may require; and
 - 10.2.5 Conform to the written promises or affirmations of fact made by the Contractor.
 - 10.3 **Fitness.** The Contractor warrants that any material supplied to the YC shall fully conform to all requirements of the Contract and all representations of the Contractor and shall be fit for all purposes and uses required by the Contract.
 - 10.4 **Inspection/Testing.** Inspection or testing of or payment for the goods does not affect the warranties set forth in subparagraphs 10.2.1 through 10.2.5 of this paragraph by YC.

TERMS AND CONDITIONS APPLICABLE TO CONTRACTS INVOLVING THE PURCHASE OF SERVICES

11. **CONTRACTOR PERSONNEL POLICIES:** Contractor will maintain personnel policies that appropriately check the backgrounds of its employees who will be providing services to YC on site in accordance with YC policy. Contractor will supply the appropriate YC representative with copies of those policies upon request.
12. **FINANCIAL TRANSACTIONS:** If Contractor is responsible for handling any type of financial transaction for YC, the Contractor shall demonstrate annually, as applicable, that it complies with the Statement on Standards for Attestation Engagements (SSAE) No. 16, known as SSAE 16, established by the Auditing Standards Board (ASB) and the American Institute of Certified Public Accountants (AICPA). The

Contractor shall provide its annual report, as applicable, on a reporting form or forms adopted as part of SSAE 16 no later than 30 days after YC requests in writing.

13. **PERFORMANCE STANDARDS:** Contractor shall, at all times during this Contract, provide the services within the highest standards of its profession. Contractor certifies that it shall maintain all applicable licenses/certifications and must provide notice immediately to YC of any change in any license/certification. Contractor warrants that the services provided shall conform to the Contract.
14. **PROVISION OF SUPPLIES, MATERIALS AND LABOR:** The Contractor shall furnish all supplies, equipment, and all management and labor necessary for the efficient and sound provision of the services or goods it supplies under this Contract, or in subsequent extensions or amendments.

TERMS AND CONDITIONS APPLICABLE TO ALL CONTRACTS

15. **ADVERTISING AND PROMOTION:** The name or logos of YC or those of any entity under YC's jurisdiction shall not be used by Contractor except as may be required to perform this Contract and only as approved in writing by YC.
16. **APPLICABLE LAWS:** This Contract is governed by the laws of the State of Arizona. Venue for any action shall be exclusively in Yavapai County, Arizona. Any provision requiring jurisdiction or venue outside the State of Arizona is void and unenforceable.
17. **ARBITRATION:** Disputes arising under this Contract shall be resolved in accordance with applicable procurement protest and administrative procedures, including A.R.S. § 41-2611 et seq., as adopted by Yavapai County Community College District procurement rules. Arbitration shall only be used if mutually agreed in writing after the dispute arises.
18. **AUDITS:** To the extent required by A.R.S. § 35-214, the Contractor shall retain and shall contractually require each subcontractor to retain all data, books and other records ("records") relating to this Contract for a period of five (5) years after completion of the Contract. All records shall be subject to inspection and audit by YC at reasonable times. Upon request, the Contractor shall provide access to any books, records, or other information related to the Contract to the Arizona Auditor General, the Federal Government (if applicable), and any other authorized governmental entity.
19. **BILLING:** If YC permits the Contractor to receive progress-payments, Contractor may only invoice in increments of 30 days or more. The monthly billings should be submitted to the "BILL TO" address shown on the Contract.
20. **BUSINESS CONTINUITY PLAN:** Contractor will provide to YC, within 30 days after such request, a comprehensive plan for continuing the performance of its obligations (the Business Continuity Plan) during a Public or Institutional Emergency. A Public or Institutional Emergency means a natural or human made event that creates a substantial risk to the public, that causes or threatens death or injury to the general public, or that causes a significant disruption to the day-to-day business operations of YC. The Business Continuity Plan, at a minimum, will address the following: 1) identification of response personnel by name; 2) key succession and performance responses in the event of sudden and significant decrease in workforce; 3) contingency plans for the Contractor to continue the performance of its obligations under the Agreement, despite the emergency; and 4) if Contractor will store, have access to, or otherwise process any YC Data, a data recovery plan that includes the following: identification of data recovery personnel by name, how YC Data will be recovered, recovery point and recovery time objectives, and steps to be taken to recover YC Data. If YC requires a data recovery plan, upon YC's request, Contractor will provide YC with evidence that Contractor annually tests the data recovery plan. In the event of a Public or Institutional Emergency, Contractor will implement the applicable actions set forth in the Business Continuity Plan and will make other commercially practicable efforts to mitigate the impact of the event. For clarification of intent, Contractor will not be entitled to any additional compensation or extension of time by virtue of having to implement a Business Continuity Plan, unless otherwise agreed to by YC in writing.

21. **CHANGES:** An authorized YC representative from Procurement and Contract Services may make changes within the general scope of this purchase order by giving notice to Contractor and subsequently confirming such changes in writing. If such changes affect the cost of, or the time required for performance of this purchase order, the parties may negotiate a mutually acceptable equitable adjustment to the terms of the agreement. No change by Contractor shall be recognized without written approval of an authorized YC representative. Any claim by Contractor for an adjustment under this Paragraph must be made in writing within thirty (30) days from the date the Contractor knew or should have known of the underlying change cited as the cause for such claim. Nothing in this paragraph shall excuse Contractor from proceeding with performance of the purchase order as originally outlined or as modified by mutual agreement of the parties.
22. **COMPLIANCE WITH IMMIGRATION LAWS; LEGAL WORKER'S ACT:** Contractor warrants compliance with all federal immigration laws and regulation that relate to their employees and A.R.S. § 23-214 (A). A breach of this warranty shall constitute a material breach of this Contract that is subject to penalties up to and including termination of this Agreement at the sole discretion of the non-breaching party. YC retains the legal right to inspect the papers of any contractor or subcontractor employee of the other party who works on this Contract to ensure that the contractor or subcontractor is complying with this warranty. Contractor will not be considered in material breach of this Contract if the Contractor establishes it has complied with the employment verification provision prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214(A).
23. **CONFIDENTIAL INFORMATION**
- 23.1 Confidential Information Defined:
- 23.2 Confidential Information includes, but is not limited to, Social Security Numbers, student records, student financial records regarding students (or their parents or sponsors), financial and personal information regarding YC employees and students, protected health information (as identified by the Health Information Portability and Accountability Act), and other personally identifiable information protected by applicable law or regulation. In addition, Confidential Information includes data and other information that is proprietary to or developed by YC such as institutional financial and performance records. Confidential Information does not include information the receiving party already knows; information that becomes available to the public except as a result of disclosure by the receiving party in violation of this Contract; information and/or records required to be disclosed pursuant to State of Arizona public records laws and applicable case precedent as determined in the sole discretion of YC; and information that becomes known to the receiving party from a source other than the disclosing party on a non-confidential basis.
- 23.3 Use of Confidential Information: Contractor agrees that the Confidential Information provided to it during the Contract or to which it may potentially have access, during the provision of services related therein, shall be used only and exclusively in the performance of Contractor's duties and obligations pursuant to the terms of this Contract, and not for any other purpose. The Contractor will limit access to Confidential Information to its employees who need to know the Confidential Information in order to perform Contractor's duties and obligations pursuant to the terms of this Contract and will instruct those employees to keep the information confidential.
- 23.4 Contractor Safeguards: At all times during this Contract, Contractor will maintain appropriate administrative, technical and physical safeguards to protect the security and privacy of Confidential Information in use, in transit, or in rest. The safeguards include, but are not limited to, implementation of adequate privacy and security policies, data breach response plans that comply with industry standards, and the requirements of applicable laws and regulations.
- 23.5 Reporting Incidents: Contractor shall inform YC's Chief Information Security Officer and Director of Procurement and Contract Services by sending an email to infosec@yc.edu and

procurement@yc.edu within forty-eight (48) hours of when Contractor and/or its agents know or should know that an actual or suspected security incident (which includes, but is not limited to, unauthorized access and/or misappropriation of Confidential Information) or any other security breach circumstances have occurred. Any such notice will provide a detailed description of the suspected security incident including, but not limited to, descriptions of Confidential Information that was accessed as Contractor has available at the time of notice.

23.6 Transmission Outside of The United States: To the extent that the Contractor transmits or processes YC Confidential Information outside of the United States, Contractor agrees to comply with the applicable data security and privacy laws of each country through which such information is transmitted or processed, as well as the applicable data security and privacy laws of the jurisdiction of residence for the individuals whose data is used by the Contractor. If Contractor, employees, or any tier of the Contractor's agent(s) in the performance of this Contract hosts or maintains YC Confidential Information on Contractor's technology, Contractor warrants and confirms that the hosting or maintenance of that information meets the applicable legal and industry security standards.

23.7 This Contract and all related records are subject to public disclosure under Arizona public records laws. Contractor shall cooperate with YC in responding to lawful requests for records and acknowledges that confidentiality designations alone do not exempt disclosure.

24. CONTRACT ASSIGNMENT: Except as otherwise specified in the Contract, Contractor may not, in part or whole, subcontract delegate or assign this Contract without the prior written permission of a representative of YC authorized to sign contracts.

25. CONTRACT TERMINATION: YC may, by written notice, terminate the Contract, in whole or in part, for any of the following reasons:

25.1 Termination for Bankruptcy: YC may terminate the Contract immediately if the Contractor files for bankruptcy or receivership, or takes any actions relating to insolvency, such as an assignment for the benefit of creditors.

25.2 Termination for Conflict of Interest: Pursuant to A.R.S. 38-511, YC may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract on behalf of YC is, or becomes at any time while the Contract or an extension the Contract is in effect, an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when upon receipt of written notice of the cancellation unless the notice specifies a later time. Contractor shall comply with A.R.S. §§ 38-503 and 38-505 regarding conflicts of interest and gratuities

25.3 Termination for Convenience: YC reserves the right to terminate the Contract, in whole or in part at any time with 30 days' notice, when in the best interests of YC without penalty recourse. Upon receipt of the written notice, the Contractor shall immediately stop all work as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to YC. In the event of termination under this section, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to YC. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed, and materials accepted before the effective date of the termination. Compensation shall not include lost profits or anticipatory damages. YC shall receive a refund of any prepaid payments and fees covering the remainder of the term after the effective date of the termination.

25.4 Termination of Default: In the event that the Contractor breaches any of the terms and provisions of the Contract, YC reserves the right to accurately and specifically describe the unsatisfactory performance or condition in a written notice by electronic mail (e-mail) or registered or certified mail to the Contractor requiring that the breach be corrected within ten (10) calendar

days from the date Contractor receives the notice. If the breach is not cured or corrected within this time, YC may take any one or more of the following actions:

25.4.1 Immediately terminate the Contract, reserving all rights or claims to damage for breach of any covenants of the Contract;

25.4.2 Perform any test or analysis on materials (equipment/products) for compliance with the specifications of the Contract. If the results of any test or analysis find a non-compliance with the specifications, the actual expense of testing shall be borne by the Contractor;

25.4.3 Purchase or obtain materials and/or services from another Contractor or complete the required work in accordance with the needs of YC. YC may recover any actual excess costs from the Contractor by:

- a. Deduction from an unpaid balance;
- b. Refund of prepaid payments and fees covering the remainder of the term after the effective date of the termination;
- c. Collection against the bid and/or performance bond, or;
- d. Any combination of the above or any other remedies as provided by law (including compensatory or consequential damages).

25.5 Termination for Gratuities: YC may, by written notice, immediately terminate this Contract, in whole or in part, if YC determines that employment or gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of YC for the purpose of influencing the outcome of the procurement or securing the Contract, including the making of any determination or decision about Contract performance.

26. Termination for Non-Appropriation: YC's obligations under this Contract are contingent upon the availability of appropriated funds. YC is not obligated beyond funds appropriated or otherwise made available by YC in its sole discretion for this Contract. YC may terminate this Contract without penalty upon thirty (30) days' written notice if funding is not available as determined in the sole discretion of YC. Termination for Suspension or Debarment: YC may, by written notice to the Contractor, immediately terminate this Contract if YC determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Acceptance of a Purchase Order by the Contractor shall attest that the Contractor certifies it is not presently debarred, suspended, or proposed for debarment by any federal or state agency.

27. DATA USE, OWNERSHIP, PRIVACY, and PROTECTION. The terms of this section apply if Contractor receives, has access to, stores, or analyzes any YC Data.

27.1 As between the parties, YC will own, or retain all of its rights in, all data and information that YC provides to Contractor, as well as all data and information managed by Contractor on behalf of YC, including all output, reports, analyses, and other materials relating to, derived from, or generated pursuant to the Agreement, even if generated by Contractor, as well as all data obtained or extracted through YC's or Contractor's use of such data or information (collectively, YC Data). YC Data includes all data and information provided directly to Contractor by YC, its students, or employees; and may include personal data, operational data, security data, metadata, and user-created content.

27.2 All YC Data remains the sole property of YC. Contractor will treat it as confidential information. Contractor will not use, access, disclose, license, or provide to third parties, any YC Data, except: (i) to fulfill Contractor's obligations to YC hereunder; or (ii) as authorized in writing by YC. Without limitation, Contractor will not use any YC Data, whether or not aggregated or de-identified, for product development, marketing, profiling, benchmarking, or product

demonstrations, without, in each case, YC's prior written consent. Contractor will not, directly or indirectly: (iii) attempt to re-identify or de-aggregate de-identified or aggregated information; or (iv) transfer deidentified and aggregated information to any third party unless that third party agrees not to attempt re-identification or de-aggregation. For YC Data to be considered de-identified all direct and indirect personal identifiers must be removed, including names, ID numbers, dates of birth, demographic information, location information, and school information. Upon request by YC, Contractor will deliver, destroy, and/or make available to YC any or all YC Data. Upon termination of the Contract, all YC Data will be returned to YC in a non-proprietary format that preserves its structure and utility to YC. Unless otherwise notified in writing, Contractor must destroy all YC Data on its systems, including that stored on backup media, 30 days after the termination of the Contract unless a longer term of maintenance is required by applicable law.

27.3 Contractor will ensure that all services undertaken pursuant to the Agreement are performed in compliance with applicable privacy and data protection laws, rules, and regulations. In addition, Contractor is responsible to YC for compliance with the Agreement by all Contractor Parties. If Contractor will serve as a Processor of YC Data that includes Personal Data of Data Subjects in the European Union, Contractor will cooperate with YC to comply with the applicable General Data Protection Regulation (GDPR) with respect to such Personal Data and Data Subjects. This includes, but is not limited to, ensuring that all Data Subjects have signed appropriate Consents and signing and complying with all documents and agreements reasonably requested by YC, including any data processing agreements. All capitalized terms in this section not otherwise defined in the Agreement are defined in the GDPR.

28. **DISABILITY STANDARDS:** If applicable to the work of the Contractor under this Contract, Contractor warrants that it complies with all applicable Arizona and federal disabilities laws and regulations. Contractor warrants that the products or services to be provided under this Contract comply with the applicable accessibility requirements of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §12101 et seq.) and its implementing regulations set forth at Title 28, Code of Federal Regulations, Parts 35 and 36, Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794d) and its implementing regulations set forth at Title 36, Code of Federal Regulations, Part 1194; and maintain, if applicable, Web Content Accessibility Standards 2.0 at Level AA. Contractor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services. Contractor must provide, on request, accessibility testing results and written documentation verifying accessibility. Contractor further agrees to indemnify and hold harmless YC from any claims arising out of its failure to comply with the aforesaid requirements. Failure to comply with these requirements shall constitute a material breach and may be grounds for termination of this Contract.

29. **ENTIRE AGREEMENT:** This Contract, and any attached exhibits, purchase orders, or other additional documents explicitly referenced herein, expresses and represents the totality of the terms of the agreement between the parties. Any verbal representation shall have no force or effect whatsoever. Any amendment to this contract executed in writing by both parties shall supersede, replace, and or modify any and all Contract terms with respect to the subject matter covered by the resulting amendment. The parties each represent that no promises, representations or inducements have been made by the other party with respect to the subject matter of the Contract, except as specifically set forth herein. The Contract may not be changed, altered, modified or amended except by an agreement in writing signed by both parties.

30. **FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT:** If applicable, Contractor shall safeguard those student record protected by the Family Educational Rights and Privacy Act of 1974 ("FERPA") and limit its employees' and/or agents' access to the records to those persons for whom access is essential to the performance of this Contract.

30.1 Contractor is prohibited from accessing or disclosing FERPA protected student records without the prior written authorization of the student and/or the parent of a student who is a minor

permitting Contractor to access or disclose the FERPA protected student record according to the authorization. At all times during this Contract, Contractor shall comply with the terms of the FERPA in all respects and shall be responsible for ensuring that any subcontractors involved in the Contract work also comply with FERPA.

30.2 Student educational records are protected by FERPA Contractor will not require any YC students, faculty or employees to waive any privacy rights (including, but not limited to, FERPA or the European Union's General Data Protection Regulation if applicable) as a condition for receipt of any educational services, and any attempt to do so will be void. If Contractor requires YC students, faculty or employees to accept a clickwrap, click-through, end user license agreement, or other similar agreement (hereinafter referred to as an "End User Agreement"), to waive the privacy rights referenced herein the terms of said End User Agreement that conflict or are inconsistent with the terms of this Contract will be void.

30.3 Contractor shall comply with FERPA and will not access or make any disclosures of student educational records to third parties without prior notice to and consent from YC or as otherwise provided by law. If the Contract contains a scope of work or other provision that requires or permits Contractor to access or release any student records, then, for purposes of the Contract only, YC may designate Contractor as a "school official" for YC under FERPA, as that term is defined in FERPA and its implementing regulations. If Contractor intends to utilize the "school official" exemption outlined in FERPA Contractor shall first obtain written confirmation from YC that Contractor is in fact considered by YC to be a "school official" before accessing or releasing FERPA protected student records. If Contractor violates the terms of this section, Contractor will immediately provide notice of the violation to YC.

31. FORCE MAJEURE: If the performance of a party under this Contract is interrupted or suspended due to riots, war, public emergencies or calamities, fires, earthquakes, Acts of God, government restrictions, labor disturbances or strikes, civil tumult, epidemic, pandemic or another condition beyond any control of that party ("Force Majeure"), performance by that party will be suspended for the reasonable duration of the Force Majeure. The party claiming that its performance is interrupted or prevented must promptly deliver written notice to the other party identifying the Force Majeure and use its best efforts to perform to the extent that it is able. If the Force Majeure does not abate within 30 days, , then either party may terminate this Contract by providing written notice to the other party. In the event of non-performance, payments by YC shall be suspended and excused and any deposit payment(s) advanced by YC shall be returned promptly. In the event of performance, Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed, and materials accepted before the effective date of Force Majeure written notice. Alternatively, the parties may agree to extend the term of the Contract for a mutually agreed upon period of time. Force majeure does not override non-appropriation obligations.

32. FORCED LABOR OF ETHNIC UYGHURS IN THE PEOPLE'S REPUBLIC OF CHINA: In compliance with A.R.S. § 35-394, to the extent applicable, Contractor warrants that it does not use, and agrees not to use during the term of the Contract any of the following:

32.1 Forced labor of ethnic Uyghurs in the People's Republic of China;

32.2 Any goods or services produced by the forced labor of Ethnic Uyghurs in the People's Republic of China; or

32.3 Any Contractors, Subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

33. HEALTH INSURANCE PORTIABILITY AND ACCOUNTABILITY ACT: To the extent applicable, Contractor will abide by all laws and regulations that protect the privacy of healthcare information to which Contractor obtains access under the Contract. Certain portions of the Administrative Simplification section of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as codified at 42 U.S.C. § 1320d through d-8, and the federal privacy regulations as contained in 45 CFR Part 164 may apply to

Contractor and YC, and their relationships and operation under the Contract. If necessary, Contractor and YC will enter into a standard HIPAA Business Associate Agreement, and any other required HIPAA agreements. To the extent the terms of the HIPAA Business Associate Agreement conflict with the Contract, the provisions of the Business Associate Agreement will control.

34. **INDEMNIFICATION AND LIABILITY LIMITATIONS:** To the extent permitted by law, Contractor shall defend, indemnify, and hold harmless YC, and its board, agents, officers, officials, employees, and volunteers from and against all claims, damages, losses, and expenses (including but not limited to attorney fees and court costs) arising from Contractor breach of a material term of this Contract, or from the negligent or intentional acts or omissions of the Contractor, its agents, employees, or any tier of Contractor's subcontractors in the performance of the Contract. The amount and type of insurance coverage requirements set forth in the Contract will in no way be construed as limiting the scope of indemnification in this paragraph. If applicable, Contractor shall indemnify, defend and hold harmless YC and its board, agents, officers, officials, employees, and volunteers from and against all claims (including but not limited to reasonable attorney fees and court costs) arising out of Contractor infringement of the copyright, patent, trademark, intellectual property or trade secret rights of any other person or entity. Contractor shall be responsible for obtaining any copyright, patent, trademark, intellectual property or trade secret rights or consents for goods or services that Contractor provides YC. To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless YC, and its board, agents, officers, officials, employees, and volunteers from claims arising out of Contractor's negligence, wrongful acts, or breach of this Contract. YC does not indemnify Contractor. Nothing in this Contract shall be construed as an indemnification by YC except as required under Arizona law.
35. YC's liability under any claim by Contractor shall be limited to the coverage amounts and terms outlined in YC's available insurance coverage.
36. **INDEPENDENT CONTRACTOR:** Contractor is an independent contractor. Neither YC nor Contractor may bind the other without the written consent of the other party. Contractor employees, agents, and/or officers shall not be considered employees, agents, and or/officers of YC. Contractor employees, agents, and/or officers shall not be eligible for any employment benefits of any kind from YC, including, but not limited to, worker's compensation coverage. Contractor will maintain all business registrations and licenses required to deliver and perform the Goods/Services. Contractor is using its own knowledge, skill, and technical know-how in the delivery and performance of the Contractor's duties and obligations pursuant to the Contract and is not being directly supervised by YC.
37. **INFORMATION SECURITY:** The terms of this section apply if: 1) YC is purchasing or leasing software, or processing a software renewal; 2) Contractor is creating any code for YC; 3) Contractor receives, stores, analyzes, or processes YC Data (including if the data is not online) 4) Contractor is hosting, or managing via infrastructure outside of YC, including in the cloud, YC Data or 5) Contractor is collecting Personally Identifiable Information (hereinafter referred to as "PII") or YC Data via a link on a yc.edu or another YC managed webpage. All systems, software, services, and devices that store, transmit or otherwise process YC Data must be designed, managed, and operated in accordance with information security industry best practices and standards and additionally comply with all applicable laws, rules, and regulations. YC Data means: all data and information that YC provides to Contractor, as well as all data and information managed by Contractor on behalf of YC, including all output, reports, analyses, and other materials relating to, derived from, or generated pursuant to this Contract, even if generated by Contractor, as well as all data obtained or extracted through YC's or Contractor's use of such data or information. YC Data includes all data and information provided directly to Contractor by YC students and employees, and includes, but is not limited to, personal data, metadata, and user content.
- 37.1 With respect to each System (as defined by the combination of software, hardware, infrastructure, and supporting services required to deliver functionality to users), Contractor and its

contractors at all tiers (directly and through their third-party service providers) will meet the following requirements:

- 37.1.1 Access Control. Control access to YC's resources, including YC Data, limiting access to legitimate business need as outlined in the Contract and based on an individual's job-related assignment, approve and track access to ensure proper usage and accountability, and make such information available to YC for review, upon YC's request.
- 37.1.2 Incident (Breach) Reporting. Report information security incidents that affect in any way YC Data within 48 hours of Contractor discovery of said security incidents to infosec@yc.edu (including, but not limited to, incidents that involve information disclosure, unauthorized disclosure of YC Data, successful or attempted network intrusions, malware infection, and unauthorized access or modifications). Contractor shall cooperate fully with YC's investigation of and response to the incident. Except as otherwise required by law, Contractor shall not provide notice of the incident directly to the persons whose data were involved, without prior written permission from YC.
- 37.1.3 Offshore. Ensure (i) that all development or modification of software for YC is performed only within the borders of the United States, and (ii) all YC Data (including backup copies) are stored, accessed from, and otherwise processed only within the borders of the United States unless in compliance with section 27.3.
- 37.1.4 Patch Management. Carry out updates and patch management for all Systems in a timely manner and to the satisfaction of YC. Updates and patch management must be deployed using an auditable process that can be reviewed by YC upon YC's request.
- 37.1.5 Encryption. Ensure all Systems use an industry standard encryption protocol for sensitive data, personal data or personally identifiable data, as those terms may be defined in applicable laws, rules and regulations (PII) in transit and at rest (as documented in NIST 800-57 or equivalent).
- 37.1.6 Notifications. Notify YC immediately if Contractor receives any kind of subpoena for or involving YC Data, if any third-party requests YC Data, or if Contractor has a change in the location or transmission of YC Data. All notifications to YC that are required in this Information Security paragraph will be sent to YC Information Security at infosec@yc.edu, in addition to any other notice addresses in the Agreement.
- 37.1.7 Backup and Restoration. Ensure that all YC Data is available and accessible, and that adequate systems are in place to restore the availability and accessibility of all YC Data in a timely manner in the event of a physical or technical threat.
- 37.1.8 Privacy by Design. When developing, designing, selecting, and using Systems for processing sensitive data, personal data, or personally identifiable data, as those terms may be defined in applicable laws, rules and regulations (PII), Contractor will, with due regard to industry standards and the state of the art, incorporate and implement data privacy best practices.
- 37.2 In addition to Section 35.1 above, the following provisions apply if (i) Contractor receives, stores, or analyzes YC Data (including if the data is not online); or (ii) Contractor is hosting or managing by infrastructure outside of YC, including in the cloud, YC Data:
 - 37.2.1 Third Party Security Audits. Complete certified third-party audit (such as SOC2 Type II or substantially equivalent) in accordance with then current industry standards, which audits are subject to review by YC upon YC's request.
 - 37.2.2 Penetration Tests. Perform periodic third-party scans, including penetration tests, for unauthorized applications, services, code, and system vulnerabilities on each System in accordance with industry standards, and Contractor must provide proof of testing to YC upon YC's request.
 - 37.2.3 Vulnerability Scanning. All web-based Systems are required to have a remediation plan and third-party web application security scans in accordance with the current industry's best

practices or when required by applicable industry regulations or standards. Contractor must correct weaknesses within a reasonable period of time, consistent with applicable industry regulations or standards, and consistent with the criticality of the risk, and Contractor must provide proof of testing to YC upon YC's request.

37.2.4 In addition to Sections 37.1-37.2 above, the following provisions apply if: (i) YC is purchasing or leasing software or processing a software renewal; (ii) Contractor is creating any code for YC; (iii) Contractor is hosting, or managing by infrastructure outside of YC, including in the cloud, YC Data; or (IV) Contractor is collecting PII or YC Data via a link on an YC.edu or other YC managed webpage:

37.2.5 Secure Development. Use secure development and coding standards including secure change management procedures in accordance with industry standards. Prior to releasing new software versions, Contractor will perform quality assurance testing and penetration testing and/or scanning. Contractor will provide to YC for review upon YC request, evidence of a secure Software Development Life Cycle (SDLC).

38. INSURANCE REQUIREMENTS: Contractor shall maintain during the term of the Contract the following insurance policies issued by companies licensed in Arizona with a current A.M. Best rating of A: VII or better. Contractor shall furnish annually to College, a certificate or certificates of insurance from an insurance company licensed to do business in the State of Arizona showing that the prescribed policies are in force and effect and each certificate shall provide that the insurance company shall not change or cancel any insurance until College has been notified, in writing, at least thirty (30) days before the date of change or cancellation. Certificates shall list Yavapai County Community College District as the Certificate Holder. Submission of the required documents shall be due before the start of each contract year, if applicable. Certificates shall evidence the following required coverage, conditions, and limits required by the Contract:

38.1 Commercial General Liability insurance with a limit of not less than \$2,000,000 per occurrence for bodily injury, property damage, personal injury, products and completed operations, and blanket contractual coverage, including but not limited to, the liability assumed under the indemnification provisions of the resulting contract, in addition to:

38.1.1 \$1M in Employer's Liability limits for both bodily injury or disease.

38.1.2 General Liability Policy needs to be endorsed to include affirmative coverage for Sexual Abuse and Molestation (SAM) or a separate policy placed with a limit of no less than \$1M per occurrence or claim. Supplier's coverage must be primary and non-contributory and provide a waiver of subrogation against the College.

38.2 Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$2,000,000.00 each occurrence with respect to the Contractor's owned, hired, and non-owned vehicles.

38.3 Worker's Compensation insurance with limits statutorily required by any Federal or State law and Employer's Liability insurance of not less than \$1,000,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit.

38.4 Professional Liability insurance covering acts, errors, mistakes, and omissions arising out of the work or services performed by the Contractor, or any person employed by the Contractor, with a limit of not less than \$1,000,000 each claim.

38.5 Network Security and Privacy Liability (if applicable): Coverage in an amount not less than \$2,000,000 per claim and annual aggregate, covering all acts, errors, omissions, negligence, infringement of intellectual property (except patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, breach of privacy perils, wrongful disclosure, collection, or other negligence in handling of confidential information, privacy perils, and including coverage for related regulatory defense and penalties; data breach expenses,

in an amount not less than \$2,000,000 and payable whether incurred by YC or Contractor including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services in the performance of services for YC or on behalf of YC hereunder. The policy shall contain an affirmative coverage grant for contingent bodily injury and property damage emanating from the failure of the technology services or an error or omission in the content/information provided. Such insurance shall be maintained in force at all times during the term of the agreement and for a period of three years thereafter for services completed during the term of the agreement. YC shall be given 30 days' notice of the cancellation or expiration of the aforementioned insurance for any reason.

- 38.6 No Warrant: YC in no way warrants that the minimum limits set forth above are sufficient to protect the Contractor from liabilities that may arise out of Contractor's services. The insurance requirements are minimum and in no way limit the indemnity covenants contained in any other Contract or Agreement between YC and the Contractor.
39. LIABILITY FOR TAXES: The Contractor is responsible for paying all taxes applicable to its operations, business property, and income. YC shall not be liable for any tax imposed either directly or indirectly upon the Contractor, except that YC will pay as part of the Contract price any transaction privilege or use tax assessed on Contractor's provision of the services or goods under the Contract.
40. NO WAIVER OF SOVEREIGN IMMUNITY: Nothing in this Contract shall be interpreted or construed to waive YC's sovereign immunity under the laws of the State of Arizona.
41. NO BOYCOTT OF GOODS OR SERVICES FROM ISRAEL: To the extent applicable, Contractor certifies it is not currently engaged in and agrees that for the duration of the Contract it will not engage in, a boycott of goods and services from Israel, as that term is defined in A.R.S. § 35- 393.
42. NON-DISCRIMINATION: Contractor will comply with all applicable state and federal law, rules, regulations and executive orders governing equal employment opportunity, immigration, and nondiscrimination, including the Americans with Disabilities Act. If applicable, the parties will abide by the requirements of 41 CFR § 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, age, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national original, protected veteran status or disability. YC also prohibits discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity, national origin, citizenship status, disability, veteran status or genetic information.
43. PAYMENT:
- 43.1 YC will pay for services or goods under the Contract after the Contractor has supplied them and only after the Contractor submits a detailed invoice referencing a valid Purchase Order number. Advance payments are not permitted unless expressly authorized in writing by YC. Payment terms are net 30 days.
- 43.2 Where the Contractor is to provide services or goods over a period of time, such as for a project, an authorized representative of YC may agree to pay progress payments. If approved, progress payments will be paid in arrears and require that the Contractor submit the detailed invoice specified in this clause. YC is exempt from Federal Excise Tax but is not sales tax exempt and pays out-of-state use tax directly to the State of Arizona.
44. PAYMENT CARD INDUSTRY DATA SECURITY STANDARD (PCI DSS): The terms of this section apply if Contractor is processing credit or debit card transactions as part of the Contract. For e-commerce business and/or payment card transactions, Contractor will comply with the requirements and terms of the rules of all applicable payment card industry associations or organizations, as amended from time to time (PCI Security Standards), and be solely responsible for security and maintaining confidentiality

of payment card transactions processed by means of electronic commerce up to the point of receipt of such transactions by a qualified financial institution. Contractor will, at all times during the Contract, follow the then current standard for Payment Card Industry Data Security Standard (PCI DSS), Payment Application Data Security Standard (PA-DSS) for software, and PIN Transaction Security (PCI PTS) for hardware. Contractor will provide attestation of compliance to YC annually by delivering to YC current copies of the following: (i) Contractor's "Attestation of Compliance for Onsite Assessments – Service Providers;" (ii) an attestation that all YC locations are being processed and secured in the same manner as those in Contractor's "PCI Report on Compliance;" and (iii) a copy of Contractor's PCI Report on Compliance cover letter. Contractor will notify YC immediately if Contractor becomes non-compliant, and of the occurrence of any security incidents (including information disclosure incidents, network intrusions, successful virus attacks, unauthorized access or modifications, and threats and vulnerabilities). Contractor's services must include the following:

44.1 Contractor maintains its own network operating on its own dedicated infrastructure.

Contractor's network includes a firewall that (i) includes access control rules that separate Contractor's PCI network from YC, and (ii) restricts any communication between Contractor's network devices and YC systems.

44.2 Contractor treats the YC network as an untrusted network and no unencrypted cardholder data traverses or otherwise is stored on YC's network, and YC has no ability to decrypt cardholder data.

44.3 All devices must be Secure Reading and Exchange of Data (SRED); Europay, MasterCard and VISA (EMV); and Payment Card Industry Point of Interaction (PTS POI) compliant.

45. PROPERTY RIGHTS: Except for pre-existing works of the Contractor or works of third parties for which Contractor has the permission to supply to YC under this Contract, YC shall, at all times, retain ownership in and the rights to any creative works, research data, reports, designs, recordings, graphical representations, or works of similar nature ("Works") to be developed and delivered under this Contract. Contractor agrees that the Works are "works for hire" and assigns all of the Contractor's right, title, and interest to YC.

46. REGISTERED SEX OFFENDER NOTIFICATION RESTRICTION: Contractor represents and warrants that no employee, or employee of its subcontractor(s), who has been adjudicated to be a registered sex offender will perform work on YC premises or equipment at any time. Contractor further agrees by acceptance of the Purchase Order that a violation of this condition shall be considered a material breach and may result in a cancellation of the order at YC's discretion.

47. SAFETY AND HAZARDS: All equipment supplies and services sold to YC shall conform to the applicable safety regulations of the State of Arizona and OSHA.

48. UNAUTHORIZED COSTS OR COSTS OUTSIDE SCOPE OF AGREEMENT: Costs or expenses of the Contractor relating to its performance of this Contract that are not included in the Contract price or are not authorized by the Contract are the sole responsibility of the Contractor and not of or reimbursable by YC. If the Contract specifies that YC will reimburse the Contractor a specific cost, Contractor may not charge YC that cost without YC approving a prior estimate of it.

49. WORK TO BE PERFORMED BY OTHERS: YC reserves the right to perform any and all services in-house or to utilize the services of other firms on unrelated projects.