PROFESSIONAL SERVICE AGREEMENT

(*All spaces MUST be filled in*)

Clear Form

Requisition # _____

THIS AGREEMENT IS ENTERED INTO THIS ---Select--- **DAY OF** ---Select--- , ---Select--- **BY AND BETWEEN THE ALBUQUERQUE PUBLIC SCHOOLS, HEREAFTER REFERRED TO AS APS, AND** _____ **CONTRACTOR.**

CONTRACTOR INFORMATION:	**APS INFORMATION:**
Name: _____	Name: _____
Address:	School/Department: _____
	Address:

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. **SCOPE OF WORK: The contractor will perform services as described in contractor's written proposal attached hereto. (Provide this information as a separate attachment to this professional services agreement).** The work will be subject to the General Terms and Conditions attached hereto.
2. **DELIVERABLES:** The scope of work shall include, as a minimum: what are the services, how are services provided, performance measures, who is performing the service, roles and responsibilities for contractor, when are the services provided, and cost/fees of service.
3. **BACKGROUND CHECK: Please check appropriate box.**
   - ☐ Contractor will **not have** unsupervised access to students. _____ (Responsible APS employee's signature).
   - ☐ Contractor will have unsupervised access to students. Fingerprints and funds for background check attached.
   - ☐ Verification of background check results attached and Background check results on file as of _____ _____ (Responsible APS employee's signature)

   No person shall be allowed to perform any services involving unsupervised access to students until the background check results acceptable to APS have been verified by APS.
4. **COORDINATION:** The Contractor shall work at the direction of _____, who may designate to coordinate the work of the Contractor. Work shall only be performed according to a specific written assignment, as described above or as may be provided as an attachment.
5. **COMPENSATION AND TAXES**: APS shall pay the Contractor for services rendered. Fee: $_____ (hourly, weekly, etc.) New Mexico Gross Receipts Tax: included or add at current rate for Contractor's address Tax exempt vendor. Contractor shall secure all licenses, permits, fees, registrations, etc., required for the performance of this work. Compensation will be paid based on services performed for authorized services. **Total amount including taxes billed against this Agreement shall not exceed $_____. (CONTRACTOR IS RESPONSIBLE FOR NOT EXCEEDING THIS LIMIT.)**
6. **INVOICING:** Processing of payment will begin upon receipt by APS Accounts Payable of a detailed, certified invoice for services, which shall include dates and hours reported for the period covered, along with details and percent of work expended, as described above or per attachment. **ALLOW 30 DAYS FOR PAYMENT TO BE MADE.**
7. **Contractor agrees to Albuquerque Public Schools General Terms and Conditions.**
8. **TERM:** The work shall begin on (Date) _____ and terminate on (Date) _____

IN WITNESS WHEREOF, the parties have executed this agreement.

(Type Name) **CONTRACTOR**	*(Signature)* **CONTRACTOR**	**TITLE**	**DATE**

(Type Name) **APS SCHOOL/ DEPARTMENT REPRESENTATIVE**	*(Signature)* **APS SCHOOL/ DEPARTMENT REPRESENTATIVE**	**TITLE**	**DATE**

Mandatory Signature from Procurement in compliance with Board of Education Signature Authority.

Type Name) **APS PROCUREMENT**	*(Signature)* **APS PROCUREMENT**	**TITLE**	**DATE**

ALBUQUERQUE PUBLIC SCHOOLS (APS)
GENERAL TERMS AND CONDITIONS

1. **NO PAROL EVIDENCE:** This Professional Service Agreement is intended by the parties as a final and complete expression of their Agreement. No course of prior dealings between the parties and no usage of the trade shall supplement any terms used in this Agreement.
2. **DEFINITIONS:** Definition of Terminology: This section contains definitions that are used throughout this procurement document, including appropriate abbreviations.
   "**Agreement**" shall mean the binding contract between APS and Contractor, Vendor, Bidder, Seller etc.
   "**Award of Agreement**" shall mean a formal written notice by APS that a firm(s) has/have been selected to enter into a contract for services.
   "**Contractor**" shall mean the successful Offeror, Vendor, or Seller with whom APS enters into a contact
   "**Determination**" shall mean the written documentation of a decision of a procurement manager including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.
   "**Desirable**": the terms "**may**", "**can**", "**should**", or "**prefers**" identify a desirable or discretionary item or factor.
   "**District**" shall mean Albuquerque Public Schools (APS)
   "**Mandatory**": the terms "**must**", "**shall**", "**will**", "**is required**", or "**are required**", identify a mandatory item or factor. Failure to meet a mandatory item or factor will result in the rejection of the Bidder's bid.
   "**Offer**" – the term means "proposal" or "solution", and includes all documents submitted to APS responding to RFP.
   "**Owner**" shall be Albuquerque Public Schools.
   "**Purchase Order**" shall mean the document, which directs a Contractor to deliver items of tangible personal property or services pursuant to an existing Agreement.
   "Requesting Department" means the entity within APS which is the actual recipient of the services called for in this Professional Services Agreement, as identified on the "School/Department" line of the first page of this Agreement.
   "**Vendor**" shall mean but is not limited to Contractor, Subcontractor, Seller, Offeror, etc.
3. **AMENDMENT:** This Professional Service Agreement may be amended by mutual agreement of the APS Purchasing Agent or his/her designee and the Contractor. An amendment to this Agreement shall not affect any outstanding orders issued prior to the effective date of the amendment. Amendments resulting in price adjustments and/or the extension of a price agreement expiration date are not allowed unless specifically provided for in the Professional Service Agreement specifications.
4. **DISCOUNTS:** APS will take advantage of prompt payment discounts whenever possible. Any discount period will not begin until the materials, supplies or services have been received and accepted and a correct invoice submitted for payment. If testing is required, the discount period will not begin until such tests are satisfactorily completed.
5. **PAYMENT:** Any invoices received and payment made shall be subject to APS's Terms and Conditions (NET 30) unless those Terms and Conditions are specifically waived by APS in a separate written document.
6. **INSURANCE (IF APPLICABLE)** the contractor shall purchase and maintain Worker's Compensation, Public Liability and Automobile Liability Insurance approved by APS as a condition of contract award. Albuquerque Public Schools shall be included as a loss payee and/or additional insured. Public Liability and Automobile Liability insurance shall include at least the **following** coverage.

General Liability Insurance – Per Occurrence General Aggregate - $2,000,000 Product/Completed Operations Aggregate $1,000,000	$1,000,000
Bodily injury, per occurrence	$1,000,000
Medical and medically-related expenses	$5,000
Vehicle bodily injury, each occurrence, excluding medical and medically related expenses	$750,000
Property Damage, per occurrence	$1,000,000

Contractor shall furnish Owner with certificates of insurance with the contract documents and prior to the commencement of work.

NOTE: Certificate holder shall be:

Albuquerque Public Schools

Certificate of Insurance forwarded to:

Albuquerque Public Schools- Procurement Department
P.O. Box 25704
Albuquerque, New Mexico 87125-0704

7. **INVOICING:** The Contractor shall be paid for services rendered. Contractor shall provide detailed invoices to APS. In the event that APS disputes an invoice, APS shall notify the Contractor of the dispute and shall promptly pay the non-disputed portions of the invoice. Any invoice received and payment made shall be subject to APS's Terms and Conditions unless specifically waived by APS in a separate written document.
8. **NON-APPROPRIATION:** APS's obligation to continue performance make payment under the terms of this Professional Service Agreement is contingent upon its appropriation of sufficient funds to support continuation of performance. If APS does not appropriate funds for the continuation of this procurement, this procurement will terminate upon written notice of that effect to the Contractor. APS's determination that sufficient funds have not been appropriated is firm, binding and not subject to review.
9. **TAXES:** APS holds a Class 9 Nontaxable Transaction Certificate and is exempt from payment of taxes on tangible personal property. A NTTC will be issued upon request.
10. **ASSIGNMENTS:** The Contractor shall not assign or delegate specific duties that are within the scope of this Professional Service Agreement nor transfer any interest or assign any claims for money due or to become due under this agreement without the written consent of APS.
11. **INDEPENDENT CONTRACTOR:** The Contractor is an Independent Contractor performing services for APS. The Contractor shall not accrue leave, retirement, insurance, or any other benefits afforded to employees of APS as a result of this procurement.
12. **SUBCONTRACTS:** The requirements for Contractor Personnel, Subcontracting, and Audit set forth herein shall be inserted into all subcontracts between the Contractor and any subcontractor.
13. **CONTRACTOR PERSONNEL:** Personnel identified in Contractor's Proposal to APS are considered material to performance of any work under this Professional Service Agreement. Once a Purchase Order or Agreement has been executed, no changes of personnel will be made by the Contractor without prior written consent of APS. Replacement of any Contractor personnel, if approved, shall be with personnel of equal ability, experience, and qualifications. The Contractor will be responsible for any expenses incurred in familiarizing the replacement personnel with the work to insure their being productive to the project immediately upon receiving assignments. Approval of replacement personnel shall not be unreasonably withheld. APS shall retain the right to request the removal of any of the Contractor's personnel at any time.
14. **REQUEST(S) NOT DEFINED IN SCOPE OF WORK:** Contractor shall be held responsible to **NOT** fill requests which are clearly beyond the defined scope of this Professional Service Agreement. Should such requests be made, Contractor has the responsibility of calling such violations to the attention of the APS Procurement Officer.
15. **PENALTIES:** The New Mexico Procurement Code (NMSA 1978) imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes impose penalties for bribes, gratuities and kickbacks.
16. **DEBARMENT OR SUSPENSION:** A business (Contractor, Subcontractor, Vendor, Seller or Supplier) that has either been debarred or suspended pursuant to the requirements of NMSA 1978, §13-1-177 through §13-1- 180, and §13-4-11 through §13-4-17, as amended, shall not be permitted to do business with APS and shall not be considered for a Professional Service Agreement during the period for which it is debarred or suspended with APS.
17. **CONTINGENCY FEES:** Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this order upon an agreement or understanding for a commission, percentage, brokerage or contingent fee excepting bona-fide employees or bona-fide established commercial or selling agencies maintained or utilized by Contractor for the purpose of securing business. In the event violation or breach of this warranty, APS shall have the right to annul this Professional Service Agreement without liability or, at its discretion, to deduct from this order, price or consideration or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
18. **INDEMNIFICATION:** Contractor agrees that [he/she/it] shall indemnify and hold APS and/or its employees, administrators, board members, and agents harmless from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, any and all sums paid for attorneys' fees, consultants' and experts' fees, and settlement of claims) arising out of or related to contractor's performance of this contract.
19. **PATENT AND COPYRIGHT INDEMNITY:** Contractor shall pay all royalty and license fees relating to deliverables and other items covered hereby. In the event any third party shall claim that the reproduction, manufacture, use or sale of goods or services covered hereby infringes any copyright, trademark, patent, or other intellectual property rights, Contractor shall indemnify and hold APS harmless from any cost, expense, damage, or loss resulting from the infringement or claim of infringement.
20. **NO MINIMUM GUARANTEE (If applicable) :** No commitment is made by APS as to quantity and frequency of purchase of services or products pursuant to this Professional Services Agreement. APS reserves the right to purchase items referenced under this agreement using any other method and from any other Vendor as deemed necessary and in the best interest of APS.

21. **TITLE:** Title to any materials and supplies delivered hereunder shall pass to APS at the F.O.B. point specified subject to the right of APS to reject upon inspection. For any exception to the delivery date specified, Contractor shall give prior notification and obtain approval thereto from APS's Procurement Department. Order is subject to termination for failure to make timely delivery.
22. **FOB:** Unless stated otherwise, the price for goods is FOB: Destination (APS's designated address).
23. **ACCEPTANCE:** Acceptance of delivery of goods/services shall not be considered acceptance of the goods/services furnished. Acceptance occurs when the APS Requesting Department, after a reasonable opportunity to inspect the goods/services, signifies to the Contractor that are goods/services are conforming and fails to make an effective rejection.
24. **DELIVERY:** Any goods provided to APS in connection with this Professional Services Contract shall be delivered free of the rightful claim of any third person, any security interest or other lien. Unless otherwise agreed all goods called for in this Professional Service Agreement shall be tendered in a single delivery and payment is due only upon such delivery (NET 30). For any exception to the delivery date specified, Contractor shall give prior notification and obtain approval thereto from APS's Requesting Department. Order is subject to termination for failure to make timely delivery.
25. **DELAYS IN DELIVERY:** Time is of the essence and this purchase may be subject to termination for failure to deliver goods or services on time, unless delay was caused by APS. If delay in delivery is foreseen, Contractor must notify the APS Requesting Department of late delivery, cause of late delivery and remedy for late delivery.
26. **REVOCATION OF ACCEPTANCE:** The APS Requesting Department can revoke acceptance of goods or services when it is discovered, in a reasonable time, that the Contractor's nonconforming goods substantially impair the value of the goods or services..
27. **VARIATION IN QUANTITY:** No variation in the quantity of any item called for by this order will be accepted unless such variation has been caused by conditions of loading, shipping, packing or allowances in manufacturing process and then only to the extent, if any, specified in this order.
28. **WARRANTIES:** Contractor warrants the materials, supplies or services furnished to be exactly as specified in this order, free from defects in Contractor's design, labor, materials and manufacture, and to be in compliance with any drawings or specifications incorporated herein and with any samples furnished by Contractor. All applicable UCC warranties, express or implied are incorporated herein.
29. **AUDIT:** APS reserves the right to audit the Contractor's records associated with this Professional Service Agreement at any time during the Term period and for a period of up to three (3) years following the expiration or termination of the agreement. Such audit may be conducted by APS personnel or a third party under Agreement with the APS. APS shall give the Contractor reasonable notice prior to the conduct of any audit and upon receiving the notice from APS the Contractor agrees to fully cooperate with the auditors. If Contractor subcontracts any portion of its obligation to another party, Contractor shall guarantee APS's access to books and records of such party for Audit purposes.
30. **CHANGES:** APS may make changes within the general scope of this 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 order, an appropriate equitable adjustment shall be made. No change by Contractor shall be recognized without written approval of APS. Any claim of Contractor for an adjustment under this Paragraph must be made in writing within thirty (30) days from the date of receipt by Contractor of notification of such change unless APS waives this condition. Nothing in this Paragraph shall excuse Contractor from proceeding with performance of the order as changed hereunder.
31. **SEVERABILITY:** If any provision of this Professional Service Agreement is found invalid or unenforceable, the remainder of the Professional Service Agreement will be enforced to the maximum extent permissible and the legality and enforceability of the other provisions of the resultant agreement will not be affected.
32. **LABOR DISPUTES:** Contractor shall give prompt notice to APS of any actual or potential labor dispute which delays or may delay timely performance of this Professional Service Agreement.
33. **AFFIRMATIVE ACTION:** Contractor shall not maintain or provide racially segregated facilities for employees at any establishment under his/her control. Contractor agrees to adhere to the principle set forth in Executive Order 11246 and 11375, and to undertake specifically to maintain employment policies and practices that affirmatively promote equality of opportunity.
34. **NONDISCRIMINATION:** Any Contractor doing business with the Albuquerque Public Schools must be in compliance with the Federal Civil Rights Act of 1964 and Title VII of the Act (rev. 1979) and the Americans with Disabilities Act of 1990 (public law 101-336).

35. TERMINATION BY APS:

1. FOR CAUSE:

a. The occurrence of either one of the following events will justify termination for cause:

i. Contractor's persistent failure to perform the work in accordance with the Agreement documents (including but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment).

ii. Contractor's violation in any substantial way of any provisions of this Agreement.

b. If either one of the events identified above occur, APS may, after giving Contractor (and the surety, if any) ten (10) days written notice, terminate the service of Contractor, exclude Contractor from site, and take possession of the work. Contractor shall be paid for project costs incurred up to the date of termination but shall not be paid for loss of profits resulting from such termination.

c. Where Contractor's services have been so terminated by APS, the termination will not affect any rights or remedies of APS against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due the Contractor by APS will not release the Contractor from liability.

2. FOR CONVENIENCE:

a. Upon ten (10) days written notice to Contractor, APS may without cause and without prejudice to any other right or remedy of APS, elect to terminate the Agreement.

b. In such case, Contractor shall be paid (without duplication of any items):

i. for completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination,

ii. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Agreement document in connection with uncompleted work.

c. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

36. FORCE MAJEURE: Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Agreement if and to the extent that such party's performance of this Agreement is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injections-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

a. Force Majeure shall **NOT** include the following occurrences:

i. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market; or

ii. Late performance by a Subcontractor unless the delay arises out of a Force Majeure occurrence in accordance with this Force Majeure term and condition; or

iii. Inability of either the Contractor or any Subcontractor to acquire or maintain any required insurance, bonds, licenses, or permits.

b. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt requested, and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Agreement Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Agreement.

c. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and that such delay or failure is caused by force majeure.

37. NON-COLLUSION: In signing this Professional Service Agreement, the Contractor certifies he/she has not, either directly or indirectly, entered into action to restraint competitive bidding in connection with this offer submitted to the APS Purchasing Agent or his/her designee.

38. NON-DISCLOSURE: The Contractor shall not disclose any information relating to students and employees of APS other than such information that may be authorized by the individual student or employee. The Contractor will ensure compliance with HIPAA and FERPA regulations as applicable. Contractor agrees to indemnify and hold harmless

APS from any damages, claims, liabilities, and costs including reasonable attorney fees in the event any unauthorized release of such information occurs.

39. **CONFLICT OF INTEREST:** Contractor certifies that no relationship exists between the Contractor and APS that interferes with fair competition or is a conflict of interest; and no relationship exists between such propose and another person or firm that constitutes a conflict of interest that is adverse to APS.

40. **APPLICABLE LAWS:** If this Professional Service Agreement results from Federal funding or Grants, applicable clauses of the Uniform Guidance Procurement Standards are incorporated herein by reference. Any provision required to be included in an Agreement of this type by any applicable and valid Executive Order, federal, state or local law, ordinance, rule or regulation also shall be deemed to be incorporated herein. Any Agreement or litigation resulting from acceptance of this purchase order will be construed according to the laws of the State of New Mexico unless otherwise stated.
41. **GOVERNING LAW**: This Professional Service Agreement and any Agreement with a Contractor which may result from this procurement shall be governed by the laws of the State of New Mexico.
42. **DISPUTE RESOLUTION:** In the event the Parties do not agree to mediate the dispute or unable to resolve the dispute through mediation, then the dispute shall be resolved by binding arbitration. Such arbitration shall be governed by the New Mexico Uniform Arbitration Act, NMSA 44-7A-1, et seq. as amended.