

REGION 13 PURCHASING COOPERATIVE

A Department of Education Service Center Region 13



R13 PC VENDOR CONTRACT

Between Education Service Center Region 13

And ZeroEyes, Inc

Bid # 2022-116

Bid Title Safety Equipment, Supplies, and Services

This Contract ("Contract") is entered into between Region 13 Purchasing Cooperative ("R13 PC") at Education Service Center Region 13 and ZeroEyes, Inc ("Vendor"), having submitted a proposal in response to the above-referenced Solicitation Bid and whose proposal was subsequently accepted and awarded by R13 PC. In consideration of the mutual covenants and conditions contained in this Contract, R13 PC and Vendor intend to be legally bound, and subject to the terms and conditions of this Contract, including provisions of all attachments referenced herein, and agree as follows:

1. **Contract Terms:** The terms and conditions of this Contract shall govern all procurements conducted hereunder. No pre-published terms on Vendor's Purchase Order, acknowledgements, invoice, or other forms shall have any force or effect unless agreed to in writing by the Member and Vendor. The General Terms and Conditions ("Terms and Conditions") in this Contract apply to this proposal invitation in the Bid and the Proposer's response to this Bid, and are an integral part of any contract awarded by RE13 PC under this Proposal Invitation and any related Member purchase order as described in these Terms and Conditions.
2. **Term of Contract:** The term of this Contract shall be from 09/01/2023 through 08/31/2024; provided, however, this Contract may be terminated prior to the expiration of the term as provided in the termination section of this Contract.
3. **Renewal of Contract; Extension of Contract:** This Contract expires on 08/31/2024, unless the Contract is terminated prior to the expiration of the term as provided in the termination section of this Contract. This Contract may be extended for up to Three (3) additional one-year terms by the written agreement of both parties, upon the request of the R13 PC. If R13 PC requests a renewal or extension, the Vendor will be notified via email to the primary contact of the awarded Vendor. An agreement, purchase order, or supplemental contract with a Member may not exceed the Vendor contract term outlined in the Vendor contract. Vendor has no right to or vested interest in a Contract renewal. R13 PC will evaluate the Contract award prior to the expiration of the then current Contract term (initial or renewal), and reserves the right to not renew the Contract based on factors that may include, but are not limited to, the annual amount of business, Vendor's performance, and the continued provision of best value to the Members.
4. **Termination of Contract:** This Contract may be terminated prior to the expiration of the term hereof as follows:
 - a. By R13 PC without cause, upon thirty (30) days prior written notice to the Vendor
 - b. By the Vendor without cause, upon ninety (90) days prior written notice to purchasing@esc13.txed.net
 - c. By the Member in connection with the use of Federal Funds, termination for convenience by the Governmental Entity as provided for under Federal Regulations 2 CFR part 200.

In the event of termination, the vendor will be compensated for goods and services delivered prior to the termination provided that the goods and services were delivered in accordance with the terms and conditions of the terminated agreement. This termination clause does not affect the sales agreements executed by the Vendor and the Member pursuant to this agreement. Members may negotiate a termination for convenience clause that meets the needs of the transaction based on applicable factors, such as funding sources or other needs.

5. **Administration Fee:** In consideration for the support and services provided by R13 PC, the Vendor will pay an administration fee, of 3%, to R13 PC on all equipment, products, and services provided to Members. The administration fee must be included in, and not added to, the pricing. Vendor may not charge Members more than the contracted price to offset the administration fee. The Vendor will submit payment to R13 PC for the percentage of administration fee stated in the solicitation bid multiplied by the sales of all equipment, products, and services purchased by Members under this contract during each quarter. Payments should note the Vendors name and the R13 PC contract number in the memo and must be mailed to the address above with attention to "Attn: Accounts Receivable". Payments must be received no later than 30 days after the end of each quarter. Vendor agrees to cooperate with R13 PC in auditing transactions under this contract to ensure that the administration fee is paid on all items purchased under this contract. In the event the Vendor is delinquent in any undisputed administration fees, R13 PC reserves the right to cancel this contract and reject any proposal submitted by the Vendor in any

subsequent solicitations. In the event the contract is cancelled, the administration fee payment will be due no more than 30 days from the cancellation date.

6. **Survival of Contract:** Notwithstanding any expiration or termination of this Contract, all payment obligations incurred prior to expiration or termination are due to R13 PC. All applicable sales, leases, supplemental agreements, contracts, software license agreements, warranties and service agreements entered into between a Member and Vendor under the terms and conditions of this agreement shall survive the expiration or termination of this agreement. All Orders, Purchase Orders issued, or contracts executed by R13 PC or a Member and accepted by the Vendor prior to the expiration or termination of this agreement, shall survive expiration or termination of the agreement, subject to previously agreed terms and conditions agreed by the parties or as otherwise specified herein relating to termination of this agreement.

7. **Prevailing Wage Rates and Construction/Construction-Related Contracts:** (Construction/Public Works Projects ONLY) Vendor and all subcontractors of Vendor shall comply with all laws regarding prevailing wage rates, including but not limited to, TEX. GOV'T. CODE Chapter 2258, applicable to the construction of a public work, and any related federal requirements, including the DAVIS-BACON ACT. In the event TEX. GOV'T. CODE Chapter 2258 applies to a product or service provided by Vendor to R13 PC or a Member, Vendor and any subcontractor(s) shall comply with the prevailing wage rates set by R13 PC or the Member.

If the Bid includes construction or construction-related goods or services, such as the installation of equipment, limited site preparation work, or alterations to existing buildings or facilities, which collectively are referred to in these Terms and Conditions as "construction-related services." It is not the intent of R13 PC for these Terms and Conditions to represent and reflect the complete agreement between a Member and a Vendor with respect to a specific procurement for construction-related services a R13 PC Contract awarded pursuant to the Bid. A Member procuring construction-related services under a R13 PC Contract will likely negotiate and require Vendor to enter into a Member Construction Contract with additional terms that are specific to the member's procurement or project. Additionally, a Member may require compliance with legal requirements applicable to construction-related services, including certain bonding requirements and prevailing wage requirements. The Member Construction Contract terms as agreed to by the Member and Vendor become a part of the R13 PC Contract awarded under this Proposal Invitation. ***A Contract awarded under this Bid does not include architecture, engineering or other services that must be procured in accordance with the Texas Professional Services Procurement Act (Chapter 2254 of the Texas Government Code), and therefore a Member Construction Contract entered into with a Vendor pursuant to the R13 PC Contract may not include such services. To the extent that an awarded good or service includes a construction component that requires architecture or engineering services, a Member must procure such services outside the R13 PC Contract through a separate procurement process.***

8. **Product and Pricing Change Requests:** Vendor may request equipment, product, or service changes, additions, or deletions at any time. All requests must be submitted based on the method outlined on the R13 PC website. The request must include the following:

- a. Vendor company name
- b. Vendor contact name
- c. Contract Number
- d. Specific request of change
- e. Justification of change
- f. An updated document that outlines the updated equipment, product, and services

Any change in equipment, product, or service will require a contract amendment signed by all parties. Vendor agrees to not contract with a Member prior to all parties signing the amended contract. All pricing submitted to R13 PC shall include the participation fee, as provided in the solicitation, to be remitted to R13 PC by the Vendor. The vendor will not show adding the fee to the invoice presented to Member customer.

9. **Compliance with Laws:** Vendor shall comply with all applicable federal, state, and local laws, statutes, ordinances, standards, orders, rules and regulations. ***ADDITIONAL REQUIREMENTS FOR PURCHASES USING FEDERAL GRANT FUNDS (2 C.F.R. 200 Uniform Guidance / EDGAR):*** When a Member seeks to procure goods and services using funds under a federal grant or contract, specific federal laws, regulations, and requirements may apply in addition to those under state law. This includes, but is not limited to, the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 C.F.R. 200 (sometimes referred to as the "Uniform Guidance" or new "EDGAR"). All Vendors submitting proposals must complete the EDGAR Vendor Certification Form contained in the Proposal Invitation Forms regarding their willingness and ability to comply with certain requirements which may be applicable to specific Member purchases using federal grant funds. This information will be made available to Members for their use while considering their purchasing options when using federal grant funds. Members may also require Vendors to enter into ancillary agreements, in addition to the R13 PC Contract's general Terms and Conditions, to address the member's specific contractual needs, including contract requirements for a procurement using federal grants or contracts.

- 10. Confidentiality:** Vendor and R13 PC agree to secure the confidentiality of all information and records in accordance with applicable federal and state laws, rules, and regulations. Vendor and R13 PC understand that the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, govern the privacy and security of educational records and information and agree to abide by FERPA rules and regulations, as applicable. Vendor also acknowledges that R13 PC and Members are subject to the Texas Public Information Act, and Vendor waives any claim against and releases from liability R13 PC and Members, their respective officers, employees, agents, and attorneys, with respect to disclosure of information provided under or in this Contract or determined to be subject to disclosure under the Texas Public Information Act.
- 11. Title and Risk of Loss:** Title and Risk of loss shall pass upon the later of R13 PC or Members acceptance of the product or payment of the applicable invoice.
- 12. Warranty:** The Vendor warrants that all equipment, products, and services furnished are free from liens and encumbrances, and are free from defects in design, materials, and workmanship. In addition, Vendor warrants the equipment, products, and services are suitable for and will perform in accordance with the ordinary use for which they are intended. Vendor shall assume all liabilities incurred within the scope of consequential damages and incidental expenses, as set forth in the Vendor or manufacturer's warranty, which result from either delivery or use of product, which does not meet the specifications within this Contract, the Bid, or Purchase Order. Vendor's dealers and distributors must agree to assist the Member in reaching a resolution in any dispute over warranty terms with the manufacturer. Any manufacturer's warranty that extends beyond the expiration of the Vendors warranty will be passed on to the Member.
- 13. Criminal History Review:** Prior to commencing any work under the Contract, if Vendor contracts with R13 PC to provide services, Vendor must comply with all requirements relating to criminal history information required by TEX. EDUC. CODE Chapter 22. Vendor must also ensure subcontractors' compliance with TEX. EDUC. CODE, Chapter 22 requirements Covered employees with disqualifying criminal history are prohibited from serving at R13 PC or at Member school district locations; Vendor and any subcontracting entity may not permit a "covered employee" to provide services at a school if the employee has a "disqualifying criminal history" (as those terms are defined below). If Vendor receives information that a covered employee has a reported disqualifying criminal history, then Vendor will immediately remove the covered employee from the project/contract and notify the Member in writing within three (3) business days. If the Member, in its sole discretion, objects to the assignment of a covered employee for any reason, including, but not limited to, on the basis of the covered employee's criminal history record information and/or insufficient qualifications, lack of experience, and the like, based on information gathered by Member through the procurement and/or contracting processes, Vendor (and each subcontractor) agrees to discontinue using that covered employee to provide services on Members project/contract. "Covered employees" means employees, agents or subcontractors of Vendor or a subcontractor who has or will have continuing duties related to the services to be performed on Member's project/contract and has or will have direct contact with Member's students. Disqualifying criminal history" means: (1) For employees of a contracting or subcontracting entity that is providing engineering, architectural, or construction services on a project to design, construct, alter, or repair a public work: (1) a conviction or other criminal history information designated by Member; (2) a felony or misdemeanor offense that would prevent a person from being employed under Texas Education Code Sec. 22.08341(d), that is: conviction during the preceding 30 years (if at the time of the offense, the victim was under 18 or was enrolled in a public school) of: (a) a felony offense under Title 5, Texas Penal Code; (b) an offense on conviction of which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) an offense under federal law or the laws of another state that is equivalent to (a) or (b); (2) For employees of all other contracting or subcontracting entities: (1) a conviction or other criminal history information designated by Owner; (2) a felony or misdemeanor offense that would prevent a person from being employed under Texas Education Code Sec. 22.085(a), that is: (a) conviction of a felony offense under Title 5, Texas Penal Code if at the time of the offense, the victim was under 18; (b) conviction of or placement on deferred adjudication community supervision for an offense for which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) conviction of an offense under federal law or the laws of another state that is equivalent to (a) or (b). Member shall be solely responsible for making the final determination of what constitutes direct contact with Member's students and what constitutes a disqualifying criminal history. The criminal history record information review obligation applies only if Vendor contracts with R13 PC to provide services; it does not apply to a contract for the purchase of goods, products or real estate.
- 14. Tax Exempt Status:** R13 PC and all members that are Texas governmental entities or agencies are exempt from payment of Texas State Sales Taxes under TEXAS TAX CODE § 151.310 for the purchase of tangible personal property. Vendor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, without limitation, any federal, state, or local income, sales or excise taxes of Vendor or its employees. R13 PC and Members shall not be liable for any taxes resulting from this Contract, except where otherwise required by law.
- 15. State of Texas Franchise Tax:** By signature hereon, the Vendor hereby certifies that he/she is not currently delinquent in the payment of any franchise taxes owed to the State of Texas under Chapter 171, Tax Code.

16. Assignment of Contract: Vendor may not assign this Contract or any of its rights, duties, or obligations without the prior written approval of R13 PC or Member. Any attempted assignment of this Contract by Vendor shall be null and void. Any Purchase Order created as a result of this Contract may not be transferred, assigned, or subcontracted without the prior written approval of either R13 PC or the Member.

17. Notification of Material Change: Vendor shall notify R13 PC if any material change occurs in vendor operations within (5) business days.

18. Specifications; Performance; Equipment, Products, or Services: Vendor will provide equipment, products, or services as stated in its Proposal under the above-referenced Bid. All equipment and products provided under this Contract must be new and the current model. Vendor may offer close-out or refurbished equipment or products if they are clearly indicated in Vendor's product and pricing list. Unless agreed to by the Member in advance, equipment and products must be delivered as operational to the Member's site.

Vendor represents and warrants that the products or services Vendor provides under the Contract conform to the item specifications and other requirements of the Bid (except to the extent and as specifically noted as deviations in Vendor's Proposal), and are free from all defects in material, workmanship and title. If Vendor deviates from an item specification, including delivering a product other than the specific brand and model of the product awarded, the ordering Members may reject the product when delivered and terminate the purchase order at no cost or penalty to the member. Vendor further warrants that all products provided under the Contract meet applicable OSHA standards and regulations, and that any electrical items bear the appropriate listing from US, FMRC, NEMA, or UL Laboratories. If awarded products are chemicals or other products that customarily require Material Safety Data Sheets (MSDS), Vendor must include the MSDS with the first shipment of the product to a Member during the Contract term. Vendor must provide additional MSDSs to Members upon request, promptly and at no additional cost.

19. Samples. R13 PC may request a product sample. Vendor must furnish the requested sample at no cost to the R13 PC, and, unless otherwise specified, R13 PC must receive the sample within five business days of the Request. The submitted sample must be labeled with the Bid reference # and Name, Item Number, Product Identification Number, and R13 PC's Vendor's name. The Cooperative may retain product samples for a sufficient length of time to be made available for Members to review. If not destroyed or consumed during examination or testing, R13 PC will return product samples to Vendor at Vendor's request and expense, provided that Vendor has included a written return request with when they submitted product samples. Notwithstanding the foregoing, the R13 PC may permanently retain product samples submitted by awarded Vendors for the purpose of determining and ensuring that the quality and workmanship of awarded products delivered to R13 PC Members is comparable to the product samples. The Cooperative is not liable for product samples that are damaged, destroyed or consumed during examination or testing.

20. Subcontractors: Vendor shall be fully responsible to R13 PC and Members for all acts and omissions of subcontractors. This Contract shall not be construed to create a contractual relationship, nor shall it require payment to any subcontractors between or by R13 PC or the Member, unless otherwise required by law.

21. Member Use and Purchase; Orders and Payment: To access the contract equipment, products, or services under this contract, a Member will issue an order directly to Vendor and clearly indicate to Vendor that it intends to access this contract. The Member might issue a purchase order at which the Member could request to use its own forms, but the purchase order must clearly note the Vendors contract number with R13 PC. Vendor accepts and understand that when a purchase order or similar purchase document is sent from a Member through R13 PC to the Vendor, R13 PC is recoding the purchase and verifying whether the purchase is within the parameters of the R13 PC contract only. The vendor agrees that R13 PC is not a legal party to the purchase order or similar purchase document and R13 PC is not responsible for identifying fraud, mistakes, or misrepresentations for the specific order. Vendor agrees that any purchase order or similar purchase document issued from a customer to Vendor, even when processed through R13 PC, constitutes a legal contract between the Member and Vendor only. A Vendor that accepts a purchase order or similar purchase document and fulfills an order, even when processed through R13 PC, is representing that the Vendor has carefully reviewed the purchase order or similar purchase document for legality, authenticity, and accuracy. The Vendor agrees to abide by the following:

- a. The Vendor will provide equipment, products, and services directly to the Member
- b. The Vendor will invoice directly with the Member
- c. The Member will make payments directly to the Vendor
- d. The Vendor will receive payment directly from the Member. Members will be solely responsible for payment and R13 PC will have no liability for any unpaid invoice of any Member

22. Participation and Contracts Access: R13 PC contracts are available and open to Local Education Agencies (as defined by 34 C.F.R. § 303.23) in Texas. The benefits of this Contract should be available to all Members that can legally access the equipment, products, and services under this contract. A participating Member's authority to access this contract is determined through the cooperative purchasing and interlocal laws. Vendor understands that a Member reserves the right to obtain like equipment, products, and services from any other source. Vendor employees may be required to perform work at government owned

facilities, including Local Education Agencies. Vendor's employees and agents must conduct themselves in a professional manner while on the premises, and in accordance with Member's policies and procedures, and all applicable laws.

- 23. Participating Vendor Requirements:** Vendor will assign an Account Representative to R13 PC for this contact and must provide prompt notice to R13 PC if that person is changed. The Account Representative will be responsible for:
- a. Maintenance and management of this contract;
 - b. Timely response to all R13 PC and Member inquiries; and
 - c. Business review to R13 PC and Members, if applicable.

Vendor must perform one business review with R13 PC per contract year to cover sales to Members, pricing and contract terms, administrative fees, sales data reports, supply issues, customer issues, and any other necessary information.

- 24. Termination of Orders:** Members may terminate an order, in whole or part, immediately upon notice to Vendor in the event of any of the following:
- a. The Member fails to receive funding or appropriation from its governing body at levels sufficient to pay for the equipment, product, or service to be purchased
 - b. Federal, state, or provincial laws or regulations prohibit the purchase or change the Members requirements

- 25. Pricing & Invoicing:** All equipment, products, or services under this contract shall be priced at or below the price stated in Vendor's Proposal. At any time during this contract, the Vendor may offer specific selection of equipment, products, and services at discounts greater than listed in the Vendor's Proposal. When Vendor offers discounted pricing outside of the Vendor's Proposal, Vendor must submit discounted prices to R13 PC in a line-item format. When providing pricing quotes to Members, all pricing quoted must reflect Members total cost of acquisition. Regardless of the payment method chosen by the Member, the total associated with any purchase option of equipment, products, or services must always be disclosed in the pricing quote to the applicable Member at the time of purchase. During the Contract term, Members may negotiate with Vendor to obtain lower prices for awarded products or services based on volume or other factors.

A Member's obligation to Vendor is payable only and solely from funds available for the purpose of the purchase. Lack of funds will render a Member's purchase order null and void to the extent funds to complete the purchase are not available and any delivered but unpaid product will be returned to Vendor. R13 PC is not liable or responsible for any payment owed to a Vendor by a Member under the Contract.

- 26. Shipping:** All quotes to Members shall provide a line item for the cost for freight or shipping regardless of if there is a charge or not. If there is not a charge for freight or shipping, freight or delivery charges shall be passed through to the Member at cost with no markup and said charges shall be agreed by the Member unless alternative shipping terms are agreed by R13 PC as a result of the proposal award. The shipping method is determined by the Vendor and the Member at the time of the quote/purchase by the Member and satisfactory shipping methods and costs are agreed upon at that time. The Vendor shall ship, deliver or provide ordered products or services within a commercially reasonable time after the receipt of the order from the Member. If a delay in delivery is anticipated, the Vendor shall notify Member as to why delivery is delayed and shall provide an estimated time for completion of the order. R13 PC or the Member may cancel the order if the estimated delivery time is not acceptable or not as agreed by the parties. All delivered equipment and products must be properly packaged. Damaged equipment and products may be rejected. If the damage is not readily apparent at the time of delivery, the Vendor must permit the equipment and products to be returned within a reasonable time at no cost to R13 PC and Members. Members reserve the right to inspect the equipment and products at a reasonable time after delivery where circumstances or conditions prevent effective inspection of the equipment and products at the time of delivery. In the event of the delivery of nonconforming equipment and products, the Member will notify the Vendor as soon as possible and the Vendor will replace nonconforming equipment and products with conforming equipment and products that are acceptable to the Member. Vendor must arrange and pay for the return shipment on equipment and products that arrive in a defective and inoperable condition. R13 PC may declare the Vendor in breach of this contract if the Vendor intentionally delivers substandard or inferior equipment or products.

- 27. Reporting:** The Vendor is responsible for keeping record of all sales that go through the R13 PC Agreement and submit contract sales activity report every quarter to R13 PC. Reports are due by the 30 days after each quarter regardless of number or amount of sales during that quarter. The report must include the following:
- a. Member organization name, physical address, contact name, contact email address, and phone number
 - b. R13 PC Bid number
 - a. R13 Vendor Contract Number
 - b. Outline of Member purchases
 - c. R13 PC Administration fee listed
 - d. Date purchase was invoiced/sale was recognized as revenue by Vendor.

Failure to properly report or render the participation fee to R13 PC shall constitute a breach of this agreement with R13 PC and shall be grounds for termination of this agreement and any other agreement held with R13 PC and possible legal action. Any overpayment of participation fees to R13 PC by a Vendor will be refunded to the Vendor within ninety (90) days of receipt of

notification if R13 PC receives written notification of the overpayment not later than the expiration of six (6) months from the date of overpayment and R13 PC determines that the Vendor Agreement amount was not legally due to R13 PC pursuant to this agreement and applicable law. It is the Vendor's responsibility to identify which sales are R13 PC Agreement sales and pay the correct participation fee due for R13 PC Agreement sales. Any notification of overpayment received by R13 PC after the expiration of six (6) months from the date of overpayment will be non-refundable. R13 PC reserve the right to extend the six (6) month deadline to notify if approved by the ESC Region 13 Board of Directors. R13 PC reserves all rights under the law to collect the fees due. Please contact R13 PC at purchasing@esc13.txed.net or call (512) 919-5458 if you have questions about paying fees.

- 28. Records Retention and Audits:** R13 PC or its authorized representative, shall be afforded unrestricted access to and permitted to inspect and copy all the Vendor's records, which shall include but not be limited to accounting records (hard copy as well as computer readable data), correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Contract. The Vendor shall preserve all such records for a period of five (5) years, or for such longer period as may be required by law, after final payment under this Contract. If this Contract is funded from contract/grant funds provided by the U. S. Government or the State of Texas, the Contract, books, and records shall be available for review and audit by the Comptroller General of the U.S. and/or the Inspector General of the federal sponsoring agency, or the State of Texas and its duly authorized representatives.
- 29. Grant of License During Contract:** Vendor grants to R13 PC a royalty-free, non-exclusive right and license to use Vendor's trademarks in advertising and promotional materials for the purpose of marketing Vendor's relationship with R13 PC. R13 PC grants Vendor a royalty-free, non-exclusive right and license to use R13 PC's trademarks in advertising and promotional materials for the purpose of marketing R13 PC's relationship with Vendor. Upon the termination of this contract for any reason, each party will have 30 days to remove all Trademarks from signage, websites, and the like bearing the other party's name or logo.
- 30. Use & Quality Control of Intellectual Property:** Neither party may alter other party's trademarks from the form provided and must comply with removal requests as to specific uses of its trademarks or logos. Each party agrees to use the other party's trademarks only in good faith and in a dignified manner consistent with such parties' use of the trademarks. Upon written notice to the breaching party, the breaching party has 30 days of the date of the written notice to cure the breach or the license will be terminated.
- 31. Publicity and Marketing:** Any publicity or marketing regarding information of this contract must not be released without prior written approval from R13 PC. Publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Vendor individually or jointly with others. The Vendor must not claim that R13 PC endorses its equipment, products, or services.
- 32. Performance, Default, & Remedies:** During the term of this contract, the parties will monitor performance and address unresolved contract issues as follows:
- a. The parties must promptly notify each other of any known dispute and work in good faith to resolve such dispute within a reasonable period of time. If necessary, R13 PC and the Vendor will jointly develop a short briefing document that describes the issue(s), relevant impacts, and positions of both parties
 - b. If parties are unable to resolve the issue in a timely manner, as specified above, either R13 PC or Vendor may escalate the resolution of the issue to a higher level of management. The Vendor will have 30 calendar days to cure an outstanding issue
 - c. Notwithstanding the existence of a dispute, the Vendor must continue without delay to carry out all of its responsibilities under the contract that are not affected by the dispute. If the Vendor fails to continue without delay to perform its responsibilities under the contract, in the accomplishment of all undisputed work, the Vendor will bear any additional costs incurred by R13 PC and/or its Members as a result of such failure to proceed.
- 33. Disclosures:** Vendor and R13 PC affirm that they, or any authorized employees or agents, have not given, offered to give, nor intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Agreement. Vendor shall attach, in writing, a complete description of any and all relationships that might be considered a conflict of interest in doing business with the R13 PC. The Vendor affirms that, to the best of his/her knowledge, the offer has been arrived at independently, and is submitted without collusion with anyone to obtain information or gain any favoritism that would in any way limit completion or give an unfair advantage over other vendors in the award of this Agreement.
- 34. Miscellaneous:** The Vendor acknowledges and agrees that continued participation in R13 PC is subject to R13 PC sole discretion and that any Vendor may be removed from the participation in the Program at any time with or without cause. Nothing in the Agreement or in any other communication between R13 PC and the Vendor may be construed as a guarantee that R13 PC or Members will submit any orders at any time. R13 PC reserves the right to request additional proposals for items or services already on Agreement at any time.
- 35. Indemnification:** THE VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND R13 PC, ~~MEMBER(S)~~ TRUSTEES, OFFICERS, ADMINISTRATORS, AGENTS, AND EMPLOYEES FROM AND AGAINST ALL CLAIMS AND SUITS BY THIRD PARTIES FOR

DAMAGES, INJURIES TO PERSONS (INCLUDING DEATH), PROPERTY DAMAGES, LOSSES, AND EXPENSES INCLUDING COURT COSTS AND REASONABLE ATTORNEY'S FEES, ARISING OUT OF, OR RESULTING FROM, VENDOR'S PERFORMANCE UNDER THIS AGREEMENT, INCLUDING ALL SUCH CAUSES OF ACTION BASED UPON COMMON, CONSTITUTIONAL, OR STATUTORY LAW, OR BASED IN WHOLE OR IN PART, UPON ALLEGATIONS OF NEGLIGENT OR INTENTIONAL ACTS ON THE PART OF THE VENDOR, ITS OFFICERS, EMPLOYEES, AGENTS, SUBCONTRACTORS, LICENSEES, OR INVITEES. PARTIES FOUND LIABLE SHALL PAY THEIR PROPORTIONATE SHARE OF DAMAGES AS AGREED BY THE PARTIES OR AS ORDERED BY A COURT OF COMPETENT JURISDICTION OVER THE CASE. NO LIMITATION OF LIABILITY FOR DAMAGES FOR PERSONAL INJURY OR PROPERTY DAMAGE ARE PERMITTED OR AGREED BY R13 PC/ESC REGION 13. PER TEXAS EDUCATION CODE §44.032(F), AND PURSUANT TO ITS REQUIREMENTS ONLY, REASONABLE ATTORNEY'S FEES ARE RECOVERABLE BY THE PREVAILING PARTY IN ANY DISPUTE RESULTING IN LITIGATION.

WITHOUT LIMITING THE SCOPE OF THESE TERMS AND CONDITIONS, IF ANY CLAIM IS ASSERTED OR ACTION OR PROCEEDING BROUGHT AGAINST R13 PC OR A MEMBER THAT ALLEGES THAT ALL OR ANY PART OF THE PRODUCTS SUPPLIED BY VENDOR, IN THE FORM SUPPLIED OR MODIFIED BY VENDOR, OR ITS SUBCONTRACTORS PURSUANT TO VENDOR'S SOLE DIRECTIONS, INFRINGES OR MISAPPROPRIATES ANY UNITED STATES INTELLECTUAL PROPERTY, INTANGIBLE ASSET, OR OTHER PROPRIETARY RIGHT, TITLE OR INTEREST (INCLUDING, WITHOUT LIMITATION, ANY COPYRIGHT OR PATENT OR ANY TRADE SECRET RIGHT, TITLE, OR INTEREST), OR VIOLATES ANY OTHER CONTRACT, LICENSE, GRANT, OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY, THE COOPERATIVE, UPON ITS AWARENESS, SHALL GIVE VENDOR PROMPT WRITTEN NOTICE THEREOF. VENDOR SHALL DEFEND, AND HOLD R13 PC AND THE MEMBER HARMLESS, AGAINST ANY SUCH CLAIM OR ACTION AND SHALL INDEMNIFY R13 PC AND MEMBER AGAINST ANY LIABILITY, DAMAGES AND COSTS RESULTING FROM SUCH CLAIM. In addition, if, in any such suit arising from such claim, the continued use of the product for the purpose intended is enjoined by any court of competent jurisdiction, Vendor shall, at its expense and option, either (a) procure for Member the right to continue using the product; (b) modify the product so that it becomes non-infringing; (c) replace the product or portions thereof so that it becomes non-infringing; or (d) allow the Cooperative member to return the product and refund the purchase price (less reasonable depreciation for use.)

- 36. Governing Law and Exclusive Venue:** This Contract is made in Texas and shall be construed, interpreted, and governed by the laws of the State of Texas. Any dispute under this Contract involving R13 PC must be brought exclusively in the state and federal courts located in Austin, Travis County, Texas. Any dispute not involving R13 PC but involving a Member and Vendor, shall be governed by the laws of the state of the Member and exclusive jurisdiction and venue shall be within the city, county, and state of the Member.
- 37. Multiple Contract Awards; Non-Exclusivity:** R13 PC reserves the right to award multiple contracts under the Bid, including multiple contracts for each product and service category. Product/Service categories are established at the sole discretion of R13 PC. This Contract shall not be construed to imply that the Vendor has the exclusive right to provide products and or services to R13 PC or the Members. During the Term of this Contract R13 PC and Members reserve the right to use all available resources to procure other products and or services as needed and doing so will not violate any rights of the Vendor.
- 38. Penalties:** If the Vendor is unable to provide the product(s) or services at the prices quoted in the Vendor's proposal or fails to abide by the terms and conditions of the Contract, the R13 PC or the Member, within their sole discretion, may either insist the Vendor honor the quoted price(s) within the Vendor's proposal or Supplemental Contract OR recommend to the R13 PC that the Vendor no longer be given the opportunity to submit a proposal to R13 PC and or that this Contract be terminated.
- 39. Insurance:** Vendor is required to provide R13 PC and/or the Member with copies of certificates of insurance, naming R13 PC and/or the Member as additional insured parties for Texas Workers Compensation and General Liability Insurance, within 14 business days of contract award and prior to the commencement of any work under this Contract. Certificates of Insurance, name and address of Vendor, the limits of liability, the effective dates of each policy, and policy number shall be delivered to R13 PC and/or the Member prior to commencement of any work under this Contract. All policies of insurance shall waive all rights of subrogation against R13 PC, Members, and member's officers, employees, and agents. R13 PC and the Member reserve the right to require additional insurance should R13 PC or the Member deem additional insurance necessary, in their sole discretion.
- 40. Force Majeure:** Neither R13 PC, any Member, or Vendor shall be deemed to have breached any provision of this Contract as a result of any delay, failure in performance, or interruption of service resulting directly or indirectly from acts of God, network failures, acts of civil or military authorities, epidemics, pandemics, civil disturbances, wars, energy crises, fires, transportation contingencies, interruptions in third-party telecommunications or Internet equipment or service, other catastrophes, or any other occurrences which are reasonably beyond R13 PC, any Member or Vendor's control (herein referred to as "Force Majeure"). A party defaulting under this provision must provide the other party prompt written notice of the default. Vendor is required to use due caution and preventive measures to protect against the effects of Force Majeure, and the burden of proving that Force Majeure has occurred rests on the party seeking relief.
- 41. Severability:** In the event any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained within the Contract.

Zero Eyes Cooperative Contract_vs2

Final Audit Report

2023-11-28

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| By: | Jennifer Irrobali (jennifer.irrobali@esc13.txed.net) |
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