

# UTA Standard Terms and Conditions

September 2020

“Vendor” as used in these UTA Standard Terms and Conditions means the party contracting with Utah Transit Authority (“UTA”) to provide Goods and/or Services to UTA. Vendor is identified as “Vendor” on the applicable UTA Purchase Order (“PO”). The PO, these UTA Standard Terms and Conditions and any other terms, conditions, standards, drawings, schedules or other documents identified in the PO form the “Contract” related to the applicable PO. The terms “Goods” and “Services” are intended to have their broadest meanings. “Goods” includes any equipment, parts, materials, supplies, project deliverables, and work product supplied by Vendor in accordance with the PO. “Services” includes labor, professional services, and any manual, technical and other human resources provided in the fulfillment of the PO, including those specified in the PO and any additional Services incidental to the furnishing of Goods.

- 1. JURISDICTION, CHOICE OF LAW, AND VENUE:** Utah law governs this transaction. The parties shall submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of the PO and Contract. Venue is in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
- 2. LAWS AND REGULATIONS:** Vendor and any and all Goods and/or Services furnished under the Contract will comply fully with all applicable Federal and State laws and regulations, including those related to safety and environmental protection. Vendor shall also comply with all applicable licensure and certification requirements.
- 3. RECORDS ADMINISTRATION:** Vendor shall maintain all records necessary to properly account for the payments made to Vendor for costs authorized by the Contract. Vendor shall retain those records for at least six years after the Contract is fully performed or terminated, or until all audits initiated within the six-year period have been completed (whichever is later). Vendor shall allow UTA, State, and Federal auditors, and UTA agency staff, access to all the records relating to the Contract, for audit, inspection, and monitoring of Goods and/or Services. Such access must be during normal business hours, or by appointment.
- 4. CONFLICT OF INTEREST:** Vendor represents that it has not offered or given any gift or compensation prohibited by the laws of the State of Utah to any officer or employee of UTA to secure favorable treatment with respect to being awarded the Contract.
- 5. INDEPENDENT CONTRACTOR:** Vendor is an independent contractor. As such, Vendor has no authorization, express or implied, to bind UTA to any agreements, settlements, liability or understanding whatsoever. Vendor shall not perform any acts as agent for UTA, except as expressly set forth in the Contract. Compensation stated in the Contract is the total amount payable to Vendor by UTA. Vendor is responsible for the payment of all income tax and social security tax due as a result of payments received from UTA for the Goods and/or Services. Persons employed by UTA and acting under the direction of UTA will not be deemed to be employees or agents of Vendor.
- 6. STANDARD OF CARE.** Vendor shall perform any Services to be provided under the Contract in a good and workmanlike manner, using at least that standard of care, skill and judgment which can reasonably be expected from similarly situated independent contractors (including, as applicable, professional standards of care).
- 7. SALES TAX EXEMPTION:** Purchases of certain materials are exempt from Utah sales tax. UTA will provide a sales tax exemption certificate to Vendor upon request. UTA will not pay Vendor for sales taxes for exempt purchases, and such taxes should not be included in Vendor’s Application for Payment.
- 8. DELIVERY:** Unless otherwise specified in the Contract, all Goods will be delivered FOB to the destination designated by UTA in the PO. Vendor shall be responsible for delivery costs and all risk of loss shall remain with Vendor until such time as the Goods are received by UTA, its agent or consignee, regardless of whether UTA has made full payment for the Goods. Vendor shall deliver all Goods to UTA and perform all Services no later than the date(s) indicated in the PO. If

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Vendor fails to make delivery of any part of the Goods or fails to perform any portion of the Services on the date(s) indicated, UTA may terminate and pursue other remedies.

9. **INSPECTIONS:** Goods furnished under the Contract will be subject to inspection and testing by UTA at times and places determined by UTA. If UTA finds Goods furnished to be incomplete or not in compliance with applicable specifications and standards, UTA may reject the Goods and require Vendor to either correct them without charge or deliver them at a reduced price which is equitable under the circumstances. If Vendor is unable or refuses to correct such Goods within a time deemed reasonable by UTA, then UTA may cancel the order in whole or in part. Nothing in this paragraph will adversely affect UTA's rights including the rights and remedies associated with revocation of acceptance under the Uniform Commercial Code.
10. **INVOICING AND PAYMENT:** Vendor will promptly submit invoices (within 30 days of delivery of the applicable Goods and/or Services) to UTA. The UTA purchase order number shall be listed on all invoices, freight tickets, and correspondence relating to the Contract. The prices paid by UTA will be those prices listed in the PO. UTA may adjust or return any invoice reflecting incorrect pricing. Unless otherwise specified, payment terms are Net 30 days following receipt of invoice.
11. **WARRANTY:** Vendor warrants all Goods (including hardware, firmware, and/or software products that it licenses) provided to UTA under the Contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in the Contract.

Vendor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to the Contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to the Contract unless otherwise specified and mutually agreed upon elsewhere in the Contract. In general, Vendor warrants that: (1) the Good will do what the salesperson said it would do, (2) the Good will live up to all specific claims that the manufacturer makes in their advertisements, (3) the Goods will be suitable for the ordinary purposes for which such items are used, (4) the Goods will be suitable for any special purposes that UTA has relied on Vendor's skill or judgment to consider when it advised UTA about the Good, (5) the Goods have been properly designed and manufactured, and (6) the Goods are free of significant defects or unusual problems about which UTA has not been warned. Nothing in this warranty will be construed to limit any rights or remedies UTA may otherwise have under the Contract.

12. **INDEMNIFICATION:** Vendor shall release, protect, defend, indemnify and hold UTA and its trustees, officers, and employees, harmless from and against any damage, cost or liability, including reasonable attorney's fees for any or all injuries to persons, property or claims for money damages arising from the willful misconduct or the negligent acts or omissions of Vendor, its subcontractors and suppliers, and their respective employees and agents, except to the extent caused by the negligent acts or omissions of UTA.
13. **INSURANCE:** Vendor shall maintain worker's compensation insurance in accordance with applicable laws and shall also maintain general liability insurance with policy limits no less than two million per occurrence and four million in the aggregate. Vendor shall include UTA as an additional insured with respect to such insurance. Upon request, Vendor shall provide proof of insurance to UTA. The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. UTA is no way warrants that the minimum limits contained herein are sufficient to protect the Vendor from liabilities that might arise out of the performance of the work under this contract by the Vendor, his agents, representatives, employees, or subcontractors and Vendor is free to purchase additional insurance as may be determined necessary.

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## 14. Claims and Dispute Resolution

### 14.1 Claims.

“Claim” means any disputes between UTA and the Vendor arising out of or relating to the Contract Documents including any disputed claims for Contract adjustments that cannot be resolved in accordance with the Written Amendments as set forth in Section 22. Claims must be made by written notice. The responsibility to substantiate claims rests with the party making the claim. Unless otherwise directed by UTA in writing, Vendor shall proceed diligently with performance of the Work pending final resolution of a Claim, including litigation. UTA shall continue to pay any undisputed payments related to such Claim.

### 14.2 Dispute Resolution.

The parties shall attempt to informally resolve all claims, counterclaims and other disputes. No party may bring a legal action to enforce any term of this Contract without first having exhausted such process. If the dispute cannot be resolved informally, either party may request mediation under the auspices of the Juris Arbitration and Mediation Services (JAMS). A JAMS mediator shall be mutually agreed to among the Parties. The Mediation shall be non-binding. The Mediator shall determine the logistics, format and other aspects of the actual mediation. If mediation is not successful in resolving the dispute, either Party may commence legal action in accordance with the venue and law provisions of this Contract.

- 15. DEFAULT:** If Vendor: (a) becomes insolvent; (b) files a petition under any chapter of the bankruptcy laws or is the subject of an involuntary petition; (c) makes a general assignment for the benefit of its creditors; (d) has a receiver appointed; (e) should fail to make prompt payment to any subcontractors or suppliers; or (f) fails to comply with any of its material obligations under the Contract, UTA may, at its option either cure the default at Vendor's expense or terminate the Contract after first giving Vendor five (5) days written notice to cure such default. Immediately after such termination, UTA may: (i) take possession of the Goods wherever they may be located and in whatever state of completion they may be together with all drawings and other information necessary to enable UTA to have the Items completed, installed, operated, maintained and/or repaired; (ii) pay to Vendor any amount then due under the Contract after taking full credit for any offsets to which UTA may be entitled; (iii) contract with or employ any other party or parties to finish the Items; and (iv) collect from Vendor any additional expense, losses or damage which UTA may suffer.
- 16. Costs and Attorney's Fees:** If any party to this Agreement brings an action to enforce or defend its rights or obligations hereunder, the prevailing party shall be entitled to recover its costs and expenses, including mediation, arbitration, litigation, court costs and attorneys' fees, if any, incurred in connection with such suit, including on appeal.
- 17. Governing Law.** The Agreement and all Contract Documents are governed by the laws of the State of Utah, without giving effect to its conflict of law principles. Actions to enforce the terms of this Agreement may only be brought in the Third District Court for Salt Lake County, Utah.
- 18. PATENTS, COPYRIGHTS, ETC:** Vendor will defend, indemnify and hold UTA, its officers, agents and employees harmless from liability of any kind or nature, arising from Vendor's use of any copyrighted or un-copyrighted composition, trade secret, patented or un-patented invention, article or appliance furnished or used in the performance of the Contract.
- 19. ENVIRONMENTAL RESPONSIBILITY:** UTA is ISO 14001 Environmental Management System (EMS) certified. Vendor acknowledges that its Goods and/or Services might affect UTA's ability to maintain the obligation of the EMS. A partial list of activities, products or Services deemed as have a potential EMS effect is available at the UTA website [www.rideuta.com](http://www.rideuta.com). Upon request by UTA, Vendor shall complete and return a *Contractor Activity Checklist*. If UTA

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determines that the Goods and/or Services under the Contract has the potential to impact the environment, UTA may require Vendor to submit additional environmental documents. Vendor shall provide one set of the appropriate safety data sheet(s) (SDS) and container label(s) upon delivery of a hazardous material to UTA.

20. **PUBLIC INFORMATION:** Vendor acknowledges that the Contract and related materials (invoices, orders, etc.) will be public documents under the Utah Government Records Access and Management Act (GRAMA). Vendor's response to the solicitation for the Contract will also be a public document subject to GRAMA, except for legitimate trade secrets, so long as such trade secrets were properly designated in accordance with terms of the solicitation.
21. **SEVERABILITY:** If any provision of the Contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected; and the rights and obligations of the parties will be construed and enforced as if the Contract did not contain the particular provision held to be invalid.
22. **WRITTEN AMENDMENTS:** The Contract may be amended, modified, or supplemented only by written amendment to the Contract, executed by authorized persons of the parties hereto.
23. **ASSIGNMENT:** Vendor shall not assign, sell, or transfer any interest in the Contract without the express written consent of UTA.
24. **FORCE MAJEURE:** Neither party to the Contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which are beyond that party's reasonable control. UTA may terminate the Contract after determining such delay or default will reasonably prevent successful performance of the Contract.
25. **WAIVER:** Any waiver by a party of any breach of any kind or character whatsoever by the other party, whether such be direct or implied, will not be a continuing waiver of or consent to any subsequent breach of the Contract.
26. **ENTIRE AGREEMENT:** The Contract constitutes the entire agreement between the parties with respect to the subject matter, and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written. The terms of the Contract supersede any additional or conflicting terms or provisions that may be preprinted on Vendor's work plans, cost estimate forms, receiving tickets, invoices, or any other related standard forms or documents of Vendor that may subsequently be used to implement, record, or invoice Goods and/or Services hereunder from time to time, even if such standard forms or documents have been signed or initialed by a representative of UTA. The terms of the Contract prevail in any dispute between the terms of the Contract and the terms printed on any such standard forms or documents, and such standard forms or documents will not be considered written amendments of the Contract.