

ACCEPTANCE OF THIS PURCHASE ORDER BINDS CONTRACTOR TO ALL THESE TERMS AND CONDITIONS AND ALL THE TERMS, CONDITIONS, AND PROVISIONS INCLUDED IN THE SOLICITATION THE DIVISION OF PURCHASING OFFERED RELATING TO THIS PURCHASE ORDER.

PURCHASE ORDER TERMS AND CONDITIONS FOR GOODS & SERVICES

1. **DEFINITIONS:** The following terms shall have the meanings set forth below:
 - a) "**Confidential Information**" means information that is deemed as confidential under applicable state and federal laws, including personal information. The State Entity reserves the right to identify, during and after this Contract, additional reasonable types of categories of information that must be kept confidential under federal and state laws.
 - b) "**Purchase Order**" means the Purchase Order including these terms and conditions.
 - c) "**Contractor**" means the individual or entity delivering the Procurement Item identified in this Purchase Order. The term "Contractor" shall include Contractor's agents, officers, employees, and partners.
 - d) "**Procurement Item**" means a supply, a service, construction, or technology that Contractor is required to deliver to the State Entity under this Purchase Order.
 - e) "**Response**" means the Contractor's bid, proposals, quote, or any other document used by the Contractor to respond to the State Entity's Solicitation.
 - f) "**Solicitation**" means any document used to obtain bids, proposals, pricing, qualifications, or information for the purpose of entering into this Purchase Order.
 - g) "**State Entity**" means the department, division, office, bureau, agency, or other organization identified on the Purchase Order Signature Page(s).
 - h) "**State of Utah**" means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
 - i) "**Subcontractors**" means a person under contract with a contractor or another subcontractor to provide services or labor for design or construction, including a trade contractor or specialty contractor.
2. **GOVERNING LAW AND VENUE:** This Purchase Order shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Purchase Order shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** At all times during this Purchase Order, Contractor and all Procurement Items delivered and/or performed under this Purchase Order will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. If this Purchase Order is funded by federal funds, either in whole or in part, then any federal regulation related to the federal funding, including CFR Appendix II to Part 200, will supersede this Attachment A.
4. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by the State Entity to Contractor under this Purchase Order. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, the State of Utah, federal auditors, State Entity staff, or their designees, access to all such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Purchase Order.
5. **PERMITS:** If necessary Contractor shall procure and pay for all permits, licenses, and approvals necessary for the execution of this Purchase Order.
6. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** The Status Verification System, also referred to as "E-verify", only applies to contracts issued through a Request for Proposal process, to sole sources that are included within a Request for Proposal, and when Contractor employs any personnel in Utah.
 - a. Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
 - b. Contractor shall require that each of its Subcontractors certify by affidavit, as to their own entity, under penalty of perjury, that each Subcontractor has registered and is participating in the Status Verification System to verify the work eligibility status of Subcontractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
 - c. Contractor's failure to comply with this section will be considered a material breach of this Purchase Order.
7. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State Entity or the State of Utah, unless disclosure has been made to the State Entity.
8. **INDEPENDENT CONTRACTOR:** Contractor and Subcontractors, in the performance of this Purchase Order, shall act in an independent capacity and not as officers or employees or agents of the State Entity or the State of Utah.
9. **CONTRACTOR RESPONSIBILITY:** Contractor is solely responsible for fulfilling the Purchase Order, with responsibility for all Procurement Items delivered and/or performed as stated in this Purchase Order. Contractor shall be the sole point of contact regarding all contractual matters. Contractor must incorporate Contractor's responsibilities under this Purchase Order into every subcontract with its Subcontractors that will provide the Procurement Item(s) to the State Entity under this Purchase Order. Moreover, Contractor is responsible for its Subcontractors compliance under this Purchase Order.

10. **INDEMNITY:** Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors, and shall fully indemnify, defend, and save harmless the State Entity and the State of Utah from all claims, losses, suits, actions, damages, and costs of every name and description arising out of Contractor's performance of this Purchase Order caused by any intentional act or negligence of Contractor, its agents, employees, officers, partners, or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the sole fault of the State Entity. The parties agree that if there are any limitations of the Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property.
11. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees.
12. **AMENDMENTS:** This Purchase Order may only be amended by the mutual written agreement of the parties, which amendment will be attached to this Purchase Order. Automatic renewals will not apply to this Purchase Order, even if identified elsewhere in this Purchase Order.
13. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, proposed for debarment, or declared ineligible by any governmental department or agency, whether international, national, state, or local. Contractor must notify the State Entity within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by any governmental entity during this Purchase Order.
14. **TERMINATION:** This Purchase Order may be terminated, with cause by either party, in advance of the specified expiration date, upon written notice given by the other party. The party in violation will be given ten (10) days after written notification to correct and cease the violations, after which this Purchase Order may be terminated for cause immediately and subject to the remedies below. This Purchase Order may also be terminated without cause (for convenience), in advance of the specified expiration date, by the State Entity, upon thirty (30) days written termination notice being given to the Contractor. The State Entity and the Contractor may terminate this Purchase Order, in whole or in part, at any time, by mutual agreement in writing.

On termination of this Purchase Order, all accounts and payments will be processed according to the financial arrangements set forth herein for approved and conforming Procurement Items ordered prior to date of termination. In no event shall the State Entity be liable to the Contractor for compensation for any Good neither requested nor accepted by the State Entity. In no event shall the State Entity's exercise of its right to terminate this Purchase Order for convenience relieve the Contractor of any liability to the State Entity for any damages or claims arising under this Purchase Order.
15. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Contractor, this Purchase Order may be terminated in whole or in part at the sole discretion of the State Entity, if the State Entity reasonably determines that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Purchase Order; or (ii) that a change in available funds affects the State Entity's ability to pay under this Purchase Order. A change of available funds as used in this paragraph includes, but is not limited to a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.

If a written notice is delivered under this section, the State Entity will reimburse Contractor for the Procurement Item(s) properly ordered and/or Services properly performed until the effective date of said notice. The State Entity will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.
16. **SALES TAX EXEMPTION:** The Procurement Item(s) under this Purchase Order will be paid for from the State Entity's funds and used in the exercise of the State Entity's essential functions as a State of Utah entity. Upon request, the State Entity will provide Contractor with its sales tax exemption number. It is Contractor's responsibility to request the State Entity's sales tax exemption number. It also is Contractor's sole responsibility to ascertain whether any tax deduction or benefits apply to any aspect of this Purchase Order.
17. **WARRANTY OF PROCUREMENT ITEM(S):** Contractor warrants, represents and conveys full ownership and clear title, free of all liens and encumbrances, to the Procurement Item(s) delivered to the State Entity under this Purchase Order. Contractor warrants for a period of one (1) year that: (i) the Procurement Item(s) perform according to all specific claims that Contractor made in its Response; (ii) the Procurement Item(s) are suitable for the ordinary purposes for which such Procurement Item(s) are used; (iii) the Procurement Item(s) are suitable for any special purposes identified in the Contractor's Response; (iv) the Procurement Item(s) are designed and manufactured in a commercially reasonable manner; (v) the Procurement Item(s) are manufactured and in all other respects create no harm to persons or property; and (vi) the Procurement Item(s) are free of defects. Unless otherwise specified, all Procurement Item(s) provided shall be new and unused of the latest model or design.

Remedies available to the State Entity under this section include, but are not limited to, the following: Contractor will repair or replace Procurement Item(s) at no charge to the State Entity within ten (10) days of any written notification informing Contractor of the Goods not performing as required under this Purchase Order. If the repaired and/or replaced Procurement Item(s) prove to be inadequate, or fail its essential purpose, Contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State Entity may otherwise have under this Purchase Order.
18. **CONTRACTOR'S INSURANCE RESPONSIBILITY.** The Contractor shall maintain the following insurance coverage:
 - a. Workers' compensation insurance during the term of this Contract for all its employees and any Subcontractor employees related to this Contract. Workers' compensation insurance shall cover full liability under the workers' compensation laws of the jurisdiction in which the work is performed at the statutory limits required by said jurisdiction.
 - b. Commercial general liability [CGL] insurance from an insurance company authorized to do business in the State of Utah. The limits of the CGL insurance policy will be no less than one million dollars (\$1,000,000.00) per person per occurrence and three million dollars (\$3,000,000.00) aggregate.

- c. Commercial automobile liability [CAL] insurance from an insurance company authorized to do business in the State of Utah. The CAL insurance policy must cover bodily injury and property damage liability and be applicable to all vehicles used in your performance of Services under this Agreement whether owned, non-owned, leased, or hired. The minimum liability limit must be \$1 million per occurrence, combined single limit. The CAL insurance policy is required if Contractor will use a vehicle in the performance of this Contract.
- d. Other insurance policies required in the Solicitation.

Certificate of Insurance, showing up-to-date coverage, shall be on file in the State Entity before the Contract may commence.

The State reserves the right to require higher or lower insurance limits where warranted. Failure to provide proof of insurance as required will be deemed a material breach of this Contract. Contractor's failure to maintain this insurance requirement for the term of this Contract will be grounds for immediate termination of this Contract.

19. **RESERVED.**

20. **PUBLIC INFORMATION:** Contractor agrees that this Purchase Order, related purchase orders, related pricing documents, and invoices will be public documents and may be available for public and private distribution in accordance with the State of Utah's Government Records Access and Management Act (GRAMA). Contractor gives the State Entity and the State of Utah express permission to make copies of this Purchase Order, related sales orders, related pricing documents, and invoices in accordance with GRAMA. Except for sections identified in writing by Contractor and expressly approved by the State of Utah Division of Purchasing and General Services, Contractor also agrees that the Contractor's Response will be a public document, and copies may be given to the public as permitted under GRAMA. The State Entity and the State of Utah are not obligated to inform Contractor of any GRAMA requests for disclosure of this Purchase Order, related purchase orders, related pricing documents, or invoices.
21. **DELIVERY:** All deliveries under this Purchase Order will be F.O.B. destination with all transportation and handling charges paid for by Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State Entity, except as to latent defects or fraud. Contractor shall strictly adhere to the delivery and completion schedules specified in this Purchase Order.
22. **ACCEPTANCE AND REJECTION:** The State Entity shall have thirty (30) days after delivery of the Procurement Item(s) to perform an inspection of the Procurement Item(s) to determine whether the Procurement Item(s) conform to the standards specified in the Solicitation and this Purchase Order prior to acceptance of the Procurement Item(s) by the State Entity.
If Contractor delivers nonconforming Procurement Item(s), the State Entity may, at its option and at Contractor's expense: (i) return the Procurement Item(s) for a full refund; (ii) require Contractor to promptly correct or replace the nonconforming Procurement Item(s); or (iii) obtain replacement Procurement Item(s) from another source, subject to Contractor being responsible for any cover costs. Contractor shall not redeliver corrected or rejected Procurement Item(s) without: first, disclosing the former rejection or requirement for correction; and second, obtaining written consent of the State Entity to redeliver the corrected Procurement Item(s). Repair, replacement, and other correction and redelivery shall be subject to the terms of this Purchase Order.
23. **INVOICING:** Contractor will submit invoices within thirty (30) days of the delivery date of the Procurement Item(s) to the State Entity. The Purchase Order number shall be listed on all invoices, freight tickets, and correspondence relating to this Purchase Order. The prices paid by the State Entity will be those prices listed in this Purchase Order, unless Contractor offers a prompt payment discount within its Response or on its invoice. The State Entity has the right to adjust or return any invoice reflecting incorrect pricing.
24. **PAYMENT:** Payments are to be made within thirty (30) days after a correct invoice is received. All payments to Contractor will be remitted by mail, electronic funds transfer, or the State of Utah's Purchasing Card (major credit card). If payment has not been made after sixty (60) days from the date a correct invoice is received by the State Entity, then interest may be added by Contractor as prescribed in the Utah Prompt Payment Act. The acceptance by Contractor of final payment, without a written protest filed with the State Entity within ten (10) business days of receipt of final payment, shall release the State Entity and the State of Utah from all claims and all liability to the Contractor. The State Entity's payment for the Procurement Item(s) and/or Services shall not be deemed an acceptance of the Procurement Item(s) and is without prejudice to any and all claims that the State Entity or the State of Utah may have against Contractor. The State of Utah and the State Entity will not allow the Contractor to charge end users electronic payment fees of any kind.
25. **INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY:** Contractor will indemnify and hold the State Entity and the State of Utah harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities, and costs in any action or claim brought against the State Entity or the State of Utah for infringement of a third party's copyright, trademark, trade secret, or other proprietary right. The parties agree that if there are any limitations of Contractor's liability, such limitations of liability will not apply to this section.
26. **OWNERSHIP IN INTELLECTUAL PROPERTY:** The State Entity and Contractor each recognizes that each has no right, title, or interest, proprietary or otherwise, in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing. All Procurement Item(s), documents, records, programs, data, articles, memoranda, and other materials not developed or licensed by Contractor prior to the execution of this Purchase Order, but specifically manufactured under this Purchase Order shall be considered work made for hire, and Contractor shall transfer any ownership claim to the State Entity.

27. **ASSIGNMENT:** Contractor may not assign, sell, transfer, subcontract or sublet rights, or delegate any right or obligation under this Purchase Order, in whole or in part, without the prior written approval of the State Entity.
28. **REMEDIES:** Any of the following events will constitute cause for the State Entity to declare Contractor in default of this Purchase Order: (i) Contractor's non-performance of its contractual requirements and obligations under this Purchase Order; or (ii) Contractor's material breach of any term or condition of this Purchase Order. The State Entity may issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains after Contractor has been provided the opportunity to cure, the State Entity may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) terminate this Purchase Order; (iii) impose liquidated damages, if liquidated damages are listed in this Purchase Order; (iv) debar/suspend Contractor from receiving future contracts from the State Entity or the State of Utah; or (v) demand a full refund of any payment that the State Entity has made to Contractor under this Purchase Order for Procurement Item(s) that do not conform to this Purchase Order.
29. **FORCE MAJEURE:** Neither party to this Purchase Order will be held responsible for delay or default caused by fire, riot, act of God, and/or war which is beyond that party's reasonable control. The State Entity may terminate this Purchase Order after determining such delay will prevent successful performance of this Purchase Order.
30. **CONFIDENTIALITY:** If Confidential Information is disclosed to Contractor, Contractor shall: (i) advise its agents, officers, employees, partners, and Subcontractors of the obligations set forth in this Purchase Order; (ii) keep all Confidential Information strictly confidential; and (iii) not disclose any Confidential Information received by it to any third parties. Contractor will promptly notify the State Entity of any potential or actual misuse or misappropriation of Confidential Information.
- Contractor shall be responsible for any breach of this duty of confidentiality, including any required remedies and/or notifications under applicable law. Contractor shall indemnify, hold harmless, and defend the State Entity and the State of Utah, including anyone for whom the State Entity or the State of Utah is liable, from claims related to a breach of this duty of confidentiality, including any notification requirements, by Contractor or anyone for whom the Contractor is liable.
- Upon termination or expiration of this Purchase Order, Contractor will return all copies of Confidential Information to the State Entity or certify, in writing, that the Confidential Information has been destroyed. This duty of confidentiality shall be ongoing and survive the termination or expiration of this Purchase Order.
31. **PUBLICITY:** Contractor shall submit to the State Entity for written approval all advertising and publicity matters relating to this Purchase Order. It is within the State Entity's sole discretion whether to provide approval, which approval must be in writing.
32. **WORK ON STATE OF UTAH OR ELIGIBLE USER PREMISES:** Contractor shall ensure that personnel working on State of Utah premises shall: (i) abide by all of the rules, regulations, and policies of the premises; (ii) remain in authorized areas; (iii) follow all instructions; and (iv) be subject to a background check, prior to entering the premises. The State of Utah or Eligible User may remove any individual for a violation hereunder.
33. **WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.
34. **SUSPENSION OF WORK:** Should circumstances arise which would cause the State Entity to suspend Contractor's responsibilities under this Purchase Order, but not terminate this Purchase Order, this will be done by formal written notice pursuant to the terms of this Purchase Order. Contractor's responsibilities may be reinstated upon advance formal written notice from the State Entity.
35. **CHANGES IN SCOPE:** Any changes in the scope of the services to be performed under this Purchase Order shall be in the form of a written amendment to this Purchase Order, mutually agreed to and signed by both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of services.
36. **PROCUREMENT ETHICS:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or to any person in any official capacity who participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.
37. **ATTORNEY'S FEES:** In the event of any judicial action to enforce rights under this Purchase Order, the prevailing party shall be entitled its costs and expenses, including reasonable attorney's fees incurred in connection with such action.
38. **TRAVEL COSTS:** If travel expenses are permitted by the Solicitation, then all travel costs associated with the delivery of Services under this Purchase Order will be paid according to the rules and per diem rates found in the Utah Administrative Code R25-7. Invoices containing travel costs outside of these rates will be returned to Contractor for correction.
39. **DISPUTE RESOLUTION:** Prior to either party filing a judicial proceeding, the parties agree to participate in the mediation of any dispute. The State Entity, after consultation with Contractor, may appoint an expert or panel of experts to assist in the resolution of a dispute. If the State Entity appoints such an expert or panel, State Entity and Contractor agree to cooperate in good faith in providing information and documents to the expert or panel in an effort to resolve the dispute.
40. **ORDER OF PRECEDENCE:** In the event of any conflict in the terms and conditions in this Purchase Order, the order of precedence shall be: (i) this Attachment A; (ii) the State of Utah's additional terms and conditions, if any; and (iii) Contractor's terms and conditions that are attached to this Purchase Order, if any. Any provision attempting to limit the liability of Contractor or limit the rights of the State Entity or the State of Utah must be in writing and attached to this Purchase Order or it is rendered null and void.

41. **SURVIVAL OF TERMS:** Termination or expiration of this Purchase Order shall not extinguish or prejudice the State Entity's right to enforce this Purchase Order with respect to any default of this Purchase Order or defect in the Procurement Item(s) that has not been cured, or of any of the following clauses, including: Governing Law and Venue, Laws and Regulations, Records Administration, Remedies, Dispute Resolution, Indemnity, Newly Manufactured, Indemnification Relating to Intellectual Property, Warranty of Procurement Item(s), Insurance.
42. **SEVERABILITY:** The invalidity or unenforceability of any provision, term, or condition of this Purchase Order shall not affect the validity or enforceability of any other provision, term, or condition of this Purchase Order, which shall remain in full force and effect.
43. **ERRORS AND OMISSIONS:** Contractor shall not take advantage of any errors and/or omissions in this Purchase Order. The Contractor must promptly notify the State of any errors and/or omissions that are discovered.
44. **ENTIRE AGREEMENT:** This Purchase Order constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.

(Revised April 16, 2018)