

# Standard Terms and Conditions

1. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in 63G-6, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes and Salt Lake City School District Board policies which permit the Salt Lake City School District (District) to purchase certain specified services, and other approved purchases for the District: Administrative Procedures Relating to Board Policy F2.
2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** The Contractor and any and all supplies, services and equipment furnished will comply fully with all applicable Federal and State laws and regulations. Said laws and regulations include, but are not limited to Equal Employment Opportunity laws, the Fair Labor Standards Act, Occupational Safety and Health Administration (OSHA) laws, Family Medical Leave Act (FMLA), the Americans with Disability Act (ADA), the Utah Anti-discrimination Act and the Utah Immigration Act. Any violation of applicable law shall constitute a breach of this contract and the Contractor shall hold the District harmless from any and all liability arising out of, or in connection with, said violation including any attorney's fees and costs incurred by the District as a result of such violation.
4. **RECORDS ADMINISTRATION:** The Contractor shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records shall be retained by the Contractor for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The Contractor agrees to allow District, State and Federal auditors, and District Staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
5. **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, and to sole sources that are included within a Request for Proposal. It does not apply to Invitation to Bids nor to the Multi-Step Process.

## 5.1 Status Verification System

- i. Each offeror and each person signing on behalf of any offeror certifies as to its own entity, under penalty of perjury, that the named Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of the contractor's new employees that are employed in the District of Utah in accordance with UCA Section 63G-11-103.
- ii. The Contractor shall require that the following provision be placed in each subcontract at every tier: "The subcontractor shall certify to the main (prime or general) contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with Section 63G-11-103 and to comply with all applicable employee status verification laws. Such affidavit must be provided prior to the notice to proceed for the subcontractor to perform the work."
- iii. The District will not consider a proposal for award, nor will it make any award where there has not been compliance with this Section.
- iv. Manually or electronically signing the Proposal is deemed the Contractor's certification of compliance with all provisions of this employment status verification certification required by all applicable status verification laws including UCA Section 63G-11-103.

## 5.2 Indemnity Clause for Status Verification System

- i. Contractor (includes, but is not limited to any Contractor, Design Professional, Designer or Consultant) shall protect, indemnify and hold harmless, the District and its officers, employees, agents, representatives and anyone that the District may be liable for, against any claim, damages or liability arising out of or resulting from violations of the above Status Verification System Section whether violated by employees, agents, or contractors of the following: (a) Contractor; (b) Subcontractor at any tier; and/or (c) any entity or person for whom the Contractor or Subcontractor may be liable.
  - ii. Notwithstanding Section 1. above, Design Professionals or Designers under direct contract with the District shall only be required to indemnify the District for a liability claim that arises out of the design professional's services, unless the liability claim arises from the Design Professional's negligent act, wrongful act, error or omission, or other liability imposed by law except that the design professional shall be required to indemnify the District in regard to subcontractors or sub-consultants at any tier that are under the direct or indirect control or responsibility of the Design Professional, and includes all independent contractors, agents, employees or anyone else for whom the Design Professional may be liable at any tier.
6. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the District, unless disclosure has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended.
  7. **CONTRACTOR, AN INDEPENDENT CONTRACTOR:** The Contractor shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the District to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the District, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the Contractor by the District. The Contractor shall be responsible for the payment of all income tax and social security

amounts due as a result of payments received from the District for these contract services. Persons employed by the District and acting under the direction of the District shall not be deemed to be employees or agents of the Contractor.

- 8. INDEMNITY CLAUSE:** The Contractor agrees to indemnify, save harmless, and release the District, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the negligence of the Contractor's officers, agents, volunteers, or employees, but not for claims arising from the District's sole negligence.
- 9. EQUAL OPPORTUNITY CLAUSE:** The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.
- 10. SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.
- 11. RENEGOTIATION OR MODIFICATIONS:** This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by authorized persons of the parties hereto, and attached to the original signed copy of the contract. Automatic renewals will not apply to this contract.
- 12. DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the District. The Contractor must notify the District Director of Purchasing within 30 days if debarred by any governmental entity during the Contract period.
- 13. TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon 60 days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.
- 14. NONAPPROPRIATION OF FUNDS:** The Contractor acknowledges that the District cannot contract for the payment of funds not yet appropriated by the Utah District Legislature. If funding to the District is reduced due to an order by the Legislature or the Governor, or is required by District law, or if federal funding (when applicable) is not provided, the District may terminate this contract or proportionately reduce the services and purchase obligations and the amount due from the District upon 30 days written notice. In the case that funds are not appropriated or are reduced, the District will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and the District will not be liable for any future commitments, penalties, or liquidated damages.
- 15. SALES TAX EXEMPTION:** The District's sales and use tax exemption number is 11906942-005-STC. The tangible personal property or services being purchased are being paid from District funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.
- 16. WARRANTY:** The contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the District under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the District of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the District has relied on the contractor's skill or judgment to consider when it advised the District about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the District has not been warned. Remedies available to the District include the following: The contractor will repair or replace (at no charge to the District) the product whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the 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 District may otherwise have under this contract.
- 17. PUBLIC INFORMATION:** Contractor agrees that the contract, related Sales Orders, and Invoices will be public documents, and may be available for distribution. Contractor gives the District express permission to make copies of the contract, related Sales Orders, and Invoices in accordance with the District of Utah Government Records Access and Management Act (GRAMA). Except for sections identified in writing and expressly approved by the District Purchasing Department, Contractor also agrees that the Contractor's response to the solicitation will be public document, and copies may be given to the public under GRAMA laws. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.
- 18. DELIVERY:** Unless otherwise specified in this contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with the Contractor until final inspection and

acceptance when responsibility will pass to the District except as to latent defects, fraud & the Contractor's warranty obligations.

- 19. ORDERING AND INVOICING:** All orders will be shipped promptly in accordance with the delivery schedule. The Contractor will promptly submit invoices (within 30 days of shipment or delivery of services) to the District. The District purchase order number shall be listed on all invoices, freight tickets, and correspondence relating to the contract order. The prices paid by the District will be those prices listed in the contract. The District has the right to adjust or return any invoice reflecting incorrect pricing.
- 20. PAYMENT:** Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. All payments to the Contractor will be remitted by mail unless paid by the District's Purchasing Card (major credit card).
- 21. PATENTS, COPYRIGHTS, ETC.:** The Contractor will release, indemnify and hold the District, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this contract.
- 22. ASSIGNMENT/SUBCONTRACT:** The Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the District.
- 23. DEFAULT AND REMEDIES:** Any of the following events will constitute cause for the District to declare the Contractor in default of the contract: 1) nonperformance of contractual requirements; 2) A material breach of any term or condition of this contract. The District will issue a written notice of default providing a ten (10) day period in which the Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate the Contractor's liability for damages. If the default remains after the Contractor has been provided the opportunity to cure, the District may do one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this contract and any related contracts or portions thereof; 3. Impose liquidated damages, if liquidated damages are listed in the contract; 4. Suspend the Contractor from receiving future solicitations.
- 24. FORCE MAJEURE:** Neither party to this contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The District may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.
- 25. PROCUREMENT ETHICS:** The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the District is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the District, or who in any official capacity 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 (63G-6-1002, Utah Code Annotated, 1953, as amended).
- 26. CONFLICT OF TERMS:** Contractor Terms and Conditions that apply must be in writing and attached to the contract. No other Terms and Conditions will apply to this contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be: 1. Attachment A: District Standard Terms and Conditions; 2. District Contract Signature Page(s); 3. District Additional Terms and Conditions; 4. Contractor Terms and Conditions.
- 27. ENTIRE AGREEMENT:** This Agreement, including all Attachments, and documents incorporated hereunder, and the related District Solicitation constitute 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 this Agreement shall supersede any additional or conflicting terms or provisions that may be set forth or printed on the Contractor's work plans, cost estimate forms, receiving tickets, invoices, or any other related standard forms or documents of the Contractor that may subsequently be used to implement, record, or invoice services hereunder from time to time, even if such standard forms or documents have been signed or initialed by a representative of the District. The parties agree that the terms of this Agreement shall prevail in any dispute between the terms of this Agreement and the terms printed on any such standard forms or documents, and such standard forms or documents shall not be considered written amendments of this Agreement.