

## ATTACHMENT "A"

### SAMPLE TERMS AND CONDITIONS OF A CONTRACT

1. 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 of this contract. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.

2. LAWS AND REGULATIONS: Any and all supplies, services and equipment furnished must comply fully with all applicable Federal and State laws and regulations.

3. RECORDS ADMINISTRATION: The [Successful Offeror] shall maintain, or supervise the maintenance of all books, records, documents, and accounting procedures and practices of the [Successful Offeror] relevant to this agreement, including but not limited to records necessary to properly account for the payments made to the [Successful Offeror] for costs authorized by this contract. These records shall be retained by the [Successful Offeror] 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 [Successful Offeror] agrees to allow State (executive and legislative) and federal auditors, and State legislative staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Access will be during normal business hours, or by appointment.

Any reports, studies, photographs, negatives, or other documents prepared by the [Successful Offeror] in the performance of its obligations under this contract are the exclusive property of the Management Committee and all of those materials must be remitted to the Management Committee or its designee by the [Successful Offeror] upon completion, termination, or cancellation of this contract. The [Successful Offeror] may not use, willingly allow, or cause to have any of those materials used for any purpose other than the performance of the [Successful Offeror]'s obligations under this contract without the prior written consent of the Management Committee or its designee.

4. CONFLICT OF INTEREST: [Successful Offeror] represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended.

5. [SUCCESSFUL OFFEROR], AN INDEPENDENT CONTRACTOR: The [Successful Offeror] is an independent contractor, and as an independent contractor, may not, and has no express or implied authorization to, bind the State or the Management Committee to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the Management Committee, except as expressly set forth in this contract. Compensation stated in this contract is the total amount payable to the [Successful Offeror] by the Management Committee. The [Successful Offeror] is responsible for the payment of all income tax and social security amounts due as a result of payments received from the

Management Committee for these contract services. Persons employed by the State, including the Legislature and that Management Committee, and acting under the direction of the State, including the Legislature and that Management Committee, are not, and may not be considered to be, employees or agents of the [Successful Offeror].

6. **INDEMNITY CLAUSE:** The [Successful Offeror] agrees to indemnify, save harmless, and release the State of Utah, the Utah Legislature, the Management Committee, and all of their officers, members, agents, volunteers, and employees of each of these from and against any and all losses, claims, damages, injuries, liabilities, suits, or proceedings arising out of the performance of this contract that are caused in whole or in part by the negligence of the [Successful Offeror]'s officers, agents, volunteers, or employees, but not for claims arising from the State's sole negligence.

The [Successful Offeror] agrees to indemnify, save harmless, and release the STATE OF UTAH, the Utah Legislature, the Management Committee, and all of their officers, members, agents, volunteers, and employees of each of these from and against any and all losses, claims, damages, injuries, liabilities, suits, or proceedings asserted by any employee of the [Successful Offeror], any subcontractor of the [Successful Offeror], any person directly or indirectly employed by any of them, or any person for whose acts any of them may be liable.

The indemnification provided by the [Successful Offeror] is not and may not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the successful offeror or any subcontractor under workers' compensation acts, disability benefits acts, or other employee benefit acts.

The remedy provided to the State of Utah, the Utah Legislature, the Management Committee, and members, employees and authorized agents of each of these by this indemnification is in addition to, and not in lieu of, any other remedy available under this contract or otherwise. This indemnification obligation is not diminished or limited in any way to the total limits of insurance required in this contract or otherwise available to the successful offeror or subcontractor of the successful offeror.

7. **INSURANCE:** During the term of the contract, the [Successful Offeror] shall maintain public liability insurance coverage of at least \$1 million. The State of Utah, the Utah Legislature, the Management Committee, the NCSL and the members and employees of each of these must be named as additional insureds on the policies. The [Successful Offeror] shall provide evidence of insurance coverage to the Management Committee or its designee at the time the contract is signed by the [Successful Offeror] and at any other time upon request of the Management Committee or its designee.

The [Successful Offeror] shall procure and provide evidence of workers' compensation insurance coverage for the duration of the contract as required by Utah law. The [Successful Offeror] shall provide evidence of workers' compensation coverage at the time that the contract is signed and at any other time upon request of the Management Committee or its designee.

8. ASSIGNMENT: The [Successful Offeror] may not assign, transfer, or delegate any rights, obligations, or duties under the contract without the prior written consent of the Management Committee.

9. PRE-APPROVAL OF EXPENDITURES: The [Successful Offeror] agrees that, in performing its duties, it will not enter into any contract or expend any money on behalf of the Management Committee without the express prior approval of the Management Committee or its designee.

10. EQUAL OPPORTUNITY CLAUSE: The [Successful Offeror] agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibit 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 [Successful Offeror] agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.

11. SEVERABILITY CLAUSE: A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void does not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.

12. RENEGOTIATION OR MODIFICATIONS: This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by the parties to this contract, and attached to the original signed copy of the contract.

13. DEBARMENT: The [Successful Offeror] certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this contract, by any governmental department or agency. If the [Successful Offeror] cannot certify this statement, attach a written explanation for review by the Management Committee.

14. DEFAULT OF CONTRACT: If the [Successful Offeror] defaults on this contract, the Management Committee may procure the services from other sources and hold the successful offeror responsible for any excess costs incurred because of the [Successful Offeror]'s default.

15. TERMINATION: This contract may be terminated with or without cause by either party upon ten calendar day written notice being given to the other party. Upon termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth in this contract for approved services rendered to date of termination. Upon termination of this contract, the [Successful Offeror] shall provide all documents, supplies, information, plans, contracts, and other items in whatever form that relate to this contract to the Management Committee.

16. WARRANTY: The [Successful Offeror] agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah, the Legislature, and the Management Committee under this contract for a period of 1 year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The [Successful Offeror] (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State 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 [Successful Offeror] 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 Management Committee has relied on the [Successful Offeror]'s skill or judgement to consider when it advised the Management Committee 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 Management Committee has not been warned. Remedies available to the State include the following: The [Successful Offeror] will repair or replace (at no charge to the Management Committee) the product whose nonconformance is discovered and made known to the [Successful Offeror] in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the [Successful Offeror] 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 of Utah, the Legislature, and the Management Committee may otherwise have under this contract.

17. PUBLIC INFORMATION: [Successful Offeror] agrees that the contract will be a public document, as to distribution of copies, and [Successful Offeror] gives the Management Committee express permission to make copies of the contract and of the response to the solicitation in accordance with the State of Utah Government Records Access and Management Act, Utah Code Annotated Title 63, Chapter 2.

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