

Attachment A
SUU Standard Terms & Conditions

1. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in the Southern Utah University (SUU) Purchasing Policies and Procedures, and all applicable sections of the Utah Procurement Code, Title 63G, Chapter 6, Utah Code Annotated, 1953, as amended, and all related statutes, regulations and rules which permit the University to purchase certain specified supplies and services, and other approved purchases.
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 the Fifth Judicial District Court for Iron 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.
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 Southern Utah University, Board of Regents, State and/or Federal auditors, and University Staff, access to all the records relating to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
5. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of Southern Utah University unless disclosure regarding such has been made in accordance with UCA Section 67-16-8, 1953, as amended.
6. **CONTRACTOR IS AN INDEPENDENT CONTRACTOR:** The Contractor shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind SUU to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for SUU, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the Contractor by SUU. The Contractor shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from SUU for these contract services. Persons employed by SUU and acting under the direction of SUU shall not be deemed to be employees or agents of the Contractor.
7. **INDEMNITY:** The Contractor agrees to indemnify, hold harmless, and release the State of Utah and SUU, 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 acts or negligence of the Contractor's officers, agents, volunteers, or employees, but not for claims arising from the SUU's sole negligence. The parties agree that if there are any Limitations of the Contractor's Liability, including a limitation of liability 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.
8. **INSURANCE:** The contractor shall maintain Comprehensive General Liability (including contractual liability for this agreement and products and completed operations coverage), Automobile Liability, and if applicable, Professional Liability Insurance, with a minimum single limit of \$1,000,000 for each occurrence and \$2,000,000 general aggregate for bodily injury (including death) and property damage liability. The contractor shall also maintain all employee related insurance, in the statutory amounts, such as unemployment compensation, worker's compensation, and employer's liability, for its employees involved in performing services pursuant to this contract. The contractor's insurance carriers must be authorized to do business in Utah. The insurers and policy provisions must be acceptable to the University's Risk and Insurance Manager. Each of the Contractor's insurance policies shall include an endorsement that names SUU and its officers, and employees as additional insureds, and the policy shall provide SUU and its officers and employees with primary coverage (not contributing coverage) for any liability arising as a result of the Contractor's acts or omissions in connection with this Contract. The Contractor is not required, however, to obtain an "additional insured" endorsement for any Workers' Compensation or professional liability insurance policy. Contractor waives any right of subrogation against SUU and its officers and employees.
9. **EMPLOYMENT PRACTICES:** 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 December 13, 2006, which prohibits sexual harassment in the workplace. Contractor also agrees to abide by any laws and policies of the State of Utah regarding any of the above mentioned prohibitions in this paragraph.
10. **SEVERABILITY CLAUSE:** If any provision of this contract is declared by a court of competent jurisdiction to be invalid, 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.
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 or political subdivision of any governmental entity. If the Contractor cannot certify this statement, attach a written explanation for review by SUU. The Contractor must notify the SUU Director of Purchasing within 30 days if debarred by any governmental entity during the Contract period.
13. **TERMINATION:** This Contract may be terminated with or without cause by either party, in advance of the specified performance date(s), upon sixty (60) days written notice being given by the other party. On termination of this contract, all out-of-pocket costs will be reimbursed to the non-terminating party.
14. **NONAPPROPRIATION OF FUNDS:** The Contractor acknowledges SUU cannot contract for the payment of funds not yet appropriated by the Utah State Legislature. If funding to SUU is reduced due to an order by the Legislature, Governor, Board of Regents, or is required by State law, or if federal funding (when applicable) is not provided, SUU may terminate this contract or proportionately reduce the services and purchase obligations and the amount due from SUU upon 30 days written notice. In the case that funds are not appropriated or are reduced, SUU will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and SUU will not be liable for any future commitments, penalties, or liquidated damages.
15. **SALES TAX EXEMPTION:** SUU's State of Utah sales and use tax **exemption number is 11961541-002-STC**. The tangible personal property or services being purchased are being paid from SUU 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. **NOTIFICATION SUU HAS 501(c)(3) STATUS:** SUU has been granted 501(c)(3) status under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986. SUU's 501(c)(3) status may mean sales tax may not apply to a SUU contractor's purchase(s) directly associated with a SUU construction project; the contractor bears the entire responsibility to determine such with the State Tax Commission.
17. **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 University 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 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 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 University has relied on the contractor's skill or judgment to consider when it advised the University about the product; 5) the product has been properly designed and manufactured; 6) the product is free of significant defects or unusual problems about which the University has not been warned. Remedies available to the University include the following: the contractor will repair or replace at no charge to the University 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 University may otherwise have under this contract.
18. **PUBLIC INFORMATION:** SUU is a governmental entity and thus subject to the Government Records Access and Management Act of the Utah Code, Section 63G-2-101 et seq., 1953, as may be amended ("GRAMA"). Pursuant to GRAMA, certain records within University's possession or control (including the Agreement) may be subject to public disclosure. University hereby informs Contractor that any person or entity that provides the University with records that such person or entity believes should be protected from disclosure for business reasons must, pursuant to Section 63G-2-309 of GRAMA, provide to the University, with the record, a written claim of business confidentiality and a concise statement of reasons supporting such claim. Notwithstanding any provision to the contrary in the Agreement, the University may disclose any information or record to the extent required by GRAMA or otherwise required by law, and to University's attorneys, accountants, consultants on a need-to-know basis.
19. **PAYMENT:** No advance deposit is required. Payment will be made by SUU check following the performance of the contracted services. No payment will be made for services not rendered.
20. **PATENTS, COPYRIGHTS, ETC.:** The Contractor will release, indemnify and hold SUU, 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.
21. **ASSIGNMENT/SUBCONTRACT:** 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 SUU.

Dated 05/22/2020

- 22. DEFAULT AND REMEDIES:** Any of the following events will constitute cause for SUU to declare Contractor in default of the contract: 1. Nonperformance of contractual requirements; 2. A material breach of any term or condition of this contract; 3. An indication that performer will not appear. If it is possible, depending on the scheduled date of the event, SUU will issue a written notice of default providing a ten (10) calendar day period in which Contractor will have an opportunity to cure including providing suitable assurance that Contractor will appear and perform as scheduled. 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, SUU 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 Contractor from receiving future solicitations.
- 23. 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. SUU may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.
- 24. ATTORNEY FEES.** In the event it is necessary for either party to bring any action to enforce any of the terms of this Contract, it is agreed that the prevailing party will be entitled to its attorney's fees and costs.
- 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 SUU 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 SUU, 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. TRAVEL:** When applicable, reimbursement for travel costs shall be limited to amounts authorized by the State of Utah and SUU for airfare and per diem rates for employee travel.
- 27. 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: SUU Standard Terms & Conditions; 2) SUU Contract Signature Page(s); 3) SUU Additional Terms & Conditions, if any; 4) Contractor's proposal/bid response (incorporated into Agreement by reference); and, 5) Contractor Terms & Conditions, if any.
- 28. ENTIRE AGREEMENT:** This contract, including all Attachments, and documents incorporated by reference hereunder, and the related SUU solicitation (if any) 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 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 SUU. 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.