



**ATTACHMENT A: WASATCH COUNTY SCHOOL DISTRICT TERMS AND CONDITIONS  
FOR PROFESSIONAL SERVICES**

1. **AUTHORITY:** Provisions of this contract ("Contract") are pursuant to the authority set forth in 63G-6a, Utah Code, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), Wasatch County School District Procurement Policies, and related statutes which permit Wasatch County School District to purchase certain specified services, and other approved purchases for Wasatch County School District.
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.
3. **LAWS AND REGULATIONS:** The person or entity contracting with Wasatch County School District under this Contract ("Contractor") and any and all supplies, services, equipment, and construction furnished under this Contract will comply fully with all applicable Federal, and State, and local laws, codes, rules, regulations, and ordinances, including applicable licensure and certification requirements.
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 State and Federal auditors, and Wasatch County School 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. **TIME:** The Contractor shall complete the scope of services work in a manner to achieve any milestones identified in the procurement documents related to this Contract and the attachments to this Contract. The full scope of services work shall be completed by any applicable deadline stated in the solicitation.
6. **TIME IS OF THE ESSENCE:** For all work and services under this Contract, time is of the essence and Contractor shall be liable for all damages to the Wasatch County School District and anyone for whom Wasatch County School District may be liable, as a result of the failure to timely complete the scope of work required under this Contract.
7. **PAYMENT:**
  - 7.1 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. After 60 days from the date a correct invoice is received by the appropriate Wasatch County School District official, the Contractor may assess interest on overdue, undisputed account charges up to a maximum of the interest rate paid by the IRS on taxpayer refund claims, plus two percent, computed similarly as the requirements of Utah Code Section 15-6-3. The IRS interest rate is adjusted quarterly, and is applied on a per annum basis, on the invoice amount that is overdue.
  - 7.2 The contract total may be changed only by written amendment executed by authorized personnel of the parties. Unless otherwise stated in the Contract, all payments to the Contractor will be remitted by mail.
  - 7.3 The acceptance by the Contractor of final payment without a written protest filed with Wasatch County School District within ten (10) working days of receipt of final payment shall release Wasatch County School District from all claims and all liability to the Contractor for fees and costs of the performance of the services pursuant to this Contract.
8. **PROMPT PAYMENT DISCOUNT:** Offeror may quote a prompt payment discount based upon early payment; however, discounts offered for less than 30 days will not be considered in making the award. Contractor shall list Payment Discount Terms on invoices. The prompt payment discount will apply to payments made checks. The date from which discount time is calculated will be the date a correct invoice is received or receipt of shipment, whichever is later; except that if testing is performed, the date will be the date of acceptance of the merchandise.
9. **CHANGES IN SCOPE:** Any changes in the scope of the services to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by duly authorized representatives of 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.
10. **DOCUMENT OWNERSHIP:** Contractor agrees that any work/services and all Deliverables prepared for Wasatch County School District, to the extent to which it is eligible under copyright law in any county, shall be deemed a work made for hire, such

that all right, title and interest in the work and Deliverables reside with Wasatch County School District. To the extent any work or Deliverable is deemed not to be, for any reason whatsoever, work made for hire, Contractor agrees to assign and hereby assigns all right, title, and interest, including but not limited to, copyright, patent, trademark, and trade secret, to such work and Deliverables, and all extensions and renewals thereof, to Wasatch County School District. Contractor further agrees to provide all assistance reasonably requested by Wasatch County School District in the establishment, preservation and enforcement of its rights in such work and deliverables, or subsequent amendments or modifications to such work and deliverables, without any additional compensation to Contractor. Contractor agrees to waive, and hereby, to the extent permissible, waives, all rights relating to such work and deliverables, or subsequent amendments or modifications to such work and deliverables, including without limitation any and all rights of identification of authorship and any and all rights of approval, restriction or limitation on use.

## **11. CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":**

### **11.1 Status Verification System**

- (1) Contractor 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 State of Utah in accordance with applicable immigration laws including Utah Code Ann. Section 63G-12-302.
- (2) 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 applicable immigration laws including Utah Code Ann. Section 63G-12-302 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."
- (3) Wasatch County School District will not consider a proposal for award, nor will it make any award, where there has not been compliance with this Section.
- (4) 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 Utah Code Ann. Section 63G-12-302.

### **11.2 Indemnity Clause for Status Verification System**

Contractor (includes, but is not limited to any Contractor or Consultant) shall protect, indemnify and hold harmless Wasatch County School District and its officers, employees, agents, representatives and anyone that Wasatch County School 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) Contractor's subcontractor or subconsultant at any tier; and/or (c) any entity or person for whom the Contractor or Subcontractor may be liable.

- 12. CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of Wasatch County School District, unless disclosure has been made in accordance with Section 67-16-8, Utah Code, as amended. Contractor also represents that it has no conflict of interest in performing the services for Wasatch County School District under this Contract, unless such conflict of interest has been disclosed to Wasatch County School District and approval to proceed, notwithstanding the conflict, has been obtained from Wasatch County School District in writing.
- 13. CONTRACTOR AN INDEPENDENT CONTRACTOR:** The Contractor shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind Wasatch County School District to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for Wasatch County School District, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the Contractor by Wasatch County School 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 Wasatch County School District for these Contract services. Persons employed by Wasatch County School District and acting under the direction of Wasatch County School District shall not be deemed to be employees or agents of the Contractor.
- 14. INDEMNITY CLAUSE:** The Contractor agrees to indemnify, save harmless, and release Wasatch County School District, and all its officers, agents, volunteers, and employees from and against any and all claims, 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 (a) the Contractor, (b) the Contractor's officers, agents, volunteers, or employees, (c) the Contractor's subcontractors or subconsultants at any tier, or (d) anyone for whom Contractor may be liable but not for claims arising from Wasatch County School District'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.

15. **EMPLOYMENT PRACTICES CLAUSE:** The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42 USC 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 work place. 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.
16. **PERFORMANCE EVALUATION:** Wasatch County School District may conduct a performance evaluation of the Contractor's services, including specific personnel of the Contractor. References in the Contract to Contractor shall include Contractor, Contractor's subcontractors, or subconsultants at any tier, if any. Results of any evaluation will be made available to the Contractor.
17. **WAIVERS:** No waiver by Wasatch County School District or Contractor of any default shall constitute a waiver of the same default at a later time or of a different default.
18. **SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal authority, 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.
19. **RENEGOTIATION OR MODIFICATIONS:** This Contract may be amended, modified, or supplemented only by written amendment to this Contract, executed by authorized persons of the parties hereto, and attached to the original signed copy of this Contract. Automatic renewals will not apply to this Contract.
20. **SUSPENSION/DEBARMENT:** The Contractor certifies that neither it nor its principals are presently or have ever been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (Contract), by any governmental department or agency in the United States, including any federal, state or local agency. If the Contractor cannot certify this statement, attach a written explanation for review by the State. The Contractor must notify Wasatch County School District within 30 days if suspended or debarred by any governmental entity during the Contract period.
21. **TERMINATION:**
- 21.1 Unless otherwise stated in the Additional Terms and Conditions of Wasatch County School District, if applicable, 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 this Contract may be terminated for cause. This Contract may be terminated without cause, in advance of the specified expiration date, by either party, upon sixty (60) days prior written notice being given to 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.
- 21.2 In the event of such termination, the Contractor shall be compensated for services properly performed under this Contract up to the effective date of the notice of termination. The Contractor agrees that in the event of such termination for cause or without cause, Contractor's sole remedy and monetary recovery from Wasatch County School District is limited to full payment for all work properly performed as authorized under this Contract up to the date of termination as well as any reasonable monies owed as a result of the Contractor having to terminate contracts necessarily and appropriately entered into by the Contractor pursuant to this Contract. Contractor further acknowledges that in the event of such termination, all work product, which includes but is not limited to all manuals, forms, contracts, schedules, reports, and any and all documents produced by Contractor under this Contract up to the date of termination are the property of Wasatch County School District and shall be promptly delivered to Wasatch County School District.
22. **INSURANCE:**
- 22.1 To protect against liability, loss and/or expense in connection with the performance of services described under this Contract, the Contractor shall obtain and maintain in force during the entire period of this Contract without interruption, at its own expense, insurance as listed below from insurance companies authorized to do business in the State of Utah. If the solicitation document has qualification requirements for the financial stability of the insurance company, these requirements must be met.
- 22.2 The following are minimum coverages that may be supplemented by additional requirements contained in the solicitation for this Contract or provided in an Attachment to this Contract:

- (1) Worker's Compensation Insurance and Employers' Liability Insurance. Worker's compensation insurance shall cover full liability under the worker's compensation laws of the jurisdiction in which the service is performed at the statutory limits required by said jurisdiction.
- (2) General Liability Insurance. Contractor must carry insurance with policy limits no less than one million per incident and three million in the aggregate. Contractor must provide proof of insurance to Wasatch County School District and must add Wasatch County School District as an additional insured with notice of cancellation.
- (3) Professional liability insurance in the amount as described in the solicitation for this Contract, if applicable.
- (4) Any other insurance described in the solicitation for this Contract, if applicable.

22.3 Any type of insurance or any increase of limits of liability not described in this Contract which the Contractor requires for its own protection or on account of any statute, rule, or regulation shall be its own responsibility, and shall be provided at Contractor's own expense.

22.4 The carrying of insurance required by this Contract shall not be interpreted as relieving the Contractor of any other responsibility or liability under this Contract or any applicable law, statute, rule, regulation, or order.

23. **STANDARD OF CARE:** The services of Contractor and its subcontractors and subconsultants at any tier, if any, shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude and complexity of the services that are the subject of this Contract. The Contractor shall be liable to Wasatch County School District for claims, liabilities, additional burdens, penalties, damages or third party claims (i.e. another Contractor's claim against Wasatch County School District), to the extent caused by wrongful acts, errors or omissions that do not meet this standard of care.
24. **STATE REVIEWS, LIMITATIONS:** The right of Wasatch County School District to perform plan checks, plan reviews, other reviews and/or comment upon the services of the Contractor, as well as any approval by Wasatch County School District, shall not be construed as relieving the Contractor from its professional and legal responsibility for services required under this Contract. No review by Wasatch County School District or any entity/user, approval or acceptance, or payment for any of the services required under this Contract shall be construed to operate as a waiver by the State of any right under this Contract or of any cause of action arising out of the performance or nonperformance of this Contract, and the Contractor shall be and remain liable to Wasatch County School District in accordance with applicable law for all damages to Wasatch County School District caused by the wrongful acts, errors and/or omissions of the Contractor or its subcontractors or subconsultants at any tier, if any.

**25. NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:**

25.1 Upon thirty (30) days written notice delivered to the Contractor, this contract may be terminated in whole or in part at the sole discretion of Wasatch County School District, if Wasatch County School District reasonably determines that a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of the contract.

25.2 Upon thirty (30) days written notice delivered to the Contractor, this contract may be terminated in whole or in part, or have the services and purchase obligations of Wasatch County School District proportionately reduced, at the sole discretion of Wasatch County School District, if Wasatch County School District reasonably determines that a change in available funds affects Wasatch County School District's ability to pay under the contract. 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.

25.3 If a notice is delivered under paragraph 1 or 2 of this Section 25 "NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW," Wasatch County School District will reimburse the Contractor for products properly delivered or services properly performed up until the effective date of said notice. Wasatch County School District will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said notice.

25.4 Notwithstanding any other paragraph or provision of this Section 25 "NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW," if Wasatch County School District in said notice to the Contractor indicates that the Contractor is to immediately cease from placing any orders or commitments with suppliers, subcontractor or other third parties, the Contractor shall immediately cease such orders or commitments upon receipt of said notice and Wasatch County School District shall not be liable for any such orders or commitments made after the receipt of said notice.

- 26. SALES TAX EXEMPTION:** The Wasatch County School District sales and use tax exemption number is 11944465-003-STC. The tangible personal property or services begin purchased are being paid from Wasatch County School 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.
- 27. PUBLIC INFORMATION:** Contractor agrees that this Contract, related sales orders, and invoices shall be public documents, and shall be available for distribution. Contractor gives Wasatch County School District express permission to make copies of this Contract, related sales orders, and invoices in accordance with the State of Utah Government Records Access and Management Act (GRAMA). Except for sections identified in writing and expressly approved by the State Division of Purchasing, Contractor also agrees that the Contractor's response to the solicitation, if applicable, will be a public document, and copies may be given to the public under GRAMA laws. This permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.
- 28. PATENTS, COPYRIGHTS, ETC.:** The Contractor will release, indemnify and hold Wasatch County School 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.
- 29. 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 Wasatch County School District.
- 30. DEFAULT AND REMEDIES:**
- 30.1 Any of the following events will constitute cause for Wasatch County School District to declare Contractor in default of this Contract:
- (1) Nonperformance of contractual requirements; or
  - (2) A material breach of any term or condition of this Contract.
- 30.2 Should Contractor be in default under any of the provisions under Subsection 30.1 above, Wasatch County School District will 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, Wasatch County School 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; or (4) Suspend Contractor from receiving future solicitations.
- 31. 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. Wasatch County School District may terminate this Contract after determining such delay or default will reasonably prevent successful performance of this Contract.
- 32. 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 Wasatch County School 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 Wasatch County School 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-6a-2304.5, Utah Code, as amended).
- 33. CONFLICT OF TERMS:** In order for any terms and conditions of the Contractor to apply to this Contract, they must be in writing and attached to this Contract. No other terms and conditions of the Contractor 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 terms and conditions in the Contract, the order of precedence shall be: (1) Attachment A: Wasatch County School District Terms and Conditions; (2) Wasatch County School District Contract; (3) Additional Terms and Conditions of Wasatch County School District; (4) Terms and Conditions of the Contractor, if any.
- 34. ENTIRE CONTRACT:** This Contract including all attachments and documents incorporated hereunder, and the related Wasatch County School District solicitation documents, if any, constitutes the entire Contract 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 Contract 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 Wasatch County

School District. The parties agree that the terms of this Contract shall prevail in any dispute between the terms of this Contract 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 Contract.

**35. DISPUTE RESOLUTION:** In the event of any dispute under this Contract prior to any filing in any judicial proceedings, the parties agree to participate in good faith in the mediation of the dispute. Wasatch County School District, after consultation with the Contractor, may appoint an expert or panel of experts to assist in the resolution of the dispute. If Wasatch County School District appoints such an expert or panel, Wasatch County School District 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.

(Revision date: 14 April 2014)