

SUU Government Entity Required Contractual Provisions Attachment (Version 9.1.2023)

This form contains mandatory contract provisions and must be attached to and specifically incorporated in all Southern Utah University (“SUU”) contractual agreements by adding the following statement to the main body of the contract: “The Provisions found in SUU Government Entity Required Contractual Provisions Attachment, ver. 9/1/23, which is attached hereto, are hereby incorporated in this Contract and made a part hereof.”

1. **CONTROLLING PROVISIONS:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in the contract (including, without limitation, all other attachments) in which this attachment is incorporated. Any terms that conflict with or could be interpreted to conflict with this attachment are nullified. Further, 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 initiated by a representative of SUU, do not supersede any terms in the Contract (defined to include this attachment). The Parties agree that standard forms or documents shall not be considered written amendments of this Contract.

2. **JURISDICTION AND VENUE:** The Contract will be governed by the laws of the State of Utah, without regard to conflicts of laws principles. The Parties will submit to the jurisdiction and venue of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof.

3. **THE ELEVENTH AMENDMENT:** The Eleventh Amendment is an inherent and incumbent protection of the State of Utah and need not be reserved, but prudence requires SUU to reiterate that nothing in or related to this Contract shall be deemed a waiver of the Eleventh Amendment.

4. **GOVERNMENT ENTITY LIABILITY, DAMAGES, WARRANTIES:** Contractor acknowledges that SUU is a governmental entity under the Governmental Immunity Act of Utah, Utah Code Ann. § 63G-7-101 *et seq.*, as amended (the “Act”), its exclusive liability is defined therein, and applies to SUU and this contract. Nothing in the Contract shall be construed as a waiver by SUU of any protections, rights, or defenses applicable to SUU under the Act, including without limitation, the provisions of § 63G-7-604 regarding limitation of judgments. Nothing in this Contract will be given the effect of requiring SUU or SUU entities to defend, hold harmless, or indemnify any Contractor or third party for any acts or omissions. Further, SUU does not agree to pay attorney fees of Contractor or any third party, except to the extent required by applicable law. Unless a longer period is stated in the Contract, 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 SUU under this Contract for a period of one year from the date of completion or delivery, whichever is later. All warranties granted by the Uniform Commercial Code or the State of Utah apply to this Contract, as do warranties at common law including but not limited to the implied warranties of merchantability and fitness for a particular purpose. No provision in the Contract will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages or rights of action available to SUU at law.

5. **INSURANCE:** Contractor acknowledges that SUU is insured through its participation in the Risk Management Fund of the State of Utah, *see* Utah Code Ann. § 63A-4-201. Nothing in the contract shall require SUU to carry different or additional insurance. Any request of SUU to name a party as additional insured shall be limited to naming such party as additional insured with respect to SUU’s negligent acts or omissions. Contractors who provide a service to SUU, have a presence on campus or whose products involve SUU and/or student data of any kind shall maintain applicable insurance policies to cover the services and products outlined in the Contract. Contractor’s insurance policies shall meet the [SUU Insurance Requirements](#), which are herein incorporated by reference.

6. **GOVERNMENT RECORDS:** As a government entity SUU is subject to the Government Records Access and Management Act, Utah Code Ann., § 63G-2-101 *et seq.*, as amended (“GRAMA”). Pursuant to GRAMA, certain records within SUU’s possession or control (including the contract) may be subject to public disclosure. Any person or entity that provides SUU with records that such person or entity believes should be protected from disclosure for business reasons must provide to SUU, *with the record*, a written claim of business confidentiality, including a concise statement of reasons supporting such claim, and a copy of the redacted record. *See* Utah Code Ann. § 63G-2-309. Notwithstanding any provision to the contrary in the contract, SUU may disclose any information or record to the extent required by GRAMA or otherwise required by law or reasonable business need.

7. **PATENTS, COPYRIGHTS, AND TRADEMARKS:** Notwithstanding any provision of the contract, Contractor agrees not to assert ownership or any interest in any SUU work product or other intellectual property, including any name or mark. 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 non-copyrighted composition, trade secret, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this Contract. Nothing in the Contract grants to Contractor any right or interest in SUU’s names or marks, including such names as “Southern Utah University,” “SUU” or any derivation thereof.

8. **CONTRACTOR IS AN INDEPENDENT CONTRACTOR AND NOT AN AGENT of SUU:** 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 expressly set forth. Compensation stated in the Contract 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 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.

9. **PRIVACY OF STUDENT RECORDS:** Contractor understands that SUU is subject to the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (FERPA). To the extent Contractor possesses any education records of SUU’s students, Contractor is deemed to be a school official with a legitimate educational interest in the records and Contractor agrees to comply with FERPA and its regulations. Contractor specifically agrees that it shall use personally identifiable education records only for purposes related to this Contract, and shall not disclose such records to any third party without authorization from SUU. Contractor shall promptly report to SUU any request for, breach of the security of, or improper disclosure of, SUU student educational records.

10. **ANTI-BOYCOTT ISRAEL:** In accordance with Utah Code Ann. § 63G-27-101 *et seq.* Contractor certifies that it is not currently engaged in a boycott of the State of Israel and agrees not to engage in a boycott of the State of Israel for the duration of the contract. This section does not apply to a contract with a total value of less than \$100,000; or a contract with a company that has fewer than 10 full-time employees. If the Contractor does engage in such a boycott, it shall immediately provide written notification to the public entity party to this contract.

11. **LEGAL COMPLIANCE:** Contractor and SUU shall comply with all applicable federal, state and local laws, codes, regulations, rules and orders in carrying out its obligations under the Contract. Without limiting the foregoing, Contractor expressly agrees to comply

with all applicable state and federal anti-discrimination, ethics, and procurement laws. Contractor specifically agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 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 C.F.R. 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 SUU policies regarding any of the above-mentioned prohibitions and cooperate in good faith in related processes.

12. **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 SUU, the Utah System of Higher Education, State and/or Federal auditors, and SUU 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.

13. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of SUU unless disclosure regarding such has been made in accordance with Utah Code Ann. § 67-16-8, as amended.

14. **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.

15. **NON-APPROPRIATION 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, USHE, 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 60 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.

16. **SALES TAX EXEMPTION:** 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 State of Utah sales and use tax **exemption number is 11961541-002-STC**. Goods or services purchased are being paid from SUU funds and used in the exercise of essential functions. SUU's 501(c)(3) status may mean sales tax may not apply to a SUU Contractor's purchase(s) directly associated with SUU construction projects. Contractor bears responsibility to determine such with the State Tax Commission or the IRS.

17. **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.

18. **FORCE MAJEURE:** Neither party will be held responsible for delay or default caused by fire, riot, pandemic, government regulation, acts of God and/or war beyond the party's reasonable control. The affected party shall promptly notify the other party immediately upon receiving information as to the existence of a Force Majeure condition affecting this Contract. The party affected by a Force Majeure condition shall make reasonable efforts to reduce the consequences of the Force Majeure condition and resume the performance of all relevant obligations as soon as possible after the termination of the Force Majeure condition. If force majeure lasts longer than 60 days and the parties fail to reach a resolution to continue to perform this Contract, SUU has the right to terminate this Contract by giving written notice to Contractor. Further, SUU may terminate this Contract at any time after determining a Force Majeure condition will reasonably prevent successful performance of the Contract.

Contractor Initials: Date