



STATE OF UTAH

Purchase Order

Bill To:
STATE OF UTAH
Utah Schools for Deaf & Blind-Business Office

Date Of Order: 07-18-2022
Date Required:
FOB:

THIS NUMBER MUST APPEAR ON ALL INVOICES, PACKING LISTS, PACKAGE LABELS AND BILLS OF LADING.
PURCHASE ORDER NUMBER
PD 400 2310000045

742 Harrison Blvd

Ogden UT 84404

Vendor Number: 04268I
AMERICAN THERMOFORM CORPORATION
1758 BRACKETT ST

LA VERNE CA 91750

For Questions Contact: Cassidy McFarland 801-629-4811

Grand Total: \$123,600.00

Item	Quantity	Unit	Description	Warehouse/ Commodity	Unit Price	Amount
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	2	EA	Braillo Cut (aka: Braille Burster)		\$15,500.00	\$31,000.00
	2	EA	Braillo 600 S2 (aka: Braille Embosser)		\$44,500.00	\$89,000.00
	2	EA	Braillo S2 Stand (aka: Embosser Stand)		\$1,800.00	\$3,600.00

Each item include a minimum 3 year warranty on parts and labor.

Items will be delivered by September 30, 2022.

Reference solicitation USDB2300005

Please send invoices to kimo@usdb.org

Ship To:
Cassidy McFarland
Utah Schools for Deaf & Blind-Ogden

742 Harrison Blvd

Ogden UT 84404

NOTICE

Invoices which exceed unit price listed above will not be paid.
Prices are F.O.B Destination, Freight Prepaid, unless otherwise indicated on this order.
Invoice items in the order they appear above.
Utah's tax exempt number is 11736850-092-STC.
Send 2 copies of your invoice to insure proper payment.
Attached Terms and Conditions apply to this Purchase Order.

Chad Hinds

Authorized Signature

ACCEPTANCE OF THIS PURCHASE ORDER BINDS CONTRACTOR TO ALL THESE TERMS AND CONDITIONS AND ALL THE TERMS, CONDITIONS, AND PROVISIONS INCLUDED IN THE SOLICITATION THE UTAH SCHOOLS FOR THE DEAF AND THE BLIND OFFERED RELATING TO THIS PURCHASE ORDER.

PURCHASE ORDER TERMS AND CONDITIONS FOR GOODS & SERVICES

1. **DEFINITIONS:** The following terms shall have the meanings set forth below:
 - a) **“Confidential Information”** means information that is deemed as confidential under applicable state and federal laws, including personal information. The State Entity reserves the right to identify, during and after this Contract, additional reasonable types of categories of information that must be kept confidential under federal and state laws.
 - b) **“Purchase Order”** means the Purchase Order including these terms and conditions.
 - c) **“Contractor”** means the individual or entity delivering the Procurement Item identified in this Purchase Order. The term “Contractor” shall include Contractor’s agents, officers, employees, and partners.
 - d) **“Procurement Item”** means a supply, a service, construction, or technology that Contractor is required to deliver to the State Entity under this Purchase Order.
 - e) **“Response”** means the Contractor’s bid, proposals, quote, or any other document used by the Contractor to respond to the State Entity’s Solicitation.
 - f) **“Solicitation”** means any document used to obtain bids, proposals, pricing, qualifications, or information for the purpose of entering into this Purchase Order.
 - g) **“State Entity”** means the department, division, office, bureau, agency, or other organization identified on the Purchase Order Signature Page(s).
 - h) **“State of Utah”** means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
 - i) **“Subcontractors”** means a person under contract with a contractor or another subcontractor to provide services or labor for design or construction, including a trade contractor or specialty contractor.
2. **GOVERNING LAW AND VENUE:** This Purchase Order shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Purchase Order shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** At all times during this Purchase Order, Contractor and all Procurement Items delivered and/or performed under this Purchase Order will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. If this Purchase Order is funded by federal funds, either in whole or in part, then any federal regulation related to the federal funding, including CFR Appendix II to Part 200, will supersede this Attachment A.
4. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor’s performance and the payments made by the State Entity to Contractor under this Purchase Order. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, the State of Utah, federal auditors, State Entity staff, or their designees, access to all such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Purchase Order.
5. **PERMITS:** If necessary Contractor shall procure and pay for all permits, licenses, and approvals necessary for the execution of this Purchase Order.
6. **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, to sole sources that are included within a Request for Proposal, and when Contractor employs any personnel in Utah.
 - a. Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor’s new employees that are employed in the State of Utah in accordance with applicable immigration laws.
 - b. Contractor shall require that each of its Subcontractors certify by affidavit, as to their own entity, under penalty of perjury, that each Subcontractor has registered and is participating in the Status Verification System to verify the work eligibility status of Subcontractor’s new employees that are employed in the State of Utah in accordance with applicable immigration laws.
 - c. Contractor’s failure to comply with this section will be considered a material breach of this Purchase Order.
7. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State Entity or the State of Utah, unless disclosure has been made to the State Entity.
8. **INDEPENDENT CONTRACTOR:** Contractor and Subcontractors, in the performance of this Purchase Order, shall act in an independent capacity and not as officers or employees or agents of the State Entity or the State of Utah.
9. **CONTRACTOR RESPONSIBILITY:** Contractor is solely responsible for fulfilling the Purchase Order, with responsibility for all Procurement Items delivered and/or performed as stated in this Purchase Order. Contractor shall be the sole point of contact regarding all contractual matters. Contractor must incorporate Contractor’s responsibilities under this Purchase Order into every subcontract with its Subcontractors that will provide the Procurement Item(s) to the State Entity under this Purchase Order. Moreover, Contractor is responsible for its Subcontractors compliance under this Purchase Order.

10. **INDEMNITY:** Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors, and shall fully indemnify, defend, and save harmless the State Entity and the State of Utah from all claims, losses, suits, actions, damages, and costs of every name and description arising out of Contractor's performance of this Purchase Order to the extent caused by any intentional wrongful act or negligence of Contractor, its agents, employees, officers, partners, or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the fault of the State Entity. The parties agree that if there are any limitations of the Contractor's liability, including a limitation of liability clause 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.
11. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by the following employment laws: (i) 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; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90, which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order 2019-1, dated February 5, 2019, which prohibits unlawful harassment in the workplace. Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees.
12. **AMENDMENTS:** This Purchase Order may only be amended by the mutual written agreement of the parties, provided that the amendment is within the Scope of Work of this Purchase Order and is within the scope/purpose of the original solicitation for which this Purchase Order was derived. The amendment will be attached and made part of this Purchase Order. Automatic renewals will not apply to this Purchase Order, even if listed elsewhere in this Purchase Order.
13. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, proposed for debarment, or declared ineligible by any governmental department or agency, whether international, national, state, or local. Contractor must notify the State Entity within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by any governmental entity during this Purchase Order.
14. **TERMINATION:** This Purchase Order may be terminated, with cause by either party, in advance of the specified expiration date, upon written notice given by the other party. The party in violation will be given ten (10) days after written notification to correct and cease the violations, after which this Purchase Order may be terminated for cause immediately and subject to the remedies below. This Purchase Order may also be terminated without cause (for convenience), in advance of the specified expiration date, by the State Entity, upon thirty (30) days written termination notice being given to the Contractor. The State Entity and the Contractor may terminate this Purchase Order, in whole or in part, at any time, by mutual agreement in writing.

On termination of this Purchase Order, all accounts and payments will be processed according to the financial arrangements set forth herein for approved and conforming Procurement Items ordered prior to date of termination. In no event shall the State Entity be liable to the Contractor for compensation for any Good neither requested nor accepted by the State Entity. In no event shall the State Entity's exercise of its right to terminate this Purchase Order for convenience relieve the Contractor of any liability to the State Entity for any damages or claims arising under this Purchase Order.
15. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Contractor, this Purchase Order may be terminated in whole or in part at the sole discretion of the State Entity, if the State Entity reasonably determines that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Purchase Order; or (ii) that a change in available funds affects the State Entity's ability to pay under this Purchase Order. 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.

If a written notice is delivered under this section, the State Entity will reimburse Contractor for the Procurement Item(s) properly ordered and/or Services properly performed until the effective date of said notice. The State Entity will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.
16. **SALES TAX EXEMPTION:** The Procurement Item(s) under this Purchase Order will be paid for from the State Entity's funds and used in the exercise of the State Entity's essential functions as a State of Utah entity. Upon request, the State Entity will provide Contractor with its sales tax exemption number. It is Contractor's responsibility to request the State Entity's sales tax exemption number. It also is Contractor's sole responsibility to ascertain whether any tax deduction or benefits apply to any aspect of this Purchase Order.
17. **WARRANTY OF PROCUREMENT ITEM(S):** Contractor warrants, represents and conveys full ownership and clear title, free of all liens and encumbrances, to the Procurement Item(s) delivered to the State Entity under this Purchase Order. Contractor warrants for a period of one (1) year that: (i) the Procurement Item(s) perform according to all specific claims that Contractor made in its Response; (ii) the Procurement Item(s) are suitable for the ordinary purposes for which such Procurement Item(s) are used; (iii) the Procurement Item(s) are suitable for any special purposes identified in the Contractor's Response; (iv) the Procurement Item(s) are designed and manufactured in a commercially reasonable manner; (v) the Procurement Item(s) are manufactured and in all other respects create no harm to persons or property; and (vi) the Procurement Item(s) are free of defects. Unless otherwise specified, all Procurement Item(s) provided shall be new and unused of the latest model or design.

Remedies available to the State Entity under this section include, but are not limited to, the following: Contractor will repair or replace Procurement Item(s) at no charge to the State Entity within ten (10) days of any written notification informing Contractor of the Goods not performing as required under this Purchase Order. If the repaired and/or replaced Procurement Item(s) prove to be inadequate, or fail its essential purpose, 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 State Entity may otherwise have under this Purchase Order.
18. **CONTRACTOR'S INSURANCE RESPONSIBILITY.** The Contractor shall maintain the following insurance coverage:

- a. Workers' compensation insurance during the term of this Contract for all its employees and any Subcontractor employees related to this Contract. Workers' compensation insurance shall cover full liability under the workers' compensation laws of the jurisdiction in which the work is performed at the statutory limits required by said jurisdiction.
- b. Commercial general liability [CGL] insurance from an insurance company authorized to do business in the State of Utah. The limits of the CGL insurance policy will be no less than one million dollars (\$1,000,000.00) per person per occurrence and three million dollars (\$3,000,000.00) aggregate.
- c. Commercial automobile liability [CAL] insurance from an insurance company authorized to do business in the State of Utah. The CAL insurance policy must cover bodily injury and property damage liability and be applicable to all vehicles used in your performance of Services under this Agreement whether owned, non-owned, leased, or hired. The minimum liability limit must be \$1 million per occurrence, combined single limit. The CAL insurance policy is required if Contractor will use a vehicle in the performance of this Contract.
- d. Other insurance policies required in the Solicitation.

Certificate of Insurance, showing up-to-date coverage, shall be on file in the State Entity before the Contract may commence.

The State reserves the right to require higher or lower insurance limits where warranted. Failure to provide proof of insurance as required will be deemed a material breach of this Contract. Contractor's failure to maintain this insurance requirement for the term of this Contract will be grounds for immediate termination of this Contract.

19. **RESERVED.**

20. **PUBLIC INFORMATION:** Contractor agrees that this Purchase Order, related purchase orders, related pricing documents, and invoices will be public documents and may be available for public and private distribution in accordance with the State of Utah's Government Records Access and Management Act (GRAMA). Contractor gives the State Entity and the State of Utah express permission to make copies of this Purchase Order, related sales orders, related pricing documents, and invoices in accordance with GRAMA. Except for sections identified in writing by Contractor and expressly approved by the Utah Schools for the Deaf and the Blind, Contractor also agrees that the Contractor's Response will be a public document, and copies may be given to the public as permitted under GRAMA. The State Entity and the State of Utah are not obligated to inform Contractor of any GRAMA requests for disclosure of this Purchase Order, related purchase orders, related pricing documents, or invoices.

21. **DELIVERY:** All deliveries under this Purchase Order will be F.O.B. destination with all transportation and handling charges paid for by Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State Entity, except as to latent defects or fraud. Contractor shall strictly adhere to the delivery and completion schedules specified in this Purchase Order.

22. **ACCEPTANCE AND REJECTION:** The State Entity shall have thirty (30) days after delivery of the Procurement Item(s) to perform an inspection of the Procurement Item(s) to determine whether the Procurement Item(s) conform to the standards specified in the Solicitation and this Purchase Order prior to acceptance of the Procurement Item(s) by the State Entity.

If Contractor delivers nonconforming Procurement Item(s), the State Entity may, at its option and at Contractor's expense: (i) return the Procurement Item(s) for a full refund; (ii) require Contractor to promptly correct or replace the nonconforming Procurement Item(s); or (iii) obtain replacement Procurement Item(s) from another source, subject to Contractor being responsible for any cover costs. Contractor shall not redeliver corrected or rejected Procurement Item(s) without: first, disclosing the former rejection or requirement for correction; and second, obtaining written consent of the State Entity to redeliver the corrected Procurement Item(s). Repair, replacement, and other correction and redelivery shall be subject to the terms of this Purchase Order.

23. **INVOICING:** Contractor will submit invoices within thirty (30) days of the delivery date of the Procurement Item(s) to the State Entity. The Purchase Order number shall be listed on all invoices, freight tickets, and correspondence relating to this Purchase Order. The prices paid by the State Entity will be those prices listed in this Purchase Order, unless Contractor offers a prompt payment discount within its Response or on its invoice. The State Entity has the right to adjust or return any invoice reflecting incorrect pricing.

24. **PAYMENT:** Payments are to be made within thirty (30) days after a correct invoice is received. All payments to Contractor will be remitted by mail, electronic funds transfer, or the State of Utah's Purchasing Card (major credit card). If payment has not been made after sixty (60) days from the date a correct invoice is received by the State Entity, then interest may be added by Contractor as prescribed in the Utah Prompt Payment Act. The acceptance by Contractor of final payment, without a written protest filed with the State Entity within ten (10) business days of receipt of final payment, shall release the State Entity and the State of Utah from all claims and all liability to the Contractor. The State Entity's payment for the Procurement Item(s) and/or Services shall not be deemed an acceptance of the Procurement Item(s) and is without prejudice to any and all claims that the State Entity or the State of Utah may have against Contractor. The State of Utah and the State Entity will not allow the Contractor to charge end users electronic payment fees of any kind.

25. **INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY:** Contractor will indemnify and hold the State Entity and the State of Utah harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities, and costs in any action or claim brought against the State Entity or the State of Utah for infringement of a third party's copyright, trademark, trade secret, or other proprietary right. The parties agree that if there are any limitations of Contractor's liability, such limitations of liability will not apply to this section.

26. **OWNERSHIP IN INTELLECTUAL PROPERTY:** The State Entity and Contractor each recognizes that each has no right, title, or interest, proprietary or otherwise, in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing. All Procurement Item(s), documents, records, programs, data, articles, memoranda, and other materials not developed or licensed by Contractor prior to the execution of this Purchase Order, but specifically manufactured under this Purchase Order shall be considered work made for hire, and Contractor shall transfer any ownership claim to the State Entity.
27. **ASSIGNMENT:** Contractor may not assign, sell, transfer, subcontract or sublet rights, or delegate any right or obligation under this Purchase Order, in whole or in part, without the prior written approval of the State Entity.
28. **REMEDIES:** Any of the following events will constitute cause for the State Entity to declare Contractor in default of this Purchase Order: (i) Contractor's non-performance of its contractual requirements and obligations under this Purchase Order; or (ii) Contractor's material breach of any term or condition of this Purchase Order. The State Entity may 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, the State Entity may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) terminate this Purchase Order; (iii) impose liquidated damages, if liquidated damages are listed in this Purchase Order; (iv) debar/suspend Contractor from receiving future contracts from the State Entity or the State of Utah; or (v) demand a full refund of any payment that the State Entity has made to Contractor under this Purchase Order for Procurement Item(s) that do not conform to this Purchase Order.
29. **FORCE MAJEURE:** Neither party to this Purchase Order will be held responsible for delay or default caused by fire, riot, act of God, and/or war which is beyond that party's reasonable control. The State Entity may terminate this Purchase Order after determining such delay will prevent successful performance of this Purchase Order.
30. **CONFIDENTIALITY:** If Confidential Information is disclosed to Contractor, Contractor shall: (i) advise its agents, officers, employees, partners, and Subcontractors of the obligations set forth in this Purchase Order; (ii) keep all Confidential Information strictly confidential; and (iii) not disclose any Confidential Information received by it to any third parties. Contractor will promptly notify the State Entity of any potential or actual misuse or misappropriation of Confidential Information.
- Contractor shall be responsible for any breach of this duty of confidentiality, including any required remedies and/or notifications under applicable law. Contractor shall indemnify, hold harmless, and defend the State Entity and the State of Utah, including anyone for whom the State Entity or the State of Utah is liable, from claims related to a breach of this duty of confidentiality, including any notification requirements, by Contractor or anyone for whom the Contractor is liable.
- Upon termination or expiration of this Purchase Order, Contractor will return all copies of Confidential Information to the State Entity or certify, in writing, that the Confidential Information has been destroyed. This duty of confidentiality shall be ongoing and survive the termination or expiration of this Purchase Order.
31. **PUBLICITY:** Contractor shall submit to the State Entity for written approval all advertising and publicity matters relating to this Purchase Order. It is within the State Entity's sole discretion whether to provide approval, which approval must be in writing.
32. **WORK ON STATE OF UTAH OR ELIGIBLE USER PREMISES:** Contractor shall ensure that personnel working on State of Utah premises shall: (i) abide by all of the rules, regulations, and policies of the premises; (ii) remain in authorized areas; (iii) follow all instructions; and (iv) be subject to a background check, prior to entering the premises. The State of Utah or Eligible User may remove any individual for a violation hereunder.
33. **WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.
34. **SUSPENSION OF WORK:** Should circumstances arise which would cause the State Entity to suspend Contractor's responsibilities under this Purchase Order, but not terminate this Purchase Order, this will be done by formal written notice pursuant to the terms of this Purchase Order. Contractor's responsibilities may be reinstated upon advance formal written notice from the State Entity.
35. **CHANGES IN SCOPE:** Any changes in the scope of the services to be performed under this Purchase Order shall be in the form of a written amendment to this Purchase Order, mutually agreed to and signed by 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.
36. **PROCUREMENT ETHICS:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or to any person in any official capacity who 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.
37. **ATTORNEY'S FEES:** In the event of any judicial action to enforce rights under this Purchase Order, the prevailing party shall be entitled its costs and expenses, including reasonable attorney's fees incurred in connection with such action.
38. **TRAVEL COSTS:** If travel expenses are permitted by the Solicitation, then all travel costs associated with the delivery of Services under this Purchase Order will be paid according to the rules and per diem rates found in the Utah Administrative Code R25-7. Invoices containing travel costs outside of these rates will be returned to Contractor for correction.
39. **DISPUTE RESOLUTION:** Prior to either party filing a judicial proceeding, the parties agree to participate in the mediation of any dispute. The State Entity, after consultation with Contractor, may appoint an expert or panel of experts to assist in the resolution of a dispute. If the State Entity appoints such an expert or panel, State Entity 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.

40. **ORDER OF PRECEDENCE:** In the event of any conflict in the terms and conditions in this Purchase Order, the order of precedence shall be: (i) this Attachment A; (ii) the State of Utah's additional terms and conditions, if any; and (iii) Contractor's terms and conditions that are attached to this Purchase Order, if any. Any provision attempting to limit the liability of Contractor or limit the rights of the State Entity or the State of Utah must be in writing and attached to this Purchase Order or it is rendered null and void.
41. **SURVIVAL OF TERMS:** Termination or expiration of this Purchase Order shall not extinguish or prejudice the State Entity's right to enforce this Purchase Order with respect to any default of this Purchase Order or defect in the Procurement Item(s) that has not been cured, or of any of the following clauses, including: Governing Law and Venue, Laws and Regulations, Records Administration, Remedies, Dispute Resolution, Indemnity, Newly Manufactured, Indemnification Relating to Intellectual Property, Warranty of Procurement Item(s), Insurance.
42. **SEVERABILITY:** The invalidity or unenforceability of any provision, term, or condition of this Purchase Order shall not affect the validity or enforceability of any other provision, term, or condition of this Purchase Order, which shall remain in full force and effect.
43. **ERRORS AND OMISSIONS:** Contractor shall not take advantage of any errors and/or omissions in this Purchase Order. The Contractor must promptly notify the State of any errors and/or omissions that are discovered.
44. **ENTIRE AGREEMENT:** This Purchase Order constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.
45. **ANTI-BOYCOTT ISRAEL:** In accordance with Utah Statute 63G-27-101, 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.

(Revision Date: 15 April 2021)

ATTACHMENT B: STATE OF UTAH STANDARD INFORMATION TECHNOLOGY TERMS AND CONDITIONS

This is for a contract of information technology Procurement Items and must be accompanied by the State of Utah Standard Terms and Conditions. With the exception of the definitions in this Attachment B, the definitions in Attachment A apply to this attachment.

1. DEFINITIONS:

- a. "Access to Secure State Facilities, Data, or Technology" means Contractor will (a) enter upon secure premises controlled, held, leased, or occupied by State of Utah; (b) maintain, develop, or have access to any deployed hardware, software, firmware, or any other technology, that is in use by State of Utah; or (c) have access to or receive any State Data or confidential information.
- b. "Background IP" means intellectual property (IP) owned or controlled prior to the effective date of this Contract or that IP developed or acquired from activities independent of the services performed under this Contract, including but not limited to (a) methodologies, processes, technologies, algorithms, software, or development tools used in performing the Services, and (b) processes and reusable reports, designs, charts, plans, specifications, documentation, forms, templates, or output which are supplied or otherwise used by or on behalf of Contractor in the course of performing the Services or creating the Custom Deliverables, other than portions that specifically incorporate proprietary or confidential information or Custom Deliverables of the Utah Schools for the Deaf and the Blind.
- c. "Contract Period" means the term of this Contract, as set forth in the Contract Signature Page(s).
- d. "Custom Deliverables" means the product that Contractor is required to design, develop, or customize and deliver to the Utah Schools for the Deaf and the Blind as specifically described under this Contract or an associated statement of work for which all interest and title shall be transferred to and owned by the Utah Schools for the Deaf and the Blind. This includes every invention, design, development, customization, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor pursuant to this Contract.
- e. "Data Breach" means the unauthorized access or acquisition of State Data that compromises the security, confidentiality, or integrity of State Data.
- f. "USDB" means the Utah Schools for the Deaf and the Blind.
- g. "Federal Criminal Background Check" means a fingerprint-based, nationwide background check conducted and processed by the FBI.
- h. "Good" means any deliverable not classified as a Custom Deliverable or Service.
- i. "Intellectual Property Rights" means all rights to patents, utility models, mask works, copyrights, trademarks, trade secrets, and other protection afforded by law to inventions, models, designs, technical information, and applications.
- j. "Non-Public Data" means records or data that are not subject to distribution to the public. Access is restricted because it includes information that is protected by state or federal law. Non-Public Data includes, but is not limited to, a person's name; government-issued identification numbers (e.g., Social Security, driver's license, passport); financial account information; or Protected Health Information.
- k. "Protected Health Information" (PHI) is as defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and its implementing regulations.
- l. "Response" means the Contractor's bid, proposals, quote, or any other document used by the Contractor to respond to the State Entity's Solicitation.
- m. "Security Incident" means the attempted unauthorized access to State Data that may result in the use, disclosure, or theft of State Data.
- n. "Services" means the furnishing of labor, time, or effort by Contractor, and may include installation, configuration, implementation, technical support, warranty maintenance, and other support services.
- o. "State Data" means all confidential information and Non-Public Data that is created, controlled, maintained, owned, or in any way originating with the State of Utah regardless of where such data or output is stored or maintained.
- p. "Subcontractors" includes contractors, manufacturers, distributors, suppliers, or consultants, at any tier, that are under the direct or indirect control or responsibility of Contractor, including a person or entity that is, or will be, providing goods or performing services pursuant to this Contract.

2. CRIMINAL BACKGROUND SCREENING: Each employee of Contractor and Subcontractor must successfully complete a Federal Criminal Background Check, prior to being granted Access to Secure State Facilities, State Data, or Technology. Each employee of Contractor or a Subcontractor who will have Access to Secure State Facilities, State Data, or Technology must be fingerprinted by local law enforcement a minimum of one week prior to needing access. At the time of fingerprinting, said employee shall disclose all felony or misdemeanor convictions. USDB may revoke Access to Secure State Facilities, Data, and Technology granted in the event of any negative results. Contractor and the employee or subcontractor shall immediately notify USDB if an arrest or conviction for a felony or misdemeanor of any person that has Access to Secure State Facilities, State Data or Technology occurs during the Contract Period. USDB will determine in its discretion if such person's Access to Secure State Facilities, State Data, or Technology shall remain in effect. Felony and misdemeanor are defined by the laws of the State of Utah, regardless of where the conviction occurred.

3. CODE OF CONDUCT: If Contractor is working at facilities controlled or owned by USDB or the State of Utah, Contractor shall follow

and enforce USDB policies.

4. **INTELLECTUAL PROPERTY INDEMNIFICATION:** Contractor warrants and represents it has full ownership and clear title free of all liens and encumbrances to any Good delivered under this contract. Contractor also warrants that any Good, Custom Deliverable, or Service furnished by Contractor under this Contract, including its use by USDB or the State of Utah in unaltered form, will not infringe any copyrights, patents, trade secrets, or other proprietary rights.

Contractor will release, indemnify, and hold USDB and the State of Utah harmless from liability or damages of any kind or nature, including Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article, or appliance furnished or used in Contractor's performance of this Contract. Additionally, if such a claim or liability is based upon an allegation that a Good, Custom Deliverable, or Service furnished by Contractor infringes on any right protected by any patent, copyright, trademark, trade secret, and/or proprietary right, Contractor shall indemnify and hold harmless USDB and the State of Utah for any judgments, settlements, costs, and reasonable attorneys' fees resulting from such a claim or liability. Contractor shall defend all actions brought upon such matters to be indemnified hereunder and pay all costs and expenses incidental thereto; however, USDB shall have the right, at its option, to participate in the defense of any such action at its own expense without relieving Contractor of any obligation hereunder. If there are any limitations of liability in this Contract, such limitations will not apply to this section.

5. **HARDWARE WARRANTY: THE STATE OF UTAH DOES NOT ACCEPT ANY PROCUREMENT ITEM "AS-IS".** CONTRACTOR WARRANTS ALL HARDWARE PORTIONS OF ANY GOOD OR CUSTOM DELIVERABLE THAT IT DIRECTLY OR INDIRECTLY PROVIDES FOR A PERIOD OF **ONE YEAR**. ALL WARRANTIES GRANTED TO USDB BY THE UNIFORM COMMERCIAL CODE OF THE STATE OF UTAH APPLY TO THIS CONTRACT. PRODUCT LIABILITY DISCLAIMERS AND/OR WARRANTY DISCLAIMERS FROM CONTRACTOR OR ITS SUPPLIERS ARE REJECTED. CONTRACTOR WARRANTS THAT THE HARDWARE: (A) WILL PERFORM AS SPECIFIED IN THE RESPONSE; (B) WILL LIVE UP TO ALL SPECIFIC CLAIMS LISTED IN THE RESPONSE; (C) WILL BE SUITABLE FOR THE ORDINARY PURPOSES FOR WHICH THE HARDWARE IS USED; (D) WILL BE SUITABLE FOR ANY SPECIAL PURPOSES THAT USDB HAS RELIED ON CONTRACTOR'S SKILL OR JUDGMENT TO CONSIDER WHEN IT ADVISED USDB ABOUT THE HARDWARE IN THE RESPONSE; (E) THE HARDWARE HAS BEEN PROPERLY DESIGNED AND MANUFACTURED; AND (F) IS FREE OF SIGNIFICANT DEFECTS.
6. **SOFTWARE WARRANTY: THE STATE OF UTAH DOES NOT ACCEPT ANY PROCUREMENT ITEM "AS-IS".** CONTRACTOR WARRANTS FOR A PERIOD OF **NINETY DAYS** FROM THE DATE OF ACCEPTANCE THAT THE SOFTWARE PORTIONS OF THE GOODS AND CUSTOM DELIVERABLES THAT CONTRACTOR DIRECTLY OR INDIRECTLY PROVIDES WILL: (A) PERFORM IN ACCORDANCE WITH THE SPECIFIC CLAIMS PROVIDED IN THE RESPONSE AND ALL SPECIFICATIONS AGREED TO IN WRITING BETWEEN USDB AND CONTRACTOR; (B) BE SUITABLE FOR THE ORDINARY PURPOSES FOR WHICH SUCH GOODS AND CUSTOM DELIVERABLES ARE USED; (C) BE SUITABLE FOR ANY SPECIAL PURPOSES THAT USDB HAS RELIED ON CONTRACTOR'S SKILL OR JUDGMENT TO CONSIDER WHEN IT ADVISED THE STATE ABOUT THE GOODS OR CUSTOM DELIVERABLES; (D) HAVE BEEN PROPERLY DESIGNED AND MANUFACTURED; AND (E) BE FREE OF SIGNIFICANT DEFECTS. CONTRACTOR SHALL PROVIDE USDB WITH BUG FIXES, INCLUDING INFORMING USDB OF ANY KNOWN SOFTWARE BUGS OR SOFTWARE DEFECTS THAT MAY AFFECT THE STATE'S USE OF THE SOFTWARE.
7. **WARRANTY REMEDIES:** Upon breach of warranty, Contractor will repair or replace (at no charge to USDB) the nonconforming Goods or Custom Deliverables. If the repaired and/or replaced products are inadequate, Contractor will refund the full amount of any payments that have been made for the failed products. These remedies are in addition to any other remedies provided by law or equity.
8. **UPDATES AND UPGRADES:** Contractor grants to USDB a non-exclusive, non-transferable license to use upgrades and updates provided by Contractor during the Contract Period. Upgrades and updates are subject to the terms of this Contract. USDB reserves the right to accept updates and upgrades at its discretion and to determine if such updates comply with the requirements in the Contract scope of work.
9. **BUG FIXING AND REMOTE DIAGNOSTICS:** Contractor shall use commercially reasonable efforts to provide work-around solutions or patches to reported software problems. With USDB's prior written authorization, Contractor may perform remote diagnostics to work on reported problems. If USDB declines remote diagnostics, Contractor and USDB may agree to on-site technical support, subject to the terms of the Contract.
10. **TECHNICAL SUPPORT AND MAINTENANCE:** If technical support and maintenance is required by the Contract, Contractor will use commercially reasonable efforts to respond to USDB in a reasonable time, and in all events, in accordance with the specific timeframes detailed in the Contract, when USDB makes technical support or maintenance requests.
11. **ELECTRONIC DELIVERY:** Contractor may electronically deliver any Good or Custom Deliverable to USDB or provide any Good and Custom Deliverable for download from the Internet, if pre-approved in writing by USDB. Contractor shall ensure the confidentiality of electronic deliveries in transit. Contractor warrants that all electronic deliveries will be free of known malware, bugs, Trojan horses, etc.
12. **SECURE PROTECTION AND HANDLING OF STATE DATA:** If Contractor is given access to State Data, the protection of State Data shall be an integral part of the business activities of Contractor, and Contractor shall ensure that there is no inappropriate or unauthorized use of State Data. Contractor shall safeguard the confidentiality, integrity, and availability of the State Data and comply with the conditions outlined below. USDB reserves the right to verify Contractor's adherence to the following conditions to ensure they are met:
- a. **Network Security:** Contractor shall maintain network security that, at a minimum, includes: network firewall provisioning, intrusion detection, and regular third-party penetration testing. Contractor shall maintain network security and ensure that Contractor network security policies conform to one of the following:
- 1) Those standards the State of Utah applies to its own network;

- 2) Current standards set forth and maintained by the National Institute of Standards and Technology, includes those at: <http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r4.pdf>; or
 - 3) Any generally recognized comparable standard that Contractor then applies to its own network and pre-approved by USDB in writing.
- b. **State Data Security:** Contractor shall protect and maintain the security of State Data with protection that is at least as good as or better than that maintained by the State of Utah. These security measures included but are not limited to maintaining secure environments that are patched and up to date with all appropriate security updates as designated (ex. Microsoft Notification). USDB reserves the right to determine if Contractor's level of protection meets the State's security requirements.
 - c. **State Data Transmission:** Contractor shall ensure all transmission or exchange of system application data with USDB and State of Utah and/or any other parties expressly designated by the State of Utah, shall take place via secure means (ex. HTTPS or FTPS).
 - d. **State Data Storage:** All State Data will be stored and maintained in data centers in the United States. No State Data will be processed on or transferred to any portable or laptop computing device or portable storage medium, except for devices that are used and kept only at Contractor's United States data centers, unless such medium is part of the Contractor's designated backup and recovery process.
 - e. **Access:** Contractor shall permit its employees and Subcontractors to remotely access non-State Data only as required to provide technical support.
 - f. **State Data Encryption:** Contractor shall store all data provided to Contractor, including State, as well as any backups made of that data, in encrypted form using no less than 128 bit key and include all data as part of a designated backup and recovery process.
 - g. **Password Protection:** Any portable or laptop computer that has access to USDB or State of Utah network, or stores any non-public State of Utah data shall be equipped with strong and secure password protection.
 - h. **Confidential Information Certification:** Contractor shall sign a Confidential Information Certification form prior to being given access to confidential computerized records.
 - i. **State Data Re-Use:** All data exchanged shall be used expressly and solely for the purpose enumerated in this Contract. No State Data of any kind may be transmitted, exchanged, or provided to other contractors or third parties except on a case-by-case basis as specifically agreed to in writing by USDB.
 - j. **State Data Destruction:** Upon expiration or termination of this Contract, Contractor shall erase, destroy, and render unreadable all State Data from all non-state computer systems and backups, and certify in writing that these actions have been completed within thirty (30) days of the expiration or termination of this Contract or within seven (7) days of the request of USDB, whichever shall come first, unless USDB provides Contractor with a written directive. USDB's written directive may require that certain data be preserved in accordance with applicable law.
 - k. **Services Shall Be Performed Within United States:** ALL OF THE SERVICES RELATED TO STATE DATA SHALL BE PERFORMED WITHIN THE BORDERS AND JURISDICTION OF THE UNITED STATES.
 - l. **User Support:** Contractor may provide technical user support on a 24/7 basis using a Follow the Sun model, unless otherwise prohibited by this contract.
- 13. SECURITY INCIDENT OR DATA BREACH NOTIFICATION:** Contractor shall immediately inform USDB of any Security Incident or Data Breach. It is within USDB's discretion to determine whether any attempted unauthorized access is a Security Incident or a Data Breach.
- a. **Incident Response:** Contractor may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement and seeking external expertise as mutually agreed upon, defined by law or contained in this Contract. Discussing Security Incidents with USDB should be handled on an urgent as-needed basis, as part of Contractor's communication and mitigation processes, defined by law or contained in this Contract.
 - b. **Security Incident Reporting Requirements:** Contractor shall promptly report a Security Incident to USDB.
 - c. **Breach Reporting Requirements:** As required by Utah Code 13-44-202 or any other law, Contractor shall immediately notify USDB of a Data Breach that affects the security of State Data.
- 14. DATA BREACH RESPONSIBILITIES:** Contractor shall comply with all applicable laws that require the notification of individuals in the event of a Data Breach or other events requiring notification in accordance with *USDB Policy*. In the event of a Data Breach or other event requiring notification under applicable law (Utah Code § 13-44-101 thru 301 et al), Contractor shall: (a) cooperate with USDB by sharing information relevant to the Data Breach; (b) promptly implement necessary remedial measures, if necessary; and (c) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in relation to the Data Breach. If the Data Breach requires public notification, all communication shall be coordinated with USDB. Contractor is responsible for all notification and remedial costs and damages.
- 15. STATE INFORMATION TECHNOLOGY POLICIES:** If Contractor is providing the State with Goods or Custom Deliverables, Contractor shall comply with policies and procedures that meet or exceed those USDB follows for internally developed goods and deliverables to minimize security risk, ensure applicable Utah and Federal laws are followed, address issues with accessibility and mobile device access, and prevent outages and data breaches within the State of Utah's environment. Contractor shall comply with the following USDB Policies.

- 16. OWNERSHIP IN CUSTOM DELIVERABLES:** Contractor warrants, represents and conveys full ownership, clear title free of all liens and encumbrances to any Custom Deliverable. Contractor conveys the ownership in Custom Deliverables as defined in this Attachment A to USDB. All intellectual property rights, title and interest in the Custom Deliverables shall transfer to USDB, subject to the following:
- Contractor has received payment for the Custom Deliverables,
 - Each party will retain all rights to Background IP, even if embedded in the Custom Deliverables.
 - Custom Deliverables, excluding Contractor's Background IP may not be marketed or distributed without written approval by USDB.
- Contractor shall grant to USDB a perpetual, irrevocable, royalty-free license to use Contractor's Background IP as defined above, solely for USDB and the State of Utah to use the Custom Deliverables.
- 17. OWNERSHIP, PROTECTION, AND USE OF RECORDS:** USDB and the State of Utah shall own exclusive title to all information and data gathered, reports developed, and conclusions reached by USDB in performance of this Contract. Contractor may not use, except in meeting its obligations under this Contract, information gathered, reports developed, or conclusions reached by USDB in performance of this Contract without the express written consent of USDB.
- 18. OWNERSHIP, PROTECTION, AND USE OF DATA:** USDB and the State of Utah shall own and retain unlimited rights to use, disclose, or duplicate all information and data (copyrighted or otherwise) developed, derived, documented, stored, or furnished by Contractor under this Contract. Contractor, and any Subcontractors under its control, expressly agrees not to use Non-Public Data without prior written permission from USDB and appropriate officials of the State of Utah.
- 19. OWNERSHIP, PROTECTION, AND USE OF CONFIDENTIAL FEDERAL, UTAH, OR LOCAL GOVERNMENT INTERNAL BUSINESS PROCESSES AND PROCEDURES:** In the event that USDB provides Contractor with confidential federal or state business processes, policies, procedures, or practices, pursuant to this Contract, Contractor shall hold such information in confidence, in accordance with applicable laws and industry standards of confidentiality, and not to copy, reproduce, sell, assign, license, market, transfer, or otherwise dispose of, give, or disclose such information to third parties or use such information for any purpose whatsoever other than the performance of this Contract. The improper use or disclosure by any party of protected internal federal or state business processes, policies, procedures, or practices is prohibited. Confidential federal or state business processes, policies, procedures, or practices shall not be divulged by Contractor or its Subcontractors, except for the performance of this Contract, unless prior written consent has been obtained in advance from USDB.
- 20. OWNERSHIP, PROTECTION, AND RETURN OF DOCUMENTS AND DATA UPON CONTRACT TERMINATION OR COMPLETION:** All documents and data pertaining to work required by this Contract will be the property of USDB and the State of Utah, and must be delivered to USDB within thirty (30) working days after termination or expiration of this Contract, and without restriction or limitation to their future use. Any State Data returned under this section must either be in the format as originally provided, in a format that is readily usable by USDB, or formatted in a way that it can be used. The costs for returning documents and data to USDB are included in this Contract.
- 21. SURVIVORSHIP:** The contractual provisions that will remain in effect after expiration or termination of this Contract are: (a) Secure Protection and Handling of State Data; (b) Data Breach Responsibilities; (c) Ownership in Custom Deliverables; (d) Ownership, Protection, and Use of Records, including Residuals of such records; and (e) Ownership, Protection, and Use of Confidential Federal, Utah, or Local Government Internal Business Processes, including residuals of such confidential business processes; (f) Ownership, Protection, and Return of Documents and Data Upon Contract Termination or Completion; and (g) any other terms that by their nature would survive the expiration, completion, or termination of this contract.
- 22. Compliance with Accessibility Standards:** Contractor shall comply with the Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973. Contractor shall comply with Utah Administrative Code R895-14-3(3), which states that contractors developing new websites or applications for State agencies are required to meet accessibility guidelines subject to rule R895 and correct any items that do not meet these guidelines at no cost to the agency. Contractor shall comply with Utah Administrative Code R895-14-4(2), which states that contractors proposing IT products and services shall provide Voluntary Product Accessibility Template® (VPAT™) documents.
- 23. RIGHT TO MONITOR PERFORMANCE AND AUDIT**
- Audit:** Contractor shall, upon written notification permit USDB, or a third party designated by USDB, to perform an assessment, audit, examination, or review of all of Contractor's sites and environments - including physical, technical, and virtual sites and environments - in order to confirm Contractor's compliance with this Contract; associated scopes of work; and applicable laws, regulations, and industry standards. Contractor shall fully cooperate with such assessment by providing access to knowledgeable personnel; physical premises; records; technical and physical infrastructures; and any other person, place, or object which may assist USDB or its designee in completing such assessment. Upon request, Contractor shall provide the results of any audit performed by or on behalf of Contractor that would assist USDB or its designee in confirming Contractor's compliance with this Contract; associated scopes of work; and applicable laws, regulations, and industry standards.
 - Monitor Performance:** USDB reserves the right to monitor Contractor's performance, perform plan checks, plan reviews, other reviews, and/or comment upon the Services of Contractor. This includes Contractor's Subcontractors, if any. Results of any evaluation may be made available to the Contractor upon Contractor's request.
- 24. TIME IS OF THE ESSENCE:** The Services shall be completed and Goods and Custom Deliverables delivered by any applicable deadline stated in this Contract. Time is of the essence.

- 25. STANDARD OF CARE:** For Services of Contractor which require licenses and certifications, such Services 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.
- 26. ANTI-BOYCOTT ISRAEL:** In accordance with Utah Statute 63G-27-101, 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.

(Revision Date: 15 April 2021)