

ATTACHMENT B: UTAH STATE BOARD OF EDUCATION ADDITIONAL TERMS AND CONDITIONS AND FLOWDOWNS

Additional Terms and Conditions and Flowdown Provisions: Purchases Made With Federal Funds

I. EXPORT CONTROLS

- a. Contractor agrees to comply with all applicable U.S. export control laws and regulations including those of the U.S. Department of Energy (10 CFR Part 810), the Nuclear Regulatory Commission (10 CFR Part 110), the Arms Export Control Act (22 U.S.C. 2751-2794), the International Traffic in Arms Regulation (ITAR) (22 CFR 120 et seq.), the Export Administration Act (50 U.S.C. 2401-2420), the Export Administration Regulations (EAR) (15 CFR 730-774), and the requirement for obtaining any export license, agreement or applicable exemption or exception, if applicable. Without limiting the foregoing, Contractor agrees that it will not transfer to any third-party any export controlled item, data, or services, to include transfer to foreign persons employed by or associated with, or under contract to Contractor's lower-tier suppliers, without the authority of an export license, agreement, or applicable exemption or exception.
- b. Contractor agrees to notify USBE's Authorized Representative if any deliverable under this Contract is restricted by export control laws or regulations, unless such export-controlled item originates with USBE and is incorporated into the deliverable under this Contract.
- c. Contractor shall immediately notify USBE's Authorized Representative if Contractor is, or becomes, listed in any Denied Parties List or if Contractor's export privileges are otherwise denied, suspended or revoked in whole or in part by the government of the United States or any State.
- d. If Contractor is engaged in the business of either exporting from the United States or manufacturing defense articles within the United States (whether exporting or not) or furnishing defense services, Contractor represents that it is registered with the Office of Defense Trade Controls, as required by the ITAR, and it maintains an effective export/import compliance program in accordance with the ITAR.

II. Appendix II to 2 CFR Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

Appendix II to 2 CFR Part 200 is incorporated in and made a part of this Contract.

In the provisions below, the terms "Recipient," "Subrecipient," or "Contractor" shall mean "Contractor." The terms "Contract," "Agreement," or "Award" shall mean "Order."

In addition to other provisions required by a Federal agency or non-Federal entity, all contracts made

by the non-Federal entity under a Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation-adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies where contractors violate or breach contract terms. Such contracts must also contain appropriate sanctions and penalties for such violations or breaches.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity, including the manner by which termination will be conducted and the basis for settlement, if appropriate.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the awarding Federal agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). This Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of a public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by a non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided

that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal entity to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689). A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide list of exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contain the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying paid with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal entity.

III. INCORPORATION OF FAR PROVISIONS

The Federal Acquisition Regulation (FAR) provisions referenced below apply to this Contract and are incorporated herein by reference, with the same force and effect as if they were given in full text, and

are applicable, including any notes following the clause citation.

FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (OCT 2015) (Applies if this Contract exceeds \$150,000.)

FAR 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (OCT 2015) (Applies if this Contract exceeds \$5,500,000 and the period of performance is more than 120 days. Disclosures made under this clause shall be made directly to the Government entities identified in the clause.)

FAR 52.203-19 PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS (JAN 2017)

FAR 52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (OCT 2016)

(Subparagraph (d)(2) does not apply. If CONTRACTOR meets the thresholds specified in paragraphs (d)(3) and (g)(2) of the clause, CONTRACTOR shall report required executive compensation by posting the information to the Government's System for Award Management (SAM) database. All information posted will be available to the general public.)

FAR 52.204-21 BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS (JUN 2016) (Applies unless CONTRACTOR is furnishing commercially available off-the-shelf items.)

FAR 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (OCT 2015) (Applies if this Contract exceeds \$35,000 except does not apply if this Contract is for commercial off the shelf items. Copies of notices provided by CONTRACTOR to the Contracting Officer shall be provided to USBE.)

FAR 52.215-20 REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 2010) (Note 2 applies in paragraph (a)(1).)

FAR 52.215-21 REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA - MODIFICATIONS (OCT 2010)

FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (NOV 2016)

FAR 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (APR 2015)

FAR 52.222-26 EQUAL OPPORTUNITY (SEP 2016)

FAR 52.222-35 EQUAL OPPORTUNITY FOR VETERANS (OCT 2015) (Applies if this Contract is for \$150,000 or more.)

FAR 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUL 2014) (Applies if this Contract exceeds \$15,000.)

FAR 52.222-37 EMPLOYMENT REPORTS ON VETERANS (FEB 2016) (Applies if this Contract is for \$150,000 or more.)

FAR 52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010) (Applies if this Contract exceeds \$10,000.)

FAR 52.222-41 SERVICE CONTRACT ACT OF 1965 (MAY 2014) (Applies if this Contract is for services subject to the Service Contract Act. The clause does not apply if this Contract has been administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in Subpart C of 29 CFR Part 4.)

FAR 52.222-50 COMBATING TRAFFICKING IN PERSONS (MAR 2015)

FAR 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (OCT 2015) (Applies if this Contract exceeds \$3,500 except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item.)

FAR 52.222-55 MINIMUM WAGES UNDER EXECUTIVE ORDER 13658 (DEC 2015) (Applies if this Contract is subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute and is to be performed in whole or in part in the United States. "Contracting Officer" means "USBE.")

FAR 52.222-62 PAID SICK LEAVE UNDER EXECUTIVE ORDER 13706 (JAN 2017) (Applies if this Contract is subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute and are to be performed in whole or in part in the United States.)

FAR 52.224-3 PRIVACY TRAINING (JAN 2017) (Applies if CONTRACTOR will (1) have access to a system of records; (2) create, collect, use, process, store, maintain, disseminate, disclose, dispose, or otherwise handle personally identifiable information; or (3) design, develop, maintain, or operate a system of records.)

FAR 52.225-1 BUY AMERICAN ACT -- SUPPLIES (MAY 2014) (Applies if the Work contains other than domestic components.)

FAR 52.225-5 TRADE AGREEMENTS (OCT 2016) (Applies if the Work contains other than U.S.-made or designated country end products as specified in the clause.)

FAR 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)

FAR 52.227-19 COMMERCIAL COMPUTER SOFTWARE-RESTRICTED RIGHTS (DEC 2007)

FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (NOV 2017)

FAR 52.245-1 GOVERNMENT PROPERTY (JAN 2017) (ALT I) (APR 2012) ("Contracting Officer" means "USBE" except in the definition of Property Administrator and in paragraphs (h)(1)(iii) where it is unchanged, and in paragraphs (c) and (h)(4) where it includes USBE. "Government" is unchanged in the phrases "Government property" and "Government furnished property" and where elsewhere used except in paragraph (d)(1) where it means "USBE" and except in paragraphs (d)(2) and (g) where the term includes USBE. The following is added as paragraph (n) "CONTRACTOR shall provide to USBE immediate notice if the Government or other customers (i) revokes its assumption of loss under any direct contracts with CONTRACTOR, or (ii) makes a determination that CONTRACTOR's property management practices are inadequate, and/or present an undue risk, or that CONTRACTOR has failed to take corrective action when required.")

FAR 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S. FLAG COMMERCIAL VESSELS (FEB 2006)

IV. CERTIFICATIONS AND REPRESENTATIONS

Contractor acknowledges that USBE will rely upon Contractor certifications and representations, including representations as to business size and socio-economic status as applicable, contained in this clause and in any written offer, proposal or quote, or company profile submission, which results in award of a contract to Contractor. By entering into such contract, Contractor republishes the certifications and representations submitted with its written offer, including company profile information, and oral offers/quotations made at the request of USBE, and Contractor makes those certifications and representations set forth below. Contractor shall immediately notify USBE of any change of status regarding any certification or representation.

1.FAR 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (Applicable to solicitations and contracts exceeding \$150,000)

(a) Definitions. As used in this provision--

"Lobbying contact" has the meaning provided at 2 U.S.C. 1602(8).

The terms "agency," "influencing or attempting to influence," "officer or employee of an agency," "person," "reasonable compensation," and "regularly employed" are defined in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12).

(b)Prohibition. The prohibition and exceptions contained in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12) are hereby incorporated by reference in this provision.

(c)Certification. Contractor hereby certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of this contract.

(d)Disclosure. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, Contractor shall complete and submit, with its offer, to USBE OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. Contractor need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(e)Penalty. Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by 31 U.S.C. 1352. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure required to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

2.FAR 52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters

(a)(1) CONTRACTOR certifies, to the best of its knowledge and belief, that--

(i)CONTRACTOR and/or any of its Principals--

(A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements,

tax evasion, violating Federal criminal tax laws, or receiving stolen property;

(C) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision; and

(ii) Contractor has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(D) Have not, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,500 for which the liability remains unsatisfied.

(1) Federal taxes are considered delinquent if both of the following criteria apply:

(i) The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(ii) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(2) Examples. (i) The taxpayer has received a statutory notice of deficiency, under I.R.C. Sec. 6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(ii) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. Sec. 6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(iii) The taxpayer has entered into an installment agreement pursuant to I.R.C. Sec. 6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(iv) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).

(2) Principal, for the purposes of this certification, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division, or business segment; and similar positions).

(b) Contractor shall provide immediate written notice to USBE if, at any time prior to contract award, Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to other remedies available, USBE may terminate this contract for default.

3. FAR 52.222-22 Previous Contracts and Compliance Reports

(a) Contractor represents that if Contractor has participated in a previous contract or subcontract subject to the Equal Opportunity clause (FAR 52.222-26): (1) Contractor has filed all required compliance reports and (2) that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

(b) Paragraph (a) applies only to the extent (1) Contractor performs work in the United States, or (2) recruits employees in the United States to Work on this Contract.

4. FAR 52.222-25 Affirmative Action Compliance

(a) Contractor represents: (1) that Contractor has developed and has on file at each establishment, Affirmative Action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or (2) that in the event such a program does not presently exist, Contractor will develop and place in operation such a written Affirmative Action Compliance Program within one-hundred twenty (120) days from the award of this Contract.

(b) Paragraph (a) applies only to the extent (1) Contractor performs work in the United States, or (2) recruits employees in the United States to Work on this Contract.