



**ATTACHMENT A:  
UTAH STATE BOARD OF EDUCATION  
STANDARD TERMS AND CONDITIONS FOR GOODS AND SERVICES**

1. **DEFINITIONS:** The following terms shall have the meanings set forth below:
- 1.1. **“Authorized Persons”** means Contractor’s employees, officers, partners, Subcontractors or other agents of Contractor, who require access to Data and have a legitimate interest in the Data to enable the Contractor to perform its responsibilities under this Contract.
  - 1.2. **“Confidential Information”** means information that is deemed confidential and not subject to public distribution under applicable state and federal laws. USBE 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.
  - 1.3. **“Contract”** means the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference. The term “Contract” shall include any purchase orders that result from this Contract.
  - 1.4. **“Contract Signature Page(s)”** means the cover page(s) that USBE and Contractor signed.
  - 1.5. **“Contractor”** means the individual or entity delivering the Procurement Items identified in this Contract. The term “Contractor” shall include Contractor’s agents, officers, employees, partners, and subcontractors.
  - 1.6. **“Data”** Any piece of information suitable for use in electronic or print format. Data includes Student Personally Identifiable Information and Educator Data and may also include Confidential Information.
  - 1.7. **“Data Breach”** means the actual unauthorized access to Data that results in the unauthorized use, disclosure, or theft of Data, or the compromise of the confidentiality, integrity, or availability of Data in possession or control of Contractor or Subcontractor.
  - 1.8. **“Destroy” or “Destruction”** means to remove Data such that it is not maintained in retrievable form and cannot be retrieved in the normal course of business.
  - 1.9. **“Educator Data”** includes, but is not limited to, the educator’s name; any unique identifier, including social security number; and other information that, alone or in combination, is linked or linkable to a specific educator.
  - 1.10. **“Incident”** means the potentially unauthorized access to Data that could reasonably result in the unauthorized use, disclosure, or theft of Data or the compromise of the confidentiality, integrity, or availability of Data within the possession or control of Contractor or Subcontractor.
  - 1.11. **“Local Educational Agency” or “LEA”** means a charter school or school district that directs and controls public elementary or secondary education institutions, its board officers, employees, agents, and authorized volunteers.
  - 1.12. **“Metadata”** includes all information created manually or automatically to provide meaning or context to other data.
  - 1.13. **“Person”** shall have the same meaning as found in Administrative Rule R33-1-1.
  - 1.14. **“Procurement Item,” “Good,” or “Service”** means a supply, a service, construction, or technology that Contractor is required to deliver to USBE under this Contract.
  - 1.15. **“Response”** means the Contractor’s bid, proposal, quote, or any other document used by the Contractor to respond to USBE’s Solicitation.
  - 1.16. **“Solicitation”** means an invitation for bids, request for proposals, notice of a sole source procurement, request for statements of qualifications, request for information, or any document used to obtain bids, proposals, pricing, qualifications, or information for the purpose of entering into this Contract.

- 1.17. **“State Entity”** means the state or any department, division, office, bureau, agency, board, commission, or other instrumentality of the state.
- 1.18. **“State of Utah” or “State”** 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.
- 1.19. **“Student Personally Identifiable Information” or “PII”** has the same meaning as that found in U.C.A § 53E-9-301 and 34 § CFR 99.3, and includes both direct identifiers (such as a student’s or other family member’s name, address, student number, or biometric number) and indirect identifiers (such as a student’s date of birth, place of birth, or mother’s maiden name). Indirect identifiers that constitute PII also include Metadata or other information that, alone or in combination, is linked or linkable to a specific student that would allow a person who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.
- 1.20. **“Subcontractor”** means a person under contract with Contractor or another subcontractor to provide services or labor as provided herein or for design or construction, including a trade contractor or specialty contractor.
- 1.21. **“Targeted Advertising”** means advertising to a student or a student’s parent by Contractor if the advertisement is based on information or Data Contractor collected or received under this Contract.
- 1.22. **“Utah State Board of Education” or “USBE”** means the board, its elected or appointed officers, employees, agents, and authorized volunteers.
2. **GOVERNING LAW AND VENUE:** This Contract is governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract 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:** Contractor shall comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. If this Contract is funded by federal funds, either in whole or in part, then any federal regulation related to the federal funding, including 2 CFR Appendix II to Part 200, will supersede this Attachment A.
4. **PERMITS:** Contractor shall, at its own expense, obtain all permits, licenses, and approvals necessary for the performance of this Contract.
5. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT “STATUS VERIFICATION SYSTEM”:** Contractor shall comply with the requirements of the Status Verification System, also referred to as “E-verify,” as required by Utah Code § 13-47-2 et seq.
6. **DISCLOSURE OF POTENTIAL CONFLICT OF INTEREST:** Contractor shall disclose whether any of its officers or employees are current or former officers or employees of USBE or the State of Utah. Contractor shall disclose if a current USBE employee is hired during the term of the Contract (*e.g.*, dual employment).
7. **INDEPENDENT CONTRACTOR:** Contractor is an independent contractor and shall not act or hold itself out as an officer, employee, or agent of USBE, except as to the specific and limited agency created by the section “Agent Designation” below.
8. **PUBLICITY:** Contractor shall not use USBE’s name, logo, or endorsement (implied or actual) in any advertising, marketing, or publicity materials without prior written approval from USBE.
9. **ASSIGNMENT:** Any assignment or delegation by Contractor must be made through an amendment to the Contract.
10. **AMENDMENTS:** Amendments to this Contract, including execution of renewal options and changes to the scope, must be made by signed written agreement of both parties.
11. **INDEMNITY:** Contractor shall be fully liable for its actions and shall fully indemnify USBE and the

State of Utah from all claims arising out of Contractor's performance, without limitation, except for the portion of any claim that is the sole fault of USBE or the State of Utah. Any limitation of Contractor's liability shall not apply to injuries to persons, including death, or to damages to property.

**12. INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY:** Contractor represents all Procurement Items are free of all liens and encumbrances and shall indemnify USBE and the State of Utah from any claim brought against USBE or the State of Utah for infringement of a third party's intellectual property. Any limitation of Contractor's liability does not apply to this section.

**13. OWNERSHIP OF PROCUREMENT ITEM:**

**13.1.** Contractor conveys to USBE full ownership and title to all Procurement Items delivered under this Contract. Procurement Items shall be transferred to USBE as work for hire, unless otherwise agreed to in the Contract.

**13.2.** Unless included in the Contract, neither party has any claim to the intellectual property of the other party.

**14. CONTRACTOR'S INSURANCE RESPONSIBILITY:**

**14.1.** Contractor shall maintain insurance during this Contract. All insurance policies required by this Contract shall be issued by insurance companies with an AM Best rating of A-VIII or better.

**14.2.** The Contractor shall maintain the following insurance coverage:

**14.2.1.** 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 Utah's workers' compensation laws at the statutory limits required thereunder.

**14.2.2.** 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 shall be no less than \$1,000,000.00 per person per occurrence and \$3,000,000.00 aggregate.

**14.2.3.** If Contractor uses a vehicle in the performance of this Contract, Contractor shall maintain 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 the performance of Services under this Contract. The minimum liability limit must be \$1,000,000.00 per occurrence, combined single limit.

**14.2.4.** If Contractor has access to Data, Contractor shall maintain Protected Information Liability insurance covering all loss of Data and claims based on alleged violations of privacy rights through improper use or disclosure of protected information with minimum limits of \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate.

**14.2.5.** If Contractor stores, processes, transmits, Data, Contractor shall maintain Cyber Liability Insurance covering loss as a result of the compromise of the confidentiality, integrity, or availability of Data with minimum limits of \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate.

**14.3.** USBE shall be named as additional insured on all CGL policies required of Contractor. Coverage required of Contractor shall be primary over any insurance or self-insurance program carried by Contractor or USBE.

**14.4.** The above insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without the insurer giving at least 30 days' prior notice to Contractor. Contractor shall forward such notice to USBE's contact as listed in the Contract within seven days of Contractor's receipt of such notice.

**14.5.** All insurance policies secured or maintained by Contractor in relation to this Contract shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Contractor or USBE, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

- 14.6.** Contractor shall provide to USBE certificates evidencing Contractor's insurance coverage required in this Contract within seven days following the effective date. No later than 15 days before the expiration date of Contractor's coverage, Contractor shall deliver to USBE certificates of insurance evidencing renewals of coverage. At any other time during the term of this Contract, upon request by USBE, Contractor shall, within seven days following such request, provide evidence satisfactory to USBE of compliance with the provisions of this section.
- 14.7.** USBE reserves the right to require higher or lower insurance limits where warranted.
- 15. DEBARMENT/SUSPENSION:** Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, or declared ineligible by any governmental entity. Contractor shall notify USBE within 30 days if debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by any governmental entity during this Contract.
- 16. WORK ON USBE, LEA, or STATE OF UTAH PREMISES:** Contractor shall ensure that its personnel working on USBE, LEA, or State of Utah premises: (i) abide by all of the rules, regulations, and policies of the premises; (ii) remain in authorized areas; (iii) follow all instructions from USBE; and (iv) if required by USBE, pass a background check prior to entering the premises. USBE may remove any individual for a violation hereunder.
- 17. DELIVERY:** All deliveries under this Contract shall be F.O.B. destination with all transportation and handling charges paid by Contractor. Risk of loss or damage shall remain with Contractor until final inspection and acceptance by USBE.
- 18. ACCEPTANCE AND REJECTION:** USBE shall have 30 days after delivery of the Procurement Items to perform an inspection of the Procurement Items to determine if the Procurement Items conform to the standards specified in the Solicitation and this Contract prior to acceptance of the Procurement Items by USBE. If the Procurement Item is not rejected, it is presumed to be accepted.
- 18.1.** If Contractor delivers nonconforming Procurement Items, USBE may, at its option and at Contractor's expense: (i) return the Procurement Items for a full refund; (ii) require Contractor to promptly correct or replace the nonconforming Procurement Items; or (iii) obtain replacement Procurement Items from another source, subject to Contractor being responsible for any cover costs. Contractor shall not redeliver corrected or rejected Procurement Items without first, disclosing the former rejection or requirement for correction; and second, obtaining written consent from USBE to redeliver the corrected Procurement Items. Repair, replacement, and other correction and redelivery shall be subject to the terms of this Contract.
- 18.2.** If at any point a latent defect or fraud is identified, acceptance by USBE may be immediately nullified.
- 19. SUSPENSION OF WORK:** USBE may suspend or reinstate work under this Contract by written notice to Contractor.
- 20. INVOICE AND PAYMENT:** Contractor shall submit an invoice for all work performed under this Contract after performance has been made. Invoices shall be submitted promptly, but no later than 15 days after fiscal year end (June 30) for any work performed during the fiscal year. All final invoices must be submitted no later than 90 days from the termination of the Contract. USBE shall make payment within 60 days after it receives a correct invoice by a check sent through the mail, electronic funds transfer, or the State of Utah's purchasing card (major credit card). If payment has not been made 60 days after USBE receives a correct invoice, then Contractor may add interest in accordance with the Utah Prompt Payment Act. If the Contractor accepts final payment without a written protest to USBE within ten business days of receipt of final payment, Contractor releases USBE and the State of Utah from all claims for payment related to the Contract. USBE's payment for the Procurement Items shall not be deemed an acceptance of the Procurement Items as identified in the Contract and does not release any claims that USBE or the State of Utah may have against Contractor. Contractor shall not charge USBE electronic payment fees.
- 21. SALES TAX EXEMPTION:** USBE is a tax-exempt organization, and Contractor shall not include

sales tax in any request for payment.

**22. WARRANTY OF PROCUREMENT ITEMS:** Unless a longer warranty period is contained in the Contract, Contractor warrants for a period of one year from the date of acceptance that: (i) the Procurement Items perform according to all specific claims that Contractor made in its Response and all specifications agreed to in writing; (ii) the Procurement Items are suitable for the ordinary purposes for which such Procurement Items are used; (iii) the Procurement Items are suitable for any special purposes identified in the Contractor's Response; (iv) the Procurement Items are designed and manufactured in a commercially reasonable manner; (v) the Procurement Items are properly designed and manufactured and in all other respects create no harm to persons or property; and (vi) the Procurement Items are free of defects. Unless otherwise specified, all Procurement Items provided shall be new and unused of the latest model or design.

**23. DEFAULT AND REMEDIES:**

**23.1. Default:** Any of the following events may constitute cause for USBE to declare Contractor in default of this Contract: (i) Contractor's non-performance of its contractual requirements or obligations under this Contract; or (ii) Contractor's material breach of any term or condition of this Contract. Termination or expiration of this Contract shall not extinguish or prejudice USBE's right to enforce this Contract with respect to any default of this Contract or defect in the Procurement Items that has not been cured.

**23.2. Opportunity to Cure:** If the Contractor is in default for non-performance or breach, USBE may provide written notice, formal or informal, of default, which gives the Contractor ten days to cure the default. Contractor shall repair, replace, or reimburse USBE, at USBE's discretion, the cost to cover Procurement Items at no charge to USBE. Time allowed for cure will not diminish or eliminate Contractor's liability for damages.

**23.3. Additional Remedies:** If the default remains after Contractor has been provided the opportunity to cure, USBE may: (i) exercise any remedy provided by law or equity; (ii) terminate this Contract; (iii) impose liquidated damages, if liquidated damages are listed in this Contract; (iv) debar/suspend Contractor from receiving future contracts from USBE or the State of Utah; and (v) demand a full refund of any payment USBE has made to Contractor under this Contract for Procurement Items that do not conform to this Contract.

**24. TERMINATION:**

**24.1. Termination for Cause:** This Contract may be terminated for cause by either party. A party in violation shall be given 10 days' written notice to correct and cease the violations, after which this Contract may be terminated immediately.

**24.2. Termination for Convenience:** This Contract may be terminated without cause (for convenience) by USBE upon 30 days' written notice to Contractor.

**24.3. Termination by Mutual Agreement:** USBE and Contractor may terminate this Contract, in whole or in part, at any time, by written amendment.

**24.4. Termination For Non-appropriation of Funds:** Upon 30 days' written notice to Contractor, this Contract may be amended or terminated by USBE if USBE reasonably determines: (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 Contract; or (ii) a change in available funds affects USBE's ability to perform under this Contract.

**24.5. Contract Closeout:** USBE shall pay Contractor for all Procurement Items ordered prior to termination of this Contract and accepted by USBE. USBE's exercise of its right to terminate this Contract shall not relieve the Contractor of any liability to USBE for any damages or claims arising under this Contract. USBE shall not be liable for any penalties or liquidated damages that accrue after the effective date of termination.

**25. FORCE MAJEURE:** Neither party shall be held responsible for unavoidable delay or default caused by circumstances, including fire, riot, an act of God, or war, that are beyond that party's reasonable control.

USBE may terminate this Contract after determining such delay or default will prevent successful performance of this Contract.

26. **WAIVER:** A waiver of any right under the Contract shall not be construed as a subsequent waiver of that right or as a waiver of any other right.
27. **DISPUTE RESOLUTION:** Prior to either party filing a judicial action, the parties agree to participate in the mediation of any dispute. USBE and Contractor will mutually agree upon a mediator, or if a mutually agreeable mediator is not selected, USBE will select an independent third party, who shall be a Utah Courts certified mediator, to assist in the resolution of a dispute. USBE and Contractor agree to cooperate in good faith in mediation proceedings.
28. **ATTORNEY'S FEES:** The prevailing party in a judicial action to enforce rights under this Contract shall be entitled to its costs and expenses, including reasonable attorney's fees.
29. **CONTRACT INFORMATION:** During the duration of this Contract, USBE is required to make available contact information of Contractor to the State of Utah Department of Workforce Services pursuant to Utah Code § 35A-2-203. The State of Utah Department of Workforce Services may contact Contractor during the duration of this Contract to inquire about Contractor's job vacancies within the State of Utah.
30. **TRAVEL COSTS:** Unless otherwise agreed, all travel costs must be pre-approved by USBE and may be booked by USBE at State of Utah per diem rates.
31. **SURVIVAL OF TERMS:** Termination or expiration of this Contract shall not diminish USBE's right to enforce any term of this Contract that by its nature would continue beyond termination, cancellation, or expiration.
32. **SEVERABILITY:** The invalidity or unenforceability of any term of this Contract shall not affect the validity or enforceability of any other term of this Contract.
33. **ENTIRE AGREEMENT:** This Contract 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.
34. **RECORDS ADMINISTRATION, RIGHT TO AUDIT, PERFORMANCE MONITORING:**
  - 34.1. **Records:** Contractor shall maintain records necessary to properly account for Contractor's compliance, performance, and the payments made by USBE to Contractor. These records shall be retained by Contractor for six years after final payment, or until all audits initiated within the six years have been completed, whichever is later.
  - 34.2. **Audit:** Contractor agrees to provide, at no additional cost, the State of Utah, federal program staff, USBE staff, and their designees access to questionnaires and internal and external audit reports. This includes the right to audit all such records and Contractor's sites and environments 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 to audit records and interview staff in any subcontract related to performance of this Contract.
  - 34.3. **Performance Monitoring:** USBE reserves the right to monitor Contractor's performance, including Subcontractors, and may perform checks and reviews. Evaluation results may be made available to Contractor upon request.
35. **PUBLIC INFORMATION:** This Contract and all related solicitation documents, purchase orders, pricing documents, and invoices are 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.
36. **CONFIDENTIALITY:** Confidential Information obtained by the Contractor may only be used for the purposes identified in this contract, unless prior written consent has been obtained in advance from USBE. Contractor shall notify USBE within one calendar day of any potential or actual misuse or unauthorized disclosure of confidential information.
37. **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.

### **38. GENERAL DATA PROVISIONS:**

**38.1. Data Ownership:** USBE retains all rights, title, and interest, including all intellectual property and proprietary rights, in and to system data, Data, and all related data and content.

**38.2. Agent Designation:** Contractor is hereby designated as an agent of USBE pursuant to FERPA for the limited purpose of receiving PII to fulfill the purposes of this contract. Contractor may use the PII as provided herein but may not transfer or otherwise convey PII to any other Person.

**38.2.1. Compliance With Data Privacy Laws:** Contractor, as USBE's agent, shall comply with all applicable data privacy laws, regulations, code, and rules including FERPA 20 U.S.C. § 1232g et seq. and 34 C.F.R. Part 99 et seq., the Individuals with Disabilities Education Act, 30 U.S.C. § 1400 et seq. and 34 C.F.R. Part 300, and the Utah Student Privacy and Data Protection Act, Utah Code § 53E-9 101 et seq.

**38.3. Return Or Destruction Of Data:** Contractor shall erase, destroy, and render unreadable all Data from all non-USBE computer systems and backups, and certify in writing that these actions have been completed within 30 days of the expiration or termination of this Contract or within seven days of the request of USBE, whichever shall come first, unless USBE provides Contractor with a written directive. USBE's written directive may require that certain Data be preserved in accordance with applicable law; or require that Contractor return the Data through a complete and secure (*i.e.*, encrypted and appropriately authenticated) download file of all Data). Data returned under this subsection must either be in the format as originally provided, in a format that is readily usable by USBE, or formatted in a way that it can be used. The costs for returning documents and data to USBE are included in this Contract.

#### **38.4. Access To Data:**

**38.4.1.** Contractor shall limit access to Data to Authorized Persons only and shall require a non-disclosure agreement be signed by all Authorized Persons prior to being granted access to Data.

**38.4.2.** Contractor shall maintain past and current lists of all Authorized Persons, maintain each non-disclosure agreement, and shall permit inspection of the same by USBE upon request.

**38.4.3.** Contractor shall maintain an audit trail for the duration of this Contract, which reflects the granting and revoking of access privileges to Authorized Persons. A copy of this audit trail may be requested by USBE from Contractor at any time and shall be provided within 10 days of the USBE request.

**38.4.4.** Contractor shall have strong access controls in place. Contractor shall disable and/or immediately delete unused or terminated Authorized Persons' accounts and shall periodically assess account inactivity for potential stale accounts.

**38.4.5.** Contractor shall provide annual mandatory privacy and security awareness training for all Authorized Persons, maintain past and current lists of Authorized Persons that have completed training, and permit inspection of the same by USBE upon request.

**38.4.6.** USBE retains the right, at its sole discretion, to revoke access to any individual, group, or entity authorized by Contractor. Thereupon, Contractor shall revoke access and provide USBE written confirmation of the date that access was removed.

#### **38.5. Use and Disclosure of Data:**

**38.5.1.** Contractor's collection, or use of Data shall be limited to that necessary and directly related to the Contractor's responsibilities set forth in the Contract.

**38.5.2.** Contractor shall share Data with a Person outside of this Contract only if provided for in writing in the Scope of Work, with prior written consent of USBE, or with law enforcement agencies or individuals as authorized by law or court order. If Contractor



receives a request for Data from law enforcement or a court order, Contractor shall notify USBE of the request within two business days, as permitted by law.

**38.5.3.** If Contractor seeks to publicly release Data, Contractor must aggregate the Data by totaling the Data and reporting it at the group, cohort, school, school district, region, or state level. Contractor shall, upon request of USBE, provide USBE with a document that lists the steps and methods the Contractor shall use to de-identify the information. Any aggregate data that is publicly released without being redacted using the methods in this section shall be considered a Breach. The following methods shall be used on any aggregated reports:

- (a). Aggregate data shall be reported publicly only if there is a sufficient number of individuals represented in any demographic or subgroup so that an individual cannot be identified.
- (b). Aggregated reports shall be redacted using complementary suppression methods that remove the risk of Data being identifiable using simple mathematics or formulas.
- (c). Contractor shall not use Data for any secondary use, including Targeted Advertising, except under the following conditions:
  - (i). For adaptive learning or customized student learning purposes.
  - (ii). To market an educational application or product to a parent or legal guardian of a student if Contractor did not use Data, shared by or collected per this Contract, to market the educational application or product.
- (d). To use a recommendation engine to recommend to a student (i) content that relates to learning or employment, within the third-party contractor's application, if the recommendation is not motivated by payment or other consideration from another party; or (ii) services that relate to learning or employment, within the third-party contractor's application, if the recommendation is not motivated by payment or other consideration from another party;
- (e). To respond to a student request for information or feedback, if the content of the response is not motivated by payment or other consideration from another party.
- (f). To use Data to allow or improve operability and functionality of the third-party contractor's application.

**38.5.4.** Contractor shall not sell or otherwise monetize Data except Data transferred through the purchase of, merger with, or otherwise acquisition of Contractor provided that all parties remain in compliance with this Contract.

**38.6. Unauthorized disclosure of Data.** Unauthorized disclosure of Data by Contractor or Subcontractor for any reason may be cause for legal action by third parties against Contractor, USBE, or their respective agents. Contractor shall indemnify, save, and hold harmless USBE, its employees, and agents against any and all claims, damages, liability, and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees pursuant to this Contract. Notwithstanding any other provision of this Contract, Contractor shall be liable to USBE for all direct, consequential, and incidental damages arising from an Incident caused by Contractor or its Subcontractors.

**38.7. Data Transmission.** Contractor shall ensure all transmission or exchange of Data takes place via secure means (ex. HTTPS or FTPS).

**38.8. Data Storage.** Contractor shall store and maintain all Data in data centers located only within the United States. Contractor shall not use, store or process Data on any unencrypted portable or laptop computing device or any portable storage medium, except for devices that are used and kept only at Contractor's United States data centers, unless such storage medium is part of

the Contractor's designated backup and recovery process.

**38.9. Access.** Contractor shall permit its employees and Subcontractors to access Data remotely only via a secured manner, such as Virtual Private Networks (VPN), and only for authorized administrative, or technical support tasks.

**38.10. Password Protection.** Contractor shall enforce strong authentication protections on all devices, systems, and networks with access to or that store Data.

### **38.11. INCIDENT RESPONSE**

**38.11.1.** In the event of an Incident which results in a Data Breach, Contractor shall notify USBE of the Breach within 24 hours in writing with sufficient information to allow USBE to meet any obligations to report such a Breach under applicable data protection laws and regulations and shall cooperate with USBE regarding remediation and the necessity to involve law enforcement, if required. Such notification shall at a minimum:

- (a). Describe the nature of the Breach and the categories and numbers of Data concerned;
- (b). Identify the name of the Contractor's data protection officer or other relevant contact person(s) from whom more information about the Breach may be obtained;
- (c). Describe the likely consequences of the Breach; and
- (d). Describe the measures taken or proposed to be taken to address the Breach.
- (e). Contractor shall comply with all applicable laws that require the notification of individuals in the event of a Breach or other events requiring notification of individuals or the public. All communication shall be coordinated with USBE. Contractor is responsible for all notification and remedial costs and damages.

## **39. COOPERATIVE TERMS**

**39.1. DEFINITIONS: "Eligible User(s)"** means those authorized to use this Cooperative Contract and is limited to Local Education Agencies, which includes school districts, charter schools, Utah Schools for the Deaf and the Blind, and any other entity that the Utah State Board of Education has authority over.

**39.2. INVOICING:** Contractor will submit invoices within thirty (30) days after the delivery date of the Procurement Item(s) to the Eligible User. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to this Contract. The prices paid by the Eligible User will be those prices listed in this Contract, unless Contractor offers a discount at the time of the invoice. It is Contractor's obligation to provide correct and accurate invoicing. The Eligible User has the right to adjust or return any invoice reflecting incorrect pricing.

**39.3. 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 an Eligible User, 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 Eligible User within ten (10) business days of receipt of final payment, shall release the Eligible User from all claims and all liability to the Contractor. An Eligible User'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 Eligible User may have against Contractor. Contractor shall not charge Eligible Users electronic payment fees of any kind.

**39.4. LARGE VOLUME DISCOUNT PRICING:** Eligible Users may seek to obtain additional volume discount pricing for large orders provided Contractor is willing to offer additional discounts for large volume orders. No amendment to this Contract is necessary for Contractor to offer discount pricing to an Eligible User for large volume purchases.

- 39.5. ELIGIBLE USER PARTICIPATION:** Participation under this Contract by Eligible Users is voluntarily determined by each Eligible User. Contractor agrees to supply each Eligible User with Procurement Items based upon the same terms, conditions, and prices of this Contract.
- 39.6. INDIVIDUAL CUSTOMERS:** Each Eligible User that purchases Procurement Items from this Contract will be treated as individual customers. Each Eligible User will be responsible to follow the terms and conditions of this Contract. Contractor agrees that each Eligible User will be responsible for their own charges, fees, and liabilities. Contractor shall apply the charges to each Eligible User individually. USBE is not responsible for any unpaid invoice.
- 39.7. ORDERING:** Orders will be placed by the using Eligible User directly with Contractor. All orders will be shipped promptly in accordance with the terms of this Contract.
- 39.8. END USER AGREEMENTS:** If Eligible Users are required by Contractor to sign an End User Agreement before participating in this Contract, then a copy of the End User Agreement must be attached to this Contract as an attachment. The term of the End User Agreement shall not exceed the term of this Contract, and the End User Agreement will automatically terminate upon the completion or termination of this Contract. An End User Agreement must reference this Contract, and it may not be amended or changed unless approved in writing by USBE. Eligible Users will not be responsible or obligated for any early termination fees if the End User Agreement terminates as a result of completion or termination of this Contract.
- 39.9. REPORTS:** Contractor agrees to provide an annual utilization report, reflecting number of licenses in each category to Eligible Users during the period. The report will show the dollar volume of purchases by each Eligible User. Reports are due by December 31 of each year to the program contact.

**ATTACHMENT B:  
UTAH STATE BOARD OF EDUCATION  
SUPPLEMENTAL INFORMATION TECHNOLOGY TERMS AND CONDITIONS**

These supplemental terms and conditions are to be incorporated in a Contract of Information Technology Procurement Items and must be accompanied by the Utah State Board of Education (USBE) 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:**

- 1.1. **“Access to Secure USBE or LEA Facilities, Data, or Technology”** means Contractor will (a) enter upon secure premises controlled, held, leased, or occupied by USBE or LEA; (b) maintain, develop, or have access to any deployed hardware, software, firmware, or any other technology, that is in use by USBE or LEA; or (c) have access to or receive any Data or confidential information.
- 1.2. **“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 USBE
- 1.3. **“Contract Period”** means the term of this Contract, as set forth on the Contract Signature Page(s).
- 1.4. **“Custom Deliverables”** means the product that Contractor is required to design, develop, or customize and deliver to USBE 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 USBE. 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.
- 1.5. **“Federal Criminal Background Check”** means a fingerprint-based, nationwide background check conducted and processed by the FBI.
- 1.6. **“Good”** means any deliverable not classified as a Custom Deliverable or Service.
- 1.7. **“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.
- 1.8. **“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.

**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 USBE Facilities, USBE Data, or Technology.

2.1. USBE will provide Contractor with forms which must be filled out by Contractor and returned to USBE. Contractor or the applicable employee shall provide USBE with sufficient personal information (at Contractor's expense) so that a Federal Criminal Background Check may be completed by USBE, at USBE's expense.

2.2. Each employee of Contractor or a Subcontractor who will have Access to Secure USBE or

LEA Facilities, Data, or Technology must be fingerprinted by USBE or 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. USBE will conduct a Federal Criminal Background Check based upon the fingerprints and personal information provided and use this same information to complete a name check in the Utah Criminal Justice Information System (UCJIS) at least every two years.

**2.3.** USBE may revoke Access to Secure USBE or LEA Facilities, Data, or Technology granted in the event of any negative results.

**2.4.** Contractor and the employee or subcontractor shall immediately notify USBE if an arrest or conviction for a felony or misdemeanor of any person that has Access to Secure USBE or LEA Facilities, Data or Technology occurs during the Contract Period. USBE will determine in its discretion if such person's Access to Secure USBE or LEA Facilities, 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. ADDITIONAL INTELLECTUAL PROPERTY INDEMNIFICATION:** Contractor warrants and represents it has full ownership and clear title free of all liens and encumbrances to any Good or Custom Deliverable delivered under this contract. Contractor also warrants that any Good, Custom Deliverable, or Service furnished by Contractor under this Contract, including its use by USBE in unaltered form, will not infringe any copyrights, patents, trade secrets, or other proprietary rights. Contractor will release, indemnify, and hold USBE 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 USBE 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, USBE 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.

**4. HARDWARE WARRANTY:** IN ADDITION TO THE WARRANTY PROVISIONS OF THE USBE STANDARD TERMS AND CONDITIONS, WITH RESPECT TO ANY HARDWARE DELIVERED PURSUANT TO THIS CONTRACT, PRODUCT LIABILITY DISCLAIMERS AND/OR WARRANTY DISCLAIMERS FROM CONTRACTOR OR ITS SUPPLIERS ARE REJECTED.

**5. SOFTWARE WARRANTY:** CONTRACTOR WARRANTS FOR A PERIOD OF **90 DAYS** FROM THE DATE OF ACCEPTANCE THAT THE SOFTWARE PORTIONS OF THE GOODS AND CUSTOM DELIVERABLES THAT CONTRACTOR DIRECTLY OR INDIRECTLY PROVIDES WILL MEET THE TERMS OF THE WARRANTY PROVISIONS OF THE USBE STANDARD TERMS AND CONDITIONS. IN ADDITION TO THE WARRANTY PROVISIONS OF THE USBE STANDARD TERMS AND CONDITIONS, CONTRACTOR SHALL PROVIDE USBE WITH BUG FIXES, INCLUDING INFORMING USBE OF ANY KNOWN SOFTWARE BUGS OR SOFTWARE DEFECTS THAT MAY AFFECT USBE'S USE OF THE SOFTWARE.

**6. SOFTWARE AND HARDWARE WARRANTY REMEDIES:** Upon breach of warranty, Contractor will repair or replace (at no charge to USBE) 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 USBE Standard Terms and Conditions or by law or equity.

**7. UPDATES AND UPGRADES:** Contractor grants to USBE 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. USBE 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.

- 8. BUG FIXING AND REMOTE DIAGNOSTICS:** Contractor shall use commercially reasonable efforts to provide work-around solutions or patches to reported software problems. With USBE's prior written authorization, Contractor may perform remote diagnostics to work on reported problems. If USBE declines remote diagnostics, Contractor and USBE may agree to on-site technical support, subject to the terms of the Contract.
- 9. TECHNICAL SUPPORT AND MAINTENANCE:** If technical support and maintenance is required by the Contract, Contractor will use commercially reasonable efforts to respond to USBE in a reasonable time, and in all events, in accordance with the specific timeframes detailed in the Contract, when USBE makes technical support or maintenance requests.
- 10. ELECTRONIC DELIVERY:** Contractor may electronically deliver any Good or Custom Deliverable to USBE or provide any Good and Custom Deliverable for download from the Internet if pre-approved in writing by USBE. 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.
- 11. SECURE PROTECTION AND HANDLING OF STATE DATA:** If Contractor is given access to Data, the protection of 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 Data. Contractor shall safeguard the confidentiality, integrity, and availability of the Data and comply with the conditions outlined below. USBE reserves the right to verify Contractor's adherence to the following conditions to ensure they are met.
  - 11.1. Change of Circumstances:** Contractor shall notify USBE of material changes to Contractor's organization (e.g., management, sale, merger, etc.), infrastructure, system, software licensing, security or privacy controls, IT security organization, or loss prevention controls that may impact the security of Data. Contractor shall notify USBE prior to such changes being implemented.
  - 11.2. 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 using methods that are at least as good as or better than that established in the latest version of the National Institute of Standards and Technology (NIST) "Framework for Improving Critical Infrastructure Cybersecurity," also referred to as NIST Cybersecurity Framework (<https://www.nist.gov/cyberframework>).
  - 11.3. Data Security.** Contractor shall comply with and protect and maintain the security of Data using methods that are at least as good as or better than that established in the latest version of NIST "Framework for Improving Critical Infrastructure Cybersecurity"/ NIST Cybersecurity Framework (<http://nist.gov/cyberframework>). These security measures include 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). USBE reserves the right to determine if Contractor's level of protection meets USBE's security requirements.
  - 11.4. Data Transmission:** Contractor shall ensure all transmission or exchange of Data, including system application data with USBE and/or any other parties expressly designated by USBE, shall take place via secure means (ex. HTTPS or FTPS).
  - 11.5. Data Encryption:** Contractor shall store all Data provided to Contractor, as well as any backups made of that data, in encrypted form using industry standard and currently supported cryptographic protocols and include all data as part of a designated backup and recovery process
- 12. SERVICES SHALL BE PERFORMED WITHIN UNITED STATES:** ALL OF THE SERVICES RELATED TO DATA SHALL BE PERFORMED WITHIN THE BORDERS AND JURISDICTION OF THE UNITED STATES.
- 13. INCIDENT RESPONSE:** In addition to the Incident Response provisions of USBE's Standard Terms and Conditions, the following terms apply:

**13.1. Remediation Plan.** Contractor shall produce a written remediation plan that includes information about the cause and extent of the Incident, and the actions Contractor will take to remediate the Incident and reduce the risk of incurring a similar type of Incident in the future. Contractor shall present its analysis and remediation plan to USBE within 10 calendar days of notifying USBE of an Incident. USBE reserves the right to adjust this plan, in its sole discretion. If Contractor cannot produce its analysis and plan within the allotted time, USBE, in its sole discretion, may perform such analysis and produce a remediation plan, and Contractor shall reimburse USBE for the reasonable costs thereof.

**13.2. Breach:** In the event of the Breach, Contractor shall promptly implement necessary remedial measures and document responsive actions taken related to the Breach including any post-incident review of events and actions taken to make changes in business practices in relation to the Breach.

Contractor shall provide USBE or its designated representatives with access to records, systems, processes, and locations relevant to the performance of the Contract seven days a week, 24 hours a day, for the purpose of evaluating, mitigating, or resolving the Breach.

In addition to the notification requirements measures required in the General Terms and Conditions, Contractor or Subcontractor shall cooperate with USBE in identifying the individuals whose personally identifiable data has been placed at risk by the Breach and cooperate with and at the direction of USBE in notifying the individuals as required by law.

**14. OWNERSHIP IN CUSTOM DELIVERABLES:** Contractor warrants, represents and conveys full ownership, clear title free of all liens and encumbrances to any Custom Deliverable to USBE. All intellectual property rights, title and interest in the Custom Deliverables shall transfer to USBE, subject to the following:

**14.1.** Contractor has received payment for the Custom Deliverables;

**14.2.** Each party will retain all rights to Background IP, even if embedded in the Custom Deliverables;

**14.3.** Custom Deliverables, excluding Contractor's Background IP may not be marketed or distributed without written approval by USBE; and

**14.4.** Contractor shall grant to USBE a perpetual, irrevocable, royalty-free license to use Contractor's Background IP as defined above, solely for USBE to use with the Custom Deliverables.

**15. 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, USBE, LEA, 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.

**16. 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 USBE. 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.

**17. 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.

**18. 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.



## 1. Introduction and Background

The Utah State Board of Education (USBE) issued a Request for Proposals (RFP) seeking a qualified vendor to provide a comprehensive surplus service for K-12 textbook for LEAs per Utah Code Annotated § 53A-12-207 Disposal of Textbooks and Utah Administrative Rule R277-433-3 Disposal of Textbooks in Public Schools.

LEAs (Local education agency or "LEA" means: (a) a school district; (b) a charter school; or (c) the Utah Schools for the Deaf and the Blind) within the state of Utah acquire millions of dollars of new and used textbooks annually. These books are purchased to align with new curriculum or state core standards, to match student growth, and to replace those textbooks that are worn out or are not otherwise needed. Historically the process of disposing these textbooks at the end of their life in a LEA is a task that has proved difficult.

Many factors contribute to this, but the most critical issues for consideration are: adherence to State Laws and Rules, increasing revenues on surplus sales, motivating employees to process textbooks timely to increase potential value, and properly disposing of those textbooks which have no market value.

See the Scope of Work for further details. The Scope of Work is subject to change based on identified need(s) and mutual agreement between the parties. Further details are provided below.

## 2. Scope of Work and Project Deliverables

### **Vendor is expected to perform or provide the following tasks for a participating LEA:**

The district or school will contact Mark My Words (Contractor) for an appointment after the required internal and external notifications have not removed the textbook from surplus status. If the entity would like Contractor to directly purchase items from their location and remove it at Contractor's cost, they will provide a list of ISBN's per an Excel template that Contractor will provide on request of the items they have ready for Contractor to consider for purchase.

Contractor will respond within one (1) business day to attempt to work out details of purchasing books with purchase value. Each school or district will notify Contractor in general, or at each pickup request, whether they want to receive check or credit voucher for any material with purchase value. The school staff will need to inform Contractor whether they want a check for purchased materials or a credit voucher usable for future book purchases (10% higher value than cash payments). If only a small amount is deemed to have purchase value, Contractor will send a list of those eligible for purchase with approximate pricing depending on condition. School staff can box or palletize them, and then Contractor can send shipping labels for these to be shipped to Contractor's facility. Within two (2) weeks of arrival at Contractor's facility, a check for the books, based on condition at check-in, will be mailed to the school or district, as noted by the entity. If significant materials are available for purchase, Contractor will send a staff member to sort, box up, and ship the materials eligible for purchase. If an expected purchase price exceeds the price of freight, Contractor will offer to take everything from the entity and deduct the freight cost from the purchase price offered.

Once the purchase is done and school has already donated any books to patrons of the LEA or local charities, as desired and put out in this request, books with no purchase value can be shipped to Contractor at the entity's cost. The schools can drop the materials off directly to Contractor's warehouse at 1104 W Geneva Dr., Tempe, AZ 85282-3431, or they can arrange for freight at the school or district's expense. If schools need help in arranging freight, Contractor will send the school or district a bill for the freight, plus an additional price of \$100 per shipment for handling the setup of the shipment. The entity will have to ensure the shipper gets a weight ticket for them for the shipment if the weight of books removed is required by the entity.

At Contractor's facility, books with direct purchase value based on Contractor's proprietary purchasing guide are evaluated and sorted separately from those without purchase value. The total price paid is calculated, and a check or credit voucher toward future purchases of materials from Contractor (additional 10% beyond the purchase value offered by check payment) will be provided within two (2) weeks of service. The invoice for any services provided will be provided within six (6) weeks of service, depending on how quickly Contractor is billed by the freight company. Statements for these purchases can be provided on request upon sending of the check or within thirty (30) days afterward, only for items with direct purchase value. These will include ISBN, title, buy back price per item, quantity, school site purchased from, and total dollar amount.

Books that are not brought into Contractor's inventory are donated to local and national charities (Books for Africa, Treasures for Teachers, and others) or properly recycled with a local paper recycler. Contractor recycles only what is deemed unusable by Contractor or various charities with whom Contractor partners, including Books for Africa, Treasures for Teachers, and other similar charities. The only materials not recycled are non-paper, non-recyclable materials like CD's, transparencies, manipulatives, etc. Contractor tries to donate as many of these materials as possible rather than disposing of them. Contractor will provide reports that detail number of tons picked up, and approximately what percentage were donated or recycled. Contractor will only be able to provide exact tonnage if weight tickets are requested by the entity. This report will not detail ISBN's and quantities donated and recycled. Contractor can also provide a report on items purchased, including site name, date of purchase, ISBN, quantity, condition, price each, and total price paid. Weight tickets will not be provided for shipments initiated by Contractor unless requested by the school/district prior to pick up and will incur a \$40 fee per weight ticket and will be billed with the shipping fee. Contractor can also provide general details about non-purchased materials removed upon request or notation in the contract. This will be a general description of the material (three (3) tons of books) removed. Any more specific reporting will incur an additional fee.

### **3. Requirements**

LEA's will be responsible for providing information about books available for purchase or pickup, and Contractor will be responsible for responding in a timely manner to schedule and perform the pickups. Contractor will provide a template on request for providing details on the items available for purchase.

LEA's are responsible for offering books to schools per the State's guidelines and for contacting Contractor with a list of ISBN and quantities for consideration for purchase. Contractor will determine what will be purchased, offer a quote, and facilitate retrieval of books at Contractor's expense.

LEA's are responsible for determining what to do with the material left post-purchase, whether to send to Contractor or donate it locally. If that material is being sent to Contractor, the LEA is responsible for paying for delivery/shipping. Contractor will arrange shipping, if desired, for \$100 per shipment, cost will be billed to the LEA. If the LEA wants weight reporting from shipments, they must request verified weight tickets with the shipment, at the LEA's cost.

LEA's are responsible for letting Contractor know whether they want credit toward purchases of books (an extra 10%) or a check for the purchased items. Contractor will provide payment within two (2) weeks of receipt and check-in of the material purchased at Contractor's facility.

#### **4. Contract Award and Budget**

The contract is for a term of five (5) years. However, Mark My Words, USBE and Eligible Users reserve the right to terminate the contract at any time in accordance with the provisions set forth in the USBE Standard Terms and Conditions.

The fees are outlined in scope of work. The only fees incurred would be shipping fees, if non-purchased material is being shipped to Mark My Word's facility, and the weight ticket fees, if the LEA desires that documentation.

#### **5. Invoicing**

Contractor shall submit invoices electronically to the individual Eligible Users for all goods and/or services provided in accordance with the terms on the agreement. Invoices will not be considered for payment if submitted by another method.

Invoices shall include the following:

- a) Contractor Name
- b) Uniquely identifiable invoice number
- c) Invoice date
- d) Contract Number
- e) Recipient Entity's contact information (phone number and email address)
- f) Contractor's authorized signature
- g) Date(s) goods/services were provided
- h) Description of goods and/or services for which payment is requested
- i) Dollar amount requested.

Contractor will submit invoices within thirty (30) days after the delivery date of the goods/services to the Eligible User. The contract number shall be listed on any invoices, freight tickets, and correspondence relating to the agreement. The prices paid by the Eligible User will be those prices listed in this agreement unless Contractor offers a discount at the time of the invoice. It is Contractor's obligation to provide correct and accurate invoicing. The Eligible User has the right to adjust or return any invoice reflecting incorrect pricing.

Invoices submitted by Contractor without the required information will not be paid and shall be returned to the Contractor for completion.

All payments made to the Contractor under the agreement shall be made in the name of the Contractor, as it appears in the agreement. All payments will be sent to the Contractor to the address for the Contractor as it appears in the agreement. Changes to the information identified in this section must be requested in writing.

Contractor may be required to repay the Eligible User if, during or after the contract period, an audit or other review determines that payments made by the Eligible User to Contractor were incorrectly paid or were based on incorrect information received from the Contractor. USBE and Eligible Users reserve the right to withhold any or all subsequent payments to the Contractor until the incorrect amounts paid have been fully recovered.

## 6. Project Management

Any changes or deviation from the agreement must be agreed to in writing through a proper amendment to the agreement. The parties identified below are the points of contact for the agreement for the purpose of amending the contract.

Program Manager: Jared Gardner, Granite School District Purchasing & Warehouse Director, [jbgardner@graniteschools.org](mailto:jbgardner@graniteschools.org)

Contract Manager: Adam Herd, Director of Purchasing, [adam.herd@schools.utah.gov](mailto:adam.herd@schools.utah.gov), 801-538-7879

Contractor:

Mark My Words LLC

Susan Walker, Owner, [susan@walkerbookstore.com](mailto:susan@walkerbookstore.com), 1-866-722-7833 ext. 711

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