

DIXIE STATE UNIVERSITY

PURCHASE ORDER TERMS AND CONDITIONS

ACCEPTANCE OF THIS PURCHASE ORDER BINDS CONTRACTOR TO ALL THESE TERMS AND CONDITIONS AND ALL THE TERMS, CONDITIONS, AND PROVISIONS INCLUDED IN ANY SOLICITATION OFFERED BY DSU RELATING TO THIS PURCHASE ORDER.

1. **DEFINITIONS:** The following terms shall have the meanings set forth as follows:
 - a) **“Confidential Information”** means information that is deemed as confidential under applicable state and federal laws, including personal information. DSU 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) **“Contract”** means the Purchase Order, including these Terms and Conditions.
 - c) **“Contractor”** means the individual or entity delivering the good or service identified in this Purchase Order. The term “Contractor” shall include Contractor’s agents, officers, employees, and partners.
 - d) **“Goods”** means all types of tangible personal property, including but not limited to materials, supplies, and equipment that Contractor is required to deliver to DSU under this Purchase Order.
 - e) **“Response”** means the Contractor’s bid, proposals, quote, or any other document used by the Contractor to respond to DSU’s solicitation.
 - f) **“Dixie State University” or “DSU”** means the entity, including its departments, divisions, offices, other organizations, employees, or agents within Dixie State University identified on the Purchase Order.
 - g) **“Solicitation”** means any document used to obtain bids, proposals, pricing, qualifications, or information for the purpose of entering into this Purchase Order.
 - h) **“Subcontractor”** 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. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in the Dixie State University Purchasing Policies and Procedures, and all applicable sections of the Utah Procurement Code, Title 63G, Chapter 6, Utah Code Annotated, 1953, as amended and all related statutes, regulations, and rules which permit DSU to purchase certain specified supplies and services and other approved purchases for DSU.
3. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or a breach thereof. Venue shall be in the Fifth Judicial District Court for Washington County.
4. **LAWS AND REGULATIONS:** The Contractor and any and all supplies, services, and equipment furnished will comply fully with all applicable Federal and State laws and regulations.
5. **RECORDS ADMINISTRATION:** The Contractor shall maintain or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records shall be retained by the Contractor for at least six (6) years after the contract terminates, or until all audits initiated within the six years have been completed, whichever is later. The Contractor agrees to allow DSU, the Utah Board of Regents, State and/or Federal auditors, and DSU staff, access to all the records relating to this contract for audit and inspection and monitoring of services. Such access will be during normal business hours or by appointment.
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 as a result of a Request for Proposal process, and to sole source procurements that are included within a Request for Proposal. It does not apply to Invitation for Bids or to the Multi-Step Process.
 - a. 5.1 Status Verification System.
 1. 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.

2. 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.
3. Contractor's failure to comply with this section will be considered a material breach of this Purchase Order.
4. Manually or electronically signing the Proposal is deemed the Contractor's certification of compliance with all provisions of this employment status verification certification required by all applicable status verification laws.
7. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of DSU, unless disclosure regarding such has been made to DSU and any necessary management plan is in place and approved pursuant to DSU policy.
8. **CONTRACTOR IS AN INDEPENDENT CONTRACTOR:** The Contractor shall be an independent Contractor, and as such, shall have no authorization, express or implied, to bind DSU to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for DSU, except as herein expressly set forth in the Purchase Order, these terms and conditions, or solicitation documents. Compensation stated herein shall be the total amount payable to the Contractor by DSU. The Contractor shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from DSU for these contract services. Persons employed by DSU and acting under the direction of DSU shall not be deemed to be employees or agents of the Contractor.
9. **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, DSU and all its officers, agents, volunteers, and employees from and against any and all losses, actions, damages, injury, liability, suits, costs, and proceedings arising out of Contractor's performance of this contract caused in whole or in part by any intentional act or negligence of the Contractor, its officers, agents, volunteers, partners, Subcontractors, or employees, but not for claims arising from DSU's sole negligence. The parties agree that if there are any limitations of the Contractor's liability, including a limitation of liability for anyone for whom the Contractor is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property.
10. **INSURANCE:** Contractor shall at all times during the term of the Purchase Order, without interruption, carry and maintain commercial general liability insurance from an insurance company authorized to do business in the State of Utah. The limits of this insurance will be no less than one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) aggregate. Contractor shall maintain workers' compensation insurance during the term of the Purchase Order for all its employees and any Subcontractor employees related to this contract. Contractor also agrees to maintain any other insurance policies required in the Solicitation. The insurers and policy provisions must be acceptable to the DSU Director of Risk Management. Each of the Contractor's insurance policies shall include an endorsement that names DSU and its officers and employees as additional insureds and the policy shall provide DSU and its officers and employees with primary coverage (not contributing coverage) for any liability arising as a result of the Contractor's acts or omissions in connection with this Contract. The Contractor is not required, however, to obtain an "additional insured" endorsement for any workers' compensation or professional liability insurance policy. Contractor shall provide proof of the general liability insurance policy and other required insurance policies to DSU within 5 working days of contract award. Contractor waives any right of subrogation against DSU and its officers and employees. DSU 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 Purchase Order will be grounds for immediate termination of the Purchase Order.
11. **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 DSU under this Purchase Order. Moreover, Contractor is responsible for its Subcontractors' compliance under this Purchase Order.

12. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by all applicable laws, regulations, or orders that prohibit the discrimination of any kind by any of the Contractor's employees.
13. **SEVERABILITY CLAUSE:** If any provision of this contract is declared by a court of competent jurisdiction to be invalid, the remaining terms and provisions will not be affected; and the rights and obligations of the parties will be construed and enforced as if the Contract did not contain the particular provision held to be invalid.
14. **AMENDMENTS:** This contract may be amended, modified, or supplemented only by mutual written amendment to the contract, executed by authorized persons of the parties hereto, and attached to the original signed copy of the contract. Automatic renewals will not apply to this contract.
15. **DEBARMENT:** The Contractor certifies that it is not presently nor has ever been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Purchase Order by any governmental department, agency, or political subdivision of any governmental entity, whether international, state or local. If the Contractor cannot certify this statement, attach a written explanation for review by DSU. Contractor must notify the DSU Director of Purchasing Services 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 period.
16. **TERMINATION:** Unless otherwise stated, this Contract may be terminated with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violation(s), after which this Purchase Order may be terminated for cause. This Purchase Order may be terminated without cause, in advance of the specified expiration date, by either party, upon sixty (60) days prior written notice being given to the other party. On termination of this Contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination. In no event shall DSU be liable to the Contractor for compensation for any good neither requested nor accepted by DSU. In no event shall DSU's exercise of its right to terminate this Purchase Order relieve the Contractor of any liability to DSU for any damages or claims arising under this Purchase Order.
17. **NONAPPROPRIATION OF FUNDS:** 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 DSU, if DSU 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) a change in available funds affects DSU'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, DSU will reimburse Contractor for the goods properly ordered and/or services properly performed until the effective date of said notice. DSU will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.
18. **SALES TAX EXEMPTION:** DSU's State of Utah sales and use tax **exemption number is 12020247-002**. The tangible personal property or services being purchased are being paid from DSU funds and used in the exercise of DSU's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.
19. **NOTIFICATION - DSU HAS 501(c)(3) STATUS:** DSU has been granted 501(c)(3) status under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986. DSU's 501(c)(3) status means sales tax may not apply to a DSU's Contractor's purchase(s) directly associated with a DSU construction project. Contractor bears the entire responsibility to determine such with the State of Utah Tax Commission.
20. **WARRANTY:** Contractor warrants, represents and conveys full ownership and clear title, free of all liens and encumbrances, to the goods delivered to DSU under this Purchase Order. Contractor warrants for a period of one (1) year that: i) the goods perform according to all specific claims that Contractor made in its Response; ii) the goods are suitable for the ordinary purposes for which such goods are used; iii) the goods are suitable for any special purposes identified in the Contractor's Response; iv) the goods are designed and manufactured

in a commercially reasonable manner; v) the goods are manufactured and in all other respects create no harm to persons or property; and vi) the goods are free of defects. Unless otherwise specified, all goods provided shall be new and unused of the latest model or design. Remedies available to DSU under this section include, but are not limited to, the following: Contractor will repair or replace goods at no charge to DSU 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 goods prove to be inadequate, or fail the 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 DSU may otherwise have under this Purchase Order.

21. **PUBLIC INFORMATION:** Except as identified in writing and expressly approved by DSU, Contractor agrees the Purchase Order, related pricing documents, and invoices will be public documents, and may be available for distribution. Contractor gives DSU express permission to make copies of the Purchase Order, related sales orders, related pricing documents, and invoices in accordance with the State of Utah's Government Records Access and Management Act. DSU is not obligated to inform Contractor of any GRAMA requests for disclosure of this Purchase Order, related purchase orders, related pricing documents, or invoices.
22. **DELIVERY:** All deliveries under this Purchase Order will be F.O.B. destination with all transportation and handling charges paid for by Contractor, unless otherwise specified in this Purchase Order. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to DSU, except as to latent defects, fraud, or Contractor's warranty obligations. Contractor shall strictly adhere to the delivery and completion schedules specified in this Purchase Order.
23. **ORDERING AND INVOICING:** Contractor will promptly submit invoices within thirty (30) days of the delivery date of the goods to DSU. The Purchase Order number must be listed on all invoices, freight tickets, and correspondence relating to the Purchase Order. The State Cooperative Contract number, if applicable, must also be listed. The prices paid by DSU will be those prices listed in the Purchase Order. DSU has the right to adjust or return any invoice reflecting incorrect pricing.
24. **PAYMENT:** Unless indicated otherwise in the Purchase Order, payment will be made within thirty (30) days. Payments are normally made within thirty (30) days following the date the order is delivered or the date a correct invoice is received, whichever is later. All payments to the Contractor will be remitted by mail, unless paid by DSU's Purchasing Card (a major credit card). No payment will be made for services not rendered. The acceptance by Contractor of final payment, without a written protest filed with DSU within ten (10) business days of receipt of final payment, shall release DSU from all claims and all liability to the Contractor. DSU's payment for goods and/or services shall not be deemed an acceptance of the goods and/or services and is without prejudice to any and all claims that DSU may have against Contractor.
25. **INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY:** Contractor will release, indemnify, and hold harmless DSU, its officers, agents, and employees from and against any and all damages, expenses, claims, judgments, liabilities, and costs in any action or claim brought against DSU 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:** DSU 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.
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 DSU.
28. **REMEDIES:** Any of the following events will constitute cause for DSU to declare Contractor in default of the Purchase order: i) Contractor's non-performance of its contractual requirements; or ii) Contractor's material breach of any term or condition of the Purchase Order. DSU 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, DSU may do one or more of the following: i) exercise any remedy provided by law; ii) terminate this Purchase Order and any related contracts or portions thereof; iii) impose liquidated damages, if liquidated damages are listed in this Purchase Order; iv) suspend Contractor from

receiving future DSU competitive solicitations; or v) demand a full refund of any payment DSU has made to Contractor under this Purchase Order for goods 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, acts of God and/or war which is beyond that party's reasonable control. DSU may terminate this Purchase Order after determining such delay or default will prevent successful performance of the Purchase Order.
30. **ATTORNEY FEES.** In the event it is necessary for either party to bring any action to enforce any of the terms of this Contract, the prevailing party shall be entitled to its costs and expenses, including reasonable attorneys' fees incurred.
31. **PROCUREMENT ETHICS.** Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to DSU 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 DSU, 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.
32. **CONFLICT OF TERMS:** Contractor Terms and Conditions that apply must be in writing and attached to the contract. No other Terms and Conditions will apply to this contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, etc. In the event of any conflict in the terms and conditions in this Purchase Order, the order of precedence shall be: i) DSU Purchase Order Terms and Conditions; ii) DSU Additional Terms and Conditions, if any; iii) Contractor's proposal/bid response (incorporated into Agreement by reference); and iv) Contractor Terms and Conditions, if any. Any provision attempting to limit the liability of Contractor or limit the rights of DSU must be in writing and attached to this Purchase Order or it is rendered null and void.
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. **ERRORS AND OMISSIONS:** Contractor shall not take advantage of any errors and/or omissions in this Purchase Order. Contractor must promptly notify DSU of any errors and/or omissions that are discovered.
35. **ENTIRE AGREEMENT:** This contract, including all Attachments, and documents incorporated by reference hereunder, and the related DSU solicitation (if any) constitutes the entire agreement between the parties with respect to the subject matter, and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written. The terms of this Agreement shall supersede any additional or conflicting terms or provisions that may be set forth or printed on the Contractor's work plans, cost estimate forms, receiving tickets, invoices, or any other related standard forms or documents of the Contractor that may subsequently be used to implement, record, or invoice services hereunder from time to time, even if such standard forms or documents have been signed or initialed by a representative of DSU. The parties agree that the terms of this Agreement shall prevail in any dispute between the terms of this Agreement and the terms printed on any such standard forms or documents, and such standard forms or documents shall not be considered written amendments of this Agreement.