



OFFICE OF THE
UTAH STATE AUDITOR

April 18, 2016

Dear Audit Firm:

Attached is a request for proposal for audit services for the Utah Fund of Funds and the Utah Capital Investment Corporation for the years ending December 31, 2015 through December 31, 2019.

Your proposal must be submitted to Jon Johnson, Audit Director, Office of the State Auditor, no later than 5:00 pm. MDT on May 6, 2016 as indicated on page 1 of the Request for Proposal. Selection of the contractor will be made by May 16, 2016 and will be posted on the contracting page of our website at auditor.utah.gov/about-us/contracting/.

To be considered in the solicitation process, the proposing independent auditing firm must meet the following minimum criteria:

1. The firm must meet the *Government Auditing Standards*' continuing professional education, independence, peer review, and licensing requirements.
2. The firm must have experience in the auditing of fund of fund investment vehicles and in the auditing of investment fund vehicles.
3. The firm must have no other business, contractual, or other connection to the Funds or the Corporation.
4. The firm must be able to meet the reporting deadlines described in the Request for Proposal.

We look forward to working with you as we continue our commitment to quality audits in a timely and professional manner by utilizing the excellent services the auditing profession has to offer.

Sincerely,

Jon T. Johnson, CPA
Audit Director
801-538-1359
jonjohnson@utah.gov

REQUEST FOR PROPOSAL
UTAH FUND OF FUNDS and
UTAH CAPITAL INVESTMENT CORPORATION
OSA Solicitation No. 2016-UFOF

PURPOSE OF REQUEST FOR PROPOSAL

The purpose of this request for proposal (RFP) is to enter into a contract with a qualified independent auditing firm (Contractor) to provide audit services.

This RFP is designed to provide interested offerors with sufficient basic information to submit proposals meeting minimum requirements. It is not intended to limit a proposal's content or exclude any relevant or essential data. Offerors are at liberty and are encouraged to expand upon the specifications to evidence service capability under any agreement.

BACKGROUND

The Office of the Utah State Auditor (OSA) is required by law (*Utah Code* 63N-6-405) to audit or contract for audits of the Utah Fund of Funds, LLC and the Utah Capital Investment Corporation.

This requirement includes:

- Financial statement audits of both the Utah Fund of Funds, LLC and the Utah Capital Investment Corporation in accordance with generally accepted auditing standards and *Government Auditing Standards*, and
- An Agreed-Upon Procedures engagement of the Utah Fund of Funds performed in accordance with attestation standards established by the American Institute of Certified Public Accountants.

For an overview and background information regarding the Utah Fund of Funds, LLC and the Utah Capital Investment Corporation (collectively referred to as "the Entity"), see Appendix A of this RFP. The agreed-upon procedures for the attestation engagement are listed in Appendix B. In addition, prior year financial reports for the Entity can be found on the OSA's website at auditor.utah.gov, specifically at the following link: <https://secure.utah.gov/auditor-search/?p=public>.

NOTE: Previous audits of the Entity included a financial report for the Utah Fund of Funds II, LLC (Fund II). It is anticipated that an audit of Fund II will not be required; therefore, proposals need not reflect an audit of Fund II. The contract terms may subsequently be modified if this additional audit becomes necessary.

SUBMITTING YOUR PROPOSAL

NOTICE: By submitting a proposal in response to this RFP, the offeror is acknowledging that the requirements, scope of work, and evaluation process outlined in the RFP are fair, equitable, not unduly restrictive, understood, and agreed to. Any exceptions to the content of the RFP must be protested to the OSA prior to the closing date and time for submission of the proposal.

Proposals must be received by the submission deadline of May 6, 2016 no later than 5:00 p.m. MDT. Proposals received after the deadline will be late and ineligible for consideration.

The preferred method of submitting your proposal is electronically in PDF format to: jonjohnson@utah.gov. However, if you choose to submit hard copies, one original and three copies of your proposal must be submitted to the OSA at the address shown below:

Jon Johnson, CPA, Audit Director
Office of the Utah State Auditor
Utah State Capitol Complex
East Office Building, Suite E310
Salt Lake City, Utah, 84114-2310

Selection of the Contractor will be made by May 16, 2016. Announcement of the awarded contract will be posted to the OSA website at <http://auditor.utah.gov/about-us/contracting/>.

LENGTH OF CONTRACT

The audit contract resulting from this RFP will cover the annual audits for each of the calendar years ending December 31, 2015 through December 31, 2019, subject to an annual performance evaluation, legislative appropriation, and the needs of the Entity and the OSA.

The OSA reserves the right to review the contract on a regular basis regarding performance and cost analysis and may negotiate price and service elements during the term of the contract.

STANDARD CONTRACT TERMS AND CONDITIONS

Any contract resulting from this RFP will include but not be limited to the Standard Terms and Conditions (see Attachment A). Exceptions and or additions to the Standard Terms and Conditions are strongly discouraged.

Exceptions and additions to the Standard Terms and Conditions must be submitted with the proposal. Exceptions, additions, service level agreements, etc. submitted after the date and time for receipt of proposals will not be considered. Website URLs, or information on website URLs must not be requested in the RFP document and must not be submitted with a proposal. URLs provided with a proposal may result in that proposal being rejected as non-responsive. URLs are also prohibited from any language included in the final contract document.

The OSA retains the right to refuse to negotiate on exceptions should the exceptions be excessive or not in the best interest of the OSA, or if the negotiations could result in excessive costs to the OSA or could adversely impact existing time constraints.

DISCUSSIONS WITH OFFERORS (ORAL PRESENTATION)

An oral presentation by an offeror to clarify a proposal may be required at the sole discretion of the OSA. However, the OSA may award a contract based on the initial proposals received without discussion with the offeror. If oral presentations are required, they will be scheduled after the submission of proposals. Oral presentations will be made at the offerors' expense.

DETAILED SCOPE OF WORK

A. REPORTING REQUIREMENTS

The Contractor shall perform the following engagements for the Entity for each calendar year ending December 31, 2015 through December 31, 2019 as follows:

1. Financial Reports – The Contractor shall audit the financial statements and records of both the Utah Fund of Funds, LLC and the Utah Capital Investment Corporation and shall issue audit opinions on each of those financial statements. Such opinions shall be prepared in conformity with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*.

As previously mentioned, it is anticipated that an audit of the Utah Fund of Funds II, LLC (Fund II) will not be required; therefore, proposals need not reflect an audit of Fund II.

2. Independent Auditor’s Report on Internal Control Over Financial Reporting and on Compliance and Other Matters – The Contractor shall issue reports on internal control over financial reporting and on compliance and other matters in accordance with *Government Auditing Standards* for both the Utah Fund of Funds, LLC and the Utah Capital Investment Corporation.
3. Agreed-Upon Procedures Report – The Contractor shall conduct agreed-upon procedures as specified by the State of Utah and the Entity, to assist the State of Utah and the Entity in determining the accuracy of the various components of the Annual Report of the Utah Fund of Funds, LLC. The engagement to apply agreed-upon procedures shall be conducted in accordance with attestation standards established by the AICPA. The Contractor shall submit a report listing the procedures performed and their findings.
4. Management Letter – As appropriate, the Contractor shall prepare a comprehensive management letter which includes the audit findings and recommendations relative to the internal control over financial reporting, compliance with laws and regulations, as applicable, and adherence to generally accepted accounting principles.

The Contractor shall request written responses from Entity officials for each recommendation and shall include such responses in the report or management letter. If the Entity declines the opportunity to respond, the Contractor shall so state in their report.
5. Reporting Deadlines – As required by *Utah Code* 63N-6-301(6), the annual audits must be completed and the reports submitted by September 1st of the year following the calendar year being audited.

PROPOSAL REQUIREMENTS

Interested offerors should include the following information in their proposal to perform the audits.

A. Profile of the Independent Auditor

Provide general background information which includes:

1. The organization and size of the offeror, whether it is local, regional, national or international in operations.
2. The location of the office from which the work is to be done and the number of professional staff, by staff level, employed at that office.

3. A positive statement that the following mandatory criteria are satisfied:
 - (a) An affirmation that the offeror is properly licensed for practice as a certified public accountant in the State of Utah.
 - (b) An affirmation that the offeror meets the independence requirements of the AICPA Rule 101 and the *Government Auditing Standards*.
 - (c) An affirmation that the offeror meets continuing professional education requirements contained in the *Government Auditing Standards*.
4. A copy of the offeror's most recent peer review report.

B. Offeror's Qualifications

1. Identify the audit partners, audit managers, field supervisors and other staff who will work on the audit, including staff from other than the local office. Résumés should be included which outline relevant experience and continuing professional education for the staff auditors up to the individual with final responsibility for the engagement.
2. Describe the recent local office auditing experience similar to the type of audit requested.
3. List experience with audits of fund of funds, private equity funds, and venture capital funds.
4. If other auditors are to participate in the audit, those auditors should be required to provide similar information.

C. Offeror's Approach to the Engagement

Submit a general audit work plan to accomplish the scope defined in these guidelines. The audit work plan should demonstrate the offeror's understanding of the audit requirements and the audit tests and procedures to be applied in completing the audit plan. The plan must detail the expected number of audit hours, on an annual basis, for each calendar year being audited. The plan must also identify the breakdown of total hours between staff, in-charges, and higher levels. The planned use of specialists, if any, should also be specified.

D. Time Requirements

Detail how the reporting deadline requirements of the audit will be met.

E. Comprehensive Not-To-Exceed Fee

Supply the billing rates, estimated number of billable hours, other billable expenses and a comprehensive "not-to-exceed" fee for the financial audit, inclusive of travel, per diem and all other out-of-pocket expenses. The billable hours and fee information requested above should be provided as **separate amounts for each of the five calendar years being audited.**

CONTRACTUAL ARRANGEMENTS

A. Compensation for Services

1. Billings for audit services are to be sent directly to the OSA.
2. Separate progress billings are allowed for time and expense incurred during the audit with the stipulation that progress billings cannot exceed 75% of the fees stated above. A statement of the current and cumulative hours incurred shall be submitted with each billing.
3. Final payment for audit services shall be made by the OSA upon completion of the audit, receipt of the required reports and any other information requested by the OSA, completion of the OSA's review of the reports and any work papers deemed necessary, and receipt of a statement of actual hours incurred and a final billing statement.

B. Significant Contract Provisions

As part of the contract to be awarded, the Contractor will be required to:

1. Retain all work papers and reports for a minimum of six years from the audit report release date, and make available all work papers, audit programs, and time control records associated with the audit during performance of the audit and/or at the completion of the audit for review by the OSA and for a verification of key personnel obligated in the proposal, or other reasonable and valid purposes. **The firm will be subject to the OSA work paper review process (done for all local government and OSA contract auditors). The results of that review will be added to the OSA website.** In addition, all work papers will be subject to disclosure under the Government Records and Management Act, Section 63G-2 of the Utah Code, as if they were OSA records.
2. Immediately inform the OSA regarding any indication of fraud, errors, or illegal acts that may come to their attention in connection with the audit.
3. Notify the OSA, in advance, of all opening and exit conferences between the Entity and the Contractor, as well as all significant conferences concerning audit exceptions, accounting issues, internal control findings, or scope limitations. The Contractor must hold an exit conference with the Entity.
4. Notify the OSA, in writing, prior to entering into a contract for auditing or non-auditing engagements with the Entity or any other State agency, department or division.
5. Notify the OSA, in writing, prior to changes of partner, manager, supervisor or senior personnel obligated in the proposal.
6. Provide the Entity with Letters of Engagement in accordance with professional standards to specify the responsibilities of the Contractor and the Entity as they relate to the conduct of the audits. The terms of the Letters of Engagement shall be consistent with the terms of the Contract. In the event there are inconsistencies, the terms of the Contract shall govern and control. Copies of the Letters of Engagement must be sent to the OSA.
7. Carry and maintain liability insurance, add the State of Utah as an additional insured, and provide proof of this insurance to the OSA, as required by No. 16 of the Standard Terms and Conditions for Services (Attachment A).

EVALUATION OF PROPOSALS

A committee will evaluate proposals against the following weighted criteria:

% OF SCORING WEIGHT	EVALUATION CRITERIA
Mandatory	Licensing, independence, CPE, peer review, expected audit hours by staffing levels, and ability to meet audit deadlines.
20%	<u>Technical Experience of the Independent Auditing Firm</u> – Considering audit experience, as well as size and structure of the firm.
20%	<u>Qualifications of Staff</u>
25%	<u>Responsiveness of the proposal</u> in clearly stating an understanding of the audit services to be performed: <ol style="list-style-type: none"> (1) Appropriateness and adequacy of proposed procedures. (2) Reasonableness of time estimates and total audit hours. (3) Appropriateness of assigned staff levels.
35%	<u>Cost of the Audit</u>

Right to Reject – The OSA reserves the right to reject any and all proposals submitted and to request additional information from all proposing firms. Any contract awarded will be made to the independent auditing firm who, based on evaluation of all responses (applying all criteria and oral interviews if necessary), is determined to be the best to perform the audit. The OSA will reject any proposal with a cost in excess of the fully-burdened cost for the OSA to perform the audit.

CONTACT INFORMATION

The individuals listed below may be contacted for information. However, before making contact we request you review the Entity's prior year financial statements and auditor's reports which can be found on the OSA's website at auditor.utah.gov, specifically at the following link: http://auditor.utah.gov/audit_reports/search-audit-reports/.

OSA:

Jon Johnson, CPA, Audit Director
 Phone: 801-538-1359
 Email: jonjohnson@utah.gov

The Entity:

Bret Jepsen, Managing Director
 Utah Capital Investment
 6465 S. 3000 E., Suite 105
 Salt Lake City, Utah 84121
 Phone: 801 432-7667
 Email: bret@utahcap.com

BACKGROUND AND OVERVIEW

The Utah Capital Investment Corporation (Corporation) was organized as a Utah non-profit "quasi-public" corporation in January 2004 with the primary purpose of organizing and managing the Utah Fund of Funds, LLC (Fund). The Fund is a \$100 million State of Utah economic development program aimed at providing access to alternative or non-traditional capital for Utah entrepreneurs. The Fund was organized in March 2006 as a private, for-profit Utah limited liability company, authorized to make investments in venture capital and private equity funds. To encourage private investment in the Fund, the Utah Capital Investment Board (a Utah state agency) issues contingent tax credits to investors when they capitalize the Fund by contributing funds to the Corporation. To date, the Fund has invested in 28 separate private equity and venture capital partnerships.

The Corporation acts as the sole manager of the Fund and coordinates private investments by the Fund's manager. In order to receive an investment from the Fund, a venture or private equity fund must show proof of Utah business activity.

The Corporation receives a management fee for serving as the manager of the Fund. The investment advisor selected by the Corporation also receives a flat fee for its asset management services. In addition, the Corporation may receive investment returns from the Fund in excess of those payable to the Fund's investors. The Corporation reinvests any returns it receives from the Fund after meeting its other obligations under State law by holding them in a reserve account for further investment in the Fund.

Additional information about the Corporation and the Fund can be found online at <http://www.utahcap.com>.

UTAH CAPITAL INVESTMENT CORPORATION
UTAH FUND OF FUNDS, LLC
Agreed-Upon Procedures

The following procedures are to be performed for the Utah Capital Investment Corporation and Utah Fund of Funds, LLC (collectively referred to as the Entity)

1. The Contractor shall obtain the supporting documentation for all new funding commitments and agree the supporting documentation to the number and dollar value of new funding commitments, if any.
2. The Contractor shall recalculate client prepared net rate of return and agree the amounts used, including administrative and financing costs, to underlying accounting records provided in conjunction with the audit of the financial statements of the Entity.
3. The Contractor shall interpret Utah Code Title 63N-6-301 (6)(b)(vi)(A) “realized gains from investments and any realized losses” and Utah Code Title 63N-6-301 (6)(b)(vi)(B) “unrealized gains and any unrealized losses” according to industry standard of distributions and net asset value. The Contractor shall recalculate client prepared distributions and net asset value and agree those calculations to underlying accounting records provided in conjunction with the audit of the financial statements of the Entity.
4. The Contractor shall recalculate and agree the amounts reported as administrative, operating, and financing costs to underlying accounting records used to support the audited financial statements.
5. The Contractor shall agree the aggregate compensation information for full- and part-time employees, including benefit and travel expenses, to underlying accounting records used to support the audited financial statements.
6. The Contractor shall obtain the detail of the expenses related to the allocation manager and agree all such costs to the approved flat fee paid to the allocation manager and to the underlying accounting records used to support the audited financial statements.
7. The Contractor shall obtain client prepared support for detailed information regarding all funding sources for administrative, operations and financing expenses, including expenses charged by or to the Entity, including management and placement fees. This supporting information shall be agreed to underlying accounting records used to support the audited financial statements. These funds shall also be agreed to closing documents when applicable.
8. The Contractor shall review the Entity’s economic development plan and associated performance metrics. The Contractor shall select a random sample of 20% of economic activity and verify that said activities actually occurred (e.g. meetings, events, funding introductions, etc.).
9. The Contractor shall obtain the Entity’s schedule detailing the number of companies in Utah where an investment was made from a fund in which the Entity is invested. The Contractor shall verify that each of these companies has a Utah-based operation through company websites, financial reporting, or other online means of verification.
10. The Contractor shall obtain the Entity’s prepared schedule supporting the aggregate count of new full-time employees in the state added by all companies where investments were made by funds in which the Entity is invested. For 100% of the companies that reported new full-time employees, the Contractor shall corroborate the number of new full-time employees to communications retained by the Entity.
11. The Contractor shall obtain support for any redemption or transfer certificates issued and verify the accuracy of amounts disclosed in the annual report.
12. The Contractor shall obtain all supporting documentation for the Entity’s calculation of the aggregate total value for all venture and private equity funds in the state in which the Entity has invested during the year ended December 31, 20XX. The Contractor shall recalculate this amount based on the supporting documentation obtained.

**ATTACHMENT A: STATE OF UTAH STANDARD TERMS AND CONDITIONS FOR SERVICES
(with changes by the Office of the State Auditor (OSA) for items specific to this contract)**

This is for a contract for services (including professional services) meaning the furnishing of labor, time, or effort by a contractor.

1. **DEFINITIONS:** The following terms shall have the meanings set forth below:
 - a) **"Confidential Information"** means information that is deemed as confidential under applicable state and federal laws, including personal information. The OSA 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 Contract Signature Page(s), including all referenced attachments and documents incorporated by reference. The term "Contract" may include any purchase orders that result from this Contract.
 - c) **"Contract Signature Page(s)"** means the State of Utah cover page(s) that the OSA and Contractor sign.
 - d) **"Contractor"** means the individual or entity delivering the Services identified in this Contract. The term "Contractor" shall include Contractor's agents, officers, employees, and partners.
 - e) **"Services"** means the furnishing of labor, time, or effort by Contractor pursuant to this Contract. Services include, but are not limited to, all of the deliverable(s) (including supplies, equipment, or commodities) that result from Contractor performing the Services pursuant to this Contract. Services include those professional services identified in Section 63G-6a-103 of the Utah Procurement Code.
 - f) **"Proposal"** means Contractor's response to the OSA's Solicitation.
 - g) **"Solicitation"** means the documents used by the OSA to obtain Contractor's Proposal.
 - h) **"OSA"** means the department, division, office, bureau, agency, or other organization identified on the Contract Signature Page(s).
 - i) **"State of Utah"** means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
 - j) **"Subcontractors"** means subcontractors or subconsultants at any tier that are under the direct or indirect control or responsibility of the Contractor, and includes all independent contractors, agents, employees, authorized resellers, or anyone else for whom the Contractor may be liable at any tier, including a person or entity that is, or will be, providing or performing an essential aspect of this Contract, including Contractor's manufacturers, distributors, and suppliers.
2. **GOVERNING LAW AND VENUE:** This Contract shall be 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:** At all times during this Contract, Contractor and all Services performed under this Contract will 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 will supersede this Attachment A.
4. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by the OSA to Contractor under this Contract. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, the State of Utah, federal auditors, and OSA staff, access to all such records.
5. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** The Status Verification System, also referred to as "E-verify", only applies to contracts issued through a Request for Proposal process and to sole sources that are included within a Request for Proposal.
 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 Contract.
6. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the OSA or the State of Utah, unless disclosure has been made to the OSA.
7. **INDEPENDENT CONTRACTOR:** Contractor and Subcontractors, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the OSA or the State of Utah.
8. **INDEMNITY:** Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors, and shall fully indemnify, defend, and save harmless the OSA and the State of Utah from all claims, losses, suits, actions, damages, and costs of every name and description arising out of Contractor's performance of this Contract caused by any intentional act or negligence of Contractor, its agents, employees, officers, partners, or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the sole fault of the OSA. The parties agree that if there are any limitations of the Contractor's liability, including a

limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property.

9. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by federal and state employment laws, including: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90, which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order, dated December 13, 2006, which prohibits unlawful harassment in the workplace. Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees.
10. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, which amendment will be attached to this Contract. Automatic renewals will not apply to this Contract, even if listed elsewhere in this Contract.
11. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, or proposed for debarment by any governmental department or agency, whether international, national, state, or local. Contractor must notify the OSA 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 Contract.
12. **TERMINATION:** Unless otherwise stated in this Contract, this Contract may be terminated, with cause by either party, in advance of the specified expiration date, upon written notice given by the other party. The party in violation will be given ten (10) days after written notification to correct and cease the violations, after which this Contract may be terminated for cause immediately and is subject to the remedies listed below. This Contract may also be terminated without cause (for convenience), in advance of the specified expiration date, by either party, upon sixty (60) days written termination notice being given to the other party. The OSA and the Contractor may terminate this Contract, in whole or in part, at any time, by mutual agreement in writing. On termination of this Contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved Services ordered prior to date of termination.

Contractor shall be compensated for the Services properly performed under this Contract up to the effective date of the notice of termination. Contractor agrees that in the event of such termination for cause or without cause, Contractor's sole remedy and monetary recovery from the OSA or the State of Utah is limited to full payment for all Services properly performed as authorized under this Contract up to the date of termination as well as any reasonable monies owed as a result of Contractor having to terminate other contracts necessarily and appropriately entered into by Contractor pursuant to this Contract. In no event shall the OSA be liable to the Contractor for compensation for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the OSA's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the OSA for any damages or claims arising under this Contract.

13. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Contractor, this Contract may be terminated in whole or in part at the sole discretion of the OSA, if the OSA 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 Contract; or (ii) that a change in available funds affects the OSA's ability to pay under this Contract. A change of available funds as used in this paragraph includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.

If a written notice is delivered under this section, the OSA will reimburse Contractor for the Services properly ordered until the effective date of said notice. The OSA will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.

14. **SUSPENSION OF WORK:** Should circumstances arise which would cause the OSA to suspend Contractor's responsibilities under this Contract, but not terminate this Contract, this will be done by written notice. Contractor's responsibilities may be reinstated upon advance formal written notice from the OSA.
15. **SALES TAX EXEMPTION:** The Services under this Contract will be paid for from the OSA's funds and used in the exercise of the OSA's essential functions as a State of Utah entity. Upon request, the OSA will provide Contractor with its sales tax exemption number. It is Contractor's responsibility to request the OSA's sales tax exemption number. It also is Contractor's sole responsibility to ascertain whether any tax deduction or benefits apply to any aspect of this Contract.
16. **INSURANCE:** Contractor shall at all times during the term of this Contract, 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 (\$1,000,000.00) per occurrence and three million dollars (\$3,000,000.00) aggregate. Contractor shall provide proof of the general liability insurance policy to the OSA within thirty (30) days of contract award. Contractor must add the State of Utah as an additional insured with notice of cancellation. Failure to provide proof of insurance as required will be deemed a material breach of this Contract. Contractor's failure to maintain this insurance requirement for the term of this Contract will be grounds for immediate termination of this Contract.
17. **WORKERS' COMPENSATION INSURANCE:** Contractor shall maintain during the term of this Contract, workers' compensation insurance for all its employees as well as any Subcontractor employees related to this Contract. Workers' compensation insurance shall cover full liability under the workers' compensation laws of the jurisdiction in which the service is performed at the statutory limits required by said jurisdiction. Contractor acknowledges that within thirty (30) days of contract award, Contractor must submit proof of certificate of insurance that meets the above requirements.

18. **PUBLIC INFORMATION:** Contractor agrees that this Contract, related purchase orders, related pricing documents, and invoices will be public documents and may be available for public and private distribution in accordance with the State of Utah's Government Records Access and Management Act (GRAMA). Contractor gives the OSA and the State of Utah express permission to make copies of this Contract, related sales orders, related pricing documents, and invoices in accordance with GRAMA. Except for sections identified in writing by Contractor and expressly approved by the OSA, Contractor also agrees that the Contractor's Proposal to the Solicitation will be a public document, and copies may be given to the public as permitted under GRAMA. The OSA and the State of Utah are not obligated to inform Contractor of any GRAMA requests for disclosure of this Contract, related purchase orders, related pricing documents, or invoices.
19. **DELIVERY:** All deliveries under this Contract will be F.O.B. destination with all transportation and handling charges paid for by Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the OSA, except as to latent defects or fraud. Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract.
20. **ACCEPTANCE AND REJECTION:** The OSA shall have thirty (30) days after the performance of the Services to perform an inspection of the Services to determine whether the Services conform to the standards specified in the Solicitation and this Contract prior to acceptance of the Services by the OSA.

If Contractor delivers nonconforming Services, the OSA may, at its option and at Contractor's expense: (i) return the Services for a full refund; (ii) require Contractor to promptly correct or reperform the nonconforming Services subject to the terms of this Contract; or (iii) obtain replacement Services from another source, subject to Contractor being responsible for any cover costs.
21. **INVOICING:** Contractor will submit invoices within thirty (30) days of Contractor's performance of the Services to the OSA. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to this Contract. The prices paid by the OSA will be those prices listed in this Contract, unless Contractor offers a prompt payment discount within its Proposal or on its invoice. The OSA has the right to adjust or return any invoice reflecting incorrect pricing.
22. **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. If payment has not been made after sixty (60) days from the date a correct invoice is received by the OSA, 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 OSA within ten (10) business days of receipt of final payment, shall release the OSA and the State of Utah from all claims and all liability to the Contractor. The OSA's payment for the Services shall not be deemed an acceptance of the Services and is without prejudice to any and all claims that the OSA or the State of Utah may have against Contractor.
23. **TIME IS OF THE ESSENCE:** The Services shall be completed by any applicable deadline stated in this Contract. For all Services, time is of the essence. Contractor shall be liable for all reasonable damages to the OSA, the State of Utah, and anyone for whom the State of Utah may be liable as a result of Contractor's failure to timely perform the Services required under this Contract.
24. **CHANGES IN SCOPE:** Any changes in the scope of the Services to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of Services.
25. **PERFORMANCE EVALUATION:** The OSA may conduct a performance evaluation of Contractor's Services, including Contractor's Subcontractors. Results of any evaluation may be made available to Contractor upon request.
26. **STANDARD OF CARE:** The Services of Contractor and its Subcontractors 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. Contractor shall be liable to the OSA and the State of Utah for claims, liabilities, additional burdens, penalties, damages, or third party claims (e.g., another Contractor's claim against the State of Utah), to the extent caused by wrongful acts, errors, or omissions that do not meet this standard of care.
27. **REVIEWS:** The OSA reserves the right to perform plan checks, plan reviews, other reviews, and/or comment upon the Services of Contractor. Such reviews do not waive the requirement of Contractor to meet all of the terms and conditions of this Contract.
28. **ASSIGNMENT:** Contractor may not assign, sell, transfer, subcontract or sublet rights, or delegate any right or obligation under this Contract, in whole or in part, without the prior written approval of the OSA.
29. **REMEDIES:** Any of the following events will constitute cause for the OSA to declare Contractor in default of this Contract: (i) Contractor's non-performance of its contractual requirements and obligations under this Contract; or (ii) Contractor's material breach of any term or condition of this Contract. The OSA may issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains after Contractor has been provided the opportunity to cure, the OSA may do one or more of the following: (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 the OSA or the State of Utah; or (v) demand a full refund of any payment that the OSA has made to Contractor under this Contract for Services that do not conform to this Contract.
30. **FORCE MAJEURE:** Neither party to this Contract will be held responsible for delay or default caused by fire, riot, act of God, and/or war which is beyond that party's reasonable control. The OSA may terminate this Contract after determining such delay will prevent successful performance of this Contract.

31. **CONFIDENTIALITY:** If Confidential Information is disclosed to Contractor, Contractor shall: (i) advise its agents, officers, employees, partners, and Subcontractors of the obligations set forth in this Contract; (ii) keep all Confidential Information strictly confidential; and (iii) not disclose any Confidential Information received by it to any third parties. Contractor will promptly notify the OSA of any potential or actual misuse or misappropriation of Confidential Information.
- Contractor shall be responsible for any breach of this duty of confidentiality, including any required remedies and/or notifications under applicable law. Contractor shall indemnify, hold harmless, and defend the OSA and the State of Utah, including anyone for whom the OSA or the State of Utah is liable, from claims related to a breach of this duty of confidentiality, including any notification requirements, by Contractor or anyone for whom the Contractor is liable.
- Upon termination or expiration of this Contract, Contractor will return all copies of Confidential Information to the OSA or certify, in writing, that the Confidential Information has been destroyed. This duty of confidentiality shall be ongoing and survive the termination or expiration of this Contract.
32. **PUBLICITY:** Contractor shall submit to the OSA for written approval all advertising and publicity matters relating to this Contract. It is within the OSA's sole discretion whether to provide approval, which must be done in writing.
33. **CONTRACT INFORMATION:** Contractor shall provide information regarding job vacancies to the State of Utah Department of Workforce Services, which may be posted on the Department of Workforce Services website. Posted information shall include the name and contact information for job vacancies. This information shall be provided to the State of Utah Department of Workforce Services for the duration of this Contract. This requirement does not preclude Contractor from advertising job openings in other forums throughout the State of Utah.
34. **INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY:** Contractor will indemnify and hold the OSA and the State of Utah harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities, and costs in any action or claim brought against the OSA or the State of Utah for infringement of a third party's copyright, trademark, trade secret, or other proprietary right. The parties agree that if there are any limitations of Contractor's liability, such limitations of liability will not apply to this section.
35. **OWNERSHIP IN INTELLECTUAL PROPERTY:** The OSA and Contractor agree that each has no right, title, interest, proprietary or otherwise in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing. All deliverables, documents, records, programs, data, articles, memoranda, and other materials not developed or licensed by Contractor prior to the execution of this Contract, but specifically created or manufactured under this Contract shall be considered work made for hire, and Contractor shall transfer any ownership claim to the OSA.
36. **WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.
37. **ATTORNEY'S FEES:** In the event of any judicial action to enforce rights under this Contract, the prevailing party shall be entitled its costs and expenses, including reasonable attorney's fees incurred in connection with such action.
38. **PROCUREMENT ETHICS:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or to any person in any official capacity 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.
39. **DISPUTE RESOLUTION:** Prior to either party filing a judicial proceeding, the parties agree to participate in the mediation of any dispute. The OSA, after consultation with the Contractor, may appoint an expert or panel of experts to assist in the resolution of a dispute. If the OSA appoints such an expert or panel, OSA and Contractor agree to cooperate in good faith in providing information and documents to the expert or panel in an effort to resolve the dispute.
40. **ORDER OF PRECEDENCE:** In the event of any conflict in the terms and conditions in this Contract, the order of precedence shall be: (i) this Attachment A; (ii) Contract Signature Page(s); (iii) the State of Utah's additional terms and conditions, if any; (iv) any other attachment listed on the Contract Signature Page(s); and (v) Contractor's terms and conditions that are attached to this Contract, if any. Any provision attempting to limit the liability of Contractor or limit the rights of the OSA or the State of Utah must be in writing and attached to this Contract or it is rendered null and void.
41. **SURVIVAL OF TERMS:** Termination or expiration of this Contract shall not extinguish or prejudice the OSA's right to enforce this Contract with respect to any default or defect in the Services that has not been cured.
42. **SEVERABILITY:** The invalidity or unenforceability of any provision, term, or condition of this Contract shall not affect the validity or enforceability of any other provision, term, or condition of this Contract, which shall remain in full force and effect.
43. **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.

(Revision date: 21 August 2015)
(OSA Revision date: 23 March 2016)