



STANDARD TERMS AND CONDITIONS

"Contractor" as used in these Standard Terms and Conditions means the third-party contracting with the Sonoma-Marin Area Rail Transit District (hereinafter "SMART") to provide Goods and/or Services to SMART. The Purchase Order (hereinafter "PO"), these Standard Terms and Conditions and any other terms, conditions, standards, drawings, schedules, or other documents identified in the PO form the "Agreement" related to the applicable PO. The terms "Goods" and "Services" are intended to have their broadest meanings. "Goods" includes any equipment, parts, materials, supplies, project deliverables, and work product supplied by Contractor in accordance with the PO. "Services" includes labor, professional services, and any manual, technical, and other human resources provided in the fulfillment of the PO, including those specified in the PO and any additional Services incidental to the furnishing of Goods.

1. **AGREEMENT:** SMART has contracted with Contractor to provide goods and/or services via a PO. The terms in this document, the aforementioned PO, Contractor's bid or proposal, and, if applicable, any SMART solicitation documents, shall be referred to in total as the Agreement.

2. **DELIVERY:** Delivery of all goods and services constitutes acceptance of these terms. Deliveries shall be F.O.B. Destination, transportation and handling charges paid by Contractor, unless stated otherwise in this PO. Responsibility for loss or damage remains with Contractor until after final inspection and acceptance, at which time responsibility shall pass to SMART except as to latent defects, fraud, and Contractor's warranty obligations. SMART reserves the right to reject C.O.D. shipments.

3. **INSPECTION & ACCEPTANCE:** All goods furnished under this PO are subject to final inspection and acceptance by SMART at the destination identified in SMART's PO notwithstanding any payment or prior inspection at Contractor's facilities. Final inspection will be made within a reasonable time after receipt of goods hereunder. If SMART reasonably finds that goods are incomplete or not in compliance with specifications, SMART may reject the goods and require Contractor to either correct them without charge or deliver them at a reduced price. If Contractor is unable or refuses to cure any defects within a reasonable time, SMART may reject the goods and cancel the P.O. in whole or part.

4. **WARRANTIES:** Unless otherwise stated, all goods shall be new and current model and shall carry all manufacturer warranties. Contractor warrants all goods to be free from defects in labor, materials and manufacture and to be in compliance with the PO specifications. SMART may return any goods or materials which are defective, unsatisfactory, or of inferior quality or workmanship. Such goods and materials shall, unless used by SMART, remain the property of Contractor and may be returned at Contractor's risk and expense. Contractor shall reimburse SMART for all prior payments therefor and/or costs incurred in connection with delivery or return of such goods or materials.

5. **VARIATION IN QUANTITY OR QUALITY:** SMART will not accept variations in the quantity or quality of any good or service required under the Purchase Order. Goods, which are not provided in accordance and conformity with the specifications or guidelines of a Purchase Order, will be deemed rejected immediately upon delivery with no additional action required by SMART, and Contractor at its sole cost and expense will promptly remove these rejected goods from SMART's premises.

6. **CHANGES:** The terms of this PO shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of SMART.

7. **USE OF RECYCLED PAPER:** SMART requires that all printing jobs produced under this Agreement be printed on recycled-content papers. Recycled-content papers are defined as papers containing a minimum of 30 percent post-consumer fiber by weight.

8. **SALES AND USE TAX:** Unless otherwise specified on the PO, Contractor acknowledges that prices stated in the order portion of this Agreement include sales or use tax.

9. **MATERIAL SAFETY DATA SHEET (MSDS):** It is mandatory for Contractor to supply an MSDS with the first shipment of any merchandise that contains hazardous material.

10. **STATE, AND LOCAL LAWS:** Contractor warrants that in the performance of this Agreement, it shall comply with all State of California and local laws, ordinances, and regulations.

11. **CONFORMITY TO LEGAL REQUIREMENTS:** Contractor shall cause all completed deliverables to conform to all applicable requirements of law: federal, state, and local. Contractor represents and warrants to SMART that it has all necessary licenses, permits, qualifications, and approvals, of whatever nature, that are legally required for Contractor to practice its profession.

12. **ENVIRONMENTAL COMPLIANCE:** Contractor will comply with all applicable environmental statutes, regulations, and guidelines, including hazardous waste disposal laws and regulations. Contractor will bear full and exclusive responsibility for all claims and expenses associated with the transport, disposal or removal or remediation of any release of hazardous or non-hazardous substances when performing all work under this Agreement. Contractor will hold harmless, indemnify, and defend SMART from any claims, suits, or actions arising from such disposal or release.

13. **INDEMNIFICATION:** Contractor shall indemnify, defend, and save harmless SMART from and against any loss, damage, claim, or harm for bodily injuries, including death, or damage to property caused by Contractor or its employees, subcontractors, or suppliers in connection with the performance of this Agreement. Contractor agrees to provide a complete defense for any claim or action brought against SMART based upon a claim relating to Contractor's performance or obligations under this Agreement.

14. **INFRINGEMENT INDEMNITY:** In lieu of any other warranty by SMART or Contractor against infringement, statutory or otherwise, it is agreed that Contractor shall defend at its expense, any suit against SMART based on a claim that any item furnished under this Agreement or the normal use or sale thereof infringes any United States Letters Patent or copyright and shall pay cost and damages finally awarded in any such suit, provided that Contractor is notified in writing of the suit and given authority, information, assistance at Contractor's expense for the defense of same. If the use or sale of said item is enjoined as a result of such suit, Contractor, at no expense to SMART shall obtain for Contractor the right to use and sell said item or shall substitute an equivalent item acceptable to SMART and extend this patent indemnity hereto.

15. **STANDARD OF CARE:** Contractor's services shall be performed in acceptance with generally-accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

16. **PAYMENT TERMS:** Payment shall be made Net 30 unless otherwise stated on the Purchase Order. Payments may be withheld if Contractor is not performing work in accordance with the applicable provisions of the Agreement. The time for payment of invoices shall run only from the date of receipt of correct invoices. Contractor must submit its invoice within thirty (30) days of completing the order or performance of work.

17. **PROMPT PAYMENT:** Not later than ten (10) days after receipt of each progress payment from SMART, the Contractor shall pay to any subcontractor performing under this Agreement, the respective amounts owed to the subcontractor for its work in accordance with California Public Contract Code Section 7101, unless otherwise agreed to in writing.

18. **PRICES:** Notwithstanding the prices set forth in this Purchase Order, SMART shall receive the benefit of any general reduction in the price of any item(s) listed herein.

19. **FORCE MAJEURE:** Neither party shall be held liable for failure or delay caused by wildfire, flood, earthquake, hurricane, or tornado.

20. **INDEPENDENT CONTRACTOR:** Contractor hereby declares that it is an independent business and agrees that in the performance of this Agreement it shall act as an independent Contractor and not as an employee of SMART. Contractor has and hereby retains full control of all the employment, compensation, and discharge of all employees of Contractor assisting in its performance hereunder. Contractor shall be responsible for its own acts and those of its agents and employees during the term of this Agreement.

21. **ASSIGNMENTS AND SUBCONTRACTORS:** Neither this Agreement nor any interest herein nor claim hereunder may be assigned by Contractor either voluntarily or by operation of law, nor may all or substantially all of this Agreement be further subcontracted by Contractor without the prior written consent of SMART. No consent shall be deemed to relieve Contractor of its obligations to comply fully with the requirements hereof.

22. **PREVAILING WAGE:** If the Purchase Order requires services that are subject to prevailing wage requirements pursuant to California Labor Code §1720 et seq. ("covered work"), Contractor and its subcontractors shall pay no less than the prevailing wage rates to all workers. These prevailing wage rates are available online at <https://www.dir.ca.gov/DLSR>. The work will be subject to compliance monitoring and enforcement by the DIR, pursuant to Labor Code §1771.4.

23. **CONFLICT OF INTEREST:** Contractor represents that it has not offered or given any gift or compensation prohibited by the laws of the State of California to any employee, officer, or agent of SMART to secure favorable treatment with respect to being awarded the Agreement.

24. **EQUAL EMPLOYMENT OPPORTUNITY:** In connection with the execution of this Agreement, the Contractor shall not discriminate against any employee or applicant because of race, religion, color, gender, marital status, disability, national origin, or any other persons on the basis of characteristics prohibited by applicable federal or California law. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to any such

characteristics. Covered actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship.

25. **SYSTEM AND DATA SECURITY:** For purposes of this Agreement, SMART Data means: All information, data, and other content, including Sensitive Information and other information, whether or not made available by SMART or SMART agents, representatives or users, to Contractor or its employees, agents, representatives, or subcontractors, and any information, data, and content directly derived from the foregoing, including data reflecting user access or use. SMART Data is at all times exclusively owned by SMART and shall not be reused, sold, transferred or provided to anyone for any reason without SMART's permission. Contractor shall immediately inform SMART in the event of improper release of SMART Data. For purposes of this Agreement, "Sensitive Information" includes, but is not limited to, trade secret information; documents marked as confidential; medical records; personnel records, home addresses and phone numbers of any person, social security numbers, credit card numbers, bank account numbers or any other personally identifiable information protected by California law. Contractor shall bear full responsibility for ensuring that any product or service provided does not introduce, via any means, any spyware, adware, ransomware, rootkit, keylogger, virus, trojan, worm, or any other malicious code or mechanism designed to permit unauthorized access or recording of SMART Data, or which may restrict any authorized user's access to or use of SMART Data. Contractor shall not use for financial gain, disclose, or make other improper use of SMART Data or Sensitive Information that is acquired in connection with the Agreement. All financial, statistical, personal, technical, or other data and information relative to a party's or another entity's operations, which are designated confidential by a party and made available to the other party in order to carry out the Agreement, shall be protected by the receiving party from unauthorized use and disclosure.

26. **OWNERSHIP OF WORK PRODUCT:** All work product of the Contractor specifically created for SMART under this Agreement (the "Work Product") is the exclusive property of SMART. SMART and the Contractor agree that such Work Product is "work made for hire" of which SMART is deemed to be the author. If for any reason the Work Product is not deemed "work made for hire," the Contractor hereby irrevocably assigns to SMART all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. The Contractor shall execute such further documents and instruments as SMART, or both, may reasonably request in order to fully vest such rights in SMART. SMART is a third-party beneficiary under this Paragraph.

27. **AUDIT AND INSPECTION OF RECORDS:** Contractor shall provide SMART such access to Contractor's books, records, and facilities as may be deemed necessary to examine, audit, and inspect all work data, documents and activities related to the goods or services described herein. Contractor shall maintain such books, records, data, documents on a generally accepted accounting basis and shall clearly identify and make such items readily accessible to such parties during Contractor's performance hereunder and for a period of four (4) years from the date of final payment by SMART hereunder.

28. **TERMINATION:**

- a. **Mutual Termination:** This Agreement may be terminated by mutual written Agreement by both SMART and Contractor
- b. **Termination for Convenience:** SMART may terminate the Agreement, in whole or in part at any time and for any reason by giving written notice to the Contractor and specifying the effective date thereof, at least fifteen (15) days prior to the effective date.
- c. **Termination for Cause:** SMART may terminate this Agreement upon giving of written notice of intention to terminate for cause. Written notice by SMART of termination for cause shall contain the reasons for such intention to terminate and shall specify the effective date thereof.

29. **ECONOMIC SANCTIONS:** On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. Government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. SMART is prohibited from contracting with individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should SMART determine Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this Agreement.

30. **CLAIMS AND DISPUTE RESOLUTION:**

- a. **Claims:** "Claim" means any disputes between SMART and the Contractor arising out of or relating to the performance of work under this Agreement. Claims must be made by written notice to SMART. The responsibility to substantiate claims rests with the party making the claim. Unless otherwise directed by SMART in writing, Contractor shall proceed

diligently with the obligations under this Agreement pending final resolution of a Claim, including litigation. SMART shall continue to pay any undisputed payments related to such Claim.

- b. **Dispute Resolution:** SMART and Contractor shall attempt to informally resolve all claims, counterclaims and other disputes. If informal attempts to resolve the dispute is unsuccessful, SMART and Contractor shall escalate the matter to its executive or principal representatives. No party may bring a legal action to enforce any term of this Agreement without first having exhausted such process. If the dispute cannot be resolved informally or through escalation, either party may request mediation. The mediation shall be non-binding. The mediator shall determine the logistics, format, and other aspects of the actual mediation. If mediation is not successful in resolving the dispute, either SMART or the Contractor may commence legal action in accordance with the applicable law and forum provision of this Agreement.

31. **PUBLIC DISCLOSURE:** SMART is subject to the California Public Records Act. Contractor acknowledges that the Agreement and related materials (invoices, orders, deliverables, etc.) will be public documents as required by the Public Records Act.

32. **SEVERABILITY:** If any provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions will not be affected, and the rights and obligations of the parties will be construed and enforced as if the Agreement did not contain the provision determined to be invalid.

33. **WAIVER:** SMART's failure to enforce any provision of this PO shall not constitute a waiver or relinquishment of SMART's right to such performance, nor of its right to enforce any other provision of the PO.

34. **APPLICABLE LAW AND FORUM:** This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Venue for any action to enforce the terms of this Agreement or for the breach thereof shall be in the Superior Court of the State of California in the County of Sonoma.

35. **ENTIRE AGREEMENT; NO ORAL MODIFICATIONS:** This Agreement constitutes the entire agreement and understanding between SMART and Contractor, and supersedes all offers, negotiations and other Agreements concerning the subject matter contained herein. There are no third-party beneficiaries and there are no representations or understandings of any kind not set forth in this Agreement. Any amendments to this Agreement must be in writing and executed by both parties hereto. SMART shall not be bound by any conflicting terms in Contractor's invoices or emails.