



DART General Terms and Conditions

1. Contractor's Obligations

- a. Contractor's performance under this Contract shall be considered accepted by DART when:
 1. Contractor's performance has been approved in writing by DART; and
 2. All the other duties and obligations to be performed by Contractor under this Contract have been satisfactorily met or performed, including the delivery to DART of any materials or documentation relating to the Services.
- b. Contractor acknowledges that DART is a public agency that receives both federal and state funding. Contractor agrees to abide by and conform to all applicable federal and state laws, rules, and regulations, whether or not such laws, rules, and regulations are expressly set forth in this Contract. Contractor hereby specifically agrees to abide by and conform to those certain rules and regulations promulgated by Federal Transit Administration ("FTA") and/or the Iowa Department of Transportation.
- c. Contractor acknowledges DART is exempt from payment of Iowa sales and use taxes, and DART agrees to sign an exemption certificate submitted by Contractor, if required. Contractor shall pay all applicable license fees and all applicable sales, use, and other similar taxes relating to or arising out of this Contract. Contractor shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with DART, and Contractor is not authorized to use DART's tax exemption number in securing such materials.
- d. Contractor shall be responsible for payment of its employees' Federal Insurance Contributions Act and Social Security benefits with respect to this Contract.
- e. Unless otherwise expressly set forth in this Contract, Contractor shall be responsible for securing, at Contractor's sole expense, all necessary permits and approvals. Contractor shall promptly furnish copies of all such permits and approvals to DART as and when obtained.
- f. Contractor shall be required to obtain and maintain during the term of this Contract, at Contractor's sole expense, any and all insurance required under this Contract or as may be otherwise reasonably required by DART.
- g. Contractor shall provide to DART such additional information as DART may reasonably request from time to time.

2. Delays

- a. **Force Majeure.** Neither party will be liable for its non-performance or delayed performance if caused by a Force Majeure Event (as defined herein). A "Force Majeure Event" shall be a condition beyond the performing party's control, including but not limited to acts of God, governmental restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections

and/or any other cause beyond the reasonable control of the party whose performance is affected. A party that becomes aware of a Force Majeure Event that will significantly delay performance will notify the other party promptly in writing (but in no event later than ten (10) days) after it discovers the scope of the delay. Contractor shall not be entitled to any claim for damages on account of hindrances or delays for any Force Majeure Event whatsoever. This includes, but is not limited to, any actions that result in delays of scheduling, changes in the scope of Services as set forth in the Statement of Work or increases in the cost of performance of the Service.

- b. **Notification of Delay by Contractor.** Contractor will verbally and via email notify DART's project manager as soon as Contractor has knowledge that an event has occurred which will cause a substantial delay. Within five (5) business days, Contractor will confirm such notice in writing, furnishing as much detail as is available and, if applicable, Contractor shall suggest an extension of time for completion. DART will review the letter and suggested extension. DART shall respond to Contractor within ten (10) calendar days in writing. DART may withhold amounts necessary to cover any claims of which it has been notified of subcontractors, materialmen, or suppliers from final payment to Contractor. Both parties shall keep in contact with each other as to the status of such delay and shall agree in writing to a restart date when the facts or matters giving rise to such delay have concluded and further delays are not foreseen.
- c. **Notification of Delay by DART.** DART will verbally and via email notify Contractor's project manager as soon as DART has knowledge that an event has occurred which will cause a substantial delay. Within five (5) business days, DART will confirm such notice in writing, furnishing as much detail as is available and, if applicable, DART shall suggest an extension of time for completion. Contractor will review the letter and suggested extension. Contractor shall respond to DART within ten (10) calendar days in writing. Both parties shall keep in contact with each other as to the status of such delay and shall agree in writing to a restart date when the facts or matters giving rise to such delay have concluded and further delays are not foreseen.
- d. **Unavoidable Delays.** If delivery of the Services is unavoidably delayed, DART may negotiate the performance expectation as equal to the time of the unavoidable delay. A delay is unavoidable only if it was substantial, not reasonably foreseeable to Contractor or its subcontractors, and, in fact, caused Contractor to miss any deadlines.

3. Change Orders, Amendments, or Other Modifications

Changes affecting this Contract price or Statement of Work must follow these guidelines for implementation of the requested change:

- a. All change orders, amendments and other modifications to this Contract shall be set forth in a writing signed by both parties.

- b. DART's authorized representative may, at any time, make changes within the general scope of this Contract by providing a written, detailed request for the change. Upon receipt of DART's requested change order, Contractor shall provide DART's authorized representative a written, detailed proposal including updated price, schedule, and scope of work changes for work to be performed.
- c. When approved by DART as an amendment or change order to this Contract and authorized in writing by DART and Contractor, Contractor shall provide such additional requirements as may become necessary.
- d. Failure of the parties to agree to any written amendment or change order shall be resolved under the dispute resolution procedures set forth below.

4. Termination

- a. **Termination by DART for Convenience.** DART may terminate this Contract, in whole or in part, at any time by written notice to Contractor when it is in DART's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to DART to be paid to Contractor. If Contractor has any property in its possession belonging to DART, Contractor will account for the same and dispose of it in the manner DART directs.
- b. **Termination by DART for Breach or Default.** If Contractor does not deliver the Services in accordance with the manner called for in this Contract, or if Contractor fails to comply with any other provisions of this Contract, DART may terminate this Contract for default. Termination shall be effected by serving a notice of termination ("Notice of Termination") on Contractor setting forth the manner in which Contractor is in default. Contractor will be paid only this Contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in this Contract.
- c. **Opportunity to Cure.** DART, in its sole discretion, may, in the case of a termination for breach or default, allow Contractor seven (7) calendar days in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to DART's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within seven (7) calendar days after receipt by Contractor of written notice from DART setting forth the nature of said breach or default, DART shall have the right to terminate this Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude DART from also pursuing all available remedies against Contractor and its sureties for said breach or default.

5. Covenant Against Gratuities

Contractor warrants that it has not offered or given gratuities (in the form of entertainment, gifts, or otherwise) to any official or employee of DART with a view toward

securing favorable treatment in the awarding, amending, or evaluating performance of this Contract.

6. Patent, Intellectual Property, and Copyright Infringement and Indemnification

- a. **No Infringement.** Contractor represents and warrants that it owns or has the absolute right to sell, license, or otherwise grant the rights in the Services, including, without limitation, any equipment, hardware, and software conveyed to DART pursuant to this Contract, and that neither the Services nor any of components thereof infringe any patent, copyrights, or other intellectual property right of, or misappropriates the trade secrets of, any person or entity. Contractor hereby grants to DART a perpetual, non-exclusive, and royalty-free license to use the Services without limitation, but Contractor shall retain all rights in patents, copyrights, trademarks, trade secrets, and any other intellectual property. Software utilized under this Contract is proprietary and ownership of the software remains with Contractor and/or its subcontractors, as the case may be. DART agrees to: (1) take reasonable steps to maintain Contractor's and subcontractor's rights in the software; (2) not sell, transfer, publish, display, disclose, or make available the software, or copies of the software, to third parties except where DART may disclose the software to designated federal representatives under a nondisclosure agreement executed by both parties, (3) not use, or allow to be used, the software either directly or indirectly for the benefit of any other person or entity, and (4) not use the software, along with its Updates (as defined herein), patches, or Upgrades (as defined herein) on any equipment other than the equipment on which it was originally installed, without Contractor's written consent. "Updates" are defined as bug fixes or patches. "Upgrades" are defined as any new feature or major enhancement to the software or hardware.
- b. **Indemnity.** Contractor will defend, at its expense, any suit brought against DART to the extent it is for infringement of any patent, copyright, or other intellectual property rights, which covers, or alleges to cover, the Services or any components thereof or the products or equipment of any subcontractor that are part of the Services, and Contractor will indemnify DART for damages and costs of DART for an infringement claim. Contractor shall not enter into any settlement that obligates DART to incur any expense, adversely impacts DART's rights under this Contract, or interferes with the operation of DART's business without DART's prior written consent. If in any such suit so defended, the Services or any components thereof are held to constitute an infringement and its use is enjoined, or if in light of any claim of infringement Contractor deems it advisable to do so, Contractor may at its option and expense (i) procure for DART the right to continue using the Services and all components, or (ii) replace or modify it so that it becomes non-infringing while providing functionally equivalent performance.

7. Confidentiality and Proprietary Rights

In connection with this Contract, DART may provide, or Contractor may otherwise have access to, certain confidential information of DART, whether in written or oral form. Contractor shall maintain the confidentiality of DART's confidential information and will not copy, reproduce, or disclose it to any third party. Contractor shall use the confidential information only in furtherance of its performance under this Contract and shall restrict disclosure of confidential information to its employees who have a "need to know" the information for such purpose. To the extent DART's confidential information is furnished to a subcontractor to procure supplies or otherwise perform the Services for this Contract, Contractor shall ensure that such disclosure is strictly limited to the extent necessary for such subcontractor to perform its portion of the Services, and Contractor shall bind each such subcontractor to the obligations of this section. Contractor shall take all necessary and appropriate precautions to safeguard the confidentiality of the confidential information. These precautions shall in any case be of at least the same degree of care that Contractor applies to its own confidential information and will not be less than reasonable care. Further, such precautions shall include binding its employees to confidentiality provisions consistent with this section. The confidential information, including any and all proprietary rights and intellectual property contained therein, is and shall at all times remain the property of DART, and no grant of any proprietary rights in the confidential information or intellectual property is given or intended, including any express or implied license, other than the strictly limited right of Contractor to use the confidential information in the manner and to the limited extent permitted by this Contract. Contractor acknowledges that compliance with this section is necessary to protect the business and proprietary information of DART, and that a breach of the same will cause irreparable and continuing damage for which money damages may not be adequate. Consequently, if Contractor breaches or threatens to breach this section, DART is entitled to seek temporary, preliminary, or permanent injunctive relief, or other equitable relief, in order to prevent such damage in addition to money damages and any and all other relief and remedies available to DART under applicable law.

8. Use of "Des Moines Public Regional Transit Authority" and/or "DART" Name in Contractor Advertising or Public Relations

Contractor acknowledges and agrees that DART reserves the right to review and approve any advertising copy or other advertising material related in any manner to this Contract prior to any publication thereof. Contractor agrees that it will not allow any such copy or other material to be published in any advertisements or public relations programs until after such time as Contractor has submitted such copy to and received prior written approval thereof from DART. Contractor agrees that any published information relating to this Contract will be factual and will in no manner imply that DART endorses Contractor's firm, service, or product.

9. Dispute Resolution

- a. **Disputes.** Disputes arising in the performance of this Contract which are not resolved by concurrence of the parties shall be decided in writing by an authorized representative of DART. Such decision shall be final and conclusive unless within ten (10) days from the date of receipt of notice thereof by Contractor, Contractor mails or otherwise furnishes a written appeal to DART. In connection with any such appeal, Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Chief Executive Officer (CEO) of DART shall be binding upon this Contractor and this Contractor shall abide by the decision.
- b. **Performance During Dispute.** Unless otherwise directed by DART, Contractor shall continue performance of its duties and obligations under this Contract while matters in dispute are being resolved.
- c. **Claims for Damages.** If either party suffers injury or damage to person or property because of any act or omission of the other party or of any of the other party's employees, representatives, or agents, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.
- d. **Remedies.** Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between DART and Contractor arising out of or relating to this Contract will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction in Polk County, Iowa.
- e. **Rights and Remedies.** The duties and obligations imposed by this Contract and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by DART or Contractor shall constitute a waiver of any right or duty afforded under this Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

10. Indemnification

The parties recognize that Contractor is an independent Contractor. Contractor agrees to assume liability for and indemnify, hold harmless, and defend DART, its commission, board, officers, employees, agents and attorneys of, from, and against all liability and expense, including reasonable attorney's fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, death, property damage, equitable relief, or loss of use, arising out of the execution, performance, nonperformance, or enforcement of this Contract, whether or not due to or caused by the negligence of DART, its commission, board, officers, employees, agents, and attorneys excluding only the sole negligence of DART, its officers, employees, agents, and attorneys. Contractor's liability hereunder shall include all attorney's fees and costs incurred by DART in the enforcement of this indemnification provision. The obligations contained in this provision shall survive

termination of this Contract and shall not be limited by the amount of insurance required to be obtained or maintained under this Contract. Subject to the limitations set forth in this provision, Contractor shall assume control of the defense of any claim asserted by a third party against DART and, in connection with such defenses, shall appoint lead counsel, in each case at Contractor's expense. DART shall have the right, at its option, to participate in the defense of any third party claim, without relieving Contractor of any of its obligations hereunder. If Contractor assumes control of the defense of any third party claim in accordance with this section, Contractor shall obtain the prior written consent of DART before entering into any settlement of such claim. Notwithstanding anything to the contrary in this provision, Contractor shall not assume or maintain control of the defense of any third party claim, but shall pay the fees of counsel retained by DART and all expenses including experts' fees, if (i) an adverse determination with respect to the third party claim would, in the good faith judgment of DART, be detrimental in any material respect of DART's reputation; (ii) the third party claim seeks an injunction or equitable relief against DART; or (iii) Contractor has failed or is failing to prosecute or defend vigorously the third party claim. Each party shall cooperate, and cause its agents to cooperate, in the defense or prosecution of any third party claim and shall furnish or cause to be furnished such records and information, and attend such conferences, discovery proceedings, hearings, trials, or appeals, as may be reasonably requested in connection therewith.

11. Contractor's Liability Insurance

Contractor acknowledges and agrees that DART will not provide any insurance for Contractor, and that Contractor shall be solely responsible for procuring and maintaining any and all insurance required under this Contract or as otherwise necessary to protect Contractor in its operations. At a minimum, Contractor shall maintain insurance of the types set forth below, including, but not limited to, such insurance as will protect it from claims under Workers' Compensation Acts and other employee benefit acts; from claims for damages because of bodily injury, including death, to its employees and all others and from claims for damages to property; any or all of which may arise out of or result from Contractor's operations under this Contract, or from any subcontractor or anyone directly or indirectly employed by either of them. DART shall be named as an additional insured in respect to all liability insurance policies. All policies shall contain an endorsement that written notice shall be given to DART prior to termination, cancellation or reduction in coverage in the policy. Certificates evidencing such insurance shall be delivered to DART prior to commencement of Contractor's performance under this Contract.

Type of Insurance	Amount
General Liability Insurance (including contractual liability) written on an occurrence basis	Aggregate \$4,000,000
	Personal Injury \$2,000,000
	Each Occurrence \$2,000,000
Product Liability	Each Occurrence \$1,000,000

Automobile liability, including bodily injury and property damage	Each Occurrence \$1,000,000
Property Damage Insurance	Each Occurrence \$1,000,000
Professional Liability	Unless otherwise stated in the this Contract, this Contractor must procure and maintain a professional liability insurance policy that is specific to the project that is the subject of this Contract. The insurance must provide coverage equal to or greater than this Contract price, as well as a three-year extended discovery period following completion of the term of this Contract.
Workers Compensation and Employer Liability Insurance	As required by Iowa law
Cyber Liability (including, at a minimum, coverages for: (i) data breach and privacy crisis management; (ii) multimedia and media liability coverage; (iii) extortion liability coverage; (iv) network security coverage; and (v) errors and omissions)	Each Occurrence \$3,000,000

12. Governing Law, Venue, and Jurisdiction

The rights, obligations, and remedies of the parties shall be governed by the laws of the State of Iowa. Venue for any action shall lie solely and exclusively in Polk County, Iowa. All work done pursuant to this Contract will be controlled and governed by the laws of the State of Iowa, and any arbitration or litigation related to this Contract must be filed in Polk County, Iowa. The parties hereby irrevocably submit to jurisdiction in the Polk County, Iowa.

13. Attorney Fees

In the event of any legal action, including arbitration proceedings, seeking enforcement of this Contract, the prevailing party shall be entitled to recover reasonable attorneys' fees and the costs of such proceedings from the other party, including without limitation fees and costs associated with any trial, appellate, or bankruptcy proceeding.

14. Waiver of Jury Trial

Each party hereby agrees not to elect a trial by jury of any issue triable of right by jury, and waives any right to trial by jury fully to the extent that any such right shall now or hereafter exist with regard to this Contract, or any claim, counterclaim, or other action arising in connection therewith. This waiver of right to trial by jury is given knowingly and

voluntarily by each party and is intended to encompass individually each instance and each issue as to which the right to a trial by jury would otherwise accrue.