

Software Agreement

UTA CONTRACT NO. 21-03500

Automated Requisition-to-Purchase Order Quote Processing Program

THIS IT SOFTWARE AND ASSOCIATED SERVICES SUPPLY AGREEMENT (“Contract”) is entered into and made effective as of the date of last signature below. (“Effective Date”) by and between UTAH TRANSIT AUTHORITY, a public transit district organized under the laws of the State of Utah (“UTA”), and FAIRMARKIT, INC., a Delaware corporation (the “Contractor”).

**RECITALS**

WHEREAS, on October 18, 2021 UTA received competitive proposals to provide Automated Requisition-to-Purchase Order Quote Processing Program and (as applicable) all associated hardware, software, tools, installation services, commissioning and testing services, training and documentation (the “Software and Services”) according to the terms, conditions and specifications prepared by UTA in 21-03500 (the “RFP”); and

WHEREAS, UTA desires to award a contract for Automated Requisition-to-Purchase Order Quote Processing Program to Contractor based on an approved sole source justification; and

WHEREAS, UTA wishes to procure the Software and Services according to the terms, conditions and specifications listed in the RFP (as subsequently amended through negotiation by the parties); and

WHEREAS, Fairmarkit submitted a proposal on October 18, 2021 in response to the RFP (“Contractor’s Proposal”) was deemed to be the most advantageous to UTA; and

WHEREAS, Contractor is willing to furnish the Software and Services according to the terms, conditions and specifications of the Contract.

**AGREEMENT**

NOW, THEREFORE, in accordance with the foregoing Recitals, which are incorporated herein by reference, and for and in consideration of the mutual covenants and agreements hereafter set forth, the mutual benefits to the parties to be derived here from, and for other valuable consideration, the receipt and sufficiency of which the parties acknowledge, it is hereby agreed as follows:

**1. SOFTWARE AND ASSOCIATED SERVICES TO BE PROVIDED BY CONTRACTOR**

- A. Contractor hereby agrees to furnish and deliver the Software and Associated Services in accordance with the Contract as described in Exhibit A (Product Description and Statement of Associated Services) (including performing any installation, testing commissioning and other Services described in the Contract).
- B. Contractor hereby grants to UTA and its Users a worldwide, non-exclusive, royalty-free, paid up license for the Term to access and use the Software via a URL designated by Contractor, in

accordance with the terms and conditions of this Agreement and an applicable Service Order. Contractor further grants to UTA and its users a worldwide, non-exclusive, royalty-free, paid up license for the Subscription Term to access, download, copy, and use the Documentation in connection with the Software and in accordance with the terms and conditions of this Agreement and an applicable order

- C. As between UTA and Contractor, the Software is owned by Contractor and shall remain, the sole and exclusive property of Contractor, including but not limited to all applicable rights in source code, object code, trademarks, service marks, trade secrets, patents, copyrights, and other proprietary or intellectual property rights relating thereto (“IP Rights”). All modifications, enhancements, updates, and translations of the Software under this Agreement shall be deemed a part thereof and shall remain the sole and exclusive property of Contractor. All rights and interests not expressly granted to UTA in this Agreement are reserved to Contractor, and UTA shall have no right, title, or interest in such proprietary rights.
- D. UTA agrees to:
  - a. Access and use the Software only in the manner, and for the purposes, expressly specified in this Contract, the applicable order, and the documentation.
  - b. Not decompile, disassemble, analyze or otherwise examine the Software for the purpose of reverse engineering.
  - c. Not delete or in any manner alter any notices, disclaimers or other legends contained in the Software or appearing on any screens, documents, reports or other materials obtained by Customer or Users through use of the Software.
  - d. Take commercially reasonable measures to prevent unauthorized access to, or use of, the Software and notify Contractor of any such unauthorized use of which Customer is aware;
  - e. Comply with all applicable local, state, federal, and foreign laws in using the Software;
  - f. Not attempt to access any systems, programs or data of Contractor that are not licensed under this Agreement, or otherwise made available by Contractor for public use; and
  - g. Not copy, reproduce, republish, upload, post, transmit, or distribute the Software or facilitate or permit a third party to do so, except as expressly provided herein.
  - h. Customer is responsible for acquiring, servicing, maintaining and updating all equipment, computers, software and communications services not owned or operated by or on behalf of Contractor, that allow Users to access and use the Software.
- E. Restrictions and Responsibilities
  - a. UTA will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to the Services (“Software”); modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted by Contractor or authorized within the Services); use the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third party; or remove any proprietary notices or labels.
  - b. UTA represents, covenants, and warrants that UTA will use the Services and Software only for UTA’s business purposes and in compliance with applicable law.
  - c. UTA shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, “Equipment”). UTA shall also be responsible for maintaining the security of the equipment, UTA account, passwords (including but not limited to administrative and user passwords) and files, and for all

uses of UTA account, except in the event of unauthorized use or the Equipment with or without UTA's knowledge or consent.

- F. **Subscription Term** means the subscription period(s) during which UTA's users are authorized to access and use the Software and receive technical support therefore, as specified in the applicable order.

## 2. DATA RIGHTS

- a. Customer shall own all right, title and interest in and to the Customer Purchasing Data, including any data and communication associated with the Customer's bids, purchases, users, & vendors, as well as any data that is based on or derived from the Customer Purchasing Data and provided to Customer as part of the Software services.
- b. Company shall own and retain all right, title and interest in and to:
  - i. the Software, all improvements, enhancements, or modifications thereto
  - ii. any software, applications, inventions, or other technology developed in connection with Professional Services or Technical Support, and
  - iii. all intellectual property rights related to any of the foregoing
- c. Notwithstanding anything to the contrary, Fairmarkit shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Software and related systems and technologies (including, without limitation, information concerning Customer Purchasing Data and data derived therefrom), and Fairmarkit may during the Subscription Term:
  - i. use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Software and other Fairmarkit offerings, and
  - ii. disclose such data solely in aggregate or other de-identified form in connection with its business.
- d. No rights or licenses are granted except as expressly set forth herein.

## 3. PROFESSIONAL SERVICES

- a. Services for training on and implementation of the Software may be obtained by executing a Statement of Work ("SOW") which describes any such Services. All other Services under this Agreement are obtained only by a written SOW. Each SOW will constitute a separate order for Services hereunder, must be signed by both parties' authorized representatives, and will thereafter be attached to and governed by this Agreement.
- b. Fairmarkit agrees to provide the Services in accordance with this Agreement and the requirements set forth in the applicable Service Order or SOW, including but not limited to the timeframes and technical specifications set forth therein.
- c. Acceptance. Contractor will deliver each Deliverable to UTA within the timeframes set forth in the SOW. Unless different time periods are specified in the SOW, UTA will have ten (10) business days following delivery of each Deliverable (the "Acceptance Period") to review and evaluate the Deliverable to determine whether it conforms to the requirements of the SOW and this Agreement. If UTA does not notify Fairmarkit of any non-conformities within the Acceptance Period, the Deliverable will be deemed to have been accepted by UTA

- i. If UTA determines that the Deliverable or any component of the Deliverable fails to conform to the applicable requirements of the SOW and this Agreement, UTA will notify Contractor during the Acceptance Period. Upon receipt of a notice of non-conformity from UTA, Contractor will correct such non-conformity within seven (7) business days (or within such other period as may be specified in the SOW, if any). Following notification of correction, unless the SOW specifies a different time period, UTA will have five (5) business days to accept the Deliverable or reject the Deliverable based on whether such correction causes the related component(s) of the Deliverable to conform to the applicable requirements of the SOW and this Agreement. If UTA does not provide notice of acceptance or rejection within this time period, the Deliverable will be deemed to have been accepted by UTA as of the date that Fairmarkit's notification of correction was received by UTA.
- ii. If UTA provides notice of rejection within the five (5) day period or within the period specified in the SOW, if any, following notification of correction, the issue will be escalated using the escalation procedure set forth in the SOW, if any. If no escalation procedure is set forth in the SOW, then UTA, at its option, may terminate the SOW without liability upon written notice to Contractor, or it may choose to continue with all other Services and/or Deliverables under the SOW. In either case, UTA shall not be liable for fees to Contractor related to the rejected Deliverable(s) and UTA will promptly return.

**Deliverable** means any tangible or intangible item(s), good(s), service(s), Work Product, and/or other material(s) in any form, format, or medium compiled, created, developed, produced or otherwise provided by Contractor to or for UTA in the course of or as a result of the Services; provided, however, that any software licensed to UTA by Contractor under a separate written agreement, and/or any modifications, customizations, or improvements made by Contractor to such software, shall not be considered a Deliverable hereunder.

#### **4. TERM**

This Contract shall commence as of the Effective Date. The Contract shall remain in full force and effect for purchases of Software and Services (made via purchase order or other agreed order method) during a 3 year period expiring January 31, 2025. UTA may, at its sole election and in its sole discretion, extend the initial term for up to 2 additional one-year option periods, for a total Contract period not to exceed FIVE (5) years. Extension options may be exercised by UTA upon providing Contractor with notice of such election at least thirty (30) days prior to the expiration of the initial term or then-expiring option period (as applicable). The Contract may be further extended if the Contractor and UTA mutually agree to an extension evidenced in writing. The rights and obligations of UTA and Contractor under the Contract shall at all times be subject to and conditioned upon the provisions of the Contract.

#### **5. COMPENSATION AND FEES**

UTA shall pay Contractor in accordance with the payment milestones or other terms described in Exhibit B. If Exhibit B does not specify any milestones or other payment provisions, then payment shall be due net 30 from receipt of the invoice

#### **6. INCORPORATED DOCUMENTS**

a. The following documents hereinafter listed in chronological order, with most recent document taking precedence over any conflicting provisions contained in prior documents (where applicable), are hereby incorporated into the Contract by reference and made a part hereof:

1. The terms and conditions of this Software and Associated Services Supply Agreement (including any exhibits and attachments hereto).

2. UTA's RFP including, without limitation, all attached or incorporated terms, conditions, federal clauses (as applicable), drawings, plans, specifications and standards and other descriptions of the Software and Services;

3. Contractor's Proposal including, without limitation, all federal certifications (as applicable);

b. The above-referenced documents are made as fully a part of the Contract as if hereto attached or herein repeated. The Contract (including the documents listed above) constitute the complete contract between the parties.

c. If this procurement is funded by federal dollars, the mandatory FTA terms and conditions contained at Exhibit C will also apply.

## **7. ORDER OF PRECEDENCE**

1. The Order of Precedence for this contract is as follows:
2. UTA Contract including SOW, all other exhibits and attachments, and terms and conditions
3. UTA Solicitation Terms
4. Contractor's Bid or Proposal including proposed terms or conditions.
5. Contractor Master Service Agreement
6. Technical Support and Service Level Agreement

Any contractor proposed term or condition which is in conflict with a UTA contract or solicitation term or condition will be deemed null and void.

## **8. LAWS AND REGULATIONS**

Contractor and any and all Software and/or Services furnished under the Contract will comply fully with all applicable Federal and State laws and regulations, including those related to safety and environmental protection. Contractor shall also comply with all applicable licensure and certification requirements.

## **9. INVOICING PROCEDURES**

a. shall submit invoices to UTA's Project Manager for processing and payment in accordance with Exhibit B. If Exhibit B does not specify invoice instructions, then Contractor shall invoice UTA for all Software and Services before the Subscription Term term begins.

b. UTA shall have the right to disapprove (and withhold from payment) specific line items of each invoice to address non-conforming Software or Services. Approval by UTA shall not be unreasonably withheld. Payment for all invoice amounts not specifically disapproved or offset by UTA shall be provided to Contractor within thirty (30) calendar days of invoice submittal.

## **10. WARRANTY OF SOFTWARE AND SERVICES**

a. Contractor warrants that all Software (including hardware, firmware, and/or software products that it licenses) and Services shall conform to the specifications, drawings, standards, samples, and other descriptions made a part of (or incorporated by reference into) the Contract. Contractor further

warrants that all Software and Services shall be of the quality specified, or of the best grade if no quality is specified, and, unless otherwise provided in the Contract, will be new, and free from defects in design, materials and workmanship.

b. Contractor warrants that all Software and Services shall be in compliance with applicable federal, state, and local laws and regulations including, without limitation, those related to safety and environmental protection.

c. CONTRACTOR DOES NOT WARRANT THAT THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SOFTWARE. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SOFTWARE AND SERVICES ARE PROVIDED “AS IS” AND CONTRACTOR DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

d. In addition to the representations and warranties set forth in the Agreement, Contractor further represents and warrants as follows:

- i. The Services will be performed in a timely, professional and workmanlike manner and will be of a quality conforming to the highest standards generally accepted in Contractor ‘s industry;
- ii. The Services, Work Product, and Pre-Existing Materials do not infringe upon or misappropriate any United States or foreign copyright, patent, trademark, trade secret or other intellectual property or proprietary right of any third party.

## **11. OWNERSHIP OF DESIGNS, DRAWINGS, AND WORK PRODUCT**

Any deliverables prepared or developed pursuant to the Contract including without limitation drawings, specifications, manuals, calculations, maps, sketches, designs, tracings, notes, reports, data, software, computer programs, models and samples (“Work Product”), shall become the property of UTA when prepared, and, together with any documents or information furnished to Contractor and its employees or agents by UTA hereunder, shall be delivered to UTA upon request, and, in any event, upon termination or final acceptance of the Software and Services. UTA shall have full rights and privileges to use and reproduce said items.

To the extent that any deliverables include or incorporate preexisting intellectual property of Contractor, (Pre-Existing Materials”) Contractor hereby grants UTA a fully paid, perpetual license to use such intellectual property for UTA’s operation, maintenance, modification, improvement and replacement of UTA’s assets. The scope of the license shall be to limited to what is necessary to accomplish those purposes, including the right to share same with UTA’s contractors, agent, officers, directors, employees, joint owners, affiliates and consultants.

## **12. GENERAL INDEMNIFICATION**

Contractor shall indemnify, hold harmless and defend UTA, its officers, trustees, agents, and employees (hereinafter collectively referred to as “Indemnitees”) from and against all liabilities, claims, actions, damages, losses, and expenses including without limitation reasonable attorneys’ fees and costs (hereinafter referred to collectively as “claims”) related to bodily injury, including death, or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of the failure of such Contractor to conform to federal,

state, and local laws and regulations. If an employee of Contractor, a subcontractor, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable brings a claim against UTA or another Indemnitee, Contractor’s indemnity obligation set forth above will not be limited by any limitation on the amount of damages, compensation or benefits payable under any employee benefit acts, including workers’ compensation or disability acts. The indemnity obligations of Contractor shall not apply to the extent that claims arise out of the sole negligence of UTA or the Indemnitees.

**13. LIMITATION OF LIABILITY**

EXCEPT FOR CONTRACTOR’S CONFIDENTIALITY, INDEMNIFICATION OBLIGATIONS AND FOR BODILY INJURY OF A PERSON, COMPANY AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID BY UTA TO CONTACTOR UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**14. INSURANCE REQUIREMENTS**

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The Utah Transit Authority in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, his agents, representatives, employees or subcontractors and Contractor is free to purchase additional insurance as may be determined necessary.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Contractor shall provide coverage with limits of liability not less than those Stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a “following form” basis.

1. **Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Each Occurrence \$1,000,000

a. The policy shall be endorsed to include the following additional insured language: "The Utah Transit Authority shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor".

2. Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$1,000,000

- a. The policy shall be endorsed to include the following additional insured language: "The Utah Transit Authority shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, including automobiles owned, leased, hired or borrowed by the Contractor".

3. Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
-----------------------	-----------

Employers' Liability

Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

- a. Policy shall contain a waiver of subrogation against the Utah Transit Authority.
- b. This requirement shall not apply when a contractor or subcontractor is exempt under UCA 34A-2-103, AND when such contractor or subcontractor executes the appropriate waiver form.

4. Professional Liability (Errors and Omissions Liability)

The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this contract.

Each Claim	\$1,000,000
Annual Aggregate	\$1,000,000

- B. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of three (3) years B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include the following provisions:

- 1. On insurance policies where the Utah Transit Authority is named as an additional insured, the Utah Transit Authority shall be an additional insured to the full limits of liability purchased by the Contractor. Insurance limits indicated in this agreement are minimum limits. Larger limits may be indicated after the Contractor’s assessment of the exposure for this contract; for their own protection and the protection of UTA.
- 2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

- C. NOTICE OF CANCELLATION: Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the Utah Transit Authority, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to (Utah Transit Authority Agency Representative's Name & Address).
- D. ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers duly licensed or authorized to do business in the State and with an "A.M. Best" rating of not less than A-VII. The Utah Transit Authority in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
- E. VERIFICATION OF COVERAGE: Contractor shall furnish the Utah Transit Authority with certificates of insurance (on standard ACORD form) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be sent to [insurancercerts@rideuta.com](mailto:insurancercerts@rideuta.com) and received and approved by the Utah Transit Authority before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract shall be emailed directly to Utah Transit Authority's insurance email address at [insurancercerts@rideuta.com](mailto:insurancercerts@rideuta.com). The Utah Transit Authority project/contract number and project description shall be noted on the certificate of insurance. The Utah Transit Authority reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. DO NOT SEND CERTIFICATES OF INSURANCE TO THE UTAH TRANSIT AUTHORITY'S CLAIMS AND INSURANCE DEPARTMENT.

- F. SUBCONTRACTORS: Contractors' certificate(s) shall include all subcontractors as additional insureds under its policies or subcontractors shall maintain separate insurance as determined by the Contractor, however, subcontractor's limits of liability shall not be less than \$1,000,000 per occurrence / \$2,000,000 aggregate. G. APPROVAL: Any modification or variation from the insurance requirements in this Contract shall be made by Claims and Insurance Department or the UTA Legal Services, whose decision shall be final. Such action will not require a formal Contract amendment but may be made by administrative action.

**15. OTHER INDEMNITIES**

a. Contractor shall protect, release, defend, indemnify and hold harmless UTA and the other Indemnitees against and from any and all claims of any kind or nature whatsoever on account of infringement relating to Contractor's performance under the Contract. If notified promptly in writing and given authority, information and assistance, Contractor shall defend, or may settle at its expense, any suit or proceeding against UTA so far as based on a claimed infringement and Contractor shall pay all damages and costs awarded therein against UTA due to such breach. In case any Good or

Service is in such suit held to constitute such an infringement or an injunction is filed that interferes with UTA's rights under the Contract, Contractor shall, at its expense and through mutual agreement between UTA and Contractor, either procure for UTA any necessary intellectual property rights, or modify Contractor's Software and Services such that the claimed infringement is eliminated.

b. Contractor will defend, indemnify and hold UTA, its officers, agents and employees harmless from liability of any kind or nature, arising from Contractor's use of any copyrighted or un-copyrighted composition, trade secret, patented or un-patented invention, article or appliance furnished or used in the performance of the Contract.

#### **16. INDEPENDENT CONTRACTOR**

The parties agree that Contractor, in the carrying out of its duties hereunder, is an independent contractor and that neither Contractor nor any of its employees is or are agents, servants or employees of UTA. Neither Contractor nor any of Contractor's employees shall be eligible for any workers compensation insurance, pension, health coverage, or fringe benefits which apply to UTA's employees. Neither federal, state, nor local income tax nor payroll tax of any kind shall be withheld or paid by UTA on behalf of Contractor or the employees of Contractor. Contractor acknowledges that it shall be solely responsible for payment of all payrolls, income and other taxes generally applicable to independent contractors.

#### **17. STANDARD OF CARE.**

Contractor shall perform any Services to be provided under the Contract in a good and workmanlike manner, using at least that standard of care, skill and judgment which can reasonably be expected from similarly situated independent contractors (including, as applicable, professional standards of care).

#### **18. USE OF SUBCONTRACTORS**

a. Contractor shall give advance written notification to UTA of any proposed subcontract (not indicated in Contractor's Proposal) negotiated with respect to the Work. UTA shall have the right to approve all subcontractors, such approval not to be withheld unreasonably.

b. No subsequent change, removal or substitution shall be made with respect to any such subcontractor without the prior written approval of UTA.

c. Contractor shall be solely responsible for making payments to subcontractors.

d. Contractor shall be responsible for and direct all Work performed by subcontractors.

e. Contractor agrees that no subcontracts shall provide for payment on a cost-plus-percentage-of-cost basis. Contractor further agrees that all subcontracts shall comply with all applicable laws

#### **19. CONTRACTOR SAFETY COMPLIANCE**

UTA is an ISO 14001 for Environmental Management Systems, ISO 9001 Quality and Performance Management, and OSHAS 18001 safety systems Management Company. Contractor, including its employees, subcontractors, authorized agents, and representatives, shall comply with all UTA and industry safety standards, NATE, OSHA, EPA and all other State and Federal regulations, rules and guidelines pertaining to safety, environmental Management and will be solely responsible for any fines, citations or penalties it may receive or cause UTA to receive pursuant to this Contract. Each employee, contractor and subcontractor must be trained in UTA EMS and Safety Management principles. Contractor acknowledges that its Software and Services might affect UTA's Environmental Management Systems obligations. A partial list of activities, products or Services deemed as have a potential EMS effect is available at the UTA website [www.rideuta.com](http://www.rideuta.com). Upon request by UTA, Contractor shall complete and return a *Contractor Activity Checklist*. If UTA determines that the Software and/or Services under the

Contract has the potential to impact the environment, UTA may require Contractor to submit additional environmental documents. Contractor shall provide one set of the appropriate safety data sheet(s) (SDS) and container label(s) upon delivery of a hazardous material to UTA

## **20. ASSIGNMENT OF CONTRACT**

Contractor shall not assign any of its rights or responsibilities, nor delegate its obligations, under this Contract or any part hereof without the prior written consent of UTA, such approval not to be withheld unreasonably, and any attempted transfer in violation of this restriction shall be void.

## **21. ENVIRONMENTAL RESPONSIBILITY**

UTA is ISO 14001 Environmental Management System (EMS) certified. Contractor acknowledges that its Software and/or Services might affect UTA's ability to maintain the obligation of the EMS. A partial list of activities, products or Services deemed as have a potential EMS effect is available at the UTA website [www.rideuta.com](http://www.rideuta.com). Upon request by UTA, Contractor shall complete and return a *Contractor Activity Checklist*. If UTA determines that the Software and/or Services under the Contract has the potential to impact the environment, UTA may require Contractor to submit additional environmental documents. Contractor shall provide one set of the appropriate safety data sheet(s) (SDS) and container label(s) upon delivery of a hazardous material to UTA.

## **22. SUSPENSION OF WORK**

a. UTA may, at any time, by written order to Contractor, require Contractor to suspend, delay, or interrupt all or any part of the Work called for by this Contract. Any such order shall be specifically identified as a "Suspension of Work Order" issued pursuant to this Article. Upon receipt of such an order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of further costs allocable to the Work covered by the order during the period of Work stoppage.

b. If a Suspension of Work Order issued under this Article is canceled, Contractor shall resume Work as mutually agreed to in writing by the parties hereto.

c. If a Suspension of Work Order is not canceled and the Work covered by such order is terminated for the convenience of UTA, reasonable costs incurred as a result of the Suspension of Work Order shall be considered in negotiating the termination settlement.

d. If the Suspension of Work causes an increase in Contractor's cost or time to perform the Work, UTA's Project Manager or designee shall make an equitable adjustment to compensate Contractor for the additional costs or time, and modify this Contract by Change Order.

## **23. TERMINATION**

a. **FOR CONVENIENCE**: UTA shall have the right to terminate the Contract at any time by providing written notice to Contractor. If the Contract is terminated for convenience, UTA shall have no right to a refund for any fees paid in advance for the then current subscription term. For future subscription terms, Customer shall have the right to terminate the Contract at any time by providing ninety days written notice to the Contractor.. UTA shall not be responsible for anticipated profits based on the terminated portion of the Contract. Contractor shall promptly submit a termination claim to UTA. If Contractor has any property in its possession belonging to UTA, Contractor will account for the same, and dispose of it in the manner UTA directs.

b. **FOR DEFAULT:** If Contractor (a) becomes insolvent; (b) files a petition under any chapter of the bankruptcy laws or is the subject of an involuntary petition; (c) makes a general assignment for the benefit of its creditors; (d) has a receiver appointed; (e) should fail to make prompt payment to any subcontractors or suppliers; or (f) fails to comply with any of its material obligations under the Contract, UTA may, in its discretion, after first giving Contractor thirty (30) days written notice to cure such default:

1. Terminate the Contract (in whole or in part) for default and obtain the Software and Services using other contractors or UTA's own forces, in which event Contractor shall be liable for all incremental costs so incurred by UTA;
2. Pursue other remedies available under the Contract (regardless of whether the termination remedy is invoked); and/or
3. Except to the extent limited by the Contract, pursue other remedies available at law.

c. **CONTRACTOR'S POST TERMINATION OBLIGATIONS** : Upon receipt of a termination notice as provided above, Contractor shall (i) immediately discontinue all work affected (unless the notice directs otherwise); and (ii) deliver to UTA all data, drawings and other deliverables, whether completed or in process. Contractor shall also remit a final invoice for all services performed and expenses incurred in full accordance with the terms and conditions of the Contract up to the effective date of termination. UTA shall calculate termination damages payable under the Contract, shall offset such damages against Contractor's final invoice, and shall invoice Contractor for any additional amounts payable by Contractor (to the extent termination damages exceed the invoice). All rights and remedies provided in this Article are cumulative and not exclusive. If UTA terminates the Contract for any reason, Contractor shall remain available, for a period not exceeding 90 days, to UTA to respond to any questions or concerns that UTA may have regarding the Software and Services furnished by Contractor prior to termination.

## **24. CHANGES**

a. UTA's Project Manager or designee may, at any time, by written order designated or indicated to be a Change Order, direct changes in the Work including, but not limited to, changes:

1. In the Scope of Services.
2. In the method or manner of performance of the Work; or
3. In the schedule or completion dates applicable to the Work.

To the extent that any change in Work directed by UTA causes an actual and demonstrable impact to: (i) Contractor's cost of performing the work; or (ii) the time required for the Work, then (in either case) the Change Order shall include an equitable adjustment to this Contract to make Contractor whole with respect to the impacts of such change.

b. A change in the Work may only be directed by UTA through a written Change Order or (alternatively) UTA's expressed, written authorization directing Contractor to proceed pending negotiation of a Change Order. Any changes to this Contract undertaken by Contractor without such written authority shall be at Contractor's sole risk. Contractor shall not be entitled to rely on any other manner or method of direction.

## **25. INFORMATION, RECORDS and REPORTS; AUDIT RIGHTS**

Contractor shall retain all books, papers, documents, accounting records and other evidence to support any cost-based billings allowable under Exhibit B (or any other provision of the Contract). Such records shall include, without limitation, time sheets and other cost documentation related to the

performance of labor services, as well as subcontracts, purchase orders, other contract documents, invoices, receipts or other documentation supporting non-labor costs. Contractor shall also retain other books and records related to the performance, quality or management of the Contract and/or Contractor's compliance with the Contract. Records shall be retained by Contractor for a period of at least two (2) years, or until any audit initiated within that two-year period has been completed (whichever is later). No more than once per calendar year, during this two-year period, such records shall be made available at all reasonable times for audit and inspection by UTA and other authorized auditing parties including, but not limited to, the Federal Transit Administration. Copies of requested records shall be furnished to UTA or designated audit parties upon request. Contractor agrees that it shall flow-down (as a matter of written contract) these records requirements to all subcontractors utilized in the performance of the Contract at any tier. The scope of any audit will be limited to time periods not already covered by a prior audit.

**26. FINDINGS CONFIDENTIAL**

- a. Any documents, reports, information, or other data and materials available to or prepared or assembled by Contractor or subcontractors under this Contract are considered confidential and shall not be made available to any person, organization, or entity by Contractor without consent in writing from UTA.
- b. It is hereby agreed that the following information is not considered to be confidential:
  - 1. Information already in the public domain;
  - 2. Information disclosed to Contractor by a third party who is not under a confidentiality obligation;
  - 3. Information developed by or in the custody of Contractor before entering into this Contract;
  - 4. Information developed by Contractor through its work with other clients; and Information required to be disclosed by law or regulation including, but not limited to, subpoena, court order or administrative order.

**27. PUBLIC INFORMATION.**

Contractor acknowledges that the Contract and related materials (invoices, orders, etc.) will be public documents under the Utah Government Records Access and Management Act (GRAMA). Contractor's response to the solicitation for the Contract will also be a public document subject to GRAMA, except for legitimate trade secrets, so long as such trade secrets were properly designated in accordance with terms of the solicitation.

**28. PROJECT MANAGER**

UTA's Project Manager for the Contract is Troy Hamilton, or designee. All questions and correspondence relating to the technical aspects of the Contract should be directed to UTA's Project Manager at UTA offices located at 669 West 200 South, Salt Lake City, Utah 84101, office phone (801) 287-2321.

**29. CONTRACT ADMINISTRATOR**

UTA's Contract Administrator for the Contract is Jolene Higgins, or designee. All questions and correspondence relating to the contractual aspects of the Contract should be directed to UTA's Grants & Contracts Administrator at UTA offices located at 669 West 200 South, Salt Lake City, Utah 84101, office phone (801)287-1925.

**30. CONFLICT OF INTEREST**

Contractor represents that it has not offered or given any gift or compensation prohibited by the laws of the State of Utah to any officer or employee of UTA to secure favorable treatment with respect to being awarded the Contract. No member, officer, or employee of UTA during their tenure or one year thereafter shall have any interest, direct or indirect, in the Contract or the proceeds thereof.

**31. NOTICES OR DEMANDS**

a. Any and all notices, demands or other communications required hereunder to be given by one party to the other shall be given in writing and may be electronically delivered, personally delivered, mailed by US Mail, postage prepaid, or sent by overnight courier service and addressed to such party as follows:

If to UTA:

Utah Transit Authority  
ATTN: Contracts Administrator  
669 West 200 South  
Salt Lake City, UT 84101  
[Adminstrator@rideuta.com](mailto:Adminstrator@rideuta.com)

If to Contractor:

Fairmarkit  
ATTN: Legal  
27 School Street, Suite 400\_  
Boston, MA 02108  
Legal@fairmarkit.com

Either party may change the address at which such party desires to receive written notice of such change to any other party. Any such notice shall be deemed to have been given, and shall be effective, on delivery to the notice address then applicable for the party to which the notice is directed; provided, however, that refusal to accept delivery of a notice or the inability to deliver a notice because of an address change which was not properly communicated shall not defeat or delay the giving of a notice.

**32. CLAIMS/DISPUTE RESOLUTION**

a. "Claim" means any disputes between UTA and the Contractor arising out of or relating to the Contract Documents including any disputed claims for Contract adjustments that cannot be resolved in accordance with the Change Order negotiation process set forth in Article 20. Claims must be made by written notice. The responsibility to substantiate claims rests with the party making the claim.

b. Unless otherwise directed by UTA in writing, Contractor shall proceed diligently with performance of the Work pending final resolution of a Claim, including litigation. UTA shall continue to pay any undisputed payments related to such Claim.

c. The parties shall attempt to informally resolve all claims, counterclaims and other disputes through the escalation process described below. No party may bring a legal action to enforce any term of this Contract without first having exhausted such process.

d. The time schedule for escalation of disputes, including disputed requests for change order, shall be as follows:

Level of Authority	Time Limit
UTA's Project Manager, Troy Hamilton/Contractor's Project Manager, Customer Success Director	Five calendar days
UTA's Direct of Supply Chain, Todd Mills /Contractor's, VP of Customer Success	Five calendar days
UTA's Chief Financial Officer, William Greene/Contractor's, Chief Operating Officer	Five calendar days

Unless otherwise directed by UTA's Project Manager, Contractor shall diligently continue performance under this Contract while matters in dispute are being resolved.

If the dispute cannot be resolved informally in accordance with the escalation procedures set forth above, then either party may commence formal mediation under the Juris Arbitration and Mediation (JAMS) process using a mutually agreed upon JAMS mediator. If resolution does not occur through Mediation, then legal action may be commenced in accordance the venue and governing law provisions of this contract.

**33. GOVERNING LAW**

The validity, interpretation and performance of the Contract shall be governed by the laws of the State of Utah, without regard to its law on the conflict of laws. Any dispute arising out of the Contract that cannot be solved to the mutual agreement of the parties shall be brought in a court of competent jurisdiction in Salt Lake County, State of Utah. Contractor consents to the jurisdiction of such courts.

**34. COSTS AND ATTORNEY FEES.**

If any party to this Agreement brings an action to enforce or defend its rights or obligations hereunder, the prevailing party shall be entitled to recover its costs and expenses, including mediation, arbitration, litigation, court costs and attorneys' fees, if any, incurred in connection with such suit, including on appeal

**35. UTAH ANTI-BOYCOTT OF ISRAEL ACT**

Contractor agrees that will be not engage in any type of boycott against the State of Israel for the duration of this contract.

**36. SEVERABILITY**

Any provision of the Contract prohibited or rendered unenforceable by operation of law shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of the Contract.

**37. AMENDMENTS**

Any amendment to the Contract must be in writing and executed by the authorized representatives of each party.

**38. FORCE MAJEURE**

If either Party is unable to perform any of its obligations under this Agreement because of an event or circumstance (a "Force Majeure Event") resulting from a judicial or government decree or regulation which is not such Party's fault, communication line failure, power failure, any natural disaster or act of God, war, terrorism, invasion, insurrection, riot, the order of any civil or military authority, fire, flood, earthquake, weather, lockouts, strikes, pandemic, epidemic, the unavailability of personnel due to injury, sickness, death or termination of employment, either voluntary or involuntary, or, without limitation, any other cause beyond such Party's reasonable control, the Party so affected shall promptly give notice to the other Party and shall make commercially reasonable effort to resume performance within the Resumption Window (defined below). Upon delivery of such notice, all obligations under this Agreement shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days ("Resumption Window"), the Party receiving notice of a Force Majeure Event may, by giving written notice, terminate this Agreement or any Order or SOW. Delays in delivery due to Force Majeure Events shall automatically extend the delivery date for a period equal to the duration of such events. A Force Majeure Event, however, shall not apply to or extend Customer's obligation to pay for Software or Professional Services.

**39. NO THIRD PARTY BENEFICIARIES**

The parties enter into the Contract for the sole benefit of the parties, in exclusion of any third party, and no third party beneficiary is intended or created by the execution of the Contract.

**40. ENTIRE AGREEMENT**

This Contract shall constitute the entire agreement and understanding of the parties with respect to the subject matter hereof, and shall supersede all offers, negotiations and other agreements with respect thereto.

**41. COUNTERPARTS**

This Contract may be executed in any number of counterparts and by each of the parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Any signature page of the Contract may be detached from any counterpart and reattached to any other counterpart hereof. The electronic transmission of a signed original of the Contract or any counterpart hereof and the electronic retransmission of any signed copy hereof shall be the same as delivery of an original.

**42. NONWAIVER**

No failure or waiver or successive failures or waivers on the part of either party in the enforcement of any condition, covenant, or article of this Contract shall operate as a discharge of any such condition, covenant, or article nor render the same invalid, nor impair the right of either party to enforce the same in the event of any subsequent breaches by the other party.

**43. SALES TAX EXEMPT**

Purchases of certain materials are exempt from Utah sales tax. UTA will provide a sales tax exemption certificate to Contractor upon request. UTA will not pay Contractor for sales taxes for exempt purchases, and such taxes should not be included in Contractor's Application for Payment.

**44. SURVIVAL**

Provisions of this Contract intended by their nature and content to survive termination of this Contract shall so survive including, but not limited to, Articles 7, 9, 10, 11, 12, 13, 15, 17, 18, 19, 21, 23, 24, 25, 30, 31, 32, and 40.

IN WITNESS WHEREOF, the parties hereto have caused the Contract to be executed by officers duly authorized to execute the same as of the date of last signature below.

**UTAH TRANSIT AUTHORITY:**

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

**FAIRMARKIT, INC.**

By Kevin Frechette 12/23/2021  
DocuSigned by:  
2AEC1BC444C2443  
Name Kevin Frechette  
Title CEO

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

Approved as to Form

DocuSigned by:  
Mike Bell 12/23/2021  
367463049  
Utah Legal Counsel

## **EXHIBIT A**

### **SOFTWARE DESCRIPTION AND STATEMENT OF SERVICES**

#### Statement of Work – Standard Implementation and Additional Services

This Statement of Work (“SOW”) is made and entered into by and between Fairmarkit, Inc., (“Company”) and the Utah Transit Authority (“Customer”). This SOW and performance of the Parties hereunder is governed by and subject to the terms and conditions set forth in Master Service Agreement for UTA CONTRACT NO. 21-03500 effective January 31, 2022

In the event of a conflict between any term of the Agreement and this SOW, the terms of this SOW shall prevail. In consideration of the mutual promises contained herein, the Parties agree as follows:

#### Project Overview

Customer has purchased a subscription to Fairmarkit’s intelligent sourcing platform to streamline the process of issuing and receiving requests for quote (“RFQ”)s and requests for proposal (“RFP”)s. To support that effort, Fairmarkit will provide the following professional services and deliverables.

#### Fairmarkit Implementation Services:

#### Project Management Services:

- Dedicated Fairmarkit Engagement Manager to serve as the primary point of contact for the implementation
- Weekly project meetings and progress reports
- Backlog and project action register
- Biweekly Steering Committee meetings to review project progress, blockers and risks
- Business kickoff session to establish KPIs and program goals
- Technical kickoff session to create project plan

#### Fairmarkit Platform

- Create 3 Fairmarkit instances: Dev, Staging (non-production), and Production
- Load customer’s logo, terms and conditions and non-disclosure agreement
- Load customer’s suppliers and supplier attributes
- Create supplier groups per customer specification
- Load customer addresses, subcategories, internal part numbers and additional data sources as required by customer
- Set platform configurations as discussed with customer
- Create user accounts in accordance with the Order Form

#### Supplier Recommendations

- Load up to 24 months of customer purchase history to Fairmarkit’s machine learning engine
- Load any price lists/catalog data as provided by customer in csv format
- Load any static material master/supplier relationships as provided by customer
- Prioritize available supplier attributes in recommendation as required by customer

#### Automatically create RFQs

- Provide Customer with access to a Secure File Transfer Protocol “SFTP” server
- Work with customer to develop a flat file of purchase requests or sourcing requests that can be delivered from customer’s system to the SFTP on a scheduled basis
- Complete a field mapping exercise to map all fields on the flat file to the appropriate Fairmarkit fields, incorporating up to 4 additional static data sources to be provided by Customer
- Develop, build, test and deploy a script to automatically create Requests for Quotation (“RFQs”) and Requests for Proposals (“RFP”)s in Fairmarkit from the flat files provided, up to every 15 minutes.

#### Supplier Sync

- Provide Customer with access to a Secure File Transfer Protocol “SFTP” server
- Work with customer to develop a flat file of supplier data that can be delivered from customer’s system to the SFTP on a scheduled basis
- Complete a field mapping exercise to map all fields on the flat file to the appropriate Fairmarkit fields, incorporating up to 4 additional static data sources to be provided by Customer
- Develop, build, test and deploy a script to automatically sync supplier data to Fairmarkit once daily.

#### Supplier Sync

- Provide Customer with access to a Secure File Transfer Protocol “SFTP” server
- Work with customer to develop a flat file of supplier data that can be delivered from customer’s system to the SFTP on a scheduled basis
- Complete a field mapping exercise to map all fields on the flat file to the appropriate Fairmarkit fields, incorporating up to 4 additional static data sources to be provided by Customer
- Develop, build, test and deploy a script to automatically sync supplier data to Fairmarkit once daily.

#### Pushback Award Data

- Upon award, archive or cancellation of any RFQ or RFP generate a flat file of award/disposition data on each RFQ
- Deliver this flat file to the SFTP file location either on a scheduled or event basis, depending on customer requirements.

#### Single Sign On (“SSO”)

- Configure customer-user authentication via Single Sign On as needed by customer
- Set SSO user permissions per design

#### Change Management Support

- Assist customer in creating a change management plan specific to this rollout
- With customer’s assistance, create and execute a supplier communication and training plan that aligns with the change management plan
- Train up to twenty five (25) users in up to 3 remote sessions prior to go live
- Train up to two (2) Admin users on administrative functionality
- Create training documentation to support knowledge transfer

## Reporting

- Enable access to standard reporting for up to 5 users
- Create up to 3 custom reports in addition to standard reporting

## Supplier Diversity Enrichment

- Using Fairmarkit's partner Supplier.io, determine which Customer suppliers are diverse entities, including but not limited to women-owned business, minority-owned business, small business, veteran-owned business and disabled veteran-owned business
- Provide Customer output of the report via csv/excel
- Tag suppliers in Fairmarkit as the appropriate classification
- Enable diversity reporting
- Optionally, prioritize diverse suppliers in supplier recommendation based on customer requirements.

## Fairmarkit Deliverables:

Deliverable	Due Date	Acceptance Criteria
Technical design documentation	Prior to go-live	Design documentation and checklists illustrating how the Fairmarkit technology has been configured
Training materials	Prior to go-live	Access to various help and support videos and training documentation
Platform Reports	As requested by Customer but no sooner than go-live	Accurate reporting of Fairmarkit activity, including but not limited to total spend, count of transactions, buyer activity, supplier response rates and savings
3 Fairmarkit SaaS Environments	Prior to go live	UAT, Staging and Production instances configured per the Services definition
Diversity Enrichment Results	Prior to go live	Results from the enrichment of up to 7500 suppliers
SFTP File Server	Prior to go live	Read/write access to a secure file transfer location for delivery of files
Auto-create RFQ Script	Prior to go live	Ability to automatically create RFQs from a flat file provided by customer to SFTP
Auto-sync Suppliers	Prior to go live	Ability to sync supplier data from a flat file provided by customer to SFTP
Pushback RFQ data	Prior to go live	Completed RFQ data pushed back to SFTP

## Project Governance

Customer will designate one or more individuals to serve as its Project Manager under this Statement of Work. Customer's Project Manager will serve as the principal, day to day point of accountability for coordinating and managing Customer's obligations. Fairmarkit's Project Manager function will be conducted by the assigned Engagement Manager, with assistance from the assigned Technical Architect. The Engagement Manager will have the ability and expertise to coordinate activities and resources on behalf of Fairmarkit, resolve identified issues, escalate issues that could not be resolved and support the implementation. Customer's project manager must have the ability and expertise to coordinate activities and resources on behalf of Customer, work with Fairmarkit's Engagement Manager to resolve identified issues, escalate issues and support the project implementation in general on behalf of Customer. The Customer Project Manager and Fairmarkit Engagement will be identified prior to the commencement of implementation activities.

## Customer Responsibilities

Customer will be responsible for the following:

- Assign a project manager or other equivalent resource who can partner with Fairmarkit's Customer Success Manager.
- Approval of project plan
- Provide purchase order and supplier information as reasonably requested by Fairmarkit, in the format required by Fairmarkit
- Providing business and technical resources as required
- Identification of all strategic, preferred and key suppliers to be included in sourcing activities. "Identification" includes providing the name of the supplier and contact information for the supplier, including email address.
- Reviewing and understanding the responsibilities of each party under this Agreement
- Collaborating with Engagement Manager to establish inter-team communication and escalation pathways
- Cooperation with Fairmarkit for all internal and external change management activities
- Define reporting requirements including savings, supplier activity, and others
- Developing custom reports to deliver purchase request and supplier data to Fairmarkit's SFTP
- Completing any development work associated with ingesting the award pushback file into Customer's system.

## Implementation Assumptions:

- All supplier and PO data will be provided by Customer in a form and format required by Fairmarkit
- If the requested data is not in the form and format required by Fairmarkit, then it could delay the proper load into the Fairmarkit platform
- Customer will be responsible for supplying all required authorization/access credentials to Fairmarkit in a timely manner
- Changes to implementation scope may result in an amended SOW and additional fees
- Customer will provide a technical resource who will be knowledgeable of the Customer procurement system environment and can assist Fairmarkit with technical questions and design

## Additional Scope:

Additional scope, services and fees not contemplated in this SOW will be mutually negotiated and agreed to in additional SOW(s) which will be attached to the Agreement.

**Project Timeline:**

The estimated time for completion of this Statement of Work for implementation and training is twelve (12) weeks from the date of the technical kickoff meeting.

Fees: As outlined in Exhibit B.

**EXHIBIT B****PRICING**

<b>Services</b>	<b>Description of Services</b>	<b>Quantity</b>	<b>Billing Cycle</b>	<b>Annual Fee</b>
Fairmarkit Global Platform Fee	Provides access to Fairmarkit sourcing platform for up to 25 users	1	Annual	\$100,000.00
Supplier Diversity	Provides enrichment of up to 7,500 suppliers to identify qualified diverse suppliers	1	Annual	Included
Fairmarkit Analytics	Provides up to 5 viewer licenses to Fairmarkit sourcing analytics dashboards	1	Annual	Included
Spend Consumption in \$10M increments	Provides the ability to source up to \$10M in open requisitions per year through the Fairmarkit portal	1	Annual	\$25,000.00
One-Time Implementation Fee	Covers cost of platform integration, access to a dedicated Customer Success Manager, Supplier Enablement Support, Onsite & Virtual User Training, and weekly business reviews	1	One-Time	\$25,000.00
Year 1 Total				\$150,000.00
Year 2 Total				\$125,000.00
Year 3 Total				\$125,000.00
Year 4 Total (optional)				\$125,000.00
Year 5 Total (optional)				\$125,000.00
Total Contract Value (5 Years)				\$650,000.00
<b>Add-on Services</b>	<b>Description of Services</b>	<b>Quantity</b>	<b>Billing Cycle</b>	
Additional user seats	Can be added in buckets of 10 users	10	Annual	

Additional spend blocks of \$5M	Can be added in blocks of \$5M at any stage	1	Annual	
Additional supplier diversity tags	Provides enrichment of supplier data to identify qualified diverse suppliers	Blocks of 1000	Annual	
Additional analytics viewer licenses	Additional analytics seats can be added for \$500 per user per year	1	Annual	

## EXHIBIT C

### MAINTENANCE AND SUPPORT TERMS

#### Support Terms

##### Fairmarkit Standard Support

At Fairmarkit, customer care is our highest priority. Our customer support organization's goal is to swiftly tackle and resolve any issues that our customers may encounter. This document outlines the Fairmarkit Standard Support agreement.

---

#### Section 1: Contacting Fairmarkit Customer Support

To best serve our customer's needs, a variety of methods are available to contact Fairmarkit Customer Support.

1. Online Support:

In Platform case management- Fairmarkit allows customers the ability to access support directly from our platform. This allows customers to submit cases at any hour of the day. The customer can set the case priority as well as attach screen captures that will aid in investigation. Updates from Customer Support will result in email alerts to the customer contact email address. When logged into Fairmarkit, simply clicking the "Support" link at the top right of the page will open the ticket creation process.

2. E-Mail Support:

Customers may also access support by sending an email to [Support@fairmarkit.com](mailto:Support@fairmarkit.com) any time of the day.

3. Telephone Support:

Fairmarkit support personnel are available by telephone to receive support requests. The phone number for support in the USA is +1-800-558-8017 option 2 unless otherwise directed by your Customer Success Manager.

4. Hours:

The business hours for Standard Customer Support are M-F 9:00 am – 6:00 pm Eastern Standard time, excluding holidays. If a customer has support needs in multiple time zones then a more advanced 24x7 agreement may be necessary.

#### Section 2: Customer Support Process

**Customer Case Assignment:** When a customer contacts Fairmarkit via the Platform, e-mail or phone, a Technical Support Engineer (TSE) will be assigned to their request and a case will be opened in Fairmarkit's case management system. A unique number is assigned to the case and provided to the customer. Tier I support activities will then be performed.

Support Request Status: The following table describes the possible status assigned to a case at any given time.

Table 1 - Support Request Status Definition	
Status	Criteria
New	A support request has just been submitted. It may be assigned to an individual TSE or a queue. The TSE (Technical Support Engineer) has not responded yet to customer.
Open	The TSE has responded to customer regarding the receipt of the support request and is actively pursuing a resolution.
Pending	The TSE is not actively working on the resolution of the support request. Generally, this is due to information pending from the submitter of the case or a pending program fix. Support requests may be put on hold for other reasons as well.
Working	Issue is understood and resolution is in progress
Escalated	A support request set to an escalated status means the issue has not been resolved within the target resolution time or its impact has significantly changed. Also, the customer may request a case be escalated. CSM, Customer Support management, or other Fairmarkit personnel may also escalate for an expedited fix.
Solved	A case is "solved" if: <ul style="list-style-type: none"> <li>- The customer and the TSE agree that a satisfactory resolution has been provided, or</li> <li>- The customer understands that the problem is not a result of a defect, or</li> <li>- The TSE has made multiple attempts to contact the customer and the customer has not responded.</li> </ul> Electronic support requests (online, e-mail) may be closed when a TSE has provided an electronic reply with a high degree of confidence that his/her reply will resolve the issue or answer the question.

### Tier I Support

#### Tier I definition:

- Enter data into the case log describing the problem and assign a severity to the case (please refer to "Assignment of Severity Levels" section below).
- Provide customer with a resolution if possible regarding known problems and low complexity issues. Then based on the customer's feedback, "close" the case or move to Tier II. A resolution is generally one of the following: an answer to a customer question, a suggestion of how to accomplish a simple task, or a workaround to a program issue.
- For those problems not solved during the first contact with the customer, the TSE will provide an estimated time-frame for follow up. If the TSE has not or cannot identify an effective resolution plan, the representative will escalate the case to Tier II support.

### Tier II Support

#### Tier II definition:

- Follow up with customers: answer questions, solve problems, and report the status of a pending issue. The Tier II representative will update the customer throughout the case lifecycle.
- Answer product usage, administration or installation questions.
- Collect necessary logs and other diagnostics needed to resolve an issue.
- Access customer's system via remote sessions when needed as directed by customers.
- Attempt to provide solutions that may include workarounds to address the problem within the time limits set forth in the section "Response and Resolution Targets" below.
- Attempt to reproduce problems.
- Verify that a pending issue can be 'closed' when a satisfactory resolution has been provided to the customer.

- Escalate product defects to Tier III. Work closely with Tier III to analyze, understand, and resolve complex issues.

Tier III Support

Tier III Definition

- Diagnosis of product issues to the code level
- Develop code level fix and/or product changes to be delivered in a future release
- Provide scripts to resolve or workaround problems where possible
- Tier III maintains a separate bug tracking system for each reported issue.

In extreme cases where no workaround is available and the pending support request is a mission critical problem for the customer, and the problem results from a defect in the program, Tier III support will provide a program update or patch to resolve the problem. This level of support is provided at the discretion of support management.

**Section 3: Assignment of Support Request Severity**

When a customer opens a support request, a TSE will assess the severity of the request based on the customer's description of the problem. The severity of the support request will be recorded in the Case Management System.

Table 2 below provides the definitions used in identifying and assigning a severity level to the reported problem.

<b>Table 2 - Severity Definitions</b>	
<b>Severity</b>	<b>Criteria</b>
Urgent	<b>Total Product Failure – Customer Production System is down</b> Program is unusable resulting in total disruption of operations. No workaround is available
High	<b>Major feature/function failure</b> Operations are severely restricted Major disruption of work No acceptable workaround available
Normal	<b>Minor feature/function failure</b> Program does not operate as designed Minor impact on usage Acceptable workaround deployed
Low	<b>Minor problem</b> Documentation, general information, general questions, enhancement request, etc.

**Section 4: Response and Resolution Targets**

Fairmarkit will use commercially reasonable efforts to meet the following resolution targets.

<b>Table 3 - Response and Resolution targets</b>				
<b>Severity</b>	<b>Target Response</b>	<b>Target Resolution</b>	<b>Update Cadence</b>	<b>Solution (1 or more of the following)</b>
Urgent			Hourly	- Satisfactory workaround

	2 Business Hours	2 Business Days		- Program patch (and incorporated into future release)
High	1 Business Day	5 Business Days	Daily	- Product or system configuration change
Normal	2 Business Days	10 Business Days	NA	- Proper product usage recommendation - Question answered
Low	3 Business Days	15 Business Days	NA	

### Section 5: Customer Escalation Procedures

During the process of resolving a customer support request, the severity of the request may be increased and/or a higher level of authority might be notified. Case severity may be escalated internally when it is determined that the support request involves a system critical issue, an extremely complex problem, or an unreasonable amount of time has passed with no resolution. If a customer is not satisfied with the level of support, they may escalate directly to Fairmarkit VP of Customer Success.

To escalate an issue, please call +1-800-558-8017 option 2. Please specify the case number and the reason why the issue is being escalated. In addition, escalations may be raised by emailing [escalation@fairmarkit.com](mailto:escalation@fairmarkit.com).

**EXHIBIT D**

**TECHNICAL SUPPORT AND SERVICE LEVEL AGREEMENT**

1. The Software shall be available 99.9%, measured monthly, excluding holidays and weekends and scheduled maintenance. If Customer requests maintenance during these hours, any uptime or downtime calculation will exclude periods affected by such maintenance. Further, any downtime resulting from outages of third-party connections or utilities or other reasons beyond Fairmarkit's control will also be excluded from any such calculation.
2. Customer's sole and exclusive remedy, and Fairmarkit's entire liability, in connection with Software availability shall be that for each period of downtime lasting longer than one hour, Fairmarkit will credit Customer 5% of monthly Subscription Fees (broken out) for each period of thirty (30) or more consecutive minutes of downtime; provided that no more than one such credit will accrue per day. Downtime shall begin to accrue as soon as Customer (with notice to Fairmarkit) recognizes that downtime is taking place and continues until the availability of the Software is restored. Software upgrades (new versions) will be dynamically completed during non-activity hours and will require no interaction on the user side.

In order to receive downtime credit, Customer must notify Fairmarkit in writing within twenty-four (24) hours from the time of downtime, and failure to provide such notice will forfeit the right to receive downtime credit. Such credits may not be redeemed for cash and shall not be cumulative beyond a total of credits for one (1) week of Subscription Fees in any one (1) calendar month in any event. Fairmarkit will only apply a credit to the month in which the incident occurred. Fairmarkit's blocking of data communications or other Software in accordance with its policies shall not be deemed to be a failure of Fairmarkit's to provide adequate service levels under this Agreement.