

SKI BUS AGREEMENT
Solitude Resort
2023-2024

THIS AGREEMENT is made this 16th day of October 2023, between the **UTAH TRANSIT AUTHORITY**, a public transit district organized under the laws of the State of Utah ("Authority" or "UTA") and **SOLITUDE MOUNTAIN SKI AREA, LLC**, a Utah limited liability company ("Administrator")

WHEREAS, The Authority is a public transit district organized under the provisions of the Utah Public Transit District Act that provides public transportation service along the Wasatch Front, including in Big and Little Cottonwood Canyon, and is authorized by State law to enter into transportation; and

WHEREAS, Administrator operates a ski resort in Big or Little Cottonwood Canyon, sells season passes to the public, and hires employees to assist in the operation of its ski resort; and

WHEREAS, Administrator desires to secure public transportation services including UTA bus services under the terms and conditions described below; and

WHEREAS, pursuant to authority granted by state law, UTA desires to assist Administrator by allowing certain authorized ski passes to include ski bus fare; and

WHEREAS, UTA desires to incentivize maximum use of public transit to and from the ski resorts by providing a temporary ridership volume-based discount to the resorts; and

NOW THEREFORE, Administrator and UTA hereby covenant and agree to be bound by the terms and conditions set forth in this Agreement:

DEFINITIONS

The term “**Authorized Services**” means:

- i. **Daily Rate Authorized Services**: Travel on UTA Ski Bus; and UTA TRAX trains, regular UTA buses, or UTA FrontRunner trains connecting to Ski Bus Service in the Cottonwood Canyons.
- ii. **Daily Weekly Cap Authorized Services**: Travel on UTA Ski Bus, UTA TRAX Trains, regular UTA buses, Microtransit, Streetcar, or FrontRunner trains connecting to Ski Bus Service in the Cottonwood Canyons.

The term “**Authorized User**” means Administrator’s employees and season pass holders who have been issued a Pass in compliance with this Agreement.

The term “**Non-Connecting Service**” means travel on UTA TRAX trains, regular UTA buses, or UTA FrontRunner trains that does not directly connect to a Ski Bus servicing the

Cottonwood Canyons.

The term “**Pass**” means a card issued by Administrator to an Authorized User under the terms of this Agreement for use on UTA’s transit system.

The term “**Lessee**” means the Administrator who is leasing RVP Vanpool vehicles from UTA.

TERMS AND CONDITIONS

- A. **SKI BUS SERVICE.** The Authority shall provide public transit service in Big and Little Cottonwood Canyons on schedules and routes reasonably determined by the Authority based on anticipated passenger volume ("Ski Bus Service").
- B. **PASSES.** Administrator shall issue a pass for use on UTA's Authorized Services in the form of a unique electronic micro-chip embedded in an electronic fare card media that complies with UTA's requirements ("Pass") to Authorized Users only. Passes are non-transferrable. Administrator agrees to provide UTA educational information to each Authorized User regarding UTA's Electronic Fare Collection Policies, particularly the requirement that Authorized Users tap on prior to boarding and tap off immediately after boarding. A “Pass” may include the Ikon Pass (passes designated as “Ikon” in the property fields in the electronic fare system). Administrator agrees to pay for trips by Ikon Pass holders to the Administrator’s resort. Total Ikon Pass trips taken will be billed to each resort based on the Ski APC-EFC Report that is emailed to the resort each month by the Fare’s Department.
- C. **PASS RECOGNIZED AS TRANSIT FARE.** For the term of this Agreement, a Pass issued to an Authorized User under this Agreement, when displayed together with valid photo identification upon request, shall be recognized as full fare on Ski Bus Service when the Authorized User has tapped on and tapped off. An Authorized User's Pass will also be recognized as valid fare on UTA TRAX trains, regular UTA buses, and UTA FrontRunner trains connecting to Ski Bus Service when the Authorized User taps on and taps off.
- D. **PASSES FOR NON-CONNECTING SERVICE.** It is the responsibility of the Administrator to restrict Pass use on these Non-Connecting Service, if and as desired by Administrator by making a written request to efcooperations@rideuta.com or by indicating on the Administrator’s bulk import file sent to bulkimport@rideuta.com that the Authorized User’s Pass number be limited to Ski Bus Only, without access to Non-Connecting Service. If the Administrator fails to provide such written request or bulk import specifications, the Administrator agrees to pay full fare for an Authorized User’s use of his/her Pass for those services.
- E. **PAYMENT FOR PASSES.** Administrator is responsible for paying the full amount owed to UTA under this Agreement, regardless of whether Administrator receives payment for Passes from a third party. Administrator shall pay the amount invoiced within thirty (30) days of the invoice delivery date, provided that Administrator may withhold payment of

amounts disputed in good faith until the dispute has been resolved. UTA shall charge Administrator a one percent (1%) per month late fee on balances due under this Agreement that remain unpaid forty-five (45) days from date of invoice. Payment can be made in the following forms: Check, ACH, and/or Wire Transfer. Checks should be made payable to UTA and mailed to the following address: Utah Transit Authority, Accounts receivable, 669 West 200 South, Salt Lake City, Utah 84101. ACH/WIRE instructions are available upon request.

- i) Daily. UTA shall issue Administrator an invoice for actual daily Pass usage each month within seven days after the month ends. Administrator agrees to pay \$8.00 per Authorized User daily boarding. Boarding and fare usage will be determined by the Authority based upon monthly ridership boarding counts using UTA's Electronic Fare Collection ("EFC") ridership counting system. Trips taken between resorts ("Shuttles" between Alta-Snowbird and Brighton-Solitude) will be excluded from the Ski Bus boarding counts and will operate like a free fare zone.
- ii) Daily Weekly Cap. UTA shall issue Administrator an invoice for actual daily Pass usage, not to exceed \$28 per week per authorized user, each month within seven days after the month ends. Boarding and fare usage will be determined by the Authority based upon monthly ridership boarding counts using UTA's Electronic Fare Collection ("EFC") ridership counting system. Trips taken between resorts ("Shuttles" between Alta-Snowbird and Brighton-Solitude) will be excluded from the Ski Bus boarding counts and will operate like a free fare zone.

F. CONFISCATION AND UNAUTHORIZED USE OF PASS. UTA shall have the right to confiscate a Pass at any time (without notice to the Administrator) from any person who UTA reasonably believes is not an Authorized User or if UTA reasonably believes the Pass has been duplicated, altered, or used in an unauthorized way. UTA will immediately deactivate confiscated Passes and notify the Administrator. If the Pass is an Administrator-provided card, UTA will return it to Administrator.

G. RECONCILIATION. UTA maintains the right, upon reasonable notice, to inspect during regular business hours, all Passes always maintained by Administrator during the term of this Agreement and for a period of one year after the expiration or termination of this Agreement. Administrator shall cooperate with and permit UTA to examine the unissued Passes distributed to Administrator and the Passes sold and to inspect and reconcile all records and accounts pertaining to this Agreement monthly.

H. REPORTING

- i. Partner Website. The Authority agrees to provide the following information to Administrator through www.tap2rideuta.com, which may be accessed at any time: (1) Ridership- parameters include a date range with trip counts by Pass number or service type; (2) Active Passes- a count of total active passes; (3) Pass Summary- the current status of each Pass, the Pass number, and property field to the extent completed by Administrator; and (4) Action History- a summary of all changes made to Passes.

Administrator may access this information at www.tap2rideuta.com by selecting “reports.”

- ii. Ridership Data. Each monthly billing cycle, UTA agrees to provide Administrator with a report of its’ Authorized Users’ daily ridership on Ski Bus Service during the preceding month.
 - iii. Additional Ridership Data. Subject to Utah Code 17B-2a-815(3)(a), which limits the type of ridership data UTA may disclose to third party administrators, the Authority will provide additional Authorized User ridership data to Administrator upon request. Requests for additional ridership data must be emailed to passprograms@rideuta.com.
 - iv. Administrator Data. Administrator agrees to identify the type of each Pass issued in the property fields on the UTA Third Party Partner Website or the bulk import spreadsheet (employee or season pass-holder). UTA encourages Administrator to provide additional information in the property fields of the UTA Partner Website or bulk import spreadsheet so that the parties can obtain more comprehensive ridership data in connection with the Ski Bus Service.
 - v. Ikon Pass Data. Administrator agrees to provide a list of Ikon pass numbers to the Authority no later than November 1. The Authority Agrees to activate all Ikon passes to be valid as transit fare for the term of this Agreement.
 - vi. Annual Ridership Report. The Authority will provide Administrator with an Annual written or electronic report summarizing the service provided under the terms of the Agreement. UTA can also provide Administrator with a breakdown of EFC Pass usage if Administrator provides Pass holder information through bulk import.
 - vii. Non-Connecting Service Report. The Authority will provide Administrator with a weekly report summarizing card holder use on non-connecting service under the terms of the Agreement.
- I. **TEMPORARY VOLUME BASED DISCOUNT.** For this 2023/24 Ski Bus Agreement only, UTA will provide a Pass discount to Administrator to provide for alternate transportation solutions for their Employees. The amount owed each month for Passes shall be discounted by 75- 100% of the prior year (2022/23) fees, with a guaranteed minimum discount of \$118,598 and a maximum discount of \$158,129.

- The discount described above shall be based on the ridership information provided by the Administrator including the Administrator’s Authorized Users described in Section G. UTA shall subsequently reflect the discount in the invoices provided by UTA for the utilization of UTA service by the Administrator’s Authorized Users.
- The 75% discount will be applied to monthly invoices based on Administrator’s Authorized Users utilization until the maximum discount amount is reached. If the minimum discount amount if not reached by the end

date of this agreement, the balance of the minimum guaranteed amount will be provided in a final reconciliation payment to the ski resort.

J. CONGESTION MITIGATION

Administrator (Ski Area) will continue to exert good faith efforts toward a goal of mitigating traffic congestion to allow more efficient movement of UTA vehicles.

K. EMPLOYEE SHUTTLE AND RIDERSHIP REPORTING

Administrator agrees to track and report to UTA the employee ridership on non-UTA shuttles to UTA at least monthly by the 15TH day of the following month. Employee ridership data will be utilized to provide a metric on the number of UTA Ski Bus seats freed up for other public patrons because of the discounts provided under this Agreement.

MISCELLANEOUS PROVISIONS

L. TERM. This Agreement shall begin on date stated above and end on May 31, 2024.

M. TERMINATION OF AGREEMENT. This Agreement may be terminated with or without cause by either party by providing thirty (30) days advance written notice of termination. In the event the Agreement is terminated after UTA begins Service, the amount owed under this Agreement shall be prorated based on the number of days UTA provided the Service.

N. THIRD PARTY INTERESTS. No person not a party to this Agreement shall have any rights or entitlements of any nature under it.

O. ENTIRE AGREEMENT. This Agreement contains the entire agreement between the parties hereto for the term stated and cannot be modified except by written agreement signed by both parties. Neither party shall be bound by any oral agreement or special arrangements contrary to or in addition to the terms and condition as stated herein.

P. COSTS AND ATTORNEY’S FEES. If either party pursues legal action to enforce any covenant of this Agreement, the parties agree that all costs and expenses of the prevailing party incident to such legal action, including reasonable attorneys’ fees and court costs shall be paid by the non-prevailing party.

Q. NOTICES. Except as otherwise indicated, notices to be given hereunder shall be sufficient if given in writing in person or by personal delivery, U.S. mail, or electronic mail. Notices shall be deemed effective and complete at the time of receipt, provided that the refusal to accept delivery shall be construed as receipt for purposes of this Agreement.

If to:

Administrator:	<u>Solitude Mountain Ski Area LLC</u>	Utah Transit Authority:
Name:	<u>Amber Broadaway</u>	Kensey Kunkel

Address:	12000 E. Big Cottonwood Canyon	669 West 200 South
	Brighton, UT 84121	Salt Lake City, Utah 84101
Phone:	801.536.5776	801-741-8806
Email:	a.broadaway@solitudemountain.com	kkunkel@rideuta.com

Either party may change the address at which such party desires to receive written notice by giving written notice of such change to the 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.

R. INTENT TO BE LEGALLY BOUND. The undersigned parties have duly caused this Agreement to be executed and any individual signatories executing on behalf of a governmental entity, corporation or limited liability company are duly authorized by his or her respective governmental entity, corporation, or limited liability company employer to execute this Agreement.

S. NON-DISCRIMINATION. Administrator agrees that it shall not exclude any individual from participation in or deny any individual the benefits of this Agreement, based on race, color, national origin, creed, sex, or age in accordance with the requirements of 49 U.S.C. 5332.

T. DEFAULT. In the event that either party fails to perform any of the terms and conditions required to be performed pursuant to this Agreement, and upon fifteen (15) days' notice of such failure to perform, the non-defaulting party under this Agreement may terminate this Agreement.

U. SUCCESSORS AND ASSIGNS. This agreement shall not be assigned without the written consent of the other party. This agreement with all its terms and provision shall be binding and inure to the benefit of any permitted successors and assigns of the parties hereto.

V. AMENDMENTS. This Agreement may not be modified or terminated orally, and no claimed modification, rescission or waiver shall be binding upon either party unless in writing signed by a duly authorized representative of each party.

W. INDEMNIFICATION. The parties mutually agreed to indemnify, defend, and hold harmless the other party, its directors, officers, agents, and employees against all third-party claims, actions, debts or loss to the extent arising from a breach of a covenant, or other breach or default by the indemnifying party under this Agreement. The Parties recognize and acknowledge that UTA is a public or governmental agency or entity covered under the provisions of the Utah Governmental Immunity Act as set forth in Sections 63-30-1 to 63-30-38, Utah Code Annotated 1953, as amended, and the limits of liability therein described. UTA does not waive any legal defense or benefit available to it under applicable law. Both parties agree to cooperate in good faith in resolving any disputes that may arise under this Agreement.

X. GOVERNING LAW. This Agreement and all transactions contemplated hereunder and/or

evidenced hereby shall be governed by and construed under and enforced in accordance with the laws of the State of Utah without giving effect to any choice of law or conflict of law rules or provisions.

Y. WAIVER. The waiver by either party of any of the covenants as contained in this Agreement shall not be deemed a waiver of such party's rights to enforce the same or any other covenant herein, and the rights and remedies of the parties hereunder shall be in addition to, and not in lieu of, any right or remedy as provided by law.

Z. NO PRECEDENT. Both Parties acknowledge that this Agreement is applicable only until April 1, 2024, and that a new agreement including new terms and conditions will need to be negotiated for future ski resort service. This Agreement does not set a precedent for those future agreements.

In WITNESS WHEREOF, the undersigned parties have executed this Agreement the date and year above written.

SOLITUDE MOUNTAIN SKI AREA LLC

UTAH TRANSIT AUTHORITY

DocuSigned by:
Amber L. Broadaway _____
7E93705B28FB444... 10/26/2023
Date

By: _____
Signature Date

Print Name: Amber L. Broadaway

Print Name: _____

Print Title: President/COO

Print Title: _____

By: _____
Signature Date

Print Name: _____

Print Title: _____

DocuSigned by:
Mike Bell _____
70E33A415BA44F6...Oval

EXHIBIT A

Pass Program Account Setup

Section 1: Partner Information

Administrator: Amber Broadaway
 Address: 12000 E. Big Cottonwood Canyon

 City, State,
 Zip: Brighton, UT 84121

Section 2: Contact Information

Contact
 Name: Steve Holtey
 Title: V.P. Finance
 Phone: 801-330-3833
 Email: s.holtey@solitudemountain.com

Section 3: Designated Transit Coordinator *(For additional Coordinator, please submit names and email addresses to efcooperations@rideuta.com)*

Contact
 Name: Grace Dumas
Sr. Manager Guest Services, Tickets
& Mountain Hosts
 Title: _____
 Phone: 801-536-5782
 Email: g.dumas@solitudemountain.com

Section 4: Billing Information

Accounts
 Payable
 Contact: Steve Holtey
 Title: V.P. Finance
 Phone: 801-330-3833
 Email: s.holtey@solitudemountain.com

Method (Check One)		Email or Mailing Address
Email <input checked="" type="checkbox"/>	Mail <input type="checkbox"/>	

Payment Type (Check One)		
ACH <input type="checkbox"/>	Wire <input type="checkbox"/>	Check <input checked="" type="checkbox"/>

*ACH/WIRE Instructions are available upon request

Section 5: Programs and Pricing

Daily (\$8.00)

Description: Monthly payment required from employer to UTA, invoiced at the end of each month and based on actual monthly use at the daily rate.

Daily- Weekly Cap (\$8.00 or \$28 Cap)

Description: Monthly payment required from employer to UTA, invoiced at the end of each month and based on actual monthly use not to exceed a weekly cap of \$28 per week per authorized user. Requires 100% participation by season pass holders and/or 100% participation by employees. Please indicate below the authorized user group or groups that will be participating in the program:

Season Pass Holders

Employees