

TASK ORDERING AGREEMENT FOR RECRUITING SERVICES
UTA CONTRACT #23-0378451CG
UTA Recruiting Pool

This Task Ordering Agreement (TOA) is entered into and made effective as of the date of last signature below (the “Effective Date”) by and between UTAH TRANSIT AUTHORITY, a public transit district organized under the laws of the State of Utah (“UTA”), and 22nd Century Technologies, Inc (“Consultant”).

RECITALS

WHEREAS, UTA desires to award a task ordering contract for professional recruiting services per the Statement of Services contained at Exhibit A.

WHEREAS, on 9/20/2023, UTA issued Request for Proposal Package Number 23-037841CG (“RFP”) encouraging interested parties to submit Proposals to perform the services described in the RFP.

WHEREAS, upon evaluation of the proposals submitted in response to the RFP, UTA selected Consultant as one of multiple awardees with whom to negotiate a contract to perform the Work.

WHEREAS, Consultant is qualified and willing to perform the Work as set forth in the Scope of Services.

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. SERVICES TO BE PROVIDED

- a. Consultant shall perform all recruiting Tasks issued under this TOA as set forth in the Scope of Services (Exhibit A). Except for items (if any) which this Contract specifically states will be UTA-provided, Consultant shall furnish all the labor, material and incidentals necessary for the Work.
- b. Consultant shall perform all Work under this TOA in a professional manner, using at least that standard of care, skill and judgment which can reasonably be expected from similarly situated professionals.
- c. All Work shall conform to generally accepted standards in the transit industry. Consultant shall perform all Work in compliance with applicable laws, regulations, rules, ordinances, permit constraints and other legal requirements including, without limitation, those related to safety and environmental protection.

- d. Consultant shall furnish only qualified personnel and materials necessary for the performance of the Work.
- e. When performing Work on UTA property, Consultant shall comply with all UTA work site rules including, without limitation, those related to safety and environmental protection.
- f. Consultant is one of several awardees within a recruiting pool. Each member of the pool receiving a contract shall have a fair opportunity to bring qualified candidates to UTA for consideration. If a consultant's candidate is selected, it shall receive the placement fee as described in Exhibit B.

2. TASK ORDER ISSUANCE

- a. The Consultant's shall perform recruiting services with respect to a variety of positions and candidates. UTA shall issue a task order for each position it desires to fill. Task Orders shall be issued to all Consultants with the recruiting pool. as described in Exhibit A.
- b. If UTA, in its sole discretion, decides not to issue additional task orders beyond those already issued, this agreement shall be cancelled at no additional cost (beyond task orders already issued) to either Party.

3. FINAL ACCEPTANCE OF TASKS

Each Task shall require the Consultant to locate and recruit candidates qualified for the open UTA position. Candidates shall be submitted to UTA for consideration. UTA's subsequent selection of a candidate is solely within UTA's discretion. A Consultant may submit multiple candidates for consideration by UTA in response to each Task Order.

4. NON-SOLICITATION

No member, officer, agent, or employee of UTA during his or her tenure after more than one year shall be solicited by Consultant for employment.

5. PLACEMENT GUARANTEE

If a Consultant referred new hire leaves or is terminated by UTA within 30 days of working at UTA the Consultant is responsible for replacing the new hire within 90 days of the referred employee's termination date at no additional cost to UTA. If a new hire terminates employment or is terminated from employment with 30 to 90 days of employment UTA has the right to request a refund or replacement candidate.

6. PERIOD OF PERFORMANCE

This Contract shall commence as of the Effective Date. This Contract shall remain in full force and effect for five-year period expiring **March 26th, 2029**. This Contract may be further extended if the Consultant and UTA mutually agree to an extension evidenced in writing. The rights and obligations of UTA and Consultant under this Contract shall at all times be subject to and conditioned upon the provisions of this Contract.

7. COMPENSATION

Compensation shall be as described in Exhibit B. **INCORPORATED DOCUMENTS**

- a. The following documents hereinafter listed in chronological order, are hereby incorporated into the Contract by reference and made a part hereof:
 - 1. The terms and conditions of this Task Ordering 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 Goods and Services;
 - 3. Consultant'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 included or attached.

8. ORDER OF PRECEDENCE

The Order of Precedence for this contract is as follows:

- 1. UTA Contract including all attachments
- 2. UTA Terms and Conditions
- 3. UTA Solicitation Terms
- 4. Contractor's Bid or Proposal including proposed terms or conditions

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

9. 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) Consultant'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 Consultant 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 Consultant to proceed pending negotiation of a Change Order. Any changes to this Contract undertaken by consultant without such written authority shall be at Consultant's sole risk. Consultant shall not be entitled to rely on any other manner or method of direction.
- c. Consultant shall also be entitled to an equitable adjustment to address the actual and demonstrable impacts of "constructive" changes in the Work if: (i) subsequent to the Effective Date of this Contract, there is a material change with respect to any requirement set forth in this Contract; or (ii) other conditions exist or actions are taken by UTA which materially modify the magnitude, character or complexity of the Work from what should have been reasonably assumed by Consultant based on the information included in (or referenced by) this Contract. In order to be eligible for equitable relief for "constructive" changes in Work, Consultant must give UTA's Project Manager or designee written notice stating:
 - A. The date, circumstances, and source of the change; and
 - B. That Consultant regards the identified item as a change in Work giving rise to an adjustment in this Contract.

Consultant must provide notice of a "constructive" change and assert its right to an equitable adjustment under this Section within ten (10) days after Consultant becomes aware (or reasonably should have become aware) of the facts and circumstances giving rise to the "constructive" change. Consultant's failure to provide timely written notice as provided above shall constitute a waiver of Consultant's rights with respect to such claim.

- d. As soon as practicable, but in no event longer than 30 days after providing notice, Consultant must provide UTA with information and documentation reasonably demonstrating the actual cost and schedule impacts associated with any change in Work. Equitable adjustments will be made via Change Order. Any dispute regarding the Consultant's entitlement to an equitable adjustment (or the extent of any such equitable adjustment) shall be resolved in accordance with Article 21 of this Contract.

10. INVOICING PROCEDURES

- a. Contractor shall invoice UTA after achievement of contractual milestones or delivery of all Goods and satisfactory performance of all Services or in accordance with an approved progress or periodic billing schedule. Contractor shall submit invoices to ap@rideuta.com for processing and payment. In order to timely process invoices, Contractor shall include the following information on each invoice:
 - i. Contractor Name
 - ii. Unique Invoice Number

- iii. PO Number
 - iv. Invoice Date
 - v. Detailed Description of Charges
 - vi. Total Dollar Amount Due
- 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. UTA shall also have the right to offset (against payments) amounts reasonably reflecting the value of any claim which UTA has against Contractor under the Contract. 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 to ap@rideuta.com . Invoices not submitted electronically will shall be paid thirty (30) calendar days from date of receipt by UTA's accounting department.
- c. Invoices must include a unique invoice number, UTA's Purchase Order number, a description of the Good or Service provided, line-item pricing, total amount due, and must be submitted electronically to ap@rideuta.com.

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, computer programs, models and samples, shall become the property of UTA when prepared, and, together with any documents or information furnished to Consultant 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 Goods 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 Consultant, Consultant 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 the fullest extent necessary to accomplish those purposes, including the right to share same with UTA's Consultants, agent, officers, directors, employees, joint owners, affiliates, and consultants.

12. USE OF SUBCONSULTANTS

- a. Consultant shall give advance written notification to UTA of any proposed subcontract (not indicated in Consultant's Proposal) negotiated with respect to the Work. UTA shall have the right to approve all subconsultants, such approval not to be withheld unreasonably.
- b. No subsequent change, removal or substitution shall be made with respect to any such subconsultant without the prior written approval of UTA.
- c. Consultant shall be solely responsible for making payments to subconsultants, and such payments shall be made within thirty (30) days after consultant receives corresponding payments from UTA.

- d. Consultant shall be responsible for and direct all Work performed by subconsultants.
- e. Consultant agrees that no subcontracts shall provide for payment on a cost-plus-percentage-of-cost basis. Consultant further agrees that all subcontracts shall comply with all applicable laws.

13. KEY PERSONNEL

Consultant shall provide the key personnel as indicated in Consultant’s Proposal (or other applicable provisions of this Contract) and shall not change any of said key personnel without the express written consent of UTA. The following personnel are considered to be “key” under this clause:

If the key personnel listed above are changed without UTA’s permission, the Consultant is in default of the contract and liable for default damages.

14. SUSPENSION OF WORK

- a. UTA may, at any time, by written order to consultant, require Consultant 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, Consultant 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, Consultant 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 Consultant’s cost or time to perform the Work, UTA’s Project Manager or designee shall make an equitable adjustment to compensate Consultant for the additional costs or time and modify this Contract by Change Order.

15. TERMINATION

- a. **FOR CONVENIENCE**: UTA shall have the right to terminate the Contract at any time by providing written notice to Consultant. If the Contract is terminated for convenience, UTA shall pay Consultant: (i) in full for Goods delivered and Services fully performed prior to the effective date of termination; and (ii) an equitable amount to reflect costs incurred (including Contract close-out and subconsultant termination costs that cannot be reasonably mitigated) and profit on work-in-progress as of to the effective date of the termination notice. UTA shall not be responsible for anticipated profits based on

the terminated portion of the Contract. Consultant shall promptly submit a termination claim to UTA. If Consultant has any property in its possession belonging to UTA, Consultant will account for the same, and dispose of it in the manner UTA directs.

- b. **FOR DEFAULT:** If Consultant (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 subconsultants or suppliers; or (f) fails to comply with any of its material obligations under the Contract, UTA may, in its discretion, after first giving Consultant seven (7) days written notice to cure such default:

1. Terminate the Contract (in whole or in part) for default and obtain the Goods and Services using other Consultants or UTA's own forces, in which event Consultant 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. **CONSULTANT'S POST TERMINATION OBLIGATIONS:** Upon receipt of a termination notice as provided above, Consultant 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. Consultant 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 Consultant's final invoice, and shall invoice Consultant for any additional amounts payable by Consultant (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, Consultant 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 Goods and Services furnished by Consultant prior to termination.

- d. **TERMINATION OF TASKS OR TOA**

UTA's termination rights under this Article shall apply, in UTA's discretion, to either an individual task order or the entire TOA. Where the TOA is terminated for convenience, the Consultant shall be entitled to payment in full for all tasks satisfactorily completed prior to the termination date. Where a task is terminated prior to acceptance by UTA, Consultant shall be entitled to its actual allowable and allocable costs expended to the date of termination for the terminated task.

16. **INFORMATION, RECORDS and REPORTS; AUDIT RIGHTS**

Consultant 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 this 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. Consultant shall also retain other books and records related to the performance, quality, or management of this Contract and/or Consultant's compliance with this Contract. Records shall be retained by Consultant for a period of at least six (6) years after completion of the Work, or until any audit initiated within that six-year period has been completed (whichever is later). During this six-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. Consultant agrees that it shall flow-down (as a matter of written contract) these records requirements to all subconsultants utilized in the performance of the Work at any tier.

17. FINDINGS CONFIDENTIAL

Any documents, reports, information, or other data and materials delivered or made available to or prepared or assembled by Contractor or subcontractor 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. If confidential information is released to any third-party without UTA's written consent as described above, contractor shall notify UTA of the data breach within 10 days and provide its plan for immediate mitigation of the breach for review and approval by UTA.

- a. It is hereby agreed that the following information is not considered to be confidential:
 - A. Information already in the public domain.
 - B. Information disclosed to Contractor by a third-party who is not under a confidentiality obligation.
 - C. Information developed by or in the custody of Contractor before entering into this Contract.
 - D. Information developed by Contractor through its work with other clients; and
 - E. Information required to be disclosed by law or regulation including, but not limited to, subpoena, court order or administrative order.

18. PUBLIC INFORMATION.

Consultant acknowledges that the Contract and related materials (invoices, orders, etc.) will be public documents under the Utah Government Records Access and Management Act (GRAMA). Consultant'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.

19. GENERAL INDEMNIFICATION

Consultant 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 Consultant or any of its owners, officers, directors, agents, employees or subconsultants. This indemnity includes any claim or amount arising out of the failure of such Consultant to conform to federal, state, and local laws and regulations. If an employee of Consultant, a subconsultant, 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, Consultant'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 Consultant shall not apply to the extent that claims arise out of the sole negligence of UTA or the Indemnitees.

20. INSURANCE REQUIREMENTS

Standard 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".

b. The policy must also contain the following endorsement, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: "Contractual Liability Railroads" ISO from CG 24

17 10 01 (or a substitute form providing equivalent coverage) showing “Utah Transit Authority Property” as the Designated Job Site

2. 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, AND when such Contractor or subContractor executes the appropriate waiver form.

3. 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

- a. 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 beginning at the time work under this Contract is completed.

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 Consultant. Insurance limits indicated in this agreement are minimum limits. Larger limits may be indicated after the consultant’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 utahta@ebix.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 utahta@ebix.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. Subcontractors maintaining separate insurance shall name Utah Transit Authority as an additional insured on their policy. Blanket additional insured endorsements are not acceptable from sub-contractors. Utah Transit Authority must be scheduled as an additional insured on any sub-contractor policies.
- 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.

21. INTELLECTUAL PROPERTY INDEMNIFICATION

- a. Consultant 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 Consultant's performance under this Contract. If notified promptly in writing and given authority, information and assistance, Consultant shall defend, or may settle at its expense, any suit or proceeding against UTA so far as based on a claimed infringement and Consultant shall pay all damages and costs awarded therein against UTA due to such breach. In case any portion of the Work is in such suit held to constitute such an infringement or an injunction is filed that interferes with UTA's rights under this Contract, Consultant shall, at its expense and through mutual agreement between the UTA and Consultant, either procure for UTA any necessary intellectual property rights, or modify Consultant's services or deliverables such that the claimed infringement is eliminated.
- b. Consultant shall: (i) protect, release, defend, indemnify and hold harmless UTA and the other Indemnitees against and from any and all liens or Claims made or filed against UTA or upon the Work or the property on which the Work is located on account of any labor performed or labor, services, and equipment furnished by subconsultants of any tier; and (ii) keep the Work and said property free and clear of all liens or claims arising from the performance of any Work covered by this Contract by Consultant or its subconsultants of any tier. If any lien arising out of this Contract is filed, before or after Work is completed, Consultant, within ten (10) calendar days after receiving from UTA written notice of such lien, shall obtain a release of or otherwise satisfy such lien. If Consultant fails to do so, UTA may take such steps and make such expenditures as in its discretion it deems advisable to obtain a release of or otherwise satisfy any such lien or liens, and Consultant shall upon demand reimburse UTA for all costs incurred and expenditures made by UTA in obtaining such release or satisfaction. If any non-payment claim is made directly against UTA arising out of non-payment to any subconsultant, Consultant shall assume the defense of such claim within ten (10) calendar days after receiving from UTA written notice of such claim. If Consultant fails to do so, Consultant shall upon demand reimburse UTA for all costs incurred and expenditures made by UTA to satisfy such claim.

22. INDEPENDENT CONTRACTOR

Consultant is an independent Consultant and agrees that its personnel will not represent themselves as, nor claim to be, an officer or employee of UTA by reason of this Contract. Consultant is responsible to provide and pay the cost of all its employees' benefits.

23. PROHIBITED INTEREST

No member, officer, agent, or employee of UTA during his or her tenure or for one year thereafter shall have any interest, direct or indirect, including prospective employment by Consultant in this Contract or the proceeds thereof without specific written authorization by UTA.

24. CLAIMS/DISPUTE RESOLUTION

- a. "Claim" means any disputes between UTA and the Consultant 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 6. 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, Consultant 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/Consultant's Project Manager	Five calendar days
UTA's Greg Gerber/Consultant's [SECOND LEVEL]	Five calendar days
UTA's Kim Shanklin/Consultant's [THIRD LEVEL]	Five calendar days

Unless otherwise directed by UTA's Project Manager, Consultant 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.

25. GOVERNING LAW

This Contract shall be interpreted in accordance with the substantive and procedural laws of the State of Utah. Any litigation between the parties arising out of or relating to this Contract will be conducted exclusively in federal or state courts in the State of Utah and Consultant consents to the jurisdiction of such courts.

26. ASSIGNMENT OF CONTRACT

Consultant shall not assign, sublet, sell, transfer, or otherwise dispose of any interest in this Contract without prior written approval of UTA, and any attempted transfer in violation of this restriction shall be void.

27. 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.

28. NOTICES OR DEMANDS

- a. Any formal notice or demand to be given by one party to the other shall be given in writing by one of the following methods: (i) hand delivered; (ii) deposited in the mail, properly stamped with the required postage; (iii) sent via registered or certified mail; or (iv) sent via recognized overnight courier service. All such notices shall be addressed as follows:

b.

If to UTA:

Utah Transit Authority
ATTN: Pat Postell
669 West 200 South
Salt Lake City, UT 84101

with a required copy to:

Utah Transit Authority
ATTN: Legal Counsel
669 West 200 South
Salt Lake City, UT 84101

If to Consultant:

22nd Century Technology, Inc.
8251 Greensboro Drive, Suite 900
McLean, VA 22102

- c. 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. Either party may change the address at which such party desires to receive written notice by providing written notice of such change to any other party.
- d. Notwithstanding Section 23.1, the parties may, through mutual agreement, develop alternative communication protocols to address change notices, requests for information and similar categories of communications. Communications provided pursuant to such agreed means shall be recognized as valid notices under this Contract.

29. CONTRACT ADMINISTRATOR

UTA's Contract Administrator for this Contract is Pat Postell or designee. All questions and correspondence relating to the contractual aspects of this Contract should be directed to said Contract Administrator, or designee.

30. COSTS AND ATTORNEY'S 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

31. NO THIRD-PARTY BENEFICIARY

The parties enter into this 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 this Contract.

32. FORCE MAJEURE

Neither party to the Contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which are beyond that party's reasonable control. UTA may terminate the Contract after determining such delay or default will reasonably prevent successful performance of the Contract.

33. UTAH ANTI-BOYCOTT OF ISRAEL ACT

Contractor agrees it will not engage in a boycott of the State of Israel for the duration of this contract.

34. SEVERABILITY

Any provision of this 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 this Contract.

35. 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. The terms of the Contract supersede any additional or conflicting terms or provisions that may be preprinted on Vendor's work plans, cost estimate forms, receiving tickets, invoices, or any other related standard forms or documents of Vendor that may subsequently be used to implement, record, or invoice Goods and/or Services hereunder from time to time, even if such standard forms or documents have been signed or initialed by a representative of UTA. The terms of the Contract prevail in any dispute between the terms of the Contract and the terms printed on any such standard forms or documents, and such standard forms or documents will not be considered written amendments of the Contract.

36. AMENDMENTS

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

37. 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.

38. 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 5, 7, 8, 10, 14, 15, 17, 18, 19, 20, 23, 29 and 30.

IN WITNESS WHEREOF, the parties have made and executed this Contract as of the day, month and year of the last signature contained below.

**UTAH TRANSIT AUTHORITY:
INC.:**

22ND CENTURY TECHNOLOGIES,

By _____

By _____
Name _____
Title _____ Account Executive

DocuSigned by:
Sirveerpal Singh
2008639B42F649C...
Sirveerpal Singh

By _____

By _____
Name _____
Title _____

By _____
UTA Legal Counsel

DocuSigned by:
Mike Bell
70E33A415BA44F6...

Exhibit A
Scope of Work

The process for engaging the contractor will be:

UTA Expectation:

1. Notify the Contractor pool of the vacancy through issuance of a Task Order.
2. Provide a job description, required and desired candidate qualifications, deadline for submission of candidates, and other pertinent information within the Task Order.
3. Provide an opportunity for the Contractor to meet UTA hiring officials including hiring manager to further define the ideal candidate.
4. Provide the Contractor an opportunity to source and submit candidates for consideration through UTA Applicant Tracking System (ATS) agency portal.

Contractor Expectations:

Upon receipt of notification of a vacancy, the Contractor shall engage in an active search of qualified candidates, which may include:

1. A multi-format nationwide search of potential candidate's pools;
2. Meetings with key individuals who will influence the search or who have decision making authority in the candidate selection process. The Contractor is expected to learn about UTA's environment, culture and needs to make organization-candidate matches that are attractive to and benefit both parties.
3. Recruitment activities, including advertising of the position, direct contact, and promotion of the position to potential candidates (including passive candidates and candidates recommended by UTA) and responses to inquiries by potential candidates.
4. Screening of candidates and verification of candidate qualifications including an evaluation of public scrutiny red flags.
5. Submit applicants resume to UTA through UTA ATS agency portal
6. Participation in interview activities to provide advice, consultation, and salary negotiation during the selection stage of the recruitment.
7. Arrangement of candidates travel itinerary.

Note: The Contractor is responsible for verifying a candidate meets the requirements set forth above, as well as any additional requirements established by UTA, and shall, upon request promptly provide proof of the candidate's compliance with all applicable requirements. Applicants already in UTA ATS less than six months will be considered UTA applicants.

UTA will then select possible candidates for each contractors lists and if an employee is hired from the pool, UTA will pay the firm fixed percent of candidate annual salary in the contract.

Exhibit B
Pricing

1. **Total Not-To-Exceed Amount:** The total aggregate amount payable by UTA under this contract, collectively for all contractors in the pool, shall not exceed \$500,000 (the "Total Not-To-Exceed Amount") over the entire period of performance. This total NTE amount shall decrease with each payment to a Consultant within the Pool.
2. **Contractor Billing Rates:** The contractor placement fees are as follows:

Position Category	Fee Upon Placement (% First Annual Salary)
Information Technology	12%
Organization Excellence/Continuous Improvement	12%
Human Resource	12%
Finance	12%
Other Position	12%

Payment shall only be made to the Consultant who first submits a candidate to UTA who subsequently accepts a position with UTA.

3. **Allocation of Total Not-To-Exceed Amount:** The Total Not-To-Exceed Amount shall be allocated among the contractors in the pool based on the actual services rendered. Each contractor's billing rates will be applied as applicable.
4. **Work Allocation:** Contractors in the pool acknowledge and agree that billing will only take place upon successful placement of contractor's candidate.
5. **Invoicing and Payment:** Contractors shall submit invoices to UTA for services rendered based on the agreed-upon placement fee shown in the table above. Payments will be made in accordance with the payment terms specified in the main body of this contract.

EXHIBIT C – TASK ORDER TEMPLATE

TASK ORDER NO. _____

TASK ORDER NAME: _____

This is Task Order No. _____ to Contract No. _____ entered into by and between Utah Transit Authority (UTA) and _____, (Contractor) as of _____, _____, 202_

This Task Order is part of the above-described Contract and is governed by the terms thereof.

The purpose of this Task Order is to provide a job description, required and desired candidate qualifications, deadline for submission of candidates, and other pertinent information.

UTA and Contractor hereby agree as follows:

1.0 SCOPE OF SERVICES

The scope of work for this Task Order _____ is hereby attached and incorporated into this Task Order.

2.0 SCHEDULE

The Substantial Completion Date for this Task is _____, _____, 202_. The Final Acceptance Date for this Task is _____, _____, 202_.

3.0 PRICE (as described in Exhibit B)

IN WITNESS WHEREOF, this Task Order has been executed by UTA and the Contractor or its appointed representative

UTAH TRANSIT AUTHORITY:
By: _____
Date

22ND CENTURY TECHNOLOGIES, INC.:
By: _____

Title: _____

Title: _____

By: _____

Title: _____

ATTACHMENT 1 – TASK ORDER STATEMENT OF WORK OR SERVICES

Job Description:

Required Qualifications:

Desired Qualifications:

Time Frame:

Other: