

PROGRAM MANAGER AGREEMENT

This Program Manager Agreement (the "*Program Manager Agreement*"), effective June 28, 2013 (the "*Effective Date*"), is entered into by and between the Utah Transit Authority, a political subdivision and public transit district chartered pursuant to Section 17B-2a-801, Utah Code Annotated 1953, as amended, relating to public transit districts (the "*UTA*") and Interactive Communications International, Inc., a Florida corporation ("*InComm*") (each of UTA and InComm, a "*Party*" and collectively, the "*Parties*").

WHEREAS, the UTA has an electronic fare collection program for its customers and desires to enhance such program;

WHEREAS, InComm provides a secure point-of-sale system for processing the sale of such products and services and maintains a prepaid product distribution network comprised of the retail locations of various retailers; and

WHEREAS, the UTA desires for InComm to manage certain card products and account functions for its electronic fare collection program, in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises of the Parties and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties agree as follows:

1. **Definitions.** Except as otherwise specifically indicated, the following terms shall have the following meanings in this Agreement (with such meanings to be equally applicable to both the singular and plural forms of the terms defined):

1.1 "*Activate(d)*" means, with respect to a Card, enabled and capable of being used to conduct purchase transactions or in any other manner permitted by the applicable card terms and conditions.

1.2 "*Activation*" means the completed process through which a Card is Activated.

1.3 "*Activation Fee*" means the fee to be charged by InComm in connection with the sale of a Card and further defined in the applicable SOW.

1.4 "*Affiliate*" means, with respect to a Party, any person, firm, corporation, partnership (including, without limitation, general partnerships, limited partnerships, and limited liability partnerships), limited liability company, or other entity that now or in the future, directly Controls, is Controlled with or by or is under common Control with such Party.

1.5 "*Agreement*" means (a) this Program Manager Agreement, (b) the Request for Proposal, RFP-UT-12-03TH, (c) InComm's Proposal submitted in response thereto, (d) any SOW, mutually agreed to by the Parties in writing, and (e) the BRD.

1.6 “*Applicable Law*” means (a) the Brand System Rules, (b) any applicable rule or requirement of the National Automated Clearinghouse Association, and (c) any and all foreign, federal, state or local laws, treaties, rules, regulations, regulatory guidance, directives, policies, orders or determinations of (or agreements with) a Regulatory Authority and mandatory written direction from (or agreements with) any Regulatory Authority, including, without limitation, the GLBA, the Bank Secrecy Act and the regulations promulgated thereunder, including, without limitation, 31 CFR 1022.210, 31 CFR 1022.320, 31 CFR 1022.420, and any successor provisions, any and all sanctions or regulations enforced by the U.S. Department of Treasury’s Office of Foreign Assets Control, and federal or state statutes or regulations relating to prepaid cards, money transmission, unclaimed property or data security, and all federal or state statutes or regulations relating to prepaid cards, money transmission, unclaimed property or data security, including, without limitation, Title IV of the Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24, 123 Stat. 1734, as amended by Pub. L. No. 111-209, and the regulations promulgated thereunder, including, without limitation, 12 CFR 205.20, or any successor provisions, that are applicable to the Cards or the Program or otherwise applicable to any of the Parties or any Approved InComm Retailer, as the same may be amended and in effect from time to time during the Term.

1.7 “*Approved InComm Retailer*” means any InComm Retailer approved by InComm to offer Cards for sale and/or Reload the Cards.

1.8 “*Bank-Issued Contactless Card*” or “*BICC*” means any form of credit card, debit card, charge card, stored value card or prepaid card bearing the symbol of any Brand System that can read by a Contactless Card Reader.

1.9 “*Brand System*” means Visa U.S.A., Inc., MasterCard International, Inc., Discover Network, Inc., American Express Travel Related Services Company, Inc., or any other payment network which is utilized by an issuing bank to issue the Cards or otherwise utilized by any Party for the purposes of fulfilling such Party’s obligations hereunder.

1.10 “*Brand System Rules*” means the bylaws, operating rules and regulations of a Brand System.

1.11 “*BRD*” means the business requirements and specifications for the Products and Services, as mutually agreed in writing by the Parties from time to time.

1.12 “*Business Day*” means any day (other than a Saturday, Sunday or legal holiday) on which federally-insured financial institutions are permitted to be open in New York, New York.

1.13 “*Card*” means a closed-loop reloadable prepaid card issued in connection with the Program.

1.14 “*Cardholder*” means an individual who (a) has been issued a Card or is otherwise authorized to use, Load, or Reload a Card, or (b) has been issued a BICC by an issuing bank.

1.15 ***“Cardholder Data”*** means any data or information of any Cardholder that is provided to or obtained by any Party, or any of its Affiliates or service providers, in the performance of its obligations under this Agreement or otherwise, including but not limited to, all lists of Cardholders, former Cardholders, and all information relating to and identified with such Cardholders, including, but not limited to, “non-public personal information” (as such term is defined under 12 CFR Section 40.3(n) or 16 CFR Section 313.3(n)) including but not limited to any personal account information, financial information, account numbers, personal identification numbers and other related information, social security numbers, or other non-public business or personal or financial information provided by a Cardholder to either Party or any of its Affiliates or service providers; provided, however, “Cardholder Data” shall not include (a) data or information collected from a Cardholder by InComm, any of its Affiliates or service providers, or an Approved InComm Retailer, in connection with a transaction separate and apart from the sale of a Card, (b) data or information collected by UTA, any of its contractors or services providers, in connection with a transaction separate and apart from the sale of a Card, or in connection with a loyalty, customer promotional program or customer survey by UTA or any of its contractors, provided that such data is limited to the customer’s sponsor, if any, name, mailing address, phone numbers, travel history, and/or email address, (c) data or information collected from a Cardholder by an Approved InComm Retailer in connection with a loyalty or other customer promotional program of such Approved InComm Retailer, provided that such data is limited to name, mailing address, phone numbers and/or email address or (d) data or information use that has been expressly authorized by any Cardholder.

1.16 ***“Cardholder Funds”*** means the funds that have been tendered by or on behalf of a Cardholder for purposes of adding value to an account associated with a Card or a prepaid account, but that have not yet been redeemed or remitted to a state in accordance with applicable unclaimed property laws. For purposes of determining the Cardholder Funds payable to or held by UTA, Cardholder Funds excludes any Activation Fees, Load Fees or Reload Fees.

1.17 ***“Cardholder Funds Balance”*** means the balance of those funds that have been tendered by or on behalf of a Cardholder for purposes of adding value to an account associated with a Card or a prepaid account, but that have not yet been redeemed or remitted to a state in accordance with applicable unclaimed property laws. Activation Fees shall not be included in the Cardholder Funds Balance.

1.18 ***“Claim”*** has the meaning set forth in Section 19.1.

1.19 ***“Confidential Information”*** has the meaning set forth in Section 22.1.

1.20 ***“Contactless Card Reader”*** means a device with an embedded ISO 14443 A/B smart card reader.

1.21 ***“Control”*** means the possession, direct or indirect, of the power to vote more than fifty percent (50%) of the securities that have ordinary voting power for the election of directors of any entity, or to direct or cause the direction of the management and policies of such entity, whether through ownership of voting securities or by contract or otherwise.

1.22 ***“Customer Website”*** has the meaning set forth in Section 8.1.

- 1.23 “*Customer Service Applications*” has the meaning set forth in Section 8.2.
- 1.24 “*Deconversion and Transition Period*” has the meaning set forth in Section 18.5(a).
- 1.25 “*Development Fee*” has the meaning set forth in Section 6.1.
- 1.26 “*Examined Party*” has the meaning set forth in Section 11.3.
- 1.27 “*Fare Engine*” means that certain Hosted Back Office function, whereby the UTA: (a) determines the location of a Cardholder when his or her Card or BICC is tapped on the Contactless Card Reader at the time of boarding and at the time of exit from the UTA transit system and (b) calculates the appropriate Fare based on UTA’s current published fare schedule or other UTA policy.
- 1.28 “*GLBA*” means the Gramm-Leach-Bliley Act, 15 USC §§6801 et. seq., the regulations promulgated thereunder and regulatory interpretations thereof (including the Interagency Guidelines Establishing Information Security Standards adopted by federal bank regulatory agencies, such as the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency and the Board of Governors of the Federal Reserve System), all as they may be amended, supplemented and/or interpreted in writing from time to time by any Regulatory Authority.
- 1.29 “*Hosted Back Office*” has the meaning set forth in Section 3.
- 1.30 “*InComm Retailer*” means any retail merchant that has entered into a written agreement with InComm, or one or more of its Affiliates, for the purpose of participating in the retail sale of prepaid products distributed by InComm or any of its Affiliates.
- 1.31 “*InComm Technologies*” means, as used or provided by InComm solely in connection with this Agreement, (a) the processes, methods, machines, manufactures, technology, software or other technologies and all other materials used or provided solely by InComm pursuant to this Agreement; (b) all improvements, modifications or upgrades to any of the foregoing; and (c) any such intellectual property developed, invented, patented, or registered by InComm and/or by an InComm Affiliate prior to or during the Term of this Agreement.
- 1.32 “*Indemnified Party*” has the meaning set forth in Section 19.3.
- 1.33 “*Indemnifying Party*” has the meaning set forth in Section 19.3.
- 1.34 “*Initial Term*” has the meaning set forth in Section 18.1.
- 1.35 “*Load(ed)*” means to add funds or value to an account associated with a Card.
- 1.36 “*Load Amount*” means, with respect to any Load, the amount of funds tendered by or on behalf of a Cardholder in connection with a Load transaction to be Loaded to an account associated with a Card.

1.37 "*Load Fee*" means the fee to be charged by InComm in connection with the Load of an account associated with a Card and further defined in the applicable SOW.

1.38 "*Marks*" means the trademarks, service marks, trade names and logos of a Party.

1.39 "*Market Trial*" means the period during which the Program is tested by a select group of transit riders.

1.40 "*Participating Location*" means those retail locations owned or operated by Approved InComm Retailers through which InComm has decided to offer the Cards for sale or Reloads.

1.41 "*PCI DSS*" has the meaning set forth in Section 12.1.

1.42 "*Personal Account Number*" or "*PAN*" means the personal account number assigned to a Card.

1.43 "*Phase One Roll Out*" means the day on which the Products are first offered through retail distribution to all members of the general public. For the avoidance of doubt, the Phase One Roll Out is distinct from the Market Trial.

1.44 "*POS*" means a point-of-sale device.

1.45 "*Products*" has the meaning set forth in Section 2.2(a).

1.46 "*Program Commencement Date*" means that certain date which is ninety (90) days after the Phase One Roll Out.

1.47 "*Program*" means the UTA's electronic fare collection program for its customers, as described herein.

1.48 "*Reduced Fare Cards*" has the meaning set forth in the Reduced Fare Card Statement of Work.

1.49 "*Redemption Data*" means, as applicable, (i) the fare amount for any trip, as determined by the Fare Engine, and the applicable PAN or Bank-Issued Contactless Card number and (ii) any other amount to be deducted from or added to the Cardholder Funds Balance in accordance with UTA policy and the applicable PAN.

1.50 "*Regulatory Authority*" means any Brand System, the National Automated Clearing House Association, any state banking department, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, and any other federal or state governmental agency, including any foreign governmental agency, having jurisdiction over the Cards, any of the services to be provided hereunder, the UTA, InComm, any Approved InComm Retailer, or any of their respective Affiliates.

1.51 "*Relationship Manager*" has the meaning set forth in Section 16.

1.52 "**Reload(ed)**" means to load additional funds to an account associated with a Card in a manner described in this Agreement or any applicable SOW, or as otherwise mutually agreed upon in writing by InComm and the UTA from time to time.

1.53 "**Reload Amount**" means the amount of funds tendered by or on behalf of a Cardholder in connection with a Reload transaction to be Loaded to an account associated with a Card.

1.54 "**Reload Fee**" means the fee to be charged by InComm in connection with the Reload of an account associated with a Card and further defined in the applicable SOW.

1.55 "**Renewal Term**" has the meaning set forth in Section 18.1.

1.56 "**Retailer Agreement**" means an agreement by and between an Approved InComm Retailer and InComm, which documents such Approved InComm Retailer's participation in the retail sales portion of the Program.

1.57 "**RTVS**" has the meaning set forth in Section 3.

1.58 "**SOW**" has the meaning set forth in Section 2.2(a).

1.59 "**Services**" has the meaning set forth in Section 2.2(a).

1.60 "**Settlement Account**" means an account at a financial institution designated by the UTA as the account to be credited by InComm for settlement.

1.61 "**Term**" has the meaning set forth in Section 18.1.

1.62 "**Time-Based Cards**" means a card that provides the cardholder with unlimited access to the UTA transit system for a set period of time, including, but not limited to, the cards issued by the UTA pursuant to its Eco Pass and Ed Pass programs.

1.63 "**Transaction Data**" means with respect to the sale of a Card or the Reload of a Card, the data necessary to Activate, Load or Reload a Card, as applicable, as determined by the applicable Scope of Work or InComm from time to time.

1.64 "**UTA Equipment and Systems**" means the Program equipment and systems procured and maintained by the UTA, including, but not limited to: (a) the on-board and back office equipment and software to accommodate the Cards and administer the Program; (b) the Contactless Card Readers located on each transit vehicle or at transit vehicle platforms; (c) the Fare Engine; (d) the capability to transmit data by wireless or other means to the Fare Engine; and (e) such other systems and equipment necessary for the Program that InComm or its Affiliates is not required to provide hereunder.

1.65 "**UTA Technologies**" means, as used or provided by the UTA solely in connection with this Agreement, (a) the processes, methods, machines, manufactures, technology, software or other technologies and all other materials used or provided solely by the UTA pursuant to this Agreement; (b) all improvements, modifications or upgrades to any of the

foregoing; and (c) any such intellectual property developed, invented, patented, or registered by the UTA prior to or during the Term of this Agreement.

2. Program.

2.1 Program. InComm and the UTA are entering into this Agreement to enhance UTA's Electronic Fare Collection Program by providing various pre-paid electronic fare media, which will be made available to customers of the UTA through a variety of card types, including Bank-Issued Contactless Cards, closed-loop reloadable cards, general purpose reloadable cards and third-party sponsored cards, or otherwise, which shall be implemented over time as set forth herein and in the mutually agreed statements of work.

2.2 Format and Interpretation of Agreement.

(a) This Program Manager Agreement includes one or more Statements of Work ("**SOW**") as may be mutually agreed upon in writing by the parties from time to time. Each SOW shall set forth a product or service to be delivered to the UTA, the price and terms thereof, plus any other related items, and shall be attached hereto and incorporated herein by this reference. The physical products to be provided by InComm pursuant to this Program Manager Agreement or any executed SOW are collectively referred to herein as the "**Products**." The services to be provided by InComm pursuant to this Program Manager Agreement, the BRD or any executed SOW are collectively referred to herein as the "**Services**." In the event of a conflict of terms between an SOW and this Program Manager Agreement, the terms of the SOW shall take precedence as to the actions to be taken in connection with the SOW.

(b) This Agreement shall consist of (i) this Program Manager Agreement, (ii) the Request for Proposal, RFP-UT-12-03TH, (the "**RFP**") (iii) InComm's Proposal submitted in response thereto, (the "**Proposal**") (iv) any SOW, mutually agreed to by the Parties in writing, and (v) the BRD. In the event of a conflict or inconsistency in the terms, specifications or otherwise under this Agreement, the terms of the following documents shall govern in this order (i) the applicable BRD, (ii) the applicable SOW, (iii) the Program Manager Agreement, (iv) the Proposal, and (v) the RFP. For avoidance of doubt, the terms or specifications of first document listed in the preceding sentence, which contain a conflict or inconsistency with one or more other documents listed, shall govern with respect to such conflict or inconsistency.

2.3 InComm's Responsibilities. During the Term, InComm shall:

(a) provide the Products and Services required to be provided by InComm as set forth in this Agreement in a professional and workmanlike manner in accordance with industry standards and in compliance with Applicable Law;

(b) ensure that the Cards are compatible with the UTA Equipment and Systems and UTA Technologies, provided the UTA complies with its obligations herein related to such UTA Equipment and Systems and UTA Technologies;

(c) not enter into any Agreement with any third party, Affiliate or Approved InComm Retailer that would require the modification of, replacement of or addition to any UTA Equipment and Systems or UTA Technologies, without the prior written consent of the UTA;

(d) shall use commercially reasonable efforts to notify the UTA of any obligations under Applicable Law that accrue to the UTA in connection with Program, provided InComm shall have no liability related to the UTA's violation of Applicable Law;

(e) ensure that InComm and any financial institution, with which InComm does business with in connection with providing the Services, are in good standing with any applicable Regulatory Agency;

(f) ensure InComm is licensed to provide the Services in the State of Utah, as required by Applicable Law;

(g) establish and maintain a network of Approved InComm Retailers that will provide a geographically diverse availability of Cards within UTA's service area, as set forth in the applicable SOW;

(h) provide commercially reasonable support to UTA's Customer Service Department in resolving disputes related to the Program;

(i) maintain and manage the Cardholder Funds Balance database according to applicable industry standards, Applicable Law and any Redemption Data transmitted, as set forth in Section 3.2; and

(j) establish and maintain a customer website and develop customer service applications, as set forth in Sections 8.1 and 8.2.

2.4 UTA's Responsibilities. During the Term, the UTA shall:

(a) accept all Cards when properly presented by a Cardholder and provide services to the Cardholder for the full Load Amount or Reload Amount, as applicable;

(b) provide all UTA Equipment and Systems for purposes of InComm's delivery of the Products and Services under this Agreement;

(c) operate the Fare Engine and transmit Redemption Data to InComm;

(d) maintain a Settlement Account;

(e) resolve all Cardholder disputes according to UTA's internal policies and procedures, which the UTA can resolve, and cooperate with InComm to resolve any other Cardholder disputes, including by responding within ten (10) days to any dispute forwarded to the UTA from InComm, and forwarding to InComm promptly after receipt by the UTA copies of any communication relating to a Cardholder dispute received from any person; and

(f) cooperate with InComm to establish connectivity to InComm's systems for purposes of authorizing transactions, to send Redemption Data to InComm, and to receive settlement and other reports from InComm.

During the Term of this Agreement, the UTA shall not replace any UTA Equipment and Systems, if such replacement would (i) require InComm to change the contactless technology embedded in any Product, including but not limited to the Cards or (ii) impair any connectivity with InComm which is necessary for InComm's provision of the Services, without the prior written consent of InComm. Notwithstanding the foregoing, the UTA may change the provider of the Fare Engine without the prior written consent of InComm, provided the UTA reimburses InComm for any and all costs and expenses, incurred by InComm or its Affiliates, related directly or indirectly to establishing connectivity with such new provider.

2.5 Subcontractors and Agents. Nothing herein shall be deemed to prevent or restrict any Party from subcontracting any of its duties or obligations hereunder, provided that the subcontracting Party shall remain at all times liable for the performance of such duties or obligations as if the subcontracting Party had performed such duties or obligations itself. Without limiting the foregoing, the UTA acknowledges and agrees that InComm may, subject to Applicable Law, enter into arrangements with third parties or Affiliates to perform any of InComm's obligations hereunder. In the event that any Party desires to subcontract any of its duties or obligations hereunder, the subcontracting Party shall receive prior written approval of such subcontractor from the other Party hereto, except where subcontracting to an Affiliate. Such written approval shall not be unreasonably withheld, conditioned or delayed.

2.6 Exclusivity.

(a) Exclusive Products. During the Term, the UTA hereby grants to InComm and its Affiliates the exclusive right (i) to manufacture closed-loop reloadable cards, general purpose reloadable cards, third-party sponsored prepaid cards, and any other stored value cards for use in the UTA's electronic fare collection program (the "*Exclusive Products*"); (ii) to distribute the Exclusive Products to retail or other locations for sale to individuals or businesses; and (iii) to sell the Exclusive Products from a website. Further, during the Term, the UTA will not, directly or indirectly, enter into an agreement or other arrangement with any InComm Retailer, other than with the prior written consent of InComm, for the marketing, promotion, distribution, loading, sale or activation of (a) any prepaid or stored value products or services, including, without limitation, the Cards, or (b) any money transmission product or service. Notwithstanding the foregoing, in the event the UTA requests that one or more of the Exclusive Products be distributed through a distribution channel that InComm is either unwilling or unable to accommodate (by using reasonable efforts, within a reasonable period of time after the UTA requests the addition of said distribution channel), then with InComm's prior written consent, which shall not be unreasonably withheld, the UTA may distribute such Exclusive Products through such distribution channel. Notwithstanding the foregoing, manufacturing, distributing and selling Time-Based Cards by the UTA, in accordance with the UTA's historic practices, shall not be a violation of this Section 2.6.

(b) Related Products. In the event the UTA desires to implement any prepaid or stored value products or services, other than a card, for use in the UTA's electronic fare collection program, then the UTA agrees to consult InComm regarding the scope of the proposed products or services.

2.7 Appointment. The UTA hereby appoints InComm as the agent of the UTA to the extent required for compliance with Applicable Law, including, without limitation, state and federal laws and regulations pertaining to money transmission, in order to engage in the distribution and sale of the Cards and other activities as contemplated hereunder.

3. Back Office. As between the Parties hereto, UTA shall be responsible for (a) the management and operation of a fare system hosted back office (the "*Hosted Back Office*"), which shall include, among other things, the Fare Engine and (b) the development and operation of a Real Time Validation Server ("*RTVS*").

3.1 Authorization. InComm will develop, provide and support the UTA fare system with the ability to properly authorize service when a patron taps a Card that gets routed to InComm. Notwithstanding the foregoing, the scope and delivery phases for these "service authorization" functions will be further defined in the applicable SOW and may include:

(a) Development and support of card status change notifications to the Hosted Back Office when an account associated with a Card goes above or below a set of threshold values;

(b) Development and support of a real time Cardholder Funds Balance confirmation process with RTVS to insure sufficient funds remain in an account associated with an individual's Card when he or she taps the Card for service; and

(c) Development and support of a real time mechanism to reserve patron funds for fare settlement once an individual's trip is completed and processed through the fare system.

3.2 Account Management. UTA or its agent shall transmit the Redemption Data to InComm. InComm shall perform account management as set for the in the applicable SOW. InComm shall perform account management utilizing the Redemption Data provided by UTA or its agent. InComm shall have no liability for account management performed, so long as it performs account management in accordance with the Redemption Data or other instructions transmitted by UTA or its agent. With respect to each submission of Redemption Data to InComm, the UTA represents and warrants that all fares or other charges included in the card settlement and authorization data constitute bona fide, arms-length sales by the UTA of services in the ordinary course of the UTA's business. Notwithstanding the foregoing, the scope and delivery phases for these "account management" functions may be further defined in an applicable SOW or BRD. For the avoidance of doubt, "account management" as used in this Section 3.2 refers to the management of the Cardholder Funds Balance database with individual data entries corresponding to each account associated with a Card and not to managing actual cash accounts associated with each Card.

4. **Future Statements of Work.** The Parties acknowledge and agree that, upon the UTA's request, additional SOWs will be negotiated in good faith after the execution of this Agreement and entered into by the relevant Parties, which may include, but is not limited to, those SOWs described below in this Section 4. Notwithstanding anything in the contrary in the RFP or the Proposal, InComm shall have no obligation to provide a product or service unless such product or service is included in an executed SOW or this Program Manager Agreement.

4.1 **BICC Processing.** Following the successful PCI certification of both the UTA and any provider of the Fare Engine, it is the intent of the parties to mutually agree on the terms and conditions of a merchant processing relationship, whereby the authorization and settlement of Bank-Issued Contactless Cards utilized to board UTA transit will be facilitated by InComm. The parties acknowledge and agree that InComm's involvement in such transactions, including the authorization and settlement thereof, may be impacted by the Brand System Rules. The fees for BICC processing shall be nine percent (9%) of the total transaction.

4.2 **Third Party Sponsored Card.** Pursuant to the Third Party Sponsored Card Statement of Work, InComm would produce, support, activate and reload third-party sponsored cards via the Customer Website. Third-party sponsored cards are (i) Cards that will be distributed in bulk by the UTA to third parties for further distribution and (ii) intended to replace Current ECO, Ed and/or ski pass annual or seasonal pass products. The applicable Statement of Work shall include an Activation Fee and may include a Load Fee and a Reload Fee. Payments for Activation or Reloading of third-party sponsored cards may be made by a third party institution directly.

4.3 **Kiosks.** Pursuant to the Kiosk Statement of Work, InComm would support Card Reloads at kiosks located at mutually agreed rail and bus locations. Kiosk operations and first line maintenance shall be the sole responsibility of UTA. Payment terms and conditions for this project will be determined based a detailed feasibility and deployment plan.

4.4 **Registered BICC.** Pursuant to the Registered BICC Statement of Work, InComm would provide a system (a) where Cardholders can register their BICCs to a prepaid account (with an individual PAN) maintained by InComm; and (b) that, at the Cardholder's option, (i) can automatically reload a prepaid account by charging a credit or debit account associated with such PAN or (ii) can email a notice of low account balance to the such Cardholder inviting him or her to reload their prepaid account.

4.5 **Non Profit Replacement for Punch Pass & Tokens.** Pursuant to the Non Profit Replacement for Punch Pass & Tokens Statement of Work, InComm would provide a Card that will be used to replace existing Punch Pass & Token sales. Punch Passes are currently distributed to certain non-profit or charity organizations. Fees and other details shall be mutually agreed by the Parties.

4.6 **General Purpose Reloadable Card.** Pursuant to the GPR Card Statement of Work, InComm may introduce a contactless General Purpose Reloadable Card through many of the same channels as the Card. The parties shall mutually agree to the branding of such General Purpose Reloadable Card (a "***GPR Card***"). Each individual with GPR Card would also have the ability to create a prepaid account for UTA transit use. In such event, the registered GPR Card

would be used as the access device for the UTA transit system with fares deducted from the associated prepaid account. Individuals will have the option to (i) have value automatically added to the account when the balance falls below a threshold, or (ii) receive notice of low balance and initiate addition of value via email or mobile notification. If the balance falls to \$0, the GPR Card will revert to pay as you go status until the individual adds value to the account.

4.7 Cards for UTA Use. Pursuant to the Internal Use Card Statement of Work, InComm would supply cards to the UTA for use in fare programs administered directly by UTA, such as institutional postpaid or pass products or guest or employee passes. For the avoidance of doubt, cards supplied pursuant to this SOW would not be included in the prepaid or pay-as-you-go activities administered by InComm. Fees and other details shall be mutually agreed by the Parties.

5. Implementation. InComm shall develop and implement the Products in accordance with the implementation schedule set forth in each applicable SOW. The Parties shall mutually agree on the implementation schedule for the Program.

5.1 Access to UTA sites. The UTA shall ensure that InComm and any of its authorized representatives has reasonable access to any UTA sites for the purpose of enabling InComm or any of its authorized representatives to maintain, inspect, disconnect or remove any equipment, hardware or software provided by InComm, the UTA, or their respective suppliers that is located at such sites.

5.2 Access to Information. Each Party shall provide, or cause to be provided to the other Party, such information as the requesting Party may reasonably require to perform its obligations under this Agreement.

6. Compensation.

6.1 Development Fee. Concurrent with the execution of this Agreement, InComm shall invoice the UTA for a development fee in the amount of Two Hundred Thousand Dollars (\$200,000) (the "*Development Fee*"), which shall be payable upon notice of termination or nonrenewal provided in accordance with Section 18.1 by UTA only. In the event that this Agreement is automatically renewed for one Renewal Term in accordance with Section 18.1 and is not otherwise terminated by the UTA pursuant to Section 18.4, the Development Fee shall be waived by InComm.

6.2 Fees. Each SOW shall set forth the applicable Activation Fees, Load Fees, Reload Fees or other fees for such Product. For the avoidance of doubt, InComm shall be entitled to 100% of each Activation Fee, Load Fee or Reload Fee collected by an Approved InComm Retailer, InComm or the UTA, and shall remit the Load Amounts and/or Reload Amounts to UTA. InComm shall be deemed to have earned the Activation Fees, Load Fees and Reload Fees upon its receipt of the funds tendered by or on behalf of a Cardholder for the purpose of adding value to an account associated with a Card or a prepaid account.

6.3 Settlement Review. InComm shall provide to the UTA a reconciliation or invoice describing the Products and Services for which any Settlement was performed. The UTA shall

have the right to reasonably dispute any of the charges contained in a reconciliation or an invoice for a period of sixty (60) days after the date of the reconciliation or invoice (the "Reconciliation Date"), provided that: (i) the UTA presents a written statement of the purported billing discrepancies to InComm in reasonable detail on or before the sixtieth (60th) day after the Reconciliation Date, and (ii) the UTA negotiates in good faith with InComm for the purpose of resolving such dispute. In the event such dispute is mutually agreed upon and resolved in favor of the UTA, the UTA will receive a credit for the disputed charges. Neither Party shall be obligated to consider any notice of any billing discrepancies which are received by such Party more than sixty (60) days after the Reconciliation Date.

6.4 Cost and Fee Review. No less than two hundred (200) days prior to end of the Initial Term under this Agreement, InComm shall provide the UTA reasonable access to its books and records related to the Program, and the Parties shall mutually agree on pricing for the Program during the Renewal Term. Any increase in pricing mutually agreed on for the Program for the Renewal Term shall not exceed 10% of the pricing agreed upon in the applicable SOW for the immediately prior Term.

7. Data Warehouse. InComm shall provide information to the UTA data warehouse at the end of each Business Day. Such information may include accounts, account status changes and transaction information, as mutually agreed by InComm and UTA from time to time. Information provided under this Section 7 shall be provided by electronic secure file transfer or in another form mutually agreeable to the Parties. These daily reports shall include the twenty-four (24) hour period from 12:00 AM to 11:59 PM Eastern Time for each Business Day. Nothing contained herein shall obligate InComm to provide any information to UTA in violation of Applicable Law.

8. Customer Service. The UTA shall provide customer service related to the Program for all Cardholders. InComm shall provide to the UTA a customer services desktop application, which shall provide certain functions as mutually agreed in writing by the Parties from time to time.

8.1 Website. InComm shall develop and maintain, at its sole cost and expense, a website for UTA customers to access (the "*Customer Website*"). The Customer Website shall (i) provide functions for the Cardholders as set forth in the applicable SOWs; (ii) meet any applicable requirements and compliance rules set forth in the BRD; (iii) comply with Applicable Law; and (iv) contain graphics and other visual media as mutually agreed by InComm and UTA from time to time. InComm shall host and maintain, at its sole cost and expense, the Customer Website on its servers.

8.2 Customer Service Applications. InComm shall develop and maintain, at its sole cost and expense, certain web-based customer service applications, as described in the BRD (collectively, the "*Customer Service Applications*"), which will be used by the UTA to provide customer service to its customers. Each Customer Service Application shall (i) meet any applicable requirements and compliance rules set forth in any applicable SOW or BRD; and (ii) comply with Applicable Law, provided the UTA utilizes such Customer Service Application in accordance with all instructions provided by InComm and in a manner approved by InComm.

9. **Responsibility of the UTA to Promote the Program.** The UTA, at its own expense, shall use commercially reasonable efforts to promote the Program. To the extent that the UTA desires to place marketing materials at any InComm Approved Retailer, InComm shall use commercially reasonable efforts to facilitate the placement of such marketing materials at such InComm Approved Retailer's Participating Locations.

10. **Books and Records.**

10.1 **Books and Records.** Each Party shall maintain complete and accurate books of account and records, in accordance with generally accepted accounting principles in the United States, of all financial transactions arising in connection with its obligations pursuant to this Agreement for a period of not less than that legally required for such records from the date last recorded or created, but in no event less than three (3) years following the end of the Term. In addition to and notwithstanding the foregoing, to the extent any Party has sole possession or control of any records required to be maintained by the other Party pursuant to Applicable Law, the Party with possession or control shall maintain, or cause to be maintained, as applicable, such records in such form and for such time periods as required by Applicable Law, and shall make such records available to the other Party upon request. The Parties further agree to work together in good faith to reconcile any accounting discrepancies. In addition, no more than once during each fiscal quarter, each Party may, at its own expense, and upon reasonable prior notice, have an internal or a third party auditor, at the requesting Party's expense, inspect the books and records of the other Party relating to services performed herein by that Party, and during the Term, each Party shall furnish to the third party auditor of the other Party all such information concerning transactions and services provided by it pursuant to this Agreement as such other Party may reasonably request.

10.2 **Access.** Each Party shall at all times have reasonable access to all Program information and documents necessary to comply with Applicable Law which may be in the control or possession of the other Party, including, but not limited to, information and documents concerning Program revenues or transactions and agreements affecting the management and administration of the Program. Each Party shall exercise commercially reasonable efforts to cause any third party, to which it has provided or which at its request is holding Program information or related documents, to provide the other Party hereto with reasonable access to any information and documents that such Party may need to comply with Applicable Law which may be in the control or possession of a third party.

10.3 **GRAMA.** The Parties recognize that UTA, as a political subdivision of the State of Utah, is subject to the provisions of the Government Records Access and Management Act, ("GRAMA") (Utah Code Ann. §§63G-2-101 *et seq.*), which defines the records of UTA which are subject to disclosure to a requestor of such records. Any documents InComm submits to UTA that it believes includes "trade secrets" or are otherwise "confidential," InComm must follow the procedure set forth in Section 63G-2-309 of GRAMA by completing the form attached hereto as Exhibit A. Additionally, for ease of evaluation, UTA requests that InComm also follow the steps identified below:

- (a) Clearly mark all confidential information as such; and

(b) Include a statement with the document justifying InComm's determination that certain records are trade secret/confidential information for each record so defined on the form appearing at Exhibit A.

UTA shall not be held liable for any damages or economic harm to InComm resulting from the disclosure of any records, provided such disclosure is in compliance with the provisions of GRAMA. All records prepared pursuant to this Agreement will become public information after such documents are finalized, unless such records are identified as trade secret or confidential information as specified in this Section 10.3.

11. Compliance.

11.1 Generally. Each Party shall comply with Applicable Law in the performance of their respective obligations hereunder. InComm shall use commercially reasonable efforts to cause each Approved InComm Retailer to comply with Applicable Law in the performance of its obligations related to the Program. In the event that any Regulatory Authority requests or demands that InComm, any Approved InComm Retailer or any Participating Location cease or suspend any activities in connection with the Cards, InComm and each Approved InComm Retailer shall have the right to immediately stop all such activities in such jurisdiction without liability hereunder.

11.2 Closed-Loop Cards and Related Packaging. The UTA shall be responsible for designing the Cards and any related packaging; provided that InComm and the UTA shall cooperate in good faith to ensure that the Cards and any related packaging comply with Applicable Law. The Cards and any related packaging shall bear any disclosures required by Applicable Law. InComm shall make recommendations to the UTA as to what, if any, relevant disclosures are required by Applicable Law on a Card or any related packaging.

11.3 Regulatory Examinations. Each Party shall: (a) submit to any reasonable examination which may be required by any Regulatory Authority with audit and examination authority over the other Party (such Party, the "*Examined Party*"); (b) provide to the Examined Party any information that may be required by any Regulatory Authority or Brand System in connection with their audit or review of the Examined Party or the subject matter hereof and reasonably cooperate with such Regulatory Authority or Brand System in connection with such any audit or review; and (c) provide such other information as the Examined Party or any Regulatory Authority may from time to time reasonably request with respect to the financial condition of such Party. As between the Parties, the Examined Party shall be responsible for all costs and expenses which the other Party may incur in complying with the foregoing.

12. Cardholder Data.

12.1 Security of Cardholder Data. Each Party acknowledges and agrees that it shall bear the sole responsibility for protecting the privacy of Cardholder Data in its possession in accordance with Applicable Law, including, without limitation, the GLBA and related privacy laws and regulations. Prior to implementation of the BICC SOW and at all times during the Term thereafter, each Party shall (i) comply with the Payment Card Industry Data Security Standard ("*PCI DSS*") in the performance of its obligations hereunder and (ii) promptly provide

notice to the Party in the event that any third party audit concludes that such Party is not acting in compliance with the PCI DSS in the performance of its obligations hereunder.

12.2 Ownership and Limitation on Use of Data. The Parties agree that UTA shall own all Cardholder Data and Redemption Data; however, InComm shall be the primary repository of Cardholder Data and Redemption Data. Notwithstanding the foregoing, InComm shall be permitted to maintain a copy of any Cardholder Data or Redemption Data.

12.3 Security Breaches. Subject to any obligations placed upon the UTA or InComm by a law enforcement agency, each Party agrees to fully disclose to the other Party any actual breach in security which results in unauthorized intrusions into such Party's computer and other information systems that materially affects the other Party or the Cardholders or otherwise involves the unauthorized disclosure, access to, acquisition of, or other loss or use of Cardholder Data. As soon as any Party becomes aware that it has such a security breach it shall notify the other Party in writing and provide: (i) a description of the breach or loss, including the data that occurred; (ii) the number of individuals or accounts affected; (iii) the information accessed, acquired, lost, or misused; (iv) whether the breach or loss was computerized in nature or a paper loss; (v) whether such information was encrypted or unencrypted; (vi) whether encryption keys or passwords may have been compromised; and (vii) a description of the steps taken to investigate the incident, secure systems or recover lost information, and prevent the recurrence of further security breaches or losses of the same type. In addition, in the event of an actual breach in security of the UTA's or InComm's computer or other information systems, each Party agrees to (i) permit a mutually agreed upon independent qualified third party auditor to perform an investigation (including the installation of monitoring or diagnostic software or equipment) to locate the source and scope of the breach and provide the other Party with any material information related to such Party that such independent auditor discovers with respect to the breach, and (ii) be responsible for all costs, expenses, fines, fees, penalties and other liability directly or indirectly arising out of or related to any such actual breach which the other Party may incur or otherwise be responsible for.

12.4 Access. Each Party agrees that it will allow only authorized personnel to access the systems utilized by such Party to fulfill any of its obligations under this Agreement and will require personal identification for all Cardholder Data, Transaction Data and Redemption Data that it enters or processes. Each Party further agrees to establish and comply with all security procedures and systems needed to protect all Cardholder Data as may be required by Applicable Law.

13. Insurance. InComm shall obtain and maintain at all times during the Term, at its sole cost and expense, insurance coverage of the type and in the amounts set forth in Exhibit B. 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.

14. Fraud Recovery. InComm shall be liable for any fraud losses (i) resulting from (a) the negligence, fraud or willful misconduct of its employees, authorized agents, authorized contractors, authorized representatives, or any Approved InComm Retailer; (b) InComm's sale of Cards on the Customer Website; or (c) an inaccurate data transmission initiated by InComm;

except to the extent related to an inaccurate transmission of either Transaction Data or Redemption Data initiated by the UTA or its subcontractors; or (ii) that would have been avoided if card verification value or dynamic card verification code had been employed by InComm on the Cards. Notwithstanding the foregoing, InComm shall not be liable for any fraud losses related to (x) the UTA's breach of this Agreement; or (y) the negligence, fraud or willful misconduct of the UTA or its employees, authorized agents, authorized contractors, authorized representatives. The UTA shall be responsible for all other fraud losses.

15. Intellectual Property.

15.1 UTA Technologies and Marks. The UTA hereby grants to InComm during the Term a non-exclusive, royalty-free, non-assignable license to use (but not the right to sublicense) the UTA Technologies and UTA's Marks (and the copyrights that exist in such Marks, if any) in the United States provided that (i) the use of the UTA Technologies and UTA's Marks is solely in connection with the Program and (ii) such use is necessary for InComm to perform its obligations hereunder. The UTA's Marks shall be used only in the forms and format expressly approved in advance by UTA, which approval shall not be unreasonably withheld, condition or delayed. Title to and ownership of the UTA's Marks and the UTA Technologies shall remain with the UTA and all use of the UTA's Marks shall inure to the sole benefit of the UTA. Other than expressly provided herein with respect to the UTA's Marks or UTA Technologies, InComm shall not obtain any right, title or other interest in the UTA's Marks or UTA Technologies by virtue of this Agreement. Upon termination of this Agreement, all license rights conveyed by the UTA to InComm shall cease, and all such rights shall revert to the UTA. The UTA shall ensure that the UTA Technologies are free from material defects in design, material and workmanship under normal use and operating conditions during the Term of this Agreement.

15.2 InComm Technologies and InComm's Marks. Solely in connection with and in furtherance of its obligations under this Agreement, InComm hereby grants to the UTA during the Term a non-exclusive, royalty-free, non-assignable license to use (but not the right to sublicense) the InComm Technologies and InComm's Marks (and the copyrights that exist in such Marks, if any) in the United States provided that (i) the use of the InComm Technologies and InComm's Marks is solely in connection with the Program and (ii) such use is necessary for UTA to perform its obligations hereunder. InComm's Marks shall be used only in the forms and format expressly approved in advance by InComm, which approval shall not be unreasonably withheld, condition or delayed. Title to and ownership of InComm's Marks and the InComm Technologies shall remain with InComm and/or one of its Affiliates and all use of InComm's Marks shall inure to the sole benefit of InComm and/or one of its Affiliates. Other than expressly provided herein, UTA shall not obtain any right, title or other interest in InComm's Marks or the InComm Technologies by virtue of this Agreement. Upon termination of this Agreement, all license rights conveyed by InComm to the UTA shall cease, and all such rights shall revert to InComm and/or one of its Affiliates. InComm shall ensure that the InComm Technologies are free from material defects in design, material and workmanship under normal use and operating conditions during the Term of this Agreement.

15.3 Improvements. Any improvement(s), modifications, or upgrades to the UTA Technologies or UTA's Marks made or discovered during the Term shall belong exclusively to

UTA or one of its Affiliates. Any improvement(s), modifications, or upgrades to the InComm Technologies or InComm's Marks made or discovered during the Term shall belong exclusively to InComm or one of its Affiliates. To the extent that any Party contributes, in whole or in part, to any improvement(s) to the other Party's Technologies or Marks such Party hereby assigns to the other Party all right, title and interest in and to such improvement(s). Further, such Party agrees that (a) it will not seek, and that it will require its employees, agents and representatives (including third party contractors) not to seek patent, copyright, trademark, registered design, or other protection for any rights in and to the improvement(s), and (b) it will do and will require its employees, agents and representatives (including third party contractors) to do, at the other Party's expense, all things necessary and advisable and execute all documents as the other Party may reasonably require to vest in the other Party or its nominees any protection for the improvement(s) that the other Party deems appropriate.

16. Relationship Managers; Contracting Officer. InComm and the UTA shall each designate one employee (with sufficient authority to facilitate decision-making on behalf of InComm and the UTA, respectively, and with sufficient knowledge and experience to effectively and efficiently manage the relationship contemplated hereby) who shall be charged with day-to-day administrative responsibility for the Program (each, a "*Relationship Manager*") during the Term, and who shall make available a sufficient amount of his or her working time, attention, skill, and efforts necessary to further the interests of the Program. The current Relationship Manager for the UTA is David Snyder. The current Relationship Manager for InComm is Michael Herold. Either Party may replace its Relationship Manager at any time upon notice to the other Party, so long as the replacement Relationship Manager meets the foregoing qualifications. Further, the UTA shall each designate one employee to serve as the Contracting Officer for this Agreement. The current Contracting Officer for this Agreement is Troy Hamilton. The UTA shall notify InComm of any new Contracting Officer within three (3) Business Days of such change.

17. Representations, Warranties and Covenants.

17.1 UTA Representations, Warranties, and Covenants. The UTA hereby represents, warrants, and covenants to InComm that:

(a) it is a political subdivision and public transit district chartered pursuant to Section 17B-2a-801, Utah Code Annotated 1953, as amended, relating to public transit districts;

(b) it has and shall maintain all necessary licenses, permits, approvals, and registrations from all Regulatory Authorities which are required to perform its obligations hereunder;

(c) the execution and delivery of this Agreement by the UTA and the performance of its obligations hereunder require no consent, approval, order or authorization of, or registration, declaration or filing with, or other action by, any governmental agency or authority, except for such consents, approvals, orders, authorizations, registrations, declarations or filings which the UTA has made or obtained;

(d) the terms of this Agreement and the performance of its obligations hereunder do not and will not violate the terms of any other agreement to which it is a party;

(e) it is the sole owner of or a licensee with rights to sublicense its Marks, and its Marks do not infringe on the intellectual property rights of any person or entity;

(f) the UTA Technologies do not infringe on any United States or other jurisdiction's patent rights, copyrights, trademarks, trade dress, service marks, trade secret rights, or other proprietary rights of any third party;

(g) the UTA Technologies are proprietary to the UTA or are in the public domain or are used by the UTA under a license, and UTA has the right to sublicense any UTA Technologies which it has granted InComm a license to use;

(h) all UTA Technologies shall comply with Applicable Law; and

(i) as of the Effective Date of this Agreement, there are no pending or, to the knowledge of the UTA, threatened, Claims or litigation against the UTA that would adversely impact the UTA's ability to perform its obligations under this Agreement, including, but not limited to, any Claims or litigation contesting the UTA's ownership or right to use any of the UTA Technologies or its patents, copyrights, trademarks, service marks, or trade secrets in connection with the UTA Technologies.

17.2. InComm Representations, Warranties, and Covenants. InComm hereby represents, warrants, and covenants to the UTA that:

(a) it is duly incorporated and validly existing and in good standing under the laws of the State of Florida;

(b) it is duly qualified and is properly licensed to do business, and is in good standing (i) in each jurisdiction in which the conduct of its business requires it to so qualify or be licensed, and (ii) with each Regulatory Authority having jurisdiction over it;

(c) the Products and Services to be delivered by InComm under this Agreement are compatible with the UTA Equipment and Systems and UTA Technologies existing as of the date hereof;

(d) InComm shall not enter into an agreement with any third party, Affiliate or Approved InComm Retailer that would require the modification of, replacement of or addition to any UTA Equipment and Systems or UTA Technologies, unless InComm

reimburses UTA for any and all costs and expenses incurred by UTA or its contractors for doing so or UTA otherwise agrees to bear the expenses associated with doing so;

(e) it has and shall maintain all necessary licenses, permits, approvals, and registrations from all Regulatory Authorities which are required to perform its obligations hereunder;

(f) the execution and delivery of this Agreement by InComm and the performance of its obligations hereunder require no consent, approval, order or authorization of, or registration, declaration or filing with, or other action by, any governmental agency or authority, except for such consents, approvals, orders, authorizations, registrations, declarations or filings which InComm has made or obtained;

(g) the terms of this Agreement and the performance of its obligations hereunder do not and will not violate the terms of any other agreement to which it is a party;

(h) it is the sole owner of or a licensee with rights to sublicense its Marks, and its Marks do not infringe on the intellectual property rights of any person or entity;

(i) the InComm Technologies do not infringe on any United States or other jurisdiction's patent rights, copyrights, trademarks, trade dress, service marks, trade secret rights, or other proprietary rights of any third party;

(j) the InComm Technologies are proprietary to InComm or are in the public domain or are used by InComm under a license and InComm has the right to sublicense such InComm Technologies;

(k) all InComm Technologies shall comply with Applicable Law; and

(l) as of the Effective Date of this Agreement, there are no pending or, to the knowledge of InComm, threatened, Claims or litigation against InComm that would adversely impact InComm's ability to perform its obligations under this Agreement, including, but not limited to, any Claims or litigation contesting InComm's ownership or right to use any of the InComm Technologies or its patents, copyrights, trademarks, service marks, or trade secrets in connection with the InComm Technologies.

18. Term and Termination.

18.1 Term and Termination. The term of this Agreement shall begin on the Effective Date and continue for a period of two (2) years from the Program Commencement Date, unless otherwise terminated as provided herein (the "*Initial Term*"). This Agreement shall automatically renew for two additional periods of two (2) years (each, a "*Renewal Term*") (the Initial Term, collectively with all Renewal Terms, the "*Term*"), unless either the UTA or InComm provides the other Party with written notice of its intention to not renew this Agreement not less than one hundred eighty (180) days prior to the expiration of the Initial Term or Renewal Term then in effect.

18.2 Termination of Agreement For Cause. In addition to any termination rights provided elsewhere in this Agreement, each Party shall have the right to terminate this Agreement upon occurrence of one or more of the following events:

(a) Failure by the other Party to observe or perform, in any material respect, that Party's obligations to the other Party hereunder, so long as the failure is not due to the actions or failure to act of the terminating Party, but only if the failure continues for a period of: (i) thirty (30) Business Days after the non-performing Party receives written notice from the terminating Party specifying the failure in the case of a failure not involving the payment of money, or (ii) ten (10) Business Days after the non-performing Party receives written notice from the terminating Party specifying the failure in the case of a failure to pay any amount then due hereunder;

(b) In the event any representation, warranty statement or certificate furnished to it by the other Party in connection with or arising out of this Agreement is materially adverse to the terminating Party and intentionally untrue as of the date made or delivered;

(c) The other Party: (i) voluntarily commences any proceeding or files a petition seeking relief under Title 11 of the United States Code or any other federal, state or foreign bankruptcy, insolvency, liquidation or similar law; (ii) applies for or consents to the appointment of a receiver, trustee, custodian, sequestrator or similar official for such Party or for a substantial part of its property or assets, (iii) makes a general assignment for the benefit of creditors, or (iv) takes corporate action for the purpose of effecting any of the foregoing;

(d) The commencement of an involuntary proceeding or the filing of an involuntary proceeding or the filing of an involuntary petition in a court or competent jurisdiction seeking: (i) relief in respect for the other Party, or of a substantial part of its property or assets under Title 11 of the United States Code or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law, (ii) the appointment of a receiver, trustee, custodian, sequestrator or similar office for the other Party for a substantial part of its property or assets, or (iii) the winding up or liquidation, of the other Party, if such proceeding or petition shall continue un-dismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall continue unstayed and in effect for sixty (60) days;

(e) Upon any change to or enactment of any Applicable Law, or published change in the interpretation thereof by any Regulatory Authority, which would have a material adverse effect upon: (i) the Program; (ii) such Party's ability to perform its obligations hereunder; or (iii) such Party's expected risks or benefits under this Agreement; provided that the Parties, after good faith discussions, cannot find a mutually agreeable solution within a reasonable amount of time;

(f) Violation of Applicable Law relating to the performance of this Agreement rendering any of the Parties unable to substantially perform this Agreement, provided that the Parties cannot find a legally workable solution to avoid violating Applicable Law within a reasonable amount of time; or

(g) Upon direction from any Regulatory Authority for any Party to cease or materially limit the performance of such Party's obligations under this Agreement.

18.3 Additional Termination Right of InComm. Without limiting the termination right set forth in Section 18.2(e), InComm shall have the right to terminate this Agreement immediately upon written notice to UTA in the event that (i) InComm or any InComm Retailer is deemed, or (ii) InComm reasonably determines that InComm or any InComm Retailer may be deemed, a "seller of prepaid access" or "provider of prepaid access" (as each term is defined under 31 CFR 1010.100(ff) or any successor provision) as a result of their respective activities related to any Card.

18.4 Additional Termination Right of the UTA. The UTA shall have the right to terminate this Agreement, without cause, at any time by giving written notice to InComm. If the contract is terminated without cause pursuant to this Section 18.4, the UTA shall promptly pay to InComm (i) the cost of any Cards which remain unsold as of the termination date or the end of the Deconversion and Transition Period, if applicable, not to exceed a one year supply of inventory; (ii) all sums actually due and owing for any open work orders performed up to the day written notice of termination is given; (iii) the cost of any equipment purchased or leased by InComm for the production of the Reduced Fare Cards; and (iv) if such termination is prior to the fourth anniversary of the Program Commencement Date, the Development Fee.

18.5 Rights and Obligations upon Termination. The Parties' rights to terminate this Agreement shall be in addition to, and not in lieu of, any other remedies they may have by virtue of (a) a breach or default with respect to this Agreement or (b) any other event which permits a termination. Furthermore, the termination or expiration of this Agreement shall not relieve the Parties of any obligations due at or before the time of such termination or expiration or prejudice any claim of either Party.

(a) Upon termination of this Agreement for any reason, the Parties shall enter a deconversion and transition period (collectively, the "*Deconversion and Transition Period*"). The Deconversion and Transition Period shall last for a period determined by the UTA and in no event to exceed six (6) months counted as from the date of termination, under the then prevailing terms and conditions of this Agreement. During such period, the Parties shall responsibly and in good faith seek to effect a transition of the Program to an alternate program manager designated by the UTA. During the Deconversion and Transition Period, InComm shall provide UTA and/or UTA's authorized agent, as UTA directs, Cardholder Data in a readily accessible format that will allow UTA to fulfill its obligations under this Agreement. Moreover, during or at the conclusion of the Deconversion and Transition Period, InComm shall provide UTA and/or UTA authorized agent, as UTA directs, all Cardholder Data in a readily accessible format. In the event UTA exercises its right to provide notice of non-renewal under Section 18.1 for any Renewal Term or otherwise terminates this Agreement without cause as set forth in Section 18.4, during the Deconversion and Transition Period, InComm shall periodically bill the UTA, and the UTA shall promptly reimburse InComm, for any and all costs incurred by InComm during the Deconversion and Transition Period related to the transfer of Cardholder Data or otherwise. During the Deconversion and Transition Period, this Agreement will remain in full force and effect in accordance with its terms

(b) Upon termination of the Deconversion and Transition Period, each Party shall promptly destroy or return to the disclosing Party in a safe and secure manner as reasonably requested, at its own expense, all Confidential Information of the disclosing Party in its possession. No Party will be obligated to erase Confidential Information contained in an archived computer system backup made in accordance with such Party's security and/or disaster recovery procedures, provided that such archived copy will (i) eventually be erased or destroyed in the ordinary course of such Party's data processing procedures and (ii) will remain fully subject to the obligations of confidentiality stated herein.

(c) All provisions of this Agreement which by their nature extend beyond the expiration or termination of this Agreement, shall continue in full force and effect notwithstanding the expiration or termination of this Agreement or the Deconversion and Transition Period.

19. Indemnification.

19.1 UTA Indemnification. The UTA agrees to indemnify, defend and hold harmless InComm and its respective Affiliates, sureties, officers, directors, agents, employees, parents and subsidiaries, from and against any and all liability, damages, costs, and expenses, including reasonable legal fees and expenses, for any third party claim or demand, including, without limitation, any fees or penalties assessed by any Regulatory Authority ("*Claim*"), arising out of or related to:

(a) UTA's breach of any representation, warranty, covenant or obligation under this Agreement;

(b) gross negligence, fraud or willful misconduct on the part of the UTA, its officers, directors, employees, representatives or service providers, and their respective officers, directors and employees;

(c) obligations owed to any third party by the UTA or any third party retained by it, unless UTA's failure to fulfill the obligations result from the failure of InComm to fulfill an obligation to UTA set forth in this Agreement;

(d) any activities, acts or omissions of any third party to whom Cardholder Data is transferred or made available to a third party by the UTA or by InComm at the UTA's written request;

(e) any actual or alleged infringement or misappropriation of any intellectual property rights of any third party by the UTA;

(f) any failure of the UTA to comply with the terms and conditions applicable to a Card, including, without limitation, any failure to make any funds associated with a Card, or loaded onto a Card, available as specified in such terms and conditions; or

(g) any failure of the UTA to comply with Applicable Law with respect to any Card, Cardholder or Cardholder Funds.

The defense obligation of the UTA attaches if the Claim alleges any of the foregoing violations, breaches, acts or omissions.

19.2 InComm Indemnification. InComm agrees to indemnify, defend and hold harmless the UTA, its Affiliates, sureties, officers, directors, trustees, contractors, agents, employees, parents and subsidiaries, from and against any and all Claims arising out of or related to:

(a) InComm's breach of any representation, warranty, covenant or obligation under this Agreement;

(b) gross negligence, fraud or willful misconduct on the part of InComm or its officers, directors, employees, representatives or service providers, and their respective officers, directors and employees;

(c) obligations owed to any third party by InComm or any third party retained by it, unless InComm's failure to fulfill the obligations result from the failure of the UTA to fulfill an obligation to InComm set forth in this Agreement;

(d) any activities, acts or omissions of any third party to whom Cardholder Data is transferred or made available to a third party by InComm, unless such Cardholder Data was transferred or made available to such third party by InComm at the UTA's written request; or

(e) any actual or alleged infringement or misappropriation of any intellectual property rights of any third party by InComm; or

(g) any failure of InComm to comply with Applicable Law with respect to any Card, Cardholder or Cardholder Funds.

The defense obligation of InComm attaches if the Claim alleges any of the foregoing violations, breaches, acts or omissions.

19.3 Indemnification Procedures. If any Claim is asserted against any Party or Parties (individually or collectively, the "*Indemnified Party*") by any person who is not a Party to this Agreement in respect of which the Indemnified Party may be entitled to indemnification under the provisions of Sections 19.1 or 19.2 above, written notice of such Claim shall promptly be given to any Party or Parties (individually or collectively, the "*Indemnifying Party*") from whom indemnification may be sought. The Indemnifying Party shall have the right, by notifying the Indemnified Party within ten (10) Business Days of its receipt of the notice of the Claim, to assume the entire control (subject to the right of the Indemnified Party to participate at the Indemnified Party's expense and with counsel of the Indemnified Party's choice) of the defense, compromise or settlement of the matter, including, at the Indemnifying Party's expense, employment of counsel of the Indemnifying Party's choice. The Indemnified Party must provide reasonable cooperation in the defense and the failure to do so will be deemed waiver by the Indemnified Party of any and all right to indemnification by the Indemnifying Party. The Indemnifying Party shall not compromise or settle a Claim against the Indemnified Party without

the Indemnified Party's prior written consent, which shall not be unreasonably withheld or delayed; provided that the Indemnifying Party may, however, effect a compromise or settlement of an action without the Indemnified Party's consent if the following conditions are met: (i) there is no admission of guilt or liability by the Indemnified Party; (ii) the sole relief provided is monetary damages that are paid in full by the Indemnifying Party; (iii) the compromise or settlement entered into between the parties to the matter shall expressly provide that the compromise or settlement entered into between the parties, and all discussions between and among the parties to the matter surrounding the compromise or settlement, shall be kept confidential; (iv) such compromise or settlement also shall stipulate that no press releases or other public statements may be made concerning such compromise or settlement without the prior written consent of the Indemnified Party; and (v) the Indemnified Party is made aware of the proposed compromise or settlement as reasonably early as practicable, and the proposed compromise or settlement includes the claimant's or the plaintiff's unconditional release of the Indemnified Party from all liability in respect of the claim.

19.4 Survival. The Indemnification Obligations set forth in this Section 19 shall survive the termination or expiration of this Agreement for a period of one (1) year.

20. Limitation of Liability. NO PARTY, OR THEIR RESPECTIVE SUBSIDIARIES, PARENTS OR AFFILIATES SHALL BE LIABLE TO THE OTHER PARTY TO THIS AGREEMENT OR THEIR RESPECTIVE SUBSIDIARIES, PARENTS OR AFFILIATES, WHETHER IN CONTRACT, TORT, EQUITY OR OTHERWISE, FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING LOST PROFITS (EVEN IF SUCH DAMAGES ARE FORESEEABLE, AND WHETHER OR NOT EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES); ARISING FROM OR RELATING TO THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, THE LIMITATIONS CONTAINED IN THIS SECTION 20 SHALL NOT APPLY TO ANY CLAIM THAT (A) IS SUBJECT TO INDEMNIFICATION UNDER SECTION 19, (B) ARISES OUT OF A BREACH OF SECTION 2.6(A), BUT ONLY FOR ANY PRODUCT THAT IS SUBJECT TO AN EXECUTED SOW, SECTION 12, SECTION 15 OR SECTION 22, OR (C) WITH RESPECT TO ANY PARTY, ARISES OUT OF SUCH PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR FRAUD.

21. Disclaimers. ALL SERVICES PROVIDED BY THE PARTIES HEREUNDER ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, NO PARTY, NOR THEIR RESPECTIVE AFFILIATES MAKES ANY REPRESENTATIONS OR WARRANTIES, AND HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, RELATING TO OR ARISING OUT OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.

22. Confidential Information.

22.1 Definition. Each Party acknowledges that it may receive Confidential Information of the other Party in connection with this Agreement or the Program. For purposes of this Agreement, "**Confidential Information**" includes any Cardholder Data, financial data and budgetary or proprietary business information, income or sales data or projections, business operations, policies, procedures and techniques, advertising summary or tracking reports or other reports generated in accordance with this Agreement, schematics, ideas, techniques, know how, concepts, development tools and processes, computer printouts, computer programs, design drawings and manuals, and improvements, patents, copyrights, trade secrets or other intellectual property of any kind or nature, plans for future development and new product concepts, contemplated products, research, development, strategies, and any information which, from the relevant circumstances, should reasonably be assumed to be confidential and proprietary. The term "Confidential Information" shall not include information which, prior to delivery, was already in the recipient Party's possession; is or becomes generally available to the public through lawful means, other than as the result of a disclosure by the recipient Party or its representatives; becomes available to a recipient Party without confidential or proprietary restriction by a third party who rightfully possesses the information without confidential or proprietary restrictions; or the recipient Party can demonstrate that it was independently developed by such recipient Party.

22.2 Use. Except as otherwise specifically provided in this Agreement, each Party covenants and agrees that it will not, publish, communicate, divulge, or disclose to any person, firm, or corporation any Confidential Information of the other Party, except as necessary in the performance of the terms of this Agreement. Each Party covenants and agrees that it will not use any Confidential Information of the other Party except as necessary to fulfill its obligations or exercise its rights under this Agreement, and only for such purposes and only for the time that it is necessary to do so, except to the extent it is otherwise permitted under this Agreement. Each Party will take commercially reasonable security precautions, at least as great as the precautions it takes to protect its own trade secrets and as may be required by Applicable Law, with respect to the Confidential Information of the other Party which it receives and will disclose such Confidential Information only on a need to know basis and only to its subsidiary, agent or subcontractor who is obligated to treat such Confidential Information in a manner consistent with all the obligations of this Agreement. Liability for damages due to disclosure of the Confidential Information by any such third party shall be with the Party that disclosed the Confidential Information to the third party.

22.3 Required Disclosures. In the event that the recipient of Confidential Information is requested or becomes legally compelled to disclose any Confidential Information of the other Party, it is agreed that such recipient Party will provide the disclosing Party with prompt written notice of such request(s), unless such notice is prohibited by law, to enable the disclosing Party, at its sole cost and expense, to seek a protective order to protect and preserve the confidential nature of the Confidential Information. In such event, each Party agrees that it will furnish only that portion of the Confidential Information which is legally required and will exercise reasonable efforts to obtain reliable assurance that confidential treatment will be accorded to that portion of the Confidential Information and other information which is being disclosed. Each Party shall immediately notify the other upon discovery of any loss or unauthorized disclosure of the Confidential Information of the other Party.

22.4 Return or Destruction. As requested by the furnishing Party during the Term, upon expiration or any termination of this Agreement, or completion of the obligations of the receiving Party, as applicable, the receiving Party shall (a) return or destroy, as the furnishing Party may direct, and in the manner reasonable directed by the furnishing Party, all material in any medium that contains, refers to, or relates to the furnishing Party's Confidential Information, and (b) retain no copies except one (1) copy solely for compliance with record retention requirements under Applicable Law; provided, however, that no Party will be obligated to erase Confidential Information contained in an archived computer system backup made in accordance with such Party's security and/or disaster recovery procedures, provided that such archived copy will (a) eventually be erased or destroyed in the ordinary course of such Party's data processing procedures and (b) will remain fully subject to the obligations of confidentiality stated herein.

22.5 Misuse. In the event of any actual or suspected misuse, disclosure or loss of, or inability to account for, any Confidential Information of the furnishing Party, the receiving Party promptly shall: (a) promptly (and in any event within three (3) Business Days) notify the furnishing Party upon becoming aware thereof; (b) furnish to the other Party full details of the unauthorized possession, use or knowledge, or attempt thereof, and use reasonable efforts to assist the other Party in investigating or preventing the reoccurrence of any unauthorized possession, use, or knowledge, or attempt thereof, of Confidential Information; (c) take such actions as may be necessary or reasonably requested by the furnishing Party to minimize the violation; and (d) cooperate in all reasonable respects with the furnishing Party to minimize the violation and any damage resulting therefrom.

22.6 Ownership of Confidential Information. As between the Parties, each Party's Confidential Information shall remain the property of that Party. For the avoidance of doubt, UTA shall own all Cardholder Data. Nothing contained in this Agreement shall be construed as obligating a Party to disclose its Confidential Information to the other Party, or as granting to or conferring on a Party, expressly or impliedly, any rights or license to the Confidential Information of the other Party, and any such obligation or grant shall only be as provided by other provisions of this Agreement.

22.7 Press Releases and Inquiries. All media releases, public announcements and public disclosures by a Party relating to this Agreement or the subject matter of this Agreement, including promotional or marketing material (but not including announcements intended solely for internal distribution or disclosures to the extent required to meet legal or regulatory requirements beyond the reasonable control of the disclosing Party) shall be coordinated with and approved by the other Party prior to release. If a Party determines that disclosure is required to meet legal or regulatory requirements it shall promptly inform the other Party and coordinate such disclosure with the other Party. The disclosing Party shall limit disclosure to that which is necessary and shall give due consideration to comments the other Party and its counsel may provide regarding the nature of the disclosure.

22.8 Conflicts. To the extent that any provision in this Agreement conflicts with a provision of any other agreement between the Parties, the language most protective of Confidential Information shall take precedence as to the subject matter hereof.

23. **Assignment.** No Party may transfer or assign this Agreement or its obligations hereunder, in whole or in part, except to an Affiliate of such Party, and no attempted assignment shall be effective, without the prior written consent of the other Party. Any purported assignment in violation of this Section 23 shall be void and of no effect. Notwithstanding the foregoing, in the event InComm is acquired by, merged into, or sells substantially all of its assets to, any entity, this Agreement shall continue in full force and effect, and such successor entity shall assume the rights and obligations hereunder, upon UTA's written approval.

24. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Utah, without regard to that state's conflict of laws principles. Each Party agrees that service of process in any action or proceeding hereunder may be made upon such Party by certified mail, return receipt requested, to the address for notice set forth herein, as the same may be modified in accordance with the terms hereof. The UTA hereby irrevocably agrees that, to the extent that the UTA has or may hereafter acquire any right of immunity, whether characterized as sovereign immunity or otherwise, from any legal proceedings to enforce any obligation of the UTA related to or arising from this Agreement, including, without limitation, immunity from service of process, immunity from jurisdiction or judgment of any court or tribunal and immunity from execution of a judgment, the UTA, hereby expressly waives, only to the extent of a claim or legal proceeding in which InComm is the claimant or plaintiff, to the extent permissible under applicable Law, any such immunity, and agrees not to assert any such right or claim in any such proceeding against InComm.

25. **Force Majeure.** No Party shall be liable for any failure or delay on its part to perform, and shall be excused from performing any of its non-monetary obligations hereunder if such failure, delay or non-performance results in whole or in part from any cause beyond the absolute control of the Party, including without limitation, any act of God, act of war, riot, actions of terrorists, earthquake, fire, explosion, natural disaster, flooding, embargo, sabotage, government law, ordinance, rule, regulation, order or actions. Any Party desiring to rely upon any of the foregoing as an excuse for failure, default or delay in performance shall, when the cause arises, give to the other Party prompt notice in writing of the facts which constitute such cause; and, when the cause ceases to exist, give prompt notice thereof to the other Party. This Section 25 shall in no way limit the right of any Party to this Agreement to make any claim against third parties for any damages suffered due to said cause. If any performance under this Agreement is postponed or extended for longer than sixty (60) calendar days any Party may, by written notice to the other Party, terminate this Agreement immediately.

26. **No Third Party Beneficiaries.** No Cardholder nor any other third party, other than an Affiliate of any Party, is a third party beneficiary to this Agreement.

27. **Tax Exemption.** If requested by InComm, the UTA shall furnish a Tax Exemption Certificate and any and all affidavits and documents that may be necessary to establish a tax exemption from payment of Federal, State and local sales and use taxes for purchases related to the Program.

28. **Disputes.** In the event of a dispute in connection with this Agreement, the Relationship Managers will meet to discuss and attempt to resolve the matter. In the event they are unable to

resolve the dispute within thirty (30) calendar days, or ten (10) business days if either Party notifies the other Party that the matter requires urgent resolution, the dispute will be referred to the Steering Committee for dispute resolution. If the Relationship Managers are unable to resolve the dispute within the period set forth above, the dispute will be referred to Phil Graves, or his successor, and Clair Fiet, or his successor (collectively, the "*Steering Committee*"). The Steering Committee will use its good faith efforts to resolve the dispute, or if appropriate to negotiate an amendment to this Agreement, for a period of sixty (60) days, or ten (10) business days if either Party notifies the other Party that the matter requires urgent resolution, prior to resorting litigation or other formal dispute resolution mechanisms.

29. **Independent Contractor.** Each Party agrees that they are independent contractors as to each other in performing their respective obligations hereunder. Nothing in this Agreement or in the working relationship being established and developed hereunder shall be deemed or is intended to be deemed, nor shall it cause, the Parties to be treated as partners, joint venturers, or otherwise as joint associates for profit.

30. **Notices.** All notices to be given hereunder shall be effective only when made in writing and actually delivered (by mail, overnight courier, special courier, telecopier or otherwise) to such Party at its address set forth in Exhibit C. Any Party may change its address for receipt of notice by notice in writing to the other Party.

31. **Further Assurances.** Each Party agrees that it will do and that it will require its employees, agents and representatives (including third party contractors) to do all things and execute all documents as the other Party may reasonably require to effect the general purposes or any specific provision of this Agreement.

32. **Entire Agreement.** This Agreement sets forth the entire agreement and understanding between the Parties hereto as to the subject matter hereof and supersede all prior discussions, agreements and understandings of any kind, and every nature between them. The Program Manager Agreement and the SOWs shall not be changed, modified or amended except in writing and signed by two representatives of the UTA, a representative from the UTA's Office of the General Counsel and a representative of InComm; provided, however, that the Parties agree to immediately execute such amendments to this Agreement as are deemed necessary by InComm and its counsel to ensure compliance with Applicable Law. For the avoidance of doubt, the BRD may be changed, modified or amended by a writing signed by a representative of the UTA and a representative of InComm.

33. **Survival.** All provisions of this Agreement which by their nature extend beyond the expiration or termination of this Agreement including, without limitation, Sections 10, 12, 14, 15, 18.5, 19 (as limited in Section 19.4), 20, 21, 22, 24, 25, 26, and 29-38 shall survive the termination or expiration of this Agreement.

34. **Successors and Third Parties.** Except as limited by Section 23, this Agreement and the rights and obligations hereunder shall bind, and inure to the benefit of the Parties and their successors and permitted assigns. Nothing in this Agreement, expressed or implied, is intended to confer upon any person, other than the Parties and their successors and permitted assigns, any of the rights hereunder.

35. **Construction.** Captions contained in this Agreement are for convenience only and do not constitute a limitation of the terms hereof. All references to “herein,” “hereunder,” “hereinabove,” or like words shall refer to this Agreement as a whole and not to any particular section, subsection, or clause contained in this Agreement. The terms “include” and “including” are not limiting. Reference to any agreement or other contract includes any permitted modifications, supplements, amendments, and replacements.

36. **Severability; Waiver.** Except as otherwise limited, if any provision of this Agreement (or any portion thereof) is determined to be invalid or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and shall be binding upon the Parties and shall be enforceable, as though said invalid or unenforceable provision (or portion thereof) were not contained in this Agreement. In the event that this Agreement is determined to be invalid or unenforceable in its entirety, UTA shall be relieved of its obligations in Section 6.1. The failure by either Party to insist upon strict performance of any of the provisions contained in this Agreement shall in no way constitute a waiver of its rights as set forth in this Agreement, at law or in equity, or a waiver of any other provisions or subsequent default by the other Party in the performance of or compliance with any of the terms and conditions set forth in this Agreement.

37. **Headings.** The headings, captions, headers, footers and version numbers contained in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement.

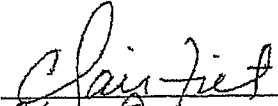
38. **Drafting.** Each Party: (a) acknowledges and agrees that they fully participated in the drafting of this Agreement and, in the event that any dispute arises with respect to the interpretation or construction of this Agreement, no presumption shall arise that any one Party drafted this Agreement; and (b) represents and warrants to the other Party that they have thoroughly reviewed this Agreement, understand and agree to undertake all of their obligations hereunder, and have obtained qualified independent legal advice with respect to the foregoing.

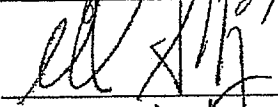
39. **Counterparts.** This Agreement may be executed and then delivered via facsimile transmission, via the sending of PDF or other copies thereof via email and in one or more counterparts, each of which shall be an original but all of which taken together shall constitute one and the same Agreement.

[SIGNATURES ON FOLLOWING PAGE]

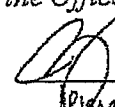
IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Effective Date.

UTAH TRANSIT AUTHORITY

By: 
Name: Claire Fiet
Title: Chief Technology Officer

By: 
Name: Michael A. Allegra
Title: General Manager

Approval of the Office of the General Counsel

By: 
Name: Jennifer Rigby
Title: Senior Counsel

INTERACTIVE COMMUNICATIONS INTERNATIONAL, INC., a Florida corporation


By: 
Name: Phil Graves
Title: Executive Vice President

EXHIBIT A

Utah Government Records Access and Management Act

Claim of Confidentiality Statement¹

Entity

Name: _____ **Date:** _____

- ☐ This record contains trade secrets as defined in Utah Code Ann. § 13-24-2;
- ☐ This record contains commercial information or non individual financial information obtained from a person, the disclosure of which could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;
- ☐ This record contains commercial information or non individual financial information obtained from a person, in which the person submitting the information has a greater interest in prohibiting access than the public in obtaining access.

Concise Statement Declaring Reasons for Declaring Confidentiality:

Requested Documents to be Protected:

At such time as UTA receives a GRAMA request seeking this record, UTA, pursuant to the statute listed in footnote 1, will determine that the record claimed to be protected or should be released after balancing interests under Utah Code Ann. §§ 63G-2-201(5)(b) or 63G-2-401(6).

¹Pursuant to Utah Code Ann. §63G-2-309 et.seq.

EXHIBIT B

INSURANCE LIMITS AND COVERAGE

Professional Liability (Errors and Omissions Liability) for Consultants and Subconsultants. (For Consulting, design, engineering or the like)

- a. Estimated Projection Project Cost up to \$9,999,999
Each Claim \$1,000,000
Annual Aggregate \$2,000,000
- b. Estimated Projection Project Cost from \$10,000,000 to \$19,999,999
Each Claim \$2,000,000
Annual Aggregate \$2,000,000
- c. Estimated Projection Project Cost from \$20,000,000 to \$40,000,000
Each Claim \$3,000,000
Annual Aggregate \$3,000,000
- d. Estimated Projection Project Cost Over \$40,000,000
Each Claim \$5,000,000
Annual Aggregate \$5,000,000

e. In the event that any professional liability insurance required by this Agreement is written on a claims-made basis, InComm warrants that any retroactive date under the policy precedes the effective date of this Agreement; 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 Agreement is completed.

f. Policy shall contain a waiver of subrogation against UTA.

g. Policy shall endorse UTA as an indemnified party.

2. General Liability for Consultants and Sub-consultants. (For work consisting of installation or the like)

- a. Estimated Projection Project Cost up to \$9,999,999
Each Claim \$1,000,000
Annual Aggregate \$2,000,000
- b. Estimated Projection Project Cost from \$10,000,000 to \$19,999,999
Each Claim \$2,000,000
Annual Aggregate \$2,000,000
- c. Estimated Projection Project Cost from \$20,000,000 to \$40,000,000
Each Claim \$3,000,000

Annual Aggregate \$3,000,000

- d. Estimated Projection Project Cost Over \$40,000,000
Each Claim \$5,000,000
Annual Aggregate \$5,000,000

e. In the event that any professional liability insurance required by this Agreement is written on a claims-made basis, InComm warrants that any retroactive date under the policy precedes the effective date of this Agreement; 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 Agreement is completed.

f. Policy shall contain a waiver of subrogation against UTA.

g. Policy shall endorse UTA as an indemnified party.

3. Automobile Liability

Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this Agreement.

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 Consultant, including automobiles owned, leased, hired or borrowed by the Consultant".

b. InComm's sub-contractors (if any) shall be subject to the same minimum requirements identified in this section.

4. 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 UTA.

b. InComm's sub-contractors shall be subject to the same minimum requirements identified in this section.

5. Railroad Protective Liability Insurance: Prior to commencing work in UTA's rail corridor, InComm must obtain "Railroad Protective Liability" insurance on behalf of UTA only as named

insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. For the avoidance of doubt, the Parties acknowledge that, in fulfilling its obligations under the SOWs executed on even date herewith, InComm shall not performing work in UTA's rail corridor.

The policies shall include, or be endorsed to include, the following provisions:

1. On insurance policies where UTA is named as an additional insured, UTA shall be an additional insured to the full limits of liability purchased by InComm even if those limits of liability are in excess of those required by this Agreement.

2. InComm's insurance coverage shall be primary insurance and non contributory with respect to all other available sources.

Additional Terms and Conditions.

A. Each insurance policy required by the insurance provisions of this Agreement 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 UTA, except when cancellation is for nonpayment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to Utah Transit Authority - Contract Administrator, 669 West 200 South, Salt Lake City, Utah 84101.

B. Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Utah and with an "A.M. Best" rating of not less than A-VII. UTA in no way warrants that the above-required minimum insurer rating is sufficient to protect InComm from potential insurer insolvency.

C. InComm shall furnish UTA with certificates of insurance (ACORD form) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

D. All certificates and any required endorsements are to be received and approved by UTA before work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of contract.

E. All certificates required by this Agreement shall be sent directly to Utah Transit Authority - Contract Administrator, 669 West 200 South, Salt Lake City, Utah 84101. UTA project/contract number and project description shall be noted on the certificate of insurance. UTA reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time.

F. All required subcontractors certificates and endorsements are to be received and approved by UTA before work commences. All insurance coverages for sub-consultants shall be subject to the minimum requirements identified above, unless otherwise specified in this Agreement.

G. Before starting any work, InComm will give UTA a certificate of insurance completed by a duly authorized representative of their insurer certifying that at least the minimum coverage required here are in effect and specifying that the liability coverage are written on an occurrence form and that the coverage will not be canceled, non-renewed, or materially changed by endorsement or through issuance of other policies of insurance without 60 days advance written notice to UTA.

H. All Certificates of Insurance shall be on ACORD™ forms. No other forms or customized certificates will be accepted. UTA's contract number should be included on all Certificates of Insurance or other related proof of insurance documents sent to UTA. All Certificates of Insurance or proof of insurance documents should be submitted to:

**Utah Transit Authority
ATTN: Troy Hamilton
669 West 200 South
Salt Lake City, UT 84101**

I. InComm warrants that this Agreement has been thoroughly reviewed by its insurance agent, broker or consultant, and that said agent/broker/consultant has been instructed to procure for InComm the insurance coverage and endorsements required herein.

J. UTA, as a self-insured governmental entity, shall not be required to provide insurance coverage for the risk of loss to UTA premises and improvements or equipment owned by UTA.

K. InComm will cause each consultant or subcontractor employed by InComm for this project to purchase and maintain insurance of the types specified herein. When requested by UTA, InComm will furnish copies of certificates of insurance evidencing coverage for each consultant or subcontractor.

EXHIBIT C

ADDRESSES FOR NOTICE PURPOSES

Utah Transit Authority:

Utah Transit Authority
669 West 200 South
Salt Lake City, UT 84101
Attn: David Snyder

With a copy to:

Utah Transit Authority
669 West 200 South
Salt Lake City, UT 84101
Attn: Troy Hamilton

InComm:

Interactive Communications International, Inc.
250 Williams Street
Fifth Floor, Suite 5-2002
Atlanta, Georgia 30303
Attn: Brooks Smith, President & CEO

With a copy to:

Interactive Communications International, Inc. – Legal Department
250 Williams Street
Fifth Floor, Suite 5-2002
Atlanta, Georgia 30303
Attn: Legal Department

ATLANTA 5393748.22

