

1. SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT TERMS AND CONDITIONS This User Agreement (“Agreement”) is a contract between User and the San Francisco Bay Area Rapid Transit District, a California Rapid Transit District (“BART”, or “the District”), and governs User’s use of <https://suppliers.bart.gov> and related websites (collectively, the “Site”) and the services provided through the Site. BY REGISTERING TO USE THE SITE AND THE SERVICES, USER ACCEPTS AND AGREES TO THE TERMS AND CONDITIONS OF THIS AGREEMENT WITH BART. IF USER DOES NOT AGREE TO ACCEPT THIS AGREEMENT, USER MAY NOT ACCESS THE SITE OR OTHERWISE USE THE SERVICES ON THIS SITE. 1. USER’S OBLIGATIONS

1.1. Eligibility. User shall not use BART’s Services unless User is at least 18 years of age, is mentally competent, and can form legally binding contracts under applicable law. User shall not assign or transfer User’s account or user identification to any other party.

1.2. Registration. Areas of the Procurement Portal may require the User to become a registered User. By registering, User agrees to (a) provide accurate, current and complete information about User and/or User’s organization as prompted by the registration form and any accompanying User Agreement or User terms and conditions (including User’s email address) and (b) maintain and update User’s information (including all contact information) to keep it accurate, current and complete. User acknowledges that if any information provided by User is untrue, inaccurate, not current or incomplete, BART reserves the right to terminate this Agreement and User’s use of the Site. By registering, User affirms that it has the capacity and authority to register as a User on this Site and is fully able and competent to enter into the terms, conditions, obligations, affirmations, and representations set forth in this Agreement, and to abide by and comply with these Terms of Use. As part of the registration process, User will be asked to select a username and password. BART may refuse to grant User a username that impersonates someone else, is or may be illegal, is or may be protected by trademark or other proprietary rights law, is vulgar or otherwise offensive, or may cause confusion, as determined by BART in its sole discretion. User will be responsible for the confidentiality and use of his or her username and password and agrees not to transfer or resell his or her use of or access to the Site to any third party. If User has reason to believe that his or her account is no longer secure, User must promptly change his or her password and immediately notify BART by clicking on the link marked “Contact Us”. User is entirely responsible for maintaining the confidentiality of his or her username and password and for any and all activities (including purchases and submittals, as applicable) that are conducted through User’s account. BART may, at any time and in its sole discretion, with or without notice, cancel User’s account and disable User’s password. Further, BART’s policy is to terminate members and accounts that have, or that BART believes have, repeatedly or egregiously violated these Terms of Use.

1.3. Scope of Use for Vendors. If User is registering on the Site as a Vendor, User agrees as follows: (a) User is a real person or entity, with a verifiable address, telephone number and email address as provided to BART. (b) User is dealing in good faith and is not attempting to defraud, cheat, or wrong the District.

1.4. Scope of Use for View Only Users. If User is registering on the Site as a View Only User, User agrees as follows: (a) User is accessing the site for the sole purpose of identifying Solicitations or other opportunities posted on the Site. (b) User shall limit information from the Site that User provides to other parties to (i) Solicitation, or other proposal (collectively the "Solicitation"); (ii) the name of the Solicitation; (iii) a description of the Solicitation; (iv) and the last day on which an agency will accept a response to the Solicitation. (c) User shall credit BART as the source of any information obtained from the Site and refer vendors to BART for complete Solicitation documents or to respond to a Solicitation. (d) User shall not charge others a fee to access or receive notices regarding information about Solicitations, or other proposals that User obtains from BART's Site.

1.5. Accuracy and Nature of User's Information. User is solely responsible for all information User provides to BART. User agrees that User's Information (i) will not be false, inaccurate, or misleading; (ii) will not violate any law, statute, ordinance or regulation; and (iii) will not be defamatory, trade libelous, unlawfully threatening or unlawfully harassing.

1.6. Fees. BART charges no fees for User to register to obtain information from the Site.

1.7. No Disruption to BART's Site. User agrees not to attempt any action that might disrupt BART's Site. Among other things, User agrees that (i) User's Information and all other input on BART's Site will not contain any viruses, Trojan horses, worms, time bombs, cancelbots, easter eggs or other software, devices, files or routines that might damage, interfere with, copy, reproduce, intercept or expropriate any system, data or personal information; (ii) User will not create liability for BART or cause BART to lose (in whole or in part) the services of BART's Internet Service Providers or other vendors; (iii) User will not use BART's Site to obtain e-mail addresses for bulk e-mail solicitations or otherwise; (iv) User will not reverse engineer any of BART's Services, programs, or infrastructure; (v) User will not use any robot, spider, other automatic device, or manual process to monitor, copy or reproduce BART's web pages or the content contained herein without BART's prior express written permission; and (vi) User will not take any action that imposes an unreasonable or disproportionately large load on BART's infrastructure.

1.8. Consent to E-Mail Correspondence from BART. User hereby agrees that BART may send future correspondence to User via electronic mail ("e-mail") that notifies User of solicitations for bids or proposals or other matters that BART believes might interest User. Any e-mail correspondence to User (i) will be clearly and conspicuously identified as sent by BART; and (ii) will clearly and conspicuously display a functioning return e-mail address to enable User to reply to BART.

1.9. Electronic Signature. User is notified by this statement that User's consent to these terms and conditions by checking the box indicating User's Agreement to be bound to these terms, meets the requirements of California Civil Code Sections §§1633.1-1633.17. User may print these terms and conditions, but they are subject to change. Changes to the terms and conditions will be effective from the time they are placed on BART's web site,

in the Terms and Conditions section of the site, or any other section where they might appear.

2. **LIABILITY LIMITATIONS AND RELEASES** This Site is operated and maintained by BART to provide public access to District business opportunities over the Internet. While the District attempts to maintain accurate and up-to-date information on its websites, neither the District nor any of its directors, officers, employees, agents, or representatives make any claims, promises, or guarantees about the accuracy, completeness, or adequacy of this information and expressly disclaims liability for any errors or omissions. Material on the Site has been compiled from a variety of sources and is subject to change without notice. BART is not responsible or liable for any viruses or other contamination of User's system, nor for any delays, inaccuracies, errors or omissions arising out of User's use of the website. This site, and all materials contained on it, including hyperlinks to other websites, are distributed and transmitted "As Is" without warranties of any kind, expressed, implied or statutory, including without limitation the warranties of merchantability, fitness for a particular purpose, title, and freedom of infringement on the rights of third parties. Under no circumstances shall BART be liable for any actions taken or omissions made from reliance on any information made available through the District's website, nor shall BART be liable for any other consequences from any such reliance. BART is not responsible for any special, indirect, incidental or consequential damages that may arise from the use of, or the inability to use, the site and/or the materials contained on the site. Unauthorized attempts to upload information or change information on the BART's website are strictly prohibited. BART is not responsible for any damages or losses related to any system errors or interruptions affecting its Site and the processing of any bids, auctions, or sales. User understands and acknowledges that the Site might be unavailable unexpectedly.

3.1. **Third Party Links.** The Site might contain links to other websites or resources for User's convenience in locating related information and services. User acknowledges and agrees that BART is not responsible or liable for (i) the availability or accuracy of such sites or resources, or (ii) the content, advertising or products on or available from such sites or resources. The inclusion of any link on the Site does not imply that BART endorses the linked site. User uses the links at User's own risk.

3.2. **Release.** If User has a dispute with another vendor or user of this Site, User releases BART (and BART's officers, directors, agents, and employees) from claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with such disputes. User will settle all disputes with other users of BART's Site without BART's involvement, and BART will have no liability whatsoever arising from communications made or transactions effected through BART's Site. If User is a California resident, User hereby waives rights under California Civil Code §1542, which provides: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

3.3. Indemnity. User agrees to indemnify, defend and hold harmless BART from and against any and all debts, liabilities, obligations, claims, suits, judgments, damages, expenses, including attorney's fees, and demands, made or incurred by any third party arising out of User's breach or alleged breach of this Agreement or User's violation or alleged violation of any applicable law or any rights of a third party.

4. PRIVACY BART does not sell or rent User's personal information to third parties for their marketing purposes without User's explicit consent. BART uses User's information only as described in the BART Privacy Policy. BART views protection of User's privacy as a very important community principle. BART stores and processes User's information on computers located in the United States that are protected by physical as well as technological security devices. User can access and modify the information User provides BART. For a complete description of how BART uses and protects User's personal information, see the BART Privacy Policy. If User objects to User's Information being transferred or used in this way User should not use BART's website services.
5. TERMINATION OR SUSPENSION BART may suspend or terminate User's access to BART's Site for any reason including but not limited to, the following: (a) User breaches any of the provisions of this Agreement; (b) BART suspects that User has engaged in fraudulent activity of any kind in connection with BART's Site; (c) User manipulates the price of any goods or services or interferes with another user's communications or transactions; (d) BART is unable to verify or authenticate any information User provide to BART; or (e) BART believes that User's actions might cause legal liability for User, BART's users, or BART.
6. MISCELLANEOUS

6.1. Changes to Site. BART may modify, suspend or terminate any aspect of BART's Site, including, but not limited to, content, news and information without prior notice.

6.2. Notice and Communication. Communications made through BART's e-mail messaging system or website shall not be deemed to constitute legal notice to BART, or any of its directors, officers, employees, agents, or representatives, with respect to any existing or potential claim or cause of action against BART or any of its directors, officers, employees, agents or representatives, where notice to BART is required by any federal, state or local laws, rules, or regulations. No communication to BART made through this website shall be deemed to constitute legal or official notice for any purpose.

6.3 Public Disclosure. As a governmental agency, BART is governed by the California Public Records Act. (California Government Code section 6250 et seq.) As such, most business conducted and communications exchanged with BART may become a public record and subject to public inspection. BART will, to the extent permitted by law, protect information exempt from disclosure under the California Public Records Act, including private, confidential, and proprietary information (confidential information). User agrees to hold BART harmless and, at BART's option, provide legal defense for BART from all claims and demands including attorneys' fees asserted against BART that

may result from BART refusing to make public documents that User has designated as confidential information. User also agrees that, if any action is filed in court seeking disclosure of such confidential information, BART may deposit the documents with the court and User will defend its designation of the information as confidential.

6.4 Accessibility. BART is committed to compliance with the Americans with Disabilities Act ("ADA"). BART offers text only versions of most pages on the website. Reasonable accommodations, including equal access to other communications, will be provided upon request.

6.5. Governing Law and Jurisdiction. This Agreement is governed by California law.

6.6. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision is to be enforced to the maximum extent permissible and the remainder of this Agreement will continue in full force and effect. But if disregarding the unenforceable provision would deprive either party of an essential purpose of this Agreement, the entire Agreement is to be held unenforceable.

6.7. Waiver. The failure of BART to exercise or enforce any right or provision of this Agreement will not be deemed a waiver of such right or provision in the future.

6.8. Independent Contractor Relationship. No independent contractor, agency, partnership, joint venture or franchise relationship is implied, intended or created by this Agreement.

6.9. Copyrights. The Site may contain copyrighted, trademarked, or other proprietary materials that belong to third parties and are used with the owner's permission. User shall not copy, modify, distribute, or create any derivative work from such materials without prior written consent from the owner. User will indemnify and hold BART harmless, as provided for previously in this Agreement, from any claim or demand made by a third party due to or arising out of User's violation of any law or rights of a third party.

6.10. Trademarks. The Site and BART's trade names, domain names and logos found on the Site are trademarks or service marks of BART. No display or use of such marks may be made without the express written permission of BART. All other designated trademarks or service marks are the property of their respective owners.

6.11. Assignment. This Agreement shall not be assigned by User or by operation of law to any other person, persons, firms or corporations without the express written approval of BART. This Agreement and all incorporated agreements may be assigned and delegated by BART to any party and will be assigned and delegated automatically in the event of a merger with another party.

6.12. Entire Agreement. This Agreement constitutes the entire Agreement between User and BART, and supersedes any previous agreements, whether oral or in writing, between

User and BART relating to the subject matter hereof. BART may remove or change any aspect of this Agreement at any time by providing notice to User.

6.13. No Third Party Beneficiary. The rights, duties, and obligations contained in this Agreement are between User and BART and there is no intention to create in any other person the status of third party beneficiary. Any person other than User or BART receiving a benefit under this Agreement is to be held to be an incidental beneficiary only.

6.14. Survival. The warranties, covenants and representations of the parties to this Agreement will survive termination of this Agreement.

6.15. Headings. Headings are for reference purposes only and in no way affect the interpretation of this Agreement.

6.16. Oral Statements by Representatives. Any oral statement or representation by any representative of BART changing or supplementing this Agreement or any terms of bidding or purchase on the Site, is unauthorized and ineffective and confers no right on User. User shall not rely upon any such statement or representation. No interpretation or purported amendment or change of any provision of this Agreement, including applicable performance requirements, is binding on BART unless agreed to, in writing, by BART.