

Election Night Reporting Request for Proposals

Introduction

The Office of the Lieutenant Governor is required to maintain a web application that displays election results on Election Day and for several days afterward. Our current system is antiquated. We are looking for a solution with a modern web application that can provide the display, sorting, and filtering of election results data from the counties.

Scope of Work

The State of Utah Office of the Lieutenant Governor (Agency) is seeking a production-ready, web-based election results or election night reporting (ENR) application (System).

Agency will use system to collect, tabulate and report votes for all Primary, General, and Special Elections for Federal, State, Municipal, and Special Service District Elections in the State of Utah. A new system will allow the agency to meet the increasing demand for transparency and accuracy in election reporting in an ever-evolving landscape of technology. The Agency is committed to ensuring that Utah's election results are reported in a timely, accurate, and secure manner, and believes that a new system will better serve the needs of voters, candidates, and election officials across the state.

Requirements

The vendor must have a system that is production ready. For the purpose of this Request for Proposal (RFP), production ready means July 1, 2023. The vendor must also meet additional mandatory minimum requirements as stated in *Attachment E – Scoresheet*.

Submission

Responders

- Provide an overview and description of Offeror's solution.
- Provide information about how solution meet the technical criteria stated in *Attachment E Scoresheet*.
 - Detailed point by point response -
- Provide a response to *Attachment D Cost sheet*.

Product Demonstrations

Responders to this RFP, who receive the minimum points required for Scorable Technical Criteria as stated in *Attachment E Scoresheet* (65%), will be required to participate in a 45-minute demonstration. Evaluators will review the product based on the following categories:

- Administrative Ease of Use
- Network System Compliance
- Reports and Customization
- Compatibility/Integration
- Public Interface Ease of Use

Training

Training for state and county elections officials must be conducted and concluded before the go live date. This training will include, as a minimum, how to set up and election with its races,

candidates, and questions; how to upload results from county election equipment to the system; how to run reports to verify data prior to publication; how to run the most common reports, along with their sorting and filtering capabilities, etc.

Contract Details

This RFP may result in one, two-year contract with 3 possible one (1) year extensions.

Timeline

The Agency plans to implement a new system before the upcoming 2023 General Election.

Business Request for GRAMA Business Confidentiality Claim

use by contractors or private providers to identify protected records or information

Note: Utah Code § 63G-2-305(1) states that trade secrets can be protected if the person submitting the trade secret provides the governmental entity with a confidentiality claim. Likewise, Utah Code § 63G-2-305(2) states that commercial financial information can be protected if disclosure could reasonably be expected to result in unfair competitive injury to the person submitting the information, and that person has provided a confidentiality claim. Confidentiality claims are described in Utah Code § 63G-2-309. A claim must include a concise statement of reasons supporting the claim and must be submitted with the information requested to be protected.

Claimant information:

Company name:

Address:

City:

State:

ZIP code:

Name of company representative:

Telephone number:

Email address:

Details about confidentiality claim:

This claim applies to records submitted to:

Date:

Reason for submission:

Confidentiality request applies to:

page paragraph reason

Following is a concise statement of reasons supporting this confidentiality claim:

Is a public (redacted) copy of the records also being provided? yes ☐ no ☐

Note: Making a confidentiality claim does not guarantee protected classification if government receives a records request.

Signed: _____

Date: _____

ATTACHMENT A: STATE OF UTAH STANDARD TERMS AND CONDITIONS FOR SERVICES

This is for a contract for services (including professional services) meaning the furnishing of labor, time, or effort by a contractor.

1. **DEFINITIONS:** The following terms shall have the meanings set forth below:
 - a) **"Confidential Information"** means information that is deemed as confidential under applicable state and federal laws, including personal information. The State Entity reserves the right to identify, during and after this Contract, additional reasonable types of categories of information that must be kept confidential under federal and state laws.
 - b) **"Contract"** means the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference. The term "Contract" may include any purchase orders that result from this Contract.
 - c) **"Contract Signature Page(s)"** means the State of Utah cover page(s) that the State Entity and Contractor sign.
 - d) **"Contractor"** means the individual or entity delivering the Services identified in this Contract. The term "Contractor" shall include Contractor's agents, officers, employees, and partners.
 - e) **"Custom Deliverable"** means the Work Product that Contractor is required to deliver to the State Entity under this Contract.
 - f) **"Services"** means the furnishing of labor, time, or effort by Contractor pursuant to this Contract. Services include, but are not limited to, all of the deliverable(s) (including Custom Deliverable, supplies, equipment, or commodities) that result from Contractor performing the Services pursuant to this Contract. Services include those professional services identified in Section 63G-6a-103 of the Utah Procurement Code.
 - g) **"Proposal"** means Contractor's response to the State Entity's Solicitation.
 - h) **"Solicitation"** means the documents used by the State Entity to obtain Contractor's Proposal.
 - i) **"State Entity"** means the department, division, office, bureau, agency, or other organization identified on the Contract Signature Page(s).
 - j) **"State of Utah"** means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
 - k) **"Subcontractors"** means subcontractors or subconsultants at any tier that are under the direct or indirect control or responsibility of the Contractor, and includes all independent contractors, agents, employees, authorized resellers, or anyone else for whom the Contractor may be liable at any tier, including a person or entity that is, or will be, providing or performing an essential aspect of this Contract, including Contractor's manufacturers, distributors, and suppliers.
 - l) **"Work Product"** means every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor or Contractor's Subcontractors (either alone or with others) pursuant to this Contract. Work Product shall be considered a work made for hire under federal, state, and local laws; and all interest and title shall be transferred to and owned by the State Entity. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any State Entity intellectual property, Contractor's intellectual property (that it owned or licensed prior to this Contract) or Third Party intellectual property.
2. **GOVERNING LAW AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** At all times during this Contract, Contractor and all Procurement Items delivered and/or performed under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. If this Contract is funded by federal funds, either in whole or in part, then any federal regulation related to the federal funding, including CFR Appendix II to Part 200, will supersede this Attachment A.
4. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by the State Entity to Contractor under this Contract. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, the State of Utah, federal auditors, and State Entity staff, access to all such records.
5. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** The Status Verification System, also referred to as "E-verify", only applies to contracts issued through a Request for Proposal process and to sole sources that are included within a Request for Proposal.
 1. Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
 2. Contractor shall require that each of its Subcontractors certify by affidavit, as to their own entity, under penalty of perjury, that each Subcontractor has registered and is participating in the Status Verification System to verify the work eligibility status of Subcontractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
 3. Contractor's failure to comply with this section will be considered a material breach of this Contract.
6. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State Entity or the State of Utah, unless disclosure has been made to the State Entity.

7. **INDEPENDENT CONTRACTOR:** Contractor and Subcontractors, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State Entity or the State of Utah.
8. **INDEMNITY:** Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors, and shall fully indemnify, defend, and save harmless the State Entity and the State of Utah from all claims, losses, suits, actions, damages, and costs of every name and description arising out of Contractor's performance of this Contract to the extent caused by any intentional wrongful act or negligence of Contractor, its agents, employees, officers, partners, or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the fault of the State Entity. The parties agree that if there are any limitations of the Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property.
9. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by federal and state employment laws, including: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90, which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order 2019-1, dated February 5, 2019, which prohibits unlawful harassment in the workplace. Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees.
10. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, provided that the amendment is within the Scope of Work of this Contract and is within the scope/purpose of the original solicitation for which this Contract was derived. The amendment will be attached and made part of this Contract. Automatic renewals will not apply to this Contract, even if listed elsewhere in this Contract.
11. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, or proposed for debarment by any governmental department or agency, whether international, national, state, or local. Contractor must notify the State Entity within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by any governmental entity during this Contract.
12. **TERMINATION:** This Contract may be terminated, with cause by either party, in advance of the specified expiration date, upon written notice given by the other party. The party in violation will be given ten (10) days after written notification to correct and cease the violations, after which this Contract may be terminated for cause immediately and is subject to the remedies listed below. This Contract may also be terminated without cause (for convenience), in advance of the specified expiration date, by the State Entity, upon thirty (30) days written termination notice being given to the Contractor. The State Entity and the Contractor may terminate this Contract, in whole or in part, at any time, by mutual agreement in writing. On termination of this Contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved Services ordered prior to date of termination.

Contractor shall be compensated for the Services properly performed under this Contract up to the effective date of the notice of termination. Contractor agrees that in the event of such termination for cause or without cause, Contractor's sole remedy and monetary recovery from the State Entity or the State of Utah is limited to full payment for all Services properly performed as authorized under this Contract up to the date of termination as well as any reasonable monies owed as a result of Contractor having to terminate other contracts necessarily and appropriately entered into by Contractor pursuant to this Contract. In no event shall the State Entity be liable to the Contractor for compensation for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State Entity's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State Entity for any damages or claims arising under this Contract.
13. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Contractor, this Contract may be terminated in whole or in part at the sole discretion of the State Entity, if the State Entity reasonably determines that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (ii) that a change in available funds affects the State Entity's ability to pay under this Contract. A change of available funds as used in this paragraph includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.

If a written notice is delivered under this section, the State Entity will reimburse Contractor for the Services properly ordered until the effective date of said notice. The State Entity will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.
14. **SUSPENSION OF WORK:** Should circumstances arise which would cause the State Entity to suspend Contractor's responsibilities under this Contract, but not terminate this Contract, this will be done by written notice. Contractor's responsibilities may be reinstated upon advance formal written notice from the State Entity.
15. **SALES TAX EXEMPTION:** The Services under this Contract will be paid for from the State Entity's funds and used in the exercise of the State Entity's essential functions as a State of Utah entity. Upon request, the State Entity will provide Contractor with its sales tax exemption number. It is Contractor's responsibility to request the State Entity's sales tax exemption number. It also is Contractor's sole responsibility to ascertain whether any tax deduction or benefits apply to any aspect of this Contract.
16. **CONTRACTOR'S INSURANCE RESPONSIBILITY.** The Contractor shall maintain the following insurance coverage:
 - a. Workers' compensation insurance during the term of this Contract for all its employees and any Subcontractor employees related to this Contract. Workers' compensation insurance shall cover full liability under the workers' compensation laws of the jurisdiction in which the work is performed at the statutory limits required by said jurisdiction.

- b. Commercial general liability [CGL] insurance from an insurance company authorized to do business in the State of Utah. The limits of the CGL insurance policy will be no less than one million dollars (\$1,000,000.00) per person per occurrence and three million dollars (\$3,000,000.00) aggregate.
- c. Commercial automobile liability [CAL] insurance from an insurance company authorized to do business in the State of Utah. The CAL insurance policy must cover bodily injury and property damage liability and be applicable to all vehicles used in your performance of Services under this Agreement whether owned, non-owned, leased, or hired. The minimum liability limit must be \$1 million per occurrence, combined single limit. The CAL insurance policy is required if Contractor will use a vehicle in the performance of this Contract.
- d. Other insurance policies required in the Solicitation.

Certificate of Insurance, showing up-to-date coverage, shall be on file with the State Entity before the Contract may commence.

The State reserves the right to require higher or lower insurance limits where warranted. Failure to provide proof of insurance as required will be deemed a material breach of this Contract. Contractor's failure to maintain this insurance requirement for the term of this Contract will be grounds for immediate termination of this Contract.

17. RESERVED.

18. PUBLIC INFORMATION: Contractor agrees that this Contract, related purchase orders, related pricing documents, and invoices will be public documents and may be available for public and private distribution in accordance with the State of Utah's Government Records Access and Management Act (GRAMA). Contractor gives the State Entity and the State of Utah express permission to make copies of this Contract, related sales orders, related pricing documents, and invoices in accordance with GRAMA. Except for sections identified in writing by Contractor and expressly approved by the State of Utah Division of Purchasing and General Services, Contractor also agrees that the Contractor's Proposal to the Solicitation will be a public document, and copies may be given to the public as permitted under GRAMA. The State Entity and the State of Utah are not obligated to inform Contractor of any GRAMA requests for disclosure of this Contract, related purchase orders, related pricing documents, or invoices.

19. DELIVERY: All deliveries under this Contract will be F.O.B. destination with all transportation and handling charges paid for by Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State Entity, except as to latent defects or fraud. Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract.

20. ACCEPTANCE AND REJECTION: The State Entity shall have thirty (30) days after the performance of the Services to perform an inspection of the Services to determine whether the Services conform to the standards specified in the Solicitation and this Contract prior to acceptance of the Services by the State Entity.

If Contractor delivers nonconforming Services, the State Entity may, at its option and at Contractor's expense: (i) return the Services for a full refund; (ii) require Contractor to promptly correct or reperform the nonconforming Services subject to the terms of this Contract; or (iii) obtain replacement Services from another source, subject to Contractor being responsible for any cover costs.

21. INVOICING: Contractor will submit invoices within thirty (30) days of Contractor's performance of the Services to the State Entity. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to this Contract. The prices paid by the State Entity will be those prices listed in this Contract, unless Contractor offers a prompt payment discount within its Proposal or on its invoice. The State Entity has the right to adjust or return any invoice reflecting incorrect pricing.

22. PAYMENT: Payments are to be made within thirty (30) days after a correct invoice is received. All payments to Contractor will be remitted by mail, electronic funds transfer, or the State of Utah's Purchasing Card (major credit card). If payment has not been made after sixty (60) days from the date a correct invoice is received by the State Entity, then interest may be added by Contractor as prescribed in the Utah Prompt Payment Act. The acceptance by Contractor of final payment, without a written protest filed with the State Entity within ten (10) business days of receipt of final payment, shall release the State Entity and the State of Utah from all claims and all liability to the Contractor. The State Entity's payment for the Services shall not be deemed an acceptance of the Services and is without prejudice to any and all claims that the State Entity or the State of Utah may have against Contractor. The State of Utah and the State Entity will not allow the Contractor to charge end users electronic payment fees of any kind.

23. TIME IS OF THE ESSENCE: The Services shall be completed by any applicable deadline stated in this Contract. For all Services, time is of the essence. Contractor shall be liable for all reasonable damages to the State Entity, the State of Utah, and anyone for whom the State of Utah may be liable as a result of Contractor's failure to timely perform the Services required under this Contract.

24. CHANGES IN SCOPE: Any changes in the scope of the Services to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of Services.

25. PERFORMANCE EVALUATION: The State Entity may conduct a performance evaluation of Contractor's Services, including Contractor's Subcontractors. Results of any evaluation may be made available to Contractor upon request.

26. STANDARD OF CARE: The Services of Contractor and its Subcontractors shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing

similar services which similarities include the type, magnitude, and complexity of the Services that are the subject of this Contract. Contractor shall be liable to the State Entity and the State of Utah for claims, liabilities, additional burdens, penalties, damages, or third party claims (e.g., another Contractor's claim against the State of Utah), to the extent caused by wrongful acts, errors, or omissions that do not meet this standard of care.

27. **REVIEWS:** The State Entity reserves the right to perform plan checks, plan reviews, other reviews, and/or comment upon the Services of Contractor. Such reviews do not waive the requirement of Contractor to meet all of the terms and conditions of this Contract.
28. **ASSIGNMENT:** Contractor may not assign, sell, transfer, subcontract or sublet rights, or delegate any right or obligation under this Contract, in whole or in part, without the prior written approval of the State Entity.
29. **REMEDIES:** Any of the following events will constitute cause for the State Entity to declare Contractor in default of this Contract: (i) Contractor's non-performance of its contractual requirements and obligations under this Contract; or (ii) Contractor's material breach of any term or condition of this Contract. The State Entity may issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains after Contractor has been provided the opportunity to cure, the State Entity may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) terminate this Contract; (iii) impose liquidated damages, if liquidated damages are listed in this Contract; (iv) debar/suspend Contractor from receiving future contracts from the State Entity or the State of Utah; or (v) demand a full refund of any payment that the State Entity has made to Contractor under this Contract for Services that do not conform to this Contract.
30. **FORCE MAJEURE:** Neither party to this Contract will be held responsible for delay or default caused by fire, riot, act of God, and/or war which is beyond that party's reasonable control. The State Entity may terminate this Contract after determining such delay will prevent successful performance of this Contract.
31. **CONFIDENTIALITY:** If Confidential Information is disclosed to Contractor, Contractor shall: (i) advise its agents, officers, employees, partners, and Subcontractors of the obligations set forth in this Contract; (ii) keep all Confidential Information strictly confidential; and (iii) not disclose any Confidential Information received by it to any third parties. Contractor will promptly notify the State Entity of any potential or actual misuse or misappropriation of Confidential Information.

Contractor shall be responsible for any breach of this duty of confidentiality, including any required remedies and/or notifications under applicable law. Contractor shall indemnify, hold harmless, and defend the State Entity and the State of Utah, including anyone for whom the State Entity or the State of Utah is liable, from claims related to a breach of this duty of confidentiality, including any notification requirements, by Contractor or anyone for whom the Contractor is liable.

Upon termination or expiration of this Contract, Contractor will return all copies of Confidential Information to the State Entity or certify, in writing, that the Confidential Information has been destroyed. This duty of confidentiality shall be ongoing and survive the termination or expiration of this Contract.

32. **PUBLICITY:** Contractor shall submit to the State Entity for written approval all advertising and publicity matters relating to this Contract. It is within the State Entity's sole discretion whether to provide approval, which must be done in writing.
33. **CONTRACT INFORMATION:** Contractor shall provide information regarding job vacancies to the State of Utah Department of Workforce Services, which may be posted on the Department of Workforce Services website. Posted information shall include the name and contact information for job vacancies. This information shall be provided to the State of Utah Department of Workforce Services for the duration of this Contract. This requirement does not preclude Contractor from advertising job openings in other forums throughout the State of Utah.
34. **INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY:** Contractor will indemnify and hold the State Entity and the State of Utah harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities, and costs in any action or claim brought against the State Entity or the State of Utah for infringement of a third party's copyright, trademark, trade secret, or other proprietary right. The parties agree that if there are any limitations of Contractor's liability, such limitations of liability will not apply to this section.
35. **OWNERSHIP IN CUSTOM DELIVERABLES:** In the event that Contractor provides Custom Deliverables to the State Entity, pursuant to this Contract, Contractor grants the ownership in Custom Deliverables, which have been developed and delivered by Contractor exclusively for the State Entity and are specifically within the framework of fulfilling Contractor's contractual obligations under this contract. Custom Deliverables shall be deemed work made for hire, such that all intellectual property rights, title and interest in the Custom Deliverables shall pass to the State Entity, to the extent that the Custom Deliverables are not recognized as work made for hire, Contractor hereby assigns to the State Entity any and all copyrights in and to the Custom Deliverables, subject to the following:
 1. Contractor has received payment for the Custom Deliverables,
 2. Each party will retain all rights to patents, utility models, mask works, copyrights, trademarks, trade secrets, and any other form of protection afforded by law to inventions, models, designs, technical information, and applications ("Intellectual Property Rights") that it owned or controlled prior to the effective date of this contract or that it develops or acquires from activities independent of the services performed under this contract ("Background IP"), and
 3. Contractor will retain all right, title, and interest in and to all Intellectual Property Rights in or related to the services, or tangible components thereof, including but not limited to (a) all know-how, intellectual property, methodologies, processes, technologies, algorithms, software, or development tools used in performing the Services (collectively, the "Utilities"), and (b) such ideas, concepts, know-how, processes and reusable reports, designs, charts, plans, specifications, documentation, forms, templates, or output which are supplied or otherwise used by or on behalf of Contractor in the course of performing the Services or creating the Custom Deliverables, other than portions that specifically incorporate proprietary or Confidential

Information or Custom Deliverables of the State Entity (collectively, the "Residual IP"), even if embedded in the Custom Deliverables.

4. Custom Deliverables, not including Contractor's Intellectual Property Rights, Background IP, and Residual IP, may not be marketed or distributed without written approval by the State Entity.

Contractor agrees to grant to the State Entity a perpetual, irrevocable, royalty-free license to use Contractor's Background IP, Utilities, and Residual IP, as defined above, solely for the State Entity and the State of Utah to use the Custom Deliverables. The State Entity reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for the State Entity's and the State of Utah's internal purposes, such Custom Deliverables. For the Goods delivered that consist of Contractor's scripts and code and are not considered Custom Deliverables or Work Product, for any reason whatsoever, Contractor grants the State Entity a non-exclusive, non-transferable, irrevocable, perpetual right to use, copy, and create derivative works from such, without the right to sublicense, for the State Entity's and the State of Utah's internal business operation under this Contract. The State Entity and the State of Utah may not participate in the transfer or sale of, create derivative works from, or in any way exploit Contractor's Intellectual Property Rights, in whole or in part.

36. **OWNERSHIP IN INTELLECTUAL PROPERTY:** The State Entity and Contractor agree that each has no right, title, interest, proprietary or otherwise in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing. All deliverables, documents, records, programs, data, articles, memoranda, and other materials not developed or licensed by Contractor prior to the execution of this Contract, but specifically created or manufactured under this Contract shall be considered work made for hire, and Contractor shall transfer any ownership claim to the State Entity.
37. **WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.
38. **ATTORNEY'S FEES:** In the event of any judicial action to enforce rights under this Contract, the prevailing party shall be entitled its costs and expenses, including reasonable attorney's fees incurred in connection with such action.
39. **PROCUREMENT ETHICS:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or to any person in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.
40. **DISPUTE RESOLUTION:** Prior to either party filing a judicial proceeding, the parties agree to participate in the mediation of any dispute. The State Entity, after consultation with the Contractor, may appoint an expert or panel of experts to assist in the resolution of a dispute. If the State Entity appoints such an expert or panel, State Entity and Contractor agree to cooperate in good faith in providing information and documents to the expert or panel in an effort to resolve the dispute.
41. **ORDER OF PRECEDENCE:** In the event of any conflict in the terms and conditions in this Contract, the order of precedence shall be: (i) this Attachment A; (ii) Contract Signature Page(s); (iii) the State of Utah's additional terms and conditions, if any; (iv) any other attachment listed on the Contract Signature Page(s); and (v) Contractor's terms and conditions that are attached to this Contract, if any. Any provision attempting to limit the liability of Contractor or limit the rights of the State Entity or the State of Utah must be in writing and attached to this Contract or it is rendered null and void.
42. **SURVIVAL OF TERMS:** Termination or expiration of this Contract shall not extinguish or prejudice the State Entity's right to enforce this Contract with respect to any default or defect in the Services that has not been cured.
43. **SEVERABILITY:** The invalidity or unenforceability of any provision, term, or condition of this Contract shall not affect the validity or enforceability of any other provision, term, or condition of this Contract, which shall remain in full force and effect.
44. **ENTIRE AGREEMENT:** This Contract constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.
45. **PUBLIC CONTRACT BOYCOTT RESTRICTIONS:** In accordance with Utah Code 63G-27-102, Contractor certifies that it is not currently engaged in an "economic boycott" nor a "boycott of the State of Israel" as those terms are defined in that Code section. Contractor also agrees not to engage in either boycott for the duration of this contract. If Contractor does engage in such a boycott, it shall immediately provide written notification to the public entity party to this contract.

(Revision Date: 02 May 2023)

ATTACHMENT B: STATE OF UTAH STANDARD INFORMATION TECHNOLOGY TERMS AND CONDITIONS

This is for a contract of information technology products and services and must be accompanied by the State of Utah Standard Terms and Conditions for Goods and Services as Attachment A. In addition to the definitions in this Attachment B, the definitions in Attachment A apply to this attachment. If a term is defined in both Attachment A and Attachment B, the definition in Attachment B will govern. All policies referenced by number in this Attachment B are available at <https://dts.utah.gov/policies>. Other policies are available upon request.

1. DEFINITIONS:

- a. "Access to Secure State Facilities, Data, or Technology" means Contractor will (a) enter upon secure premises controlled, held, leased, or occupied by State of Utah; (b) maintain, develop, or have access to any deployed hardware, software, firmware, or other technology that is in use by State of Utah; or (c) have access to or receive State Data or confidential information.
- b. "Authorized Persons" means the Contractor's employees, officers, partners, Subcontractors, or agents of Contractor who need Access to Secure State Facilities, Data, or Technology to enable the Contractor to perform its responsibilities under this Contract.
- c. "Background IP" means intellectual property (IP) owned or controlled prior to the effective date of this Contract or that IP developed or acquired from activities independent of the services performed under this Contract, including but not limited to (a) methodologies, processes, technologies, algorithms, software, or development tools used in performing the Services, and (b) processes and reusable reports, designs, charts, plans, specifications, documentation, forms, templates, or output which are supplied or otherwise used by or on behalf of Contractor in the course of performing the Services or creating the Custom Deliverables, other than portions that specifically incorporate proprietary or confidential information or Custom Deliverables of DTS.
- d. "Contract Period" means the term of this Contract, as set forth in the Contract Signature Page(s).
- e. "Custom Deliverables" means the product that Contractor is required to design, develop, or customize and deliver to DTS as specifically described under this Contract or an associated statement of work for which all interest and title shall be transferred to and owned by DTS. This includes every invention, design, development, customization, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor pursuant to this Contract.
- f. "Data Breach" means the unauthorized access to or acquisition of State Data that compromises the security, confidentiality, or integrity of State Data.
- g. "DTS" means the Utah Department of Government Operations Division of Technology Services.
- h. "Federal Criminal Background Check" means a fingerprint-based, nationwide background check conducted and processed by the FBI.
- i. "Good" means any deliverable not classified as a Custom Deliverable or Service.
- j. "Intellectual Property Rights" means all rights to patents, utility models, mask works, copyrights, trademarks, trade secrets, and other protection afforded by law to inventions, models, designs, technical information, and applications.
- k. "Non-Public Data" means records or data that are not subject to distribution to the public. Access is restricted because it includes information that is protected by state or federal law. Non-Public Data includes, but is not limited to, a person's name; government-issued identification numbers (e.g., Social Security, driver's license, passport); financial account information; or Protected Health Information.

- l. "Procurement Item" means a Good, a supply, a service, Custom Deliverable, construction, or technology that Contractor is required to deliver to the State of Utah under this Contract, including software and Software as a Service.
- m. "Protected Health Information" (PHI) is as defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and its implementing regulations.
- n. "Security Incident" means the attempted unauthorized access to State Data that may result in the use, disclosure, or theft of State Data. An incident does not include unsuccessful pings and port scans.
- o. "Services" means the furnishing of labor, time, or effort by Contractor, and may include installation, configuration, implementation, technical support, warranty maintenance, and other support services.
- p. "Single Sign On" means the authentication and authorization system operated by the State of Utah for accessing resources operated either by the State or a third party on behalf of the State.
- q. "Software as a Service (SaaS)" means an application running on a Contractor's or State's cloud infrastructure, which is accessible from various client devices through a thin client interface such as a Web browser (e.g., Web-based email), or a program interface. The State does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage, or even individual application capabilities, with the possible exception of limited user-specific application configuration settings
- r. "State Data" means Data that is created, controlled, maintained, owned, or in any way originating with or on behalf of the State of Utah, and all data that is the output of computer processing or other electronic manipulation of any data created, controlled, maintained, or in any way originating with the State of Utah, regardless of where such data or output is stored or maintained, including confidential information and Non-Public Data.
- s. "Subcontractors" includes contractors, manufacturers, distributors, suppliers, or consultants, at any tier, that are under the direct or indirect control or responsibility of Contractor, including a person or entity that is, or will be, providing goods or performing services pursuant to this Contract.

General Provisions

2. SOVEREIGN IMMUNITY: The State of Utah does not waive any protection, right, defense or immunity under the Governmental Immunity Act of Utah, Utah Code §§ 63G-7-101 to 904, as amended, the Eleventh Amendment to the Constitution of the United States, or otherwise, from any claim or from the jurisdiction of any court.

If a claim must be brought in a federal forum, then it must be brought and adjudicated exclusively within the United States District Court for the District of Utah. This paragraph only applies to a claim brought against DTS or the State of Utah to the extent Congress has abrogated the State of Utah's sovereign immunity and this paragraph is not consent by DTS or the State of Utah to be sued in federal court.

3. DRUG-FREE WORKPLACE: Contractor shall abide by DTS's drug-free workplace policies while on DTS's or the State of Utah's premises.

4. CODE OF CONDUCT: If Contractor is working at facilities controlled or owned by DTS or the State of Utah, Contractor shall follow and enforce DTS Policy 2000-0001 Code of Conduct, DTS Policy 1000-0003 Acceptable Use of Information Technology Resources and the agency applicable code of conduct. Contractor will ensure that each employee working at such facilities receives a copy of the policies and applicable codes of conduct.

5. WEBSITE BRANDING: Contractor shall only use the DTS, approved executive branch agency, and/or State of Utah logo on websites produced under terms of this Contract.

6. CONTRACTOR'S INSURANCE RESPONSIBILITY: The Contractor shall maintain the following insurance coverage:

- a. If Procurement Item is Software as a Service, Cloud Insurance Coverage from an insurance company authorized to do business in the State of Utah. The insurance policy must cover data breach and privacy/cyber

liability including technology errors and omissions and professional liability. The limits will be no less than \$5,000,000.00 aggregate.

b. A Certificate of Insurance, showing up-to-date coverage, shall be on file with DTS before the Contract may commence. Failure to provide proof of insurance as required will be deemed a material breach of this Contract.

c. Contractor's failure to maintain this insurance requirement for the Contract Period will be grounds for immediate termination.

7. RIGHT TO MONITOR PERFORMANCE AND AUDIT

a. **Audit:** Contractor shall, upon written notification permit DTS, or a third party designated by DTS, to perform an assessment, audit, examination, or review of all of Contractor's sites and environments related to DTS records or State Data - including physical, technical, and virtual sites and environments - in order to confirm Contractor's compliance with this Contract; associated scopes of work; and applicable laws, regulations, and industry standards. Contractor shall fully cooperate with such assessment by providing access to knowledgeable personnel; physical premises; records; technical and physical infrastructures; and any other person, place, or object which may assist DTS or its designee in completing such assessment. Upon request, Contractor shall provide the results of any audit performed by or on behalf of Contractor that would assist DTS or its designee in confirming Contractor's compliance with this Contract; associated scopes of work; and applicable laws, regulations, and industry standards. If Federal data is involved, this provision may not be waived to restrict Federal audit requirements

b. **Monitor Performance:** DTS reserves the right to monitor Contractor's performance, perform plan checks, plan reviews, other reviews, and/or comment upon the Services of Contractor. This includes Contractor's Subcontractors, if any. Results of any evaluation may be made available to the Contractor upon Contractor's request.

8. SURVIVORSHIP: The contractual provisions that will remain in effect after expiration or termination of this Contract are: (a) Secure Protection and Handling of State Data; (b) Data Breach Responsibilities; (c) Ownership in Custom Deliverables; (d) Ownership, Protection, and Use of Records, including Residuals of such records; and (e) Ownership, Protection, and Use of Confidential Federal, Utah, or Local Government Internal Business Processes, including residuals of such confidential business processes; (f) Ownership, Protection, and Return of Documents and Data Upon Contract Termination or Completion; (g) Conflict of Terms; and (h) any other terms that by their nature would survive the expiration, completion, or termination of this contract.

9. RELEVANT STATE AND FEDERAL LAWS

Compliance with Accessibility Standards: Contractor shall comply with the Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973. Contractor shall comply with Utah Administrative Code R895-14-3(3), which states that contractors developing websites, hardware, or software for State agencies are required to comply with applicable accessibility guidelines.

10. TIME IS OF THE ESSENCE: The Services shall be completed and Goods and Custom Deliverables delivered by any applicable deadline stated in this Contract. Time is of the essence.

11. STANDARD OF CARE: For Services of Contractor which require licenses and certifications, such Services shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the Services that are the subject of this Contract.

12. DATA BREACH. In the event of a data breach, liability for notification and remedial costs and damages shall be the responsibility of the Party whose environment was breached.

13. HARDWARE WARRANTY: THE STATE OF UTAH DOES NOT ACCEPT ANY PROCUREMENT ITEM "AS-IS". Contractor warrants all hardware portions of any Good or Custom Deliverable that it directly or indirectly provides for a period of **one year**. All warranties granted to DTS by the uniform commercial code of the state of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from contractor or its suppliers

are rejected. Contractor warrants that the hardware: (a) will perform as specified in the response; (b) will live up to all specific claims listed in the response; (c) will be suitable for the ordinary purposes for which the hardware is used; (d) will be suitable for any special purposes that DTS has relied on contractor's skill or judgment to consider when it advised DTS about the hardware in the response; (e) the hardware has been properly designed and manufactured; and (f) is free of significant defects.

14. SOFTWARE WARRANTY: THE STATE OF UTAH DOES NOT ACCEPT ANY PROCUREMENT ITEM "AS-IS". Contractor warrants for a period of **one year** from the date of acceptance that the software portions of the Goods and Custom Deliverable, including Software as a Service, that Contractor directly or indirectly provides will: (a) perform in accordance with the specific claims provided in the response and all specifications and documentation for the software; (b) be suitable for the ordinary purposes for which such goods and custom deliverables are used; (c) be suitable for any special purposes that DTS has relied on contractor's skill or judgment to consider when it advised the state about the Goods or Custom Deliverables; (d) have been properly designed and manufactured; and (e) be free of significant defects. Contractor shall provide DTS with bug fixes, including informing DTS of any known software bugs or software defects that may affect the state's use of the software.

15. WARRANTY REMEDIES: Upon breach of the hardware or software warranty, Contractor will repair or replace (at no charge to DTS) the nonconforming Goods or Custom Deliverables. If the repaired and/or replaced products are inadequate, Contractor will refund the full amount of any payments that have been made during the warranty period for the failed products. These remedies are in addition to any other remedies provided by law or equity.

License and Ownership

16. General License: For any Software, including SaaS, delivered that is not considered a Custom Deliverable, Contractor grants DTS a non-exclusive, non-transferable, right to use, , , without the right to sublicense, such Software for DTS's and the State of Utah's internal business operation under this Contract. If the Software is perpetual, Contractor grants DTS a non-exclusive, non-transferable, irrevocable, perpetual right to use, copy, and, without the right to sublicense, for DTS's and the State of Utah's internal business operation under this Contract.

17. OWNERSHIP AND USE OF RECORDS: DTS and the State of Utah shall own exclusive title to all information and data gathered, reports developed, and conclusions reached by DTS in performance of this Contract. Contractor may not use, except in meeting its obligations under this Contract, information gathered, reports developed, or conclusions reached by DTS in performance of this Contract without the express written consent of DTS.

18. OWNERSHIP AND USE OF DATA: DTS and the State of Utah shall own and retain unlimited rights to use, disclose, or duplicate all information and data (copyrighted or otherwise) specifically developed, derived, documented, stored, or furnished by Contractor for DTS under this Contract. Contractor, and any Subcontractors under its control, expressly agrees not to use Non-Public Data without prior written permission from DTS and appropriate officials of the State of Utah.

19. OWNERSHIP, PROTECTION, AND USE OF CONFIDENTIAL FEDERAL, UTAH, OR LOCAL GOVERNMENT INTERNAL BUSINESS PROCESSES AND PROCEDURES: In the event that DTS provides Contractor with confidential federal or state business processes, policies, procedures, or practices, pursuant to this Contract, Contractor shall hold such information in confidence, in accordance with applicable laws and industry standards of confidentiality, and not copy, reproduce, sell, assign, license, market, transfer, or otherwise dispose of, give, or disclose such information to third parties or use such information for any purpose whatsoever other than the performance of this Contract. The improper use or disclosure by any party of protected internal federal or state business processes, policies, procedures, or practices is prohibited. Confidential federal or state business processes, policies, procedures, or practices shall not be divulged by Contractor or its Subcontractors, except for the performance of this Contract, unless prior written consent has been obtained in advance from DTS.

20. OWNERSHIP, PROTECTION, AND RETURN OF DOCUMENTS AND DATA UPON CONTRACT TERMINATION OR COMPLETION: All documents and data pertaining to work required by this Contract will be the property of DTS and the State of Utah, and must be delivered to DTS within thirty (30) working days after termination or expiration of this Contract, and without restriction or limitation to their future use. Any State Data returned under this section must either be in the format as originally provided, in a format that is readily usable by

DTS, or formatted in a way that it can be used. The costs for returning documents and data to DTS are included in this Contract.

Technical Support

21. UPDATES AND UPGRADES: Any upgrades and updates provided by Contractor are subject to the terms of this Contract. If Software is on premises, DTS reserves the right to accept updates and upgrades at its discretion and to determine if such updates comply with the Security requirements in the Contract.

22. BUG FIXING AND REMOTE DIAGNOSTICS: Contractor shall use commercially reasonable efforts to provide work-around solutions or patches to reported software problems. If Software is on premises, Contractor may perform remote diagnostics to work on reported problems with DTS's prior written authorization. If DTS declines remote diagnostics, Contractor and DTS may agree to on-site technical support, subject to the terms of the Contract.

23. TECHNICAL SUPPORT AND MAINTENANCE: If technical support and maintenance is required by the Contract, Contractor will use commercially reasonable efforts to respond to DTS in a reasonable time, and in all events, in accordance with the specific timeframes detailed in the Contract, when DTS makes technical support or maintenance requests.

24. ELECTRONIC DELIVERY: Contractor may electronically deliver any Good or Custom Deliverable to DTS or provide any Good and/or Custom Deliverable for download from the Internet. Contractor shall ensure the confidentiality of electronic deliveries in transit. Contractor warrants that all electronic deliveries will be sent with all reasonable security measures in place to ensure deliverable is free of known malware, bugs, Trojan horses, etc.

25. TRANSITION ASSISTANCE: Upon termination or expiration of Contract, Contractor shall reasonably cooperate with other parties in connection with all Goods and Services to be delivered, including any successor contractor to whom data is transferred. The Contractor shall assist DTS in exporting and extracting data, in a format usable without the use of the Procurement Item and as agreed to between the parties, at no additional cost. Any transition service requested by DTS involving additional knowledge transfer and support may be subject to a statement of work at Contractor's then current rates, agreed upon between the Parties and added by amendment to this Contract.

Security

26. CRIMINAL BACKGROUND SCREENING: Each employee of Contractor and Subcontractor who will be granted unescorted Access to Secure State Facilities or unprotected State Data, or any Access to Technology must successfully complete a Federal Criminal Background Check, in accordance with DTS Policy 2000-0014 Background Investigations, prior to being granted such Access. Contractor or the applicable employee shall provide DTS with sufficient personal information (at Contractor's expense) so that a Federal Criminal Background Check may be completed by DTS, at DTS's expense. DTS will provide Contractor with forms which must be filled out by Contractor and returned to DTS. Each employee of Contractor or a Subcontractor who will have Access to Secure State Facilities, State Data, or Technology must be fingerprinted by DTS or local law enforcement a minimum of one week prior to needing access. At the time of fingerprinting, said employee shall disclose all felony or misdemeanor convictions. DTS will conduct a Federal Criminal Background Check based upon the fingerprints and personal information provided and use this same information to complete a Name Check in the Utah Criminal Justice Information System (UCJIS) at least every two years. DTS may revoke Access to Secure State Facilities, Data, and Technology granted in the event of any negative results. Contractor and the employee or subcontractor shall immediately notify DTS if an arrest or conviction for a felony or misdemeanor of any person that has Access to Secure State Facilities, State Data or Technology occurs during the Contract Period. DTS will determine in its discretion if such person's Access to Secure State Facilities, State Data, or Technology shall remain in effect. Felony and misdemeanor are defined by the laws of the State of Utah, regardless of where the conviction occurred.

27. SECURE PROTECTION AND HANDLING OF STATE DATA: If Contractor is given access to or will be storing State Data, the protection of State Data shall be an integral part of the business activities of Contractor, and Contractor shall ensure that there is no inappropriate or unauthorized use of State Data. Contractor shall safeguard

the confidentiality, integrity, and availability of the State Data and comply with the conditions outlined below. DTS reserves the right to verify Contractor's adherence to the following conditions to ensure they are met:

a. **Network Security:** Contractor shall maintain network security that, at a minimum, includes: network firewall provisioning, intrusion detection, and regular third-party penetration testing. Contractor shall maintain network security and ensure that Contractor network security policies conform to one of the following:

- 1) Those standards the State of Utah applies to its own network, found outlined in *DTS Policy 5000-0002 Enterprise Information Security Policy, which is based on NIST SP 800-53*;
- 2) The Current standards set forth and maintained by the National Institute of Standards and Technology in SP 800-53 found at <https://csrc.nist.gov/publications/detail/sp/800-53/rev-5/final>; or
- 3) Any generally recognized comparable standard that Contractor then applies to its own network and pre-approved by DTS in writing.

b. **State Data Security:** Contractor shall protect and maintain the security of State Data with protection that is at least as good as or better than that maintained by the State of Utah as identified in *DTS Policy 5000-0002*. These security measures included but are not limited to maintaining secure environments that are patched and up to date with all appropriate security updates as designated (ex. Microsoft Notification). DTS reserves the right to determine if Contractor's level of protection meets the State's security requirements.

c. **State Data Transmission:** Contractor shall ensure all transmission or exchange of system application data with DTS and the State of Utah and/or any other parties expressly designated by the State of Utah, shall be encrypted and take place via secure means (ex. HTTPS or FTPS). Transmission of regulatory data must conform with the current regulatory requirement applicable to such data (ex. FIPS 140-x).

d. **State Data Storage:** All State Data will be stored and maintained in data centers in the United States. State Data is required to be encrypted in transit and at rest. State Data may only be processed on or transferred to Contractor-owned portable or laptop computing device or portable storage medium if such device is whole disk encrypted, or used and kept only at Contractor's United States data centers, including if such medium is part of the Contractor's designated backup and recovery process. In no case may such devices or State Data leave the United States.

e. **Access:** Contractor may permit its employees and Subcontractors to remotely access non-State Data as required to provide technical support.

f. **State Data Encryption:** Contractor shall store all data provided to Contractor, including State, as well as any backups made of that data, in encrypted form based on the current TLS standard and include all data as part of a designated backup and recovery process. Encryption of regulatory data must conform with the current regulatory requirement applicable to such data (ex. FIPS 140-x).

g. **Authentication:** Any portable or laptop computer that has access to DTS or State of Utah network, or stores any non-public State of Utah data shall be equipped with strong and secure password protection. All systems that require authentication must use the single sign on solution operated by the State. This may be accomplished through federation using standard authentication protocols or direct integration into the vendor supplied application.

h. **Confidential Information Certification:** Contractor may be required to sign a Confidential Information Certification form prior to being given access to certain confidential computerized records, if required by agency or Federal policies.

i. **State Data Re-Use:** All data exchanged shall be used expressly and solely for the purpose enumerated in this Contract. No State Data of any kind may be transmitted, exchanged, or provided to other contractors or third parties except on a case-by-case basis as specifically agreed to in writing by DTS.

j. **State Data Destruction:** Upon expiration or termination of this Contract, Contractor shall erase, destroy, and render unreadable all State Data from all non-state computer systems and backups, and certify in writing

that these actions have been completed within thirty (30) days of the expiration or termination of this Contract or within seven (7) days of the request of DTS, whichever shall come first, unless DTS provides Contractor with a written directive. DTS's written directive may require that certain data be preserved in accordance with applicable law.

k. **Services Shall Be Performed Within United States:** ALL OF THE SERVICES REQUIRING ACCESS TO STATE DATA SHALL BE PERFORMED WITHIN THE BORDERS AND JURISDICTION OF THE UNITED STATES.

l. **User Support:** Contractor is permitted to provide technical user support, subject to 23(k) on a 24/7 basis using a Follow the Sun model, unless otherwise prohibited by this contract.

28. SECURITY INCIDENT OR DATA BREACH NOTIFICATION: As required by Utah Code 13-44-202 or any other law, upon discovery of any Security Incident or Data Breach shall provide the notification in the most expedient time possible without unreasonable delay. It is within DTS's discretion to determine whether any attempted unauthorized access is a Security Incident or a Data Breach.

a. **Incident Response:** Contractor may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement and seeking external expertise as mutually agreed upon, defined by law or contained in this Contract. Discussing Security Incidents with DTS should be handled on an urgent as-needed basis, as part of Contractor's communication and mitigation processes, defined by law or contained in this Contract.

b. **Security Incident Reporting Requirements:** Contractor shall promptly report a Security Incident to DTS.

c. **Breach Reporting Requirements:** As required by Utah Code 13-44-202 or any other law, Contractor shall immediately notify DTS of a Data Breach that affects the security of State Data.

29. DATA BREACH RESPONSIBILITIES: Contractor shall comply with all applicable laws that require the notification of individuals in the event of a Data Breach or other events requiring notification in accordance with *DTS Policy 5000-0002 Enterprise Information Security Policy*. In the event of a Data Breach or other event requiring notification under applicable law (Utah Code § 13-44-101 thru 301 et al), Contractor shall: (a) cooperate with DTS by sharing information relevant to the Data Breach; (b) promptly implement necessary remedial measures, if necessary; and (c) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in relation to the Data Breach. If the Data Breach requires public notification, all communication shall be coordinated with DTS.

30. COMPLIANCE WITH NIST 800.53 If Contractor is developing software for the State or providing Goods or Custom Deliverables or performing Services which have the potential to cause any form of outage or to modify DTS's or the State of Utah's infrastructure, Contractor shall comply with current standards set forth and maintained by the National Institute of Standards and Technology, NIST 800-53 or ISO 27001.

51. PUBLIC CONTRACT BOYCOTT RESTRICTIONS: In accordance with Utah Code 63G-27-102, Contractor certifies that it is not currently engaged in an "economic boycott" nor a "boycott of the State of Israel" as those terms are defined in that Code section. Contractor also agrees not to engage in either boycott for the duration of this contract. If Contractor does engage in such a boycott, it shall immediately provide written notification to the public entity party to this contract.

(Revision Date: 02 May 2023)

Attachment C - Cost Proposal Form
Election Night Reporting System
Solicitation # GN23-27

Vendor Name: _____

Costing Considerations & Instructions

1. All cells in a yellow highlight require an input.
2. Cost will be evaluated based on the Total Proposed Costs, per the formula outlined in Attachment D - I
3. Technical Requirements and Cost Proposals must be reflective of one another. All costs necessary to p under this contract must be included on this form.
4. If zero is entered for any cell or if any cell is left blank, the State will assume that the related services a cost or built into another cost item. If a cost category is not applicable, enter N/A.
5. Any cost not provided on this Cost Schedule, will not be allowed into the resulting contract. If you iden properly captured in this Cost Schedule, then provide suggestions for modifying this Cost Schedule to the solicitation.
6. Any deviation from this format may result in disqualification of Offeror's proposal.
7. All prices in cluded in this spreadsheet are contractual in accordance with the 2 year price guarantee i n solicitation and ***cannot be corrected or adjusted. Prices are final and cannot be negotiated.***

Annual Subscription/Usage Fees

Provide an annual cost to reflect services performed throughout the year. This may include licensing, mai updates, customer training, and hardware.

Fiscal Year	Annual Fee
Implementation Fees	\$ -
Annual Subscription/Usage Fees	
FY 2024 (July 1, 2023 to June 30, 2024)	\$ -
FY 2025 (July 1, 2024 to June 30, 2025)	\$ -
FY 2026 (July 1, 2025 to June 30, 2026)	\$ -
FY 2027 (July 1, 2026 to June 30, 2027)	\$ -
FY 2028 (July 1, 2027 to June 30, 2028)	\$ -
Total Proposed Costs	\$ -

nteractive Scorecard.
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Election Night Reporting System
SOLICITATION # GN23-27
RFP EVALUATION SCORESHEET

DRAFT: This document is intended to be a draft and should not be returned to the Division of Purchasing. Please return this document to the evaluation committee ch
This document is not subject to GRAMA pursuant to Utah Administrative Code R33-7-702(2).

Score will be assigned as follows:

Firm Name:

Evaluator:

Date:

- 1 = Poor, the proposal inadequately addresses the requirements or criteria described in t
2 = Unsatisfactory, the proposal addresses the requirements or criteria described in the R
3 = Satisfactory, the proposal addresses all requirements or criteria described in the RFP
4 = Good, the proposal addresses all requirements or criteria described in the RFP and in
5 = Excellent, the proposal addresses and exceeds all of the requirements or criteria descr

Minimum Mandatory Requirements		RFP Section	Evaluation (Pass/Fail)
1	Offeror certifies that system is production ready. This means system has been implemented and utilized at a state, county, or municipal level by another Governmental Agency for a previous Primary or General Election.	Prerequisites	
2	Offeror certifies that product is a Web Based SaaS solution	Prerequisites	
3	Offeror certifies that product is a responsive design, allowing it to be used on desktop, laptop, or mobile devices.	Prerequisites	
4	A maximum of forty pages/slides proposals will be accepted. Any pages over 40 will be removed from submission.	Prerequisites	

Scoreable Technical Criteria		RFP Section	Evaluator Score (0-5)	Criteria Weight	% of Tech Criteria	Points Possible	Points Earned	Minimum Required
1	Administrative Interface							
1a	Allow for Utah-specific custom branding	Prerequisites		5	3.3%	25.00	0.00	
1b	Ability to set up and administer races, candidates and	Prerequisites		15	10.0%	75.00	0.00	
1c	Allow state administrators to edit and post custom messages to the public in real-time	Prerequisites		15	10.0%	75.00	0.00	
2	Network System Compliance							
2a	ADA/WCAG 2.1 compliance	Prerequisites		15	10.0%	75.00	0.00	
2b	Handle Increased Traffic on Election Night	Prerequisites		15	10.0%	75.00	0.00	
3	Public Interface							
3a	Races, candidates, questions, etc., must be able to be ordered based on Utah's needs	Prerequisites		5	3.3%	25.00	0.00	
3b	Allow end users to select and maintain a list (or lists) of favorites to easily access and monitor	Prerequisites		5	3.3%	25.00	0.00	
3c	Results display auto refreshes	Prerequisites		5	3.3%	25.00	0.00	
3d	Easily filter and display results at statewide and county levels	Prerequisites		10	6.7%	50.00	0.00	
4	Reporting Capabilities							
4a	Ability to input voter registration totals to display turnout percentages	Prerequisites		5	3.3%	25.00	0.00	
4b	Must be able to provide county-based results (suppress	Prerequisites		10	6.7%	50.00	0.00	
4c	Keep previous elections' results available for display Ability to export results to a .csv	Prerequisites		10	6.7%	50.00	0.00	
4d	Must allow for a county completion report	Prerequisites		10	6.7%	50.00	0.00	
4e	Must allow for results to be previewed by county/state prior to being made live	Prerequisites		10	6.7%	50.00	0.00	
5	System Compatibility							
5a	Ingest data from county election equipment (ES&S, Dominion, Unisyn) or a standard format that those systems can easily export	Prerequisites		15	10.0%	75.00	0.00	
					100.0%	750.00	0.00	0.00

Required Technical Point Threshold	RFP Section	Min Percent	Min Points Required	Points Earned	Percent Earned	Evaluation
	Prerequisites	65%	487.5	0.0	0.0%	

Interview Criteria	RFP Section	Evaluator Score (1-5)	Criteria Weight	% of Tech Criteria	Points Possible	Points Earned	Minimum Required
1. Offerors will be required to participate in a 60-minute a. Forty-Five minutes will be allotted for a presentation and 15 minutes for questions and answers b. The state selection committee will interview only the offeror's proposed account manager c. Interview will be held virtually via Zoom or another preferred online meeting platform.							
2. Presentation of the application/system							
Administrative Ease of Use	Prerequisites		10	20%	50.00	0.00	
Network System Compliance	Prerequisites		10	20%	50.00	0.00	
Reports and Customization	Prerequisites		10	20%	50.00	0.00	
Compatibility/Integration	Prerequisites		10	20%	50.00	0.00	
Public Interface Ease of Use	Prerequisites		10	20%	50.00	0.00	
				100.0%	250.00	0.00	0.0

Required Interview Point Threshold	RFP Section	Min Percent	Min Points Required	Points Earned	Percent Earned	Evaluation
	Prerequisites	65%	162.5	0.0	0.0%	

Cost	RFP Section	Low Cost Option	Offered Cost	Percent of Total	Points Possible	Points Earned
					150.0	0.0

* Purchasing will use the following cost formula: The points assigned to each offerors cost proposal will be based on the lowest proposal price. The offeror with the lowest Proposed Price will receive 100% of the price points. All other offerors will receive a portion of the total cost points based on what percentage higher their Proposed Price is than the Lowest Proposed Price. The formula to compute the points is: Cost Points x (Lowest Proposed Price/Proposed Price).

Total Evaluation Points	Percent of Total	Points Possible	Points Earned
Total Technical Evaluation Points	65%	750.0	0.0
Total Interview Points	22%	250.0	0.0
Total Cost Evaluation Points	13%	150.0	0.0
Total Evaluation Points	100%	1,150.0	0.0