



Contract # 156247

STATE OF UTAH CONTRACT

1. CONTRACTING PARTIES: This contract is between the following agency of the State of Utah:
Department Name: Department of Technology Services (DTS) Agency Code: 110,
referred to as STATE, and the following CONTRACTOR:

Tempus Nova
Name
1550 Larimer St, Suite 217
Address
Denver Colorado 80202
City State Zip

LEGAL STATUS OF CONTRACTOR

- Sole Proprietor
- Non-Profit Corporation
- For-Profit Corporation
- Partnership
- Government Agency

Contact Person Heather Martinez Phone # 720-583-3932 Email accounting@tempusnova.com
Vendor # VC0000161222 Commodity Code # 92013

2. GENERAL PURPOSE OF CONTRACT: The general purpose of this contract is for the Contractor to provide DTS with licenses for Statewide Six Inch Resolution Serial Photography for On-Premise and Streaming Web Service Use by Utah Public Sector Agencies. For additional information, see *Attachment B: Scope of Work, Contract Pricing, and Contract Payments*.
3. PROCUREMENT: This contract is entered into as a result of the procurement process on pre-approved sole source authorization #SS 15281
4. CONTRACT PERIOD: Effective Date 01/01/2015 Termination Date 12/31/2015 unless terminated early or extended in accordance with the terms and conditions of this contract. Renewal options (if any) 2-1 year All payments under this contract will be completed within 90 days after the Termination Date.
5. CONTRACT COSTS: CONTRACTOR will be paid a maximum of **\$1,025,502** for costs authorized by this contract. Additional information regarding costs: see *Attachment B: Scope of Work, Contract Pricing, and Contract Payments*.
6. ATTACHMENT A: *State of Utah Standard IT Terms and Conditions (For DTS Related Contracts Only)*
ATTACHMENT B: *Scope of Work, Contract Pricing, and Contract Payments*
ATTACHMENT C: *Supplemental Google Orthoimagery License Agreement Terms*

Any conflicts between Attachment A and other Attachments will be resolved in favor of Attachment A.
7. DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:
 - a. All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.
 - b. Utah State Procurement Code, Procurement Rules, and CONTRACTOR'S response to Bid # dated .

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR
Didi Dellanno 12/19/2014
Contractor's signature Date
Didi Dellanno, President
Type or Print Name and Title

STATE
MAU 12-23-14
Executive Director, DTS / CIO Date
Manya 12-23-14
Director, Division of Purchasing Date
CONTRACT RECEIVED AND PROCESSED BY
Director, Division of Finance
DEC 23 2014
Date

<u>Bert Granberg</u> Agency Contact Person	<u>801-538-3163</u> Telephone Number	<u>bgranberg@utah.gov</u> Email
---	---	------------------------------------

**ATTACHMENT A: STANDARD INFORMATION TECHNOLOGY TERMS AND CONDITIONS
(FOR DTS RELATED CONTRACTS ONLY)**

This is for a contract of information technology products and services meaning all computerized and auxiliary automated information handling, including: (a) systems design and analysis; (b) acquisition, storage, and conversion of data; (c) computer programming; (d) information storage and retrieval; (e) voice, radio, video, and data communications; (f) requisite systems controls; (g) simulation; and (h) all related interactions between people and machines. This Attachment A may only be used by the Department of Technology Services.

1. DEFINITIONS:

- a. "Access to Secure State Facilities, Data, and Technology" means Contractor will (A) enter upon secure premises controlled, held, leased, or occupied by DTS or the State of Utah; (B) maintain, develop, or have access to any deployed hardware, software, firmware, or any other technology, that is in use by DTS or the State of Utah; or (C) have access to or receive any State Data or Confidential Information during the course of performing this Contract.
- b. "Authorized Persons" means the Contractor's employees, officers, partners, Subcontractors or other agents of Contractor who need to access State Data to enable the Contractor to perform its responsibilities under this Contract.
- c. "Confidential Information" means information that is deemed as confidential under applicable record laws. DTS reserves the right to identify, during and after the Contract Period, additional reasonable types of categories of information that must be kept confidential under federal and state laws by Contractor.
- d. "Contract" means the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference. This Contract may include any purchase orders that result from the parties entering into this Contract.
- e. "Contract Period" means the length of this Contract, as set forth in the Solicitation and Contract Signature Page(s).
- f. "Contract Signature Page(s)" means the cover page that DTS and Contractor sign.
- g. "Contractor" means the individual or entity delivering the Goods, Custom Deliverables, or performing the Services identified in this Contract. The term "Contractor" shall include Contractor's agents, officers, employees, partners, and/or any other person or entity for which Contractor may be liable under federal, state, or local laws.
- h. "Custom Deliverable" means the Work Product that Contractor is required to deliver to DTS under this Contract.
- i. "Data Breach" means the unauthorized access by a non-authorized person(s) which results in unauthorized acquisition of State Data and compromises the security, confidentiality, or integrity of State Data. It is within DTS's sole discretion to determine whether the unauthorized access is a Security Incident or a Data Breach.
- j. "DTS" means the Department of Technology Services, as identified on the Contract Signature Page(s).
- k. "Federal Criminal Background Check" means an in depth background check conducted and processed by the FBI that covers all states. Federal Criminal Background Check reports will show if applicant has had any criminal cases filed against them that violated federal criminal law.
- l. "Good" means any deliverable not classified as a Custom Deliverable or Service that Contractor is required to deliver to DTS under this Contract.
- m. "Non-Public Data" means data, other than personal data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by the State of Utah and the federal government because it contains information that is exempt by state, federal and local statutes, ordinances, or administrative rules from access by the general public as public information.
- n. "Personal Data" means data that includes information relating to a person that identifies the person by a person's first name or first initial and last name and has any of the following personally identifiable information (PII): government-issued identification numbers (e.g., Social Security, driver's license, passport); financial account information; including account number, credit or debit card numbers; or protected health information (PHI) relating to a person.
- o. "Proposal" means Contractor's response documents, including attachments, to DTS's Solicitation.
- p. "Protected Health Information" (PHI) means individually identifiable health information transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. PHI excludes education records covered by the Family Educational Rights and Privacy Act (FERPA), as amended, 20 U.S.C. 1232g, records described at 20 U.S.C. 1232g(a)(4)(B)(iv) and employment records held by a covered entity in its role as employer.
- q. "Security Incident" means the potentially unauthorized access by non-authorized persons to State Data that Contractor believes could reasonably result in the use, disclosure or theft of State Data within the possession or control of the Contractor. A Security Incident may or may not turn into a Data Breach. It is within DTS's sole discretion to determine whether the unauthorized access is a Security Incident or a Data Breach.
- r. "Services" means the furnishing of labor, time, or effort by Contractor as set forth in this Contract, including but not limited to installation, configuration, implementation, technical support, warranty maintenance, and other support services.
- s. "Solicitation" means the documents used by DTS to solicit Contractor's Proposal for the Goods, Custom Deliverables, or Services identified in this Contract.

- t. "State Data" means all Confidential Information, Non-Public Data, Personal Data, and Protected Health Information that is created or in any way originating with the State of Utah whether such data or output is stored on the State of Utah's hardware, Contractor's hardware, or exists in any system owned, maintained or otherwise controlled by the State of Utah or by the Contractor. State Data includes any federal data, that the State of Utah controls or maintains, that is protected under federal laws, statutes, and regulations.
 - u. "State of Utah" means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, and instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
 - v. "Subcontractors" means subcontractors or subconsultants, at any tier, that are under the direct or indirect control or responsibility of Contractor, and includes all independent contractors, agents, employees, 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.
 - w. "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 DTS. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any DTS intellectual property, Contractor's intellectual property (that it owned or licensed prior to this Contract) or Third Party intellectual property.
2. **AUTHORITY:** Provisions of this Contract are pursuant to the authority set forth in 63G-6a, Utah Procurement Code, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes, including the Utah Technology Governance Act which permits DTS to purchase and acquire information technology products and services for the State of Utah.
 3. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** This Contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
 4. **LAWS AND REGULATIONS:** Contractor, along with any Goods, Custom Deliverables, and Services furnished under this Contract, will comply fully with all applicable federal, state, and local laws, regulations, and orders, including applicable licensure and certification requirements.
 5. **NO WAIVER OF SOVEREIGN IMMUNITY:** In no event shall this Contract be considered a waiver by DTS or the State of Utah of any form of defense or immunity, whether sovereign immunity, governmental immunity, or any other immunity based on 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 solely and 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 DTS's or 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.

6. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for the payments made by DTS 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 by DTS or the State of Utah initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow State of Utah auditors, federal auditors, and DTS staff access to all the payment records related to this Contract. Such access will be during normal business hours or by appointment.
7. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** This Status Verification System, also referred to as "E-verify", requirement only applies to contracts issued through a Request for Proposal process and to sole sources that are included within a Request for Proposal.

1. Status Verification System

(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 including Section 63G-12-302, Utah Code, as amended.

(2) Contractor shall require that the following provision be placed in each subcontract at every tier: "The subcontractor shall certify to the main (prime or general) contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with applicable immigration laws including Section 63G-12-302, Utah Code, as amended, and to comply with all applicable employee status verification laws. Such affidavit must be provided prior to the notice to proceed for the subcontractor to perform the work."

(3) Manually or electronically signing this Contract is deemed Contractor's certification of compliance with all provisions of this employment status verification certification required by all applicable status verification laws including Section 63G-12-302, Utah Code, as amended.

2. Indemnity Clause for Status Verification System

(1) Contractor shall protect, indemnify, and hold harmless DTS and the State of Utah, and anyone that the State of Utah may be liable for, against any claim, damages, or liability arising out of or resulting from violations of the above Status Verification System Section whether violated by employees, agents, or contractors of the following: (a) Contractor; (b) Subcontractor at any tier; and/or (c) any entity or person for whom the Contractor or Subcontractor may be liable.

(2) Notwithstanding Section 1. above, Design Professionals or Designers under direct contract with DTS shall only be required to indemnify DTS and the State of Utah for a liability claim that arises out of the design professional's services, unless the liability claim arises from the Design Professional's negligent act, wrongful act, error or omission, or other liability imposed by law except that the design professional shall be required to indemnify DTS and the State of Utah in regard to subcontractors or subconsultants at any tier that are under the direct or indirect control or responsibility of the Design Professional, and includes all independent contractors, agents, employees or anyone else for whom the Design Professional may be liable at any tier.

8. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of DTS or the State of Utah, unless disclosure has been made in accordance with 67-16-8, Utah Public Officers' and Employees Ethics Act of the Utah Code, as amended.
9. **CONFLICT OF INTEREST WITH STATE EMPLOYEES:** Contractor agrees to comply and cooperate in good faith will all conflict of interest and ethic laws, including Section 63G-6a-2404, Utah Procurement Code, as amended.
10. **INDEPENDENT CONTRACTOR:** Contractor shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind DTS or the State of Utah to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for DTS or the State of Utah, except as herein expressly set forth. Compensation shall be the total amount payable to Contractor by DTS. Contractor shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from DTS under this Contract.
11. **CONTRACTOR ACCESS TO SECURE STATE FACILITIES, STATE DATA, AND TECHNOLOGY:** An employee of Contractor or a Subcontractor is required to complete a Federal Criminal Background Check, in accordance with DTS Policy 2000-0014 Background Investigations, if said employee of Contractor or a Subcontractor will have Access to Secure State Facilities, Data, and Technology. Contractor shall provide DTS with sufficient personal information (at Contractor's own expense) so that a Federal Criminal Background Check may be completed by DTS, at DTS's expense. DTS will also provide Contractor with a Disclosure Form and Confidentiality Agreement which must be filled out by Contractor and returned to DTS. Additionally, each employee of Contractor or a Subcontractor, who will have Access to Secure State Facilities, State Data, and Technology, will be scheduled by DTS to be fingerprinted, at a minimum of one week prior to having such access. At the time of fingerprinting, said employee of Contractor or a Subcontractor will disclose, in full, any past record of felony or misdemeanor convictions. DTS is authorized to conduct a Federal Criminal Background Check based upon the fingerprints and personal information provided. DTS will use this same information to complete a Name Check in the Utah Criminal Justice Information System (UCJIS) every two years and reserves the right to revoke Access to Secure State Facilities, Data, and Technology granted in the event of any negative results. Contractor agrees to notify DTS if an arrest or conviction of any employee of Contractor or a Subcontractor that has Access to Secure State Facilities, State Data and Technology occurs during the Contract Period. Contractor, in executing any duty or exercising any right under this Contract, shall not cause or permit any of its employees or employees of a Subcontractor (if any) who have been convicted of a felony or misdemeanor to have Access to Secure State Facilities, State Data, and Technology. A felony and misdemeanor are defined by the laws of the State of Utah, regardless of where the conviction occurred. Upon request, DTS agrees to provide Contractor with a copy of the latest version of the DTS Policy 2000-0014 Background Investigations.
12. **DRUG-FREE WORKPLACE:** Contractor agrees to abide by DTS's drug-free workplace policies while on DTS's or the State of Utah's premises. DTS will provide Contractor with a copy of these written drug-free workplace policies upon request.
13. **CODE OF CONDUCT:** If Contractor is working at facilities controlled or owned by DTS or the State of Utah, Contractor agrees to follow and enforce the applicable code of conduct. Contractor will assure that each employee or each employee of Subcontractor(s) under Contractor's supervision receives a copy of such code of conduct. Upon request, DTS agrees to provide Contractor with a copy of any applicable code of conduct.
14. **INDEMNITY CLAUSE:** To the fullest extent permitted by law, Contractor shall indemnify and hold harmless DTS and the State of Utah from and against every kind and character of claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from any act or omission in Contractor's performance under this Contract including the work of all employees of Contractor and Subcontractors, provided that any such claim, damage, loss, or expense is caused in whole or in part by the negligent or wrongful act or omission of Contractor or any Subcontractor. Contractor shall defend all actions brought upon such matters to be indemnified hereunder and pay all costs and expenses incidental thereto. Contractor's indemnity obligation shall survive expiration or termination of this Contract. Contractor agrees that if there is a limitation of liability, such limitations of liability will not apply to injuries to persons, including death, or to damages to property. The insurance requirements in this Contract shall not be construed to limit Contractor's indemnity obligations.
15. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 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; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the

basis of disabilities. Also, Contractor agrees to abide by Utah's Executive Order, dated December 13, 2006, which prohibits unlawful harassment in the work place.

16. **SEVERABILITY:** A declaration or order by any court that any provision of this Contract is illegal and void shall not affect the legality and enforceability of any other provision of this Contract, unless the provisions are mutually dependent.
17. **AMENDMENTS:** This Contract may be amended, modified, or supplemented only by written amendment and attached to the original signed copy of this Contract. Automatic renewals will not apply to this Contract.
18. **DEBARMENT:** Contractor certifies that neither it nor its principals are presently or have ever been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract, by any governmental department or agency. Contractor shall notify DTS within thirty (30) days if it is debarred by any governmental entity during the Contract Period.
19. **TERMINATION:** Unless otherwise stated in this Contract, this Contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given fourteen (14) calendar days after notification to correct and cease the violations, after which this Contract may be terminated for cause at any time. This Contract may also be terminated without cause (for convenience), in advance of the specified expiration date, by either party, upon sixty (60) calendar days prior written notice being given the other party. The parties may also agree to terminate this Contract prior to the expiration of the Contract Period by written agreement.

If Services apply to this Contract, then 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 DTS or the State of Utah is limited to full payment for all work 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.

20. **SUSPENSION OF WORK:** Should circumstances arise which would cause DTS to suspend Contractor's responsibilities under this Contract, but not terminate this Contract, this will be done by formal written notice pursuant to the terms of this Contract. Contractor's responsibilities may be reinstated upon advance formal written notice from DTS.

21. NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:

1. 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 DTS, if DTS reasonably determines that 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.

2. Upon thirty (30) days written notice delivered to the Contractor, this Contract may be terminated in whole or in part, or have the Services and purchase obligations of DTS proportionately reduced, at the sole discretion of DTS, if DTS reasonably determines that a change in available funds affects DTS'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.

3. If a notice is delivered under paragraph 1 or 2 of this Section 21 "NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW," DTS will make payment to Contractor for Goods or Custom Deliverables properly delivered or Services properly performed up until the effective date of said notice. DTS will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said notice.

4. Notwithstanding any other paragraph or provision of this Section 21 "NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW," if DTS in said notice to Contractor indicates that Contractor is to immediately cease from placing any orders or commitments with suppliers, subcontractor or other third parties, Contractor shall immediately cease such orders or commitments upon receipt of said notice and DTS shall not be liable for any such orders or commitments made after the receipt of said notice.

22. **SALES TAX EXEMPTION:** The Goods, Custom Deliverables, or Services being purchased by DTS under this Contract are being paid from DTS's funds and used in the exercise of DTS's essential function as a State of Utah entity. DTS will provide Contractor with a copy of its sales tax exemption number upon request. It is the Contractor's responsibility to request the sales tax exemption number from DTS.
23. **TITLE AND OWNERSHIP WARRANTY:** Contractor warrants, represents and conveys full ownership, clear title free of all liens and encumbrances to any Good or Custom Deliverable delivered to DTS under this Contract. Contractor fully indemnifies the State for any loss, damages or actions arising from a breach of this warranty without limitation.
24. **HARDWARE WARRANTY:** Contractor agrees to warrant and assume responsibility for all hardware portions of any Good or Custom Deliverable, that it licenses, contracts, or sells to DTS under this Contract, for a period of one (1) year. Contractor acknowledges that 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 are not applicable to this Contract. In general, the Contractor warrants that the hardware: (a) will perform as specified in the Proposal; (b) will live up to all specific claims listed in the Proposal; (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 Proposal; (e) the

hardware has been properly designed and manufactured; and (f) is free of significant defects or unusual problems about which DTS has not been warned.

25. **SOFTWARE WARRANTY:** Contractor warrants that for a period of ninety (90) days from the date of Acceptance that the software portions of the Goods and Custom Deliverables, that Contractor licenses, contracts, or sells to DTS under this Contract, will: (a) perform in accordance with the specific claims provided in the Proposal and any specifications agreed to in writing between DTS and Contractor; (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 in its Proposal; (d) have been properly designed and manufactured; and (e) be free of significant defects or unusual problems about which DTS has not been warned. Contractor agrees to provide DTS with bug fixes, including informing DTS of any known software bugs or software defects that may affect DTS's use of the software during the Contract Period.
26. **WARRANTY REMEDIES:** Upon breach of the hardware or software warranty, Contractor will repair or replace (at no charge to DTS) the Goods or Custom Deliverables whose nonconformance is discovered and made known to Contractor. If the repaired and/or replaced products prove to be inadequate, or fail to meet the performance of its essential purpose, Contractor will refund the full amount of any payments that have been made for the failing products. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity.
27. **UPDATES AND UPGRADES:** Contractor grants to DTS a non-exclusive, non-transferable license to use upgrades and updates provided by Contractor during the term of this Contract. Such upgrades and updates are subject to the terms of this Contract. DTS shall download, distribute, and install all updates as released by Contractor during the Contract Period, and Contractor strongly suggests that DTS also downloads, distributes, and installs all upgrades as released by Contractor during the Contract Period.
28. **BUG FIXING AND REMOTE DIAGNOSTICS:** Contractor shall use commercially reasonable efforts to provide work-around solutions or patches to reported software problems. With DTS's prior written authorization, Contractor may perform remote diagnostics to work on reported problems, subject to Contractor's obligation of this Contract. In the event that DTS declines remote diagnostics, Contractor and DTS may agree to on-site technical support, subject to the terms of this Contract.
29. **TECHNICAL SUPPORT AND MAINTENANCE:** If technical support and maintenance is a part of the Goods or Custom Deliverables that Contractor provides under this Contract, Contractor will use commercially reasonable efforts to respond to DTS in a reasonable time when DTS makes technical support or maintenance requests regarding the Goods or Custom Deliverables.
30. **SECURE PROTECTION AND HANDLING OF STATE DATA:** If Contractor is given State Data as part of this Contract, the protection of State Data shall be an integral part of the business activities of Contractor to ensure that there is no inappropriate or unauthorized use of State Data. To the extent that Contractor is given State Data, Contractor shall safeguard the confidentiality, integrity and availability of the State Data and comply with the following conditions:
 1. **Network Security:** Contractor agrees at all times to maintain network security that - at a minimum - includes: network firewall provisioning, intrusion detection, and regular third party penetration testing. Likewise Contractor agrees to maintain network security that conforms 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* (copy available upon request);
 - (2) Current standards set forth and maintained by the National Institute of Standards and Technology, includes those at <http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r4.pdf>; or
 - (3) Any generally recognized comparable standard that Contractor then applies to its own network and approved by DTS in writing.
 2. **State Data Security:** Contractor agrees to 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. 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).
 3. **State Data Transmission:** Contractor agrees that any and all transmission or exchange of system application data with DTS and State of Utah and/or any other parties expressly designated by the State of Utah, shall take place via secure means (ex. HTTPS or FTPS).
 4. **State Data Storage:** Contractor agrees that all State Data will be stored and maintained in data centers in the United States. Contractor agrees that no State Data at any time will be processed on or transferred to any portable or laptop computing device or any portable storage medium, except for devices that are used and kept only at Contractor's United States data centers, unless such medium is part of the Contractor's designated backup and recovery process. Contractor shall permit its personnel and contractors to access non-State Data remotely only as required to provide technical support. Contractor may provide technical user support on a 24/7 basis using a Follow the Sun model, unless otherwise prohibited by this contract.
 5. **State Data Encryption:** Contractor agrees to store all data provided to Contractor, including State, as part of its designated backup and recovery process in encrypted form, using no less than 128 bit key.

6. **Password Protection:** Contractor agrees that any portable or laptop computer that has access to DTS or State of Utah network, or stores any non-public State of Utah data is equipped with strong and secure password protection.
7. **State Data Re-Use:** Contractor agrees that any and all data exchanged shall be used expressly and solely for the purpose enumerated in this Contract. Contractor further agrees that no State Data of any kind shall be transmitted, exchanged, or otherwise passed to other Contractors or interested parties except on a case-by-case basis as specifically agreed to in writing by DTS.
8. **State Data Destruction:** The Contractor agrees that upon expiration or termination of this Contract it 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. It is understood by the parties that DTS's written directive may request that certain data be preserved in accordance with applicable law.
9. **Services Shall Be Performed Within United States:** Contractor agrees that all of the Services related to State Data that it provides to DTS will be performed by Contractor and Subcontractor(s) within the borders and jurisdiction of the United States.
31. **SECURITY INCIDENT OR DATA BREACH NOTIFICATION:** Contractor shall immediately inform DTS of any Security Incident or Data Breach.
1. **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.
2. **Security Incident Reporting Requirements:** Contractor shall report a Security Incident to DTS immediately if Contractor reasonably believes there has been a Security Incident.
3. **Breach Reporting Requirements:** If Contractor has actual knowledge of a confirmed Data Breach that affects the security of any State Data that is subject to applicable data breach notification law, Contractor shall: (a) promptly notify DTS within 24 hours or sooner, unless shorter time is required by applicable law; (b) take commercially reasonable measures to address the Data Breach in a timely manner; and (c) be responsible for its Data Breach responsibilities, as provided in the next Section.
32. **DATA BREACH RESPONSIBILITIES:** This Section only applies when a Data Breach occurs. Contractor agrees to 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 (copy available upon request). 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; (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; and (d) in accordance with applicable laws indemnify, hold harmless, and defend DTS and the State of Utah against any claims, damages, or other harm related to such Data Breach. If the Data Breach requires public notification, all communication shall be coordinated with DTS. Contractor shall be responsible for all notification and remedial costs and damages.
33. **CHANGE MANAGEMENT:** Contractor agrees to comply with DTS Change Management Policy 4000-0004. This DTS policy requires that any Goods or Custom Deliverables furnished or Services performed by Contractor that has the potential to cause any form of outage or modify the DTS's or State of Utah's infrastructure must be reviewed by the DTS Change Management Committee. DTS will inform Contractor if this change control requirement is applicable. Following this notification, any outages or Data Breaches which are caused by Contractor as a direct result of Contractor's failure to comply with DTS's notification, will result in Contractor's liability for the damages. Upon request, DTS agrees to provide Contractor with a copy of the latest version of DTS Change Management Policy 4000-0004.
34. **PUBLIC INFORMATION:** Contractor agrees that this Contract, any purchase orders, invoices, pricing lists, and the Proposal will be public documents, and may be available for distribution in accordance with the State of Utah's Government Records Access and Management Act (GRAMA). Contractor gives DTS and the State of Utah express permission to make copies of this Contract, any purchase orders, invoices, pricing lists, and Proposal in accordance with GRAMA. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation. Neither DTS nor the State of Utah will inform Contractor of any request for a copy of this Contract, including any purchase orders, invoices, pricing lists, or the Proposal.
35. **CREDITING DTS IN PUBLICITY:** Any publicity given to this Contract provided herein shall identify DTS as the managing agency and shall not be released without prior written approval by DTS.
36. **WEBSITE BRANDING:** If applicable, Contractor agrees to use the DTS or State of Utah logo, or a newer version if replaced in the future, on websites produced under terms of this Contract.
37. **DELIVERY:** Unless otherwise specified in this Contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by Contractor. Contractor is responsible for including any freight charges due by DTS to Contractor when providing quotes to DTS unless otherwise specified in this Contract. Invoices listing freight charges that were not identified in the quote prior

to shipment, unless otherwise specified in this Contract, will be returned to the Contractor to remove such costs. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to DTS except as to latent defects, fraud, and Contractor's warranty obligations.

38. ELECTRONIC DELIVERY: Contractor may electronically deliver any Good or Custom Deliverable to DTS or provide any Good and Custom Deliverable for download from the Internet, if approved in writing by DTS. Contractor should take all reasonable and necessary steps to ensure that the confidentiality of those electronic deliveries is preserved in the electronic delivery process, and are reminded that failure to do so may constitute a breach of obligations owed to DTS under this Contract. Contractor warrants that all electronic deliveries will be free of known, within reasonable industry standards, malware, bugs, Trojan horses, etc. Any electronic delivery that includes State Data that Contractor processes or stores must be delivered within the specifications of this Contract.

39. ACCEPTANCE PERIOD: A Good, Custom Deliverable, or Service furnished under this Contract shall function in accordance with the specifications identified in this Contract and Solicitation. If the Goods and Custom Deliverables delivered do not conform to the specifications identified in this Contract and Solicitation ("Defects"), DTS shall within thirty (30) calendar days of the delivery date ("Acceptance Period") notify Contractor in writing of the Defects. Contractor agrees that upon receiving such notice, it shall use reasonable efforts to correct the Defects within fifteen (15) calendar days ("Cure Period"). DTS's acceptance of a Good, Custom Deliverable, or Services occurs at the end of the Acceptance Period or Cure Period.

If after the Cure Period, a Good, Custom Deliverable, or Service still has Defects, then DTS may, at its option: (a) declare Contractor to be in breach and terminate this Contract; (b) demand replacement conforming Goods, Custom Deliverables, or Services from Contractor at no additional cost to DTS; or, (c) continue the Cure Period for an additional time period agreed upon by DTS and Contractor in writing. Contractor shall pay all costs related to the preparation and shipping of the products returned pursuant to this section. No products shall be accepted and no charges shall be paid until acceptance is met. The warranty period will begin upon the end of the Acceptance Period.

40. ORDERING AND INVOICING: All orders will be shipped promptly in accordance with the delivery schedule. Contractor will promptly submit invoices (within 30 days of shipment or delivery of services) to DTS. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to an order under this Contract. The prices paid by DTS will be those prices listed in this Contract. DTS has the right to adjust or return any invoice reflecting incorrect pricing.

41. PROMPT PAYMENT DISCOUNT: Contractor may quote a prompt payment discount based upon early payment. Contractor shall list payment discount terms on invoices. The prompt payment discount will apply to payments made with purchasing cards and checks. The date from which discount time is calculated will be the date a correct invoice is received.

42. PAYMENT AND NOTICE:

1. Payments will be made within thirty (30) days from a correct invoice is received, whichever is later. After sixty (60) days from the date a correct invoice is received by the appropriate State official, the Contractor may assess interest on overdue, undisputed account charges up to a maximum of the interest rate paid by the IRS on taxpayer refund claims, plus two percent, computed similarly as the requirements of Section 15-6-3, Utah Prompt Payment Act of Utah Code, as amended. The IRS interest rate is adjusted quarterly, and is applied on a per annum basis, on the invoice amount that is overdue.

2. The contract total may be changed only by written amendment. Unless otherwise stated in this Contract, all payments to Contractor will be remitted by mail, by electronic funds transfer, or by the State of Utah's purchasing card (major credit card). DTS will not allow Contractor to charge electronic payment fees of any kind.

3. The acceptance by Contractor of final payment without a written protest filed with DTS within ten (10) working days of receipt of final payment shall release DTS and the State of Utah from all claims and all liability to Contractor for fees and costs pursuant to this Contract.

4. Notice: Wherever under this Contract one party is required to give formal notice to the other, such notice shall be deemed given upon receipt of electronic mail and email attachments. Formal Notices to the Contractor and to DTS shall be addressed as follows:

Contractor: Email sent to Contact person at Contractor's named email address as indicated on signed State of Utah Contract Signature Page(s) of this Contract.	State of Utah - DTS: Email sent to dtsaccountspayable@utah.gov
--	--

5. Overpayment: Contractor agrees that if during, or subsequent to the contract performance, a DTS audit or a State of Utah audit determines that payments were incorrectly reported or paid by DTS, then Contractor shall, upon written request, immediately refund to DTS any such overpayments. Contractor further agrees that DTS shall have the right to withhold any or all subsequent payments under this Contract until recoupment of overpayment is made.

6. Payment withholding: Contractor agrees that the adequate reporting, record keeping, and compliance requirements specified in this Contract are a material element of performance and that if Contractor's record keeping practices, compliance, and/or reporting to DTS are not conducted in a timely and satisfactory manner, DTS may withhold part or all payments under this contract until such deficiencies have been remedied. This includes, but is not limited to, Contractor's failure to provide timely invoicing, and/or other

requirements described elsewhere within this Contract. In the event of the payment(s) being withheld, DTS agrees to provide ten (10) day advance notice to Contractor of the deficiencies that must be corrected in order to bring about the release of withheld payment. Contractor shall have ten (10) days thereafter to correct the cited reporting or record keeping practice deficiencies, or this Contract may be terminated.

43. INDEMNIFICATION – INTELLECTUAL PROPERTY: Contractor warrants that any Good, Custom Deliverable, or Service furnished by Contractor under this Contract, including its use by DTS or the State of Utah in unaltered form, will not, to Contractor's knowledge, infringe any third party copyrights, patents, trade secrets, and/or other proprietary rights that exist on the effective date of this Contract and/or that arise or are enforceable under the law of the United States of America.

Contractor will release, indemnify, and hold DTS and the State of Utah harmless from liability or damages of any kind or nature, including Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article, or appliance furnished or used in Contractor's performance of this Contract. Additionally, if such a claim or liability is based upon an allegation that a Good, Custom Deliverable, or Service furnished by Contractor infringes on any right protected by any patent, copyright, trademark, trade secret, and/or proprietary right of any third party, Contractor agrees to indemnify and hold harmless DTS and the State of Utah for any judgments, settlements, reasonable costs, and reasonable attorneys' fees resulting from such a claim or liability. Contractor shall defend all actions brought upon such matters to be indemnified hereunder and pay all costs and expenses incidental thereto; however, DTS shall have the right, at its option, to participate in the defense of any such action without relieving Contractor of any obligation hereunder. The parties agree that if there are any limitations of liability, including a limitation of liability clause in this Contract, such limitations of liability will not apply to this Section.

44. OWNERSHIP IN INTELLECTUAL PROPERTY: DTS and Contractor each recognizes that it has no right, title, or interest, proprietary or otherwise, in or to the name or any logo, or intellectual property owned or licensed by the other. DTS and Contractor each agree that, without prior written consent of the other or as described in this Contract, it shall not use the name, any logo, or intellectual property owned or licensed by the other.

45. OWNERSHIP IN CUSTOM DELIVERABLES In the event that Contractor provides Custom Deliverables to DTS, pursuant to this Contract, Contractor grants the ownership in Custom Deliverables, which have been developed and delivered by Contractor exclusively for DTS 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 DTS, to the extent that the Custom Deliverables are not recognized as work made for hire, Contractor hereby assigns to DTS 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 Deliverables, other than portions that specifically incorporate proprietary or Confidential Information or Deliverables of Customer (collectively, the "Residual IP"), even if embedded in the 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 DTS.

Contractor agrees to grant to DTS a perpetual, irrevocable, royalty-free license to use Contractor's Background IP, Utilities, and Residual IP, as defined above, solely for DTS and the State of Utah to use the Custom Deliverables. DTS reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for DTS'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 DTS a non-exclusive, non-transferable, irrevocable, perpetual right to use, copy, and create derivative works from such, without the right to sublicense, for DTS's and the State of Utah's internal business operation under this Contract. DTS 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.

46. OWNERSHIP, PROTECTION AND USE OF RECORDS: Except for confidential medical records held by direct care providers, DTS and the State of Utah shall own exclusive title to all information gathered, reports developed, and conclusions reached in performance of this Contract. Contractor may not use, except in meeting its obligations under this Contract, information gathered, reports developed, or conclusions reached in performance of this Contract without the express written consent of DTS. The improper use or disclosure of any information concerning a State of Utah client or a State of Utah employee for any purpose not directly connected with the administration of Contractor's responsibilities under this Contract is prohibited except on written consent by DTS. Contractor will be required to sign a Confidential Information Certification form in situations where they will be given access to confidential computerized records. Contractor agrees to maintain the confidentiality of records it holds for DTS as

required by applicable federal, state, or local laws. DTS and the State of Utah shall own and retain unlimited rights to use, disclose, or duplicate all information and data (copyrighted or otherwise) developed, derived, documented, stored, or furnished by Contractor under this Contract. Contractor, and any Subcontractors under its control, expressly agrees not to use confidential client or confidential federal, state, or local government data without prior written permission from DTS's Project Manager and appropriate officials of the State of Utah.

- 47. OWNERSHIP, PROTECTION, AND USE OF CONFIDENTIAL FEDERAL, STATE, 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 agrees to hold such information in confidence, in accordance with applicable laws and industry standards of confidentiality, and not to 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's Project Manager.
- 48. 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, regardless of the reason for contract termination, and without restriction or limitation to their future use. Any State Data that may be returned under provisions of this Section must either be in the format as originally provided, or in a format that is readily usable by DTS or that can be formatted in a way that it can be used. The costs for returning documents and data to DTS are included in this Contract.
- 49. CONFIDENTIALITY:** Confidential Information may be disclosed to the Contractor under the terms of this Contract. If Confidential Information is disclosed to Contractor then Contractor agrees to adhere to the following:
1. Contractor will: (a) limit disclosure of any Confidential Information to Authorized Persons who have a need to know such Confidential Information in connection with the current or contemplated business relationship between the parties to which this Contract relates, and only for that purpose; (b) advise its Authorized Persons of the proprietary nature of the Confidential Information and of the obligations set forth in this Contract and require such Authorized Persons to keep the Confidential Information confidential; (c) shall keep all Confidential Information strictly confidential by using a reasonable degree of care, but not less than the degree of care used by it in safeguarding its own confidential information; and (d) not disclose any Confidential Information received by it to any third parties, except as otherwise agreed to in writing by DTS. Contractor will promptly notify DTS of any misuse or misappropriation of Confidential Information that comes to Contractor's attention.
 2. Contractor shall be responsible for any breach of this duty of confidentiality contract by any of their officers, agents, subcontractors at any tier, and any of their respective representatives, including any required remedies and/or notifications under applicable law (Utah Code Section 13-44-101 thru 301 et al). Contractor shall indemnify, hold harmless, and defend DTS and State of Utah from claims related to a breach of these confidentiality requirements by Contractor or anyone for whom the Contractor is liable. This duty of confidentiality shall be ongoing and survive the term of this Contract.
- 50. ASSIGNMENT/SUBCONTRACT:** Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Contract, in whole or in part, without the prior written approval of DTS.
- 51. DEFAULT AND REMEDIES:** Any of the following events will constitute cause for DTS to declare Contractor in default of this Contract: (a) nonperformance of contractual requirements or (b) a material breach of any term or condition of this Contract. DTS will issue a written notice of default providing a fourteen (14) 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, DTS may do one or more of the following: (a) exercise any remedy provided by law; (b) terminate this Contract and any related contracts or portions thereof; (c) impose liquidated damages, if liquidated damages are listed in the contract; (d) suspend Contractor from receiving future solicitations; or (e) request a full refund of the Goods, Custom Deliverables, or Services furnished by Contractor that are defective or Services that were inadequately performed under this Contract.
- 52. TERMINATION UPON DEFAULT:** In the event this Contract is terminated as a result of a default by Contractor, DTS may procure or otherwise obtain, upon such terms and conditions as DTS deems appropriate, Goods, Custom Deliverables, or Services similar to those terminated, and Contractor shall be liable to DTS for any and all cover costs and damages arising therefrom, including attorneys' fees, excess costs and fees, and cost of cover together with incidental or consequential damages, incurred by DTS in obtaining similar Goods, Custom Deliverables, or Services.
- 53. FORCE MAJEURE:** Neither party to this Contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. DTS may immediately terminate this Contract after determining such delay will reasonably prevent successful performance of this Contract.
- 54. PROCUREMENT ETHICS:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, products, 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, or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or who in any official capacity participates in the procurement of such supplies, services, products, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63G-6a-2304.5, Utah Procurement Code, as amended).

55. WORKERS' COMPENSATION: Contractor shall maintain during the term of this Contract, workers' compensation insurance for all its employees as well as any subcontractor employees related to this Contract. Worker's compensation insurance shall cover full liability under the worker's compensation laws of the jurisdiction in which the service is performed at the statutory limits required by said jurisdiction. Contractor acknowledges that within thirty (30) days of contract award, the Contractor and/or Contractor's subcontractors must submit proof of certificate of insurance that meets the above requirements.

56. LIABILITY INSURANCE: Contractor agrees to provide and to maintain during the performance of this Contract, at its sole expense, a policy of general liability insurance. The limits of the policy shall be no less than \$1,000,000.00 for each occurrence and \$3,000,000.00 aggregate. It shall be the responsibility of Contractor to require any of their Subcontractor(s) to secure the same insurance coverage as prescribed herein for the Contractor.

Contractor must provide proof of insurance to DTS and must add DTS as an additional insured with notice of cancellation. Contractor acknowledges that within thirty (30) days of contract award, Contractor and/or Contractor's Subcontractors must submit proof of certificate of insurance that meets the above requirements. Failure to provide proof of insurance, as required, could result in this Contract being terminated for cause.

57. CONFLICT OF TERMS: Contractor terms and conditions that apply must be in writing and attached to this Contract. No other terms and conditions will apply to this Contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, purchase orders, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be: (a) This Attachment A; (b) DTS's Contract Signature Page(s); (c) State of Utah's Additional Terms and Conditions, if any; and (d) Contractor Terms and Conditions, if any. Attachment A will be given precedence over any provisions including, limitation of liability, indemnification, standard of care, insurance, or warranty, and will not be nullified by or exception created by more specific terms elsewhere in this Contract.

58. ENTIRE AGREEMENT: This Contract shall constitute 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.

59. SURVIVORSHIP: This paragraph defines the specific contractual provisions that will remain in effect after expiration of, the completion of, or termination of this Contract, for whatever reason: (a) Contract Jurisdiction, Choice of Law, and Venue; (b) Secure Protection and Handling of State Data; (c) Data Breach Responsibilities; (d) Ownership in Custom Deliverables; (e) Ownership, Protection, and Use of Records, including Residuals of such records; and (f) Ownership, Protection, and Use of Confidential Federal, State, or Local Government Internal Business Processes, including Residuals of such confidential business processes; (g) Ownership, Protection, and Return of Documents and Data Upon Contract Termination or Completion; (h) Confidentiality; (i) Conflict of Terms; and (j) any other terms that by their nature would survive the expiration of, completion, or termination of this contract.

60. WAIVER: The waiver by either party of any provision, term, covenant, or condition of this Contract shall not be deemed to be a waiver of any other provision, term, covenant, or condition of this Contract nor any subsequent breach of the same or any other provision, term, covenant, or condition of this Contract.

61. CONTRACT INFORMATION: Contractor understands that for the duration of any contract, to make available contact information of the winning contractor to the Department of Workforce Services in accordance with Section 35A-2-203, Utah Code, as amended. This requirement does not preclude Contractor from advertising job openings in other forums throughout the State of Utah.

62. COMPLIANCE WITH ACCESSIBILITY STANDARDS: Contractor shall comply with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973. Contractor acknowledges that all Goods and Custom Deliverables that it licenses, contracts, or sells to DTS under this contract are accessible to people with disabilities.

If Services are applicable to this Contract, the following terms and conditions apply to this Contract:

63. 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 damages to DTS and the State of Utah, and anyone for whom the State of Utah may be liable, as a result of Contractor's failure to timely complete the Services required under this Contract.

64. 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.

65. PERFORMANCE EVALUATION: DTS may conduct a performance evaluation of Contractor's Services, including Contractor's Subcontractors, if any. Results of any evaluation may be made available to the Contractor upon Contractor's request.

66. ADDITIONAL INSURANCE REQUIREMENTS:

1. Professional liability insurance in the amount as described in the Solicitation for this Contract, if applicable.
2. Any other insurance policies described or referenced in the Solicitation for this Contract.

3. Any type of insurance or any increase of limits of liability not described in this Contract which the Contractor requires for its own protection or on account of any federal, state, or local statute, rule, or regulation shall be its own responsibility, and shall be provided at Contractor's own expense.

4. The carrying of insurance required by this Contract shall not be interpreted as relieving the Contractor of any other responsibility or liability under this Contract or any applicable law, statute, rule, regulation, or order. Contractor must provide proof of the above listed policies within thirty (30) days of being awarded this Contract.

67. 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 DTS and the State of Utah for claims, liabilities, additional burdens, penalties, damages, or third party claims (i.e. 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.

68. STATE REVIEWS, LIMITATIONS: DTS reserves the right to perform plan checks, plan reviews, other reviews, and/or comment upon the Services of Contractor. DTS's approval, acceptance, or payment for any of the Services required under this Contract shall not be construed to operate as a waiver by DTS of any right under this Contract or of any cause of action arising out of the performance or nonperformance of this Contract, and Contractor shall be liable to DTS in accordance with applicable law for all damages to DTS caused by the wrongful acts, errors, and/or omissions of Contractor or its Subcontractors.

(Revision Date: 12 December 2014)

ATTACHMENT B:

Scope of Work, Contract Pricing, and Contract Payments

I. Scope of Work

This contract provides a mechanism for Utah to obtain as-needed, supporting services to the statewide Google Imagery purchase. There are two classes of supporting services, each of which is described below:

1. *Download services* for the state, or other organizations included under its license, to obtain on-premise copies of the Google Imagery
 - o Although Google Imagery is delivered as “imagery as a service” and the primary storage location of imagery is Google’s cloud and the primary vehicle for accessing the image is a web service, it is recognized that the Utah requires the ability to download some/all of the imagery for on-premise use. On-premise use is necessary for periods when the Internet may not be available and/or for certain third-party applications (e.g., a dispatching system) that are unable to consume web services.
 - o Download services will be provided on an as-needed basis based on a “per km² basis” of the area that needs to be downloaded. In addition to raw download of the as-is imagery, the download mechanism allows for various projection and/or format conversions to be completed as part of the download process. Each of these conversions would add an increment to the baseline, on a per km² cost for “raw download”.
 - o Assumptions:
 - There is a one-time setup fee to enable the download technology
 - The minimum size order for a download is 1,000 square KM
 - The conversion costs are additive. If Utah needs download, file format conversion and a re-projection then the unit cost will be the cost of download + the cost of format conversion + the cost of re-projection.
 - In addition to the raw download, there is a cost to either move the data to identified cloud storage, or to receive the data on a portable hard drive array
2. As needed support, technical assistance and development services related to deploying and maximizing the use of imagery and the Google Maps Engine (GME) environment
 - o Recognizing that obtaining Google imagery will involve a new mode of deploying imagery as well as the new Google Maps Engine platform, this scope item provides a mechanism for Utah to obtain as-needed technical support services to assist with the deployment.
 - o Services can be provided either on a time and materials (T&M) basis based on the rate schedule provided, or based on a fixed price basis based

on responding to a “task request” from Utah. No work will commence without written authorization from the AGRC.

- Tasks will be provided on an as-needed basis and may include, but are not limited to:
 - Technical support in deploying Google imagery including assistance with appropriate security and Google authentication activities
 - Training support for Google Maps Engine (GME) and other Google geospatial tools
 - Application development support using GME and/or Google imagery
 - Support toward the integration of Google geospatial technology with other geospatial technologies in use within Utah (e.g., Esri, Microstation and other CAD, 911/Dispatch)

Aerial photography data content

- The product is a single mosaicked layer of six inch pixel resolution digital orthographic aerial photography that:
 - has a pixel clarity and locational accuracy that is reasonably consistent with professional standards for a six inch pixel resolution product;
 - has < 1% cloud cover, only permanent snow or ice above the timberline, 30 degree sun angle or greater, <1% smoke/haze, and a possible mix of leaf on/off conditions
 - covers at least 90% of the geographic area of the state and all of the counties with a population of more than 100,000 residents;
 - has a license acquisition cost of \$4.66/km² in year one and \$4.91/km² for additional purchase areas in years 2 and 3
 - is available, for cost of data processing and transfer, as a bulk delivery of raw data, for the State and its partners for ‘on premise’ uses consistent with the usage terms of the license, in perpetuity
 - all imagery updates acquired during the first year is at no extra charge

Highly Accessible/Available Web Service Delivery

- Is available as a high-performance (capable of serving thousands of concurrent users), cloud-hosted API web service, including the Open Geospatial Consortium(OGC) Web Map Service (WMS) protocol, for internal and external facing applications for the first year, and:
 - includes a full user and access role management,
 - includes ability to manage access to the service in a manner that usage can be tracked by organization
 - has a 99% availability SLA and 24x7 support,
 - is available within 10 business days of purchase

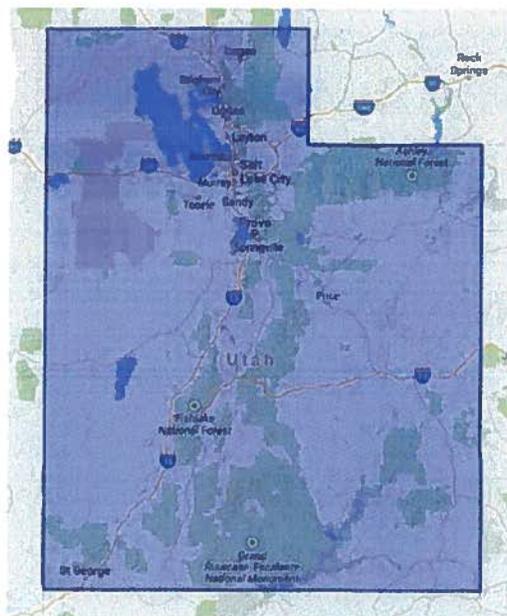
Options for Purchase of Aerial Photography Updates

- The product provides purchase options for the State, if current on the annual maintenance costs, to acquire aerial photography updates in the second and subsequent years, as flown by the product provider, at the initial per unit acquisition cost, for a period of 3 years from purchase, with:
 - a minimum purchase limitation not exceeding 5,000 km, and
 - an expected annual update of the settled area of the Wasatch Front
 - expected updates for the rest of the State on a three year refresh cycle
 - access to deprecated (previous vintages during contract period) aerial photography delivered as web services;

Public Sector Licensing for Streaming and On-Premise Use

- The product includes staff and web application uses for conducting the official business of:
 - Utah's state government; regional and local political subdivisions, public safety communication centers, K-12 and higher education entities;
 - The entities above, as provided by private sector or non-profit parties using map technology to deliver services to these organizations as specifically directed per statutory requirement, per contract, or per other formalized, time-limited agreement; and,
 - Utah's Sovereign Indian Tribes

The below screen capture is the Google Imagery delivery coverage area (shaded in blue) of the entire State of Utah at 219,887 km². Currently, Google has 212,114 km² of Imagery that will be included in the initial delivery of the imagery as a service offering (see image below where all highlighted in blue identify what is included).



Product and Service Descriptions:

- File Formats:
 - The digital orthophotography will be delivered in JPEG 2000 file format.
- Map Tiles:
- Imagery will be delivered in 4,096 pixel x 4,096 pixel tiles.
- Imagery: An image mosaic covering the Customer’s specified delivery coverage area (as shown in the above screen capture). The color imagery will have a six (6)-inch ground pixel resolution.
- Metadata: Metadata will contain the following information:
 - Date of photography
 - Coordinate system
- Final Deliverables:
 - Six (6)-inch digital orthophotography JPEG 2000 file format, including RGB (“and NRG” IF APPLICABLE) spectral bands.

II. Contract Pricing

Year	Product	Cost
Year 1	<ul style="list-style-type: none"> ● Google Maps for Work* ● Google Maps Engine* ● 1 mil public map loads for both products ● NO CHARGE; Free with Statewide purchase ● Google Imagery Subscription, includes RGB (\$4.66 km2)** ● 1 year Statewide imagery, 6" (212,114 km2) ● Includes Perpetual/Download Rights *Free with statewide purchase ** First year only	\$988,451
Optional Year 2	<ul style="list-style-type: none"> ● Subscription to all Imagery acquired in first year of agreement, plus any new Google imagery purchased by customer during term. ● Subscription includes licensed access, hosting and storage 	\$160,000
Optional Year 3	<ul style="list-style-type: none"> ● Subscription to all Imagery acquired in first year of agreement, plus any new Google imagery purchased by customer during term. ● Subscription includes licensed access, hosting and storage 	\$160,000
	Total	\$1,308,451

Support Task Order 1: Statewide Imagery Download

Pricing for Task Order 1, statewide download	Sq. KM	\$/unit	Cost
One-time setup fee (no further setups for additional downloads)			\$1,250
Raw download	219,888	\$0.15	\$32,601
Assume 10TB array of portable hard drive storage	10	\$120	\$1,200
Project management (hrs)	20	\$100	\$2,000
Total			\$37,051

GRAND TOTAL: \$1,345,502

The following provides the unit costs for download and related conversion operations:

Item	\$/Sq. KM	
Setup & configuration per image set (RGB, CIR, etc.)	\$1,250.00	One time setup fee
Download of raw Google imagery	\$0.15	
Conversion to TIFF (or other format)	\$0.14	
Re-projection from We Mercator	\$0.12	
Upload to cloud storage	\$0.05	
Output to physical drive	\$120.00	Per 1 TB drive

- Additional AOI Add On Options:
 - At any time, customer can add-on additional imagery at \$4.91/km2 (5,000 km2 minimum)
- Optional Professional Services:
 - Support for download and Google administration
 - As needed for download, utility, support and other technical assistance.

Title	Rate
Principal	\$195
Senior consultant	\$165
Senior project manager	\$150
Senior geospatial analyst	\$135
Assistant project manager	\$115
Geospatial analyst	\$100
Geospatial data specialist	\$75

All fees, including all fees described in Attachment C, Section 4.1 “Updated Imagery”, are included in the above pricing. Pricing applies to Google Imagery products.

III. Contract Payments

- a. For purchases and services pursuant to this contract, invoices shall be sent electronically to Bert Granberg at the Department of Technology Services - AGRC.
bgranberg@utah.gov
- b. Invoices approved for payment shall be sent electronically to:
dtsaccountspayable@utah.gov

Payments will be processed in accordance with the State of Utah Standard Information Technology Terms and Conditions, included herein as Attachment A.

Attachment C

Supplemental Google Orthoimagery License Agreement Terms

1. Google Maps Engine Usage. Customer's use of Google Maps Engine ("GME") and Imagery is governed by these Imagery Terms. Google reserves all rights, title and interest in the Imagery not expressly granted Customer.

2. Imagery License Grant. Customer is granted a non-sub licensable, non-transferable, non-exclusive, limited term license to use Imagery as further described in this Attachment A. The Imagery license term is provided in the Order Form. Customer's Imagery use is subject to the following requirements. Customer use rights are further described as follows. Customer may:

2.1 Use the Imagery online via Maps, as that term is defined in Customer's GME license;

2.2 Distribute the Imagery and any materials based on the Imagery (e.g. reports, analysis) to third-parties provided that Google attribution is included as required by the Attribution Guidelines for Google Maps and Google Earth (<http://www.google.com/permissions/geoguidelines/attr-guide.html>);

2.3 Use Imagery offline in any format downloadable from Google Maps Engine or as otherwise made available by Google. Customer is responsible for downloading Imagery for use offline.

2.4 Permit a third-party service provider ("Service Provider") to access the Imagery for the purpose of configuring or making available the Imagery for the Customer's benefit, subject to the terms of the Customer Agreement, provided:

(a) the Service Provider agrees in writing to adhere to the Customer Agreement's terms and this Attachment A;

(b) Service Provider only uses the Imagery for Customer's benefit. Reseller will provide Google evidence of the Service Provider access agreement upon Google request. Customer is responsible for Service Provider's compliance with the Customer Agreement; and

(c) Customer will terminate Service Provider's Imagery access immediately upon the Customer Agreement's termination or expiration. Customer may only disclose the Customer Agreement's and this Attachment A's terms to Service Providers subject to the terms of a confidentiality agreement.

3. Imagery License Restrictions. The Imagery license grant is limited as follows. Customer will not:

3.1 Sublicense, sell, rent or lease the Imagery and any materials based on the Imagery to a third-party;

3.2 Use the Imagery for High Risk Activities;

3.3. Use the Imagery with any products, systems, or applications for or in connection with any of the following:

- (a) Real time navigation or route guidance, including but not limited to turn-by-turn route guidance that is synchronized to the position of a user's sensor-enabled device.
- (b) Any systems or functions for automatic or autonomous control of vehicle behavior.

3.4. Print more than five thousand copies of sales collateral materials containing a screenshot of the Imagery for purposes of commercial sales lead generation or incorporate the Imagery as a core part of printed matter (such as printed maps or guidebooks) that is redistributed for a fee; or

3.5. Give third-parties access to mass downloads or bulk feeds of any Imagery.

4. Renewing Imagery Use.

4.1 Updated Imagery. Updated Imagery, if available, may be licensed for a fee upon each subsequent annual renewal of the Imagery license (and the accompanying GME license). Updated Imagery will replace the prior-year Imagery for the same coverage area. Customer may decline the updated Imagery and retain the prior year Imagery (subject to the renewal fee). Customer may, for an additional fee, retain previously licensed prior-year Imagery in addition to licensing updated Imagery.

4.2 Offline Imagery, Offline Imagery Perpetual License. Customer may download the licensed Imagery files and use the downloaded files offline ("Offline Imagery"). The Customer Offline Imagery license is a non-sublicensable, non-transferable, non-exclusive, perpetual license to use Offline Imagery for internal purposes only (no third-party access), subject to the Section 3 Imagery license restrictions.

4.3 Non-Renewal of Imagery. If the Customer does not renew the Imagery license, all Imagery in the Customer's GME instance will be permanently deleted. Google may be added as an administrator to the GME instance in order to complete the deletion of the Imagery. This Section does not apply to Offline Imagery.