



## GEORGETOWN LAW

October 24, 2017

Statewide Information & Analysis Center (SIAC)  
Attn. Steve Hewitt  
410 W 9800 S, £370  
Sandy, UT 84070

Re.: Public Records Request—Facial Recognition Technology

Dear Mr. Hewitt,

The Center on Privacy & Technology, a think tank based at the Georgetown University Law Center, is conducting a survey of state agencies' use of facial recognition technology (FRT), particularly its use on driver's license information.

In response to a similar request directed to the Department of Public Safety DLD, we were informed that "while the DLD photo database is used for facial recognition applications, the administration and operation of the facial recognition technology is through the Statewide Information & Analysis Center (SIAC)," and were given your contact information.

Pursuant to the Government Records Access and Management Act (GRAMA), Utah Code § 63G-2-101 et seq., we request the following records pertaining to FRT. We intend this request to cover all facial recognition software, hardware, databases and other technology used to search driver's license and state identification records (DMV photo database).

### Records Requested

Please provide copies of the following records:

1. Any manuals, memos, policies or other guidelines SIAC follows for using the FRT system.
2. Formal or informal policies or rules followed by SIAC or DPS personnel for running facial recognition searches requested by external entities, including, but not limited, to federal, state or local law enforcement agencies.
3. Any notices provided by SIAC or DPS to external agencies about the ability to run or request facial recognition searches against the DMV photo database. This request includes, but is not limited to instructions, request forms, and other materials issued to external agencies regarding requests to conduct a facial recognition search against the DMV photo database.
4. Agreements or memoranda of understanding (MOUs) signed with external entities, including relevant fusion center MOUs, permitting those agencies to run or request facial recognition

searches against the DMV photo database.

5. All requests from the past three years submitted or run by any entity other than SIAC for facial recognition searches against the DMV photo database. Emails accompanying the requests, if submitted electronically.
6. Search logs and audit records of the FRT system, including but not limited to records of logs of searches run, requests approved or denied, sample audits of search requests, misuse reports, and reports to oversight bodies.
7. Purchasing and procurement documents related to the DMV facial recognition system, including but not limited to: grant awards, cost sharing agreements, purchase orders, RFPs, responses to RFPs, invoices, and contracts for FRT hardware, software, and services.
8. Any manuals from the companies providing FRT system components, including but not limited to any technical specifications they have provided.
9. Any records relating to the sharing of biometric information or FRT with the American Association of Motor Vehicle Administrators (AAMVA), including, but not limited to, RFPs, responses to RFPs, agreements, contracts, correspondence, reports and invoices.

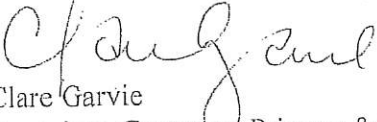
This request is made on behalf of a not-for-profit organization whose mission is to advance the field of privacy and technology policy and to train law students from around the country in this field. Because of our not-for-profit status and the fact that this request is about a matter of public concern, we request a fee waiver. If such a waiver is denied, please inform us in advance if the cost will be greater than \$50.

According to Government Records Access and Management Act (GRAMA), Utah Code § 63G-2-101 et seq., a custodian of public records shall comply with a request within 5 days. Please furnish responsive documents to Clare Garvie at [cag104@georgetown.edu](mailto:cag104@georgetown.edu) or:

Clare Garvie  
Center on Privacy & Technology  
600 New Jersey Ave NW  
Washington DC 20001

If you have any questions, cannot comply with this request within the statutory time period, or if this request is misdirected, please contact me at [cag104@georgetown.edu](mailto:cag104@georgetown.edu) or 202-661-6707 within the above timeframe. Thank you for your prompt attention to this matter.

Sincerely,

  
Clare Garvie  
Associate, Center on Privacy & Technology  
Georgetown University Law Center  
600 New Jersey Ave, NW  
Washington DC, 20001



State of Utah

GARY R. HERBERT  
Governor

SPENCER J. COX  
Lieutenant Governor

Department of Public Safety

KEITH D. SQUIRES  
*Commissioner*

NANNETTE ROLFE  
*Deputy Commissioner*

November 7, 2017

Georgetown University Law Center  
ATTN: Clare Garvie  
600 New Jersey Ave, NW  
Washington DC, 20001

RE: GRAMA Request for Records – Facial Recognition Program

Dear Ms. Garvie,

The Utah Department of Public Safety (DPS) and the Statewide Information and Analysis Center (SIAC) recently received your records request dated October 24, 2017 in which you requested a copy several records in regards to the Facial Recognition Program. The release of records you have requested is governed by the provisions of the Government Records Access and Management Act (GRAMA) found in Utah Code Ann. § 63G-2-101 et seq.

In response to your request, SIAC has determined that the request is for a voluminous quantity of records. Consequently, the SIAC will need an additional 14 days to compile the records pursuant to Utah Code Ann. §63G-2-204(5)(c)(i). In addition, as provided in Utah Code Ann. §63G-2-203(2), SIAC may charge a reasonable fee to cover the actual cost of providing the available records. This includes identifying the specific documents that are responsive to your request.

Once the SIAC has determined the volume of reports, I will send you a cost for the requested records. Then, if you wish to proceed with your request, you will be asked to send a check payable to the SIAC. The records will be released after payment for the records is received.

You may appeal this decision within 30 days from the date of this letter. Any appeal should be directed to Commissioner Keith D. Squires, 4501 South 2700 West, Salt Lake City, Utah 84129.

Sincerely,

Sherri Green  
Records Officer



State of Utah

GARY R. HERBERT  
GOVERNOR

SPENCER J. COX  
Lieutenant Governor

Department of Public Safety

NEEDLE POINTE  
COMMUNITY CENTER

November 16, 2017

Clare Garvie  
Georgetown University Law Center  
600 New Jersey Ave, NW  
Washington DC, 20001

RE: GRAMA Request for Records

Dear Ms. Garvie:

The Utah Statewide Information & Analysis Center (SIAC) recently received your records request dated October 24, 2017, which requested the following:

- 1) Any manuals, memos, policies, or other guidelines SIAC follows for using the FRT system;
- 2) Formal or informal policies or rules followed by SIAC for running facial recognition searches by external entities;
- 3) Any notices provided by SIAC to external agencies about the ability to run or request facial recognition searches against the DMV photo database;
- 4) Agreements or memorandum of understandings (MOU's) signed with external entities, permitting those agencies to run or request facial recognition searches against the DMV photo database;
- 5) All requests from the past three years submitted or run by any entity other than SIAC for facial recognition searches against the DMV photo database;
- 6) Search logs and audit records of the FRT system;
- 7) Purchasing and procurement documents related to the DMV facial recognition system;
- 8) Any manuals from the companies providing FRT system components; and
- 9) Any records relating to the sharing of biometric information or FRT with the American Association of Motor Vehicle Administrator (AAMVA).
- 10)

The release of records you have requested is governed by the provisions of the Government Records Access and Management Act (GRAMA) found in Utah Code Ann. § 63G-2-101 et seq.

In response to your request for all manuals and policies, SIAC reviewed its records and found several records that correspond to your request.

In response to your request for formal or informal policies or rules followed by SIAC for running facial recognition searches by external entities, SIAC reviewed its records and found several records that correspond to your request.

In response to your request for any notices provided by SIAC about the ability to run or request facial recognition searches, SIAC reviewed its records and found a record that corresponds to your request.

In response to your request for agreements or MOU's with external entities, these records have been classified as protected under Utah Code Ann. § 63G-2-305(10)(e). Consequently, you are not entitled access to these records and your request is hereby denied pursuant to Utah Code Ann. § 63G-2-202.

In response to your request for all requests submitted the past three years, these records have been classified as protected under Utah Code Ann. § 63G-2-305(10). SIAC is not the requesting agency for the records and does not know in the current status of the matters in which these records were requested. Consequently, you are not entitled access to these records and your request is hereby denied pursuant to Utah Code Ann. § 63G-2-202.

In response to your request for a search log of the FRT system, these records have been classified as protected under Utah Code Ann. § 63G-2-305(10). SIAC is not the requesting agency for the records and does not know in the current status of the matters in which these records were requested. Consequently, you are not entitled access to these records and your request is hereby denied pursuant to Utah Code Ann. § 63G-2-202. However, in response to your request for an audit record of the FRT system, SIAC reviewed its records and found a record that corresponds to your request.

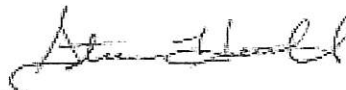
In response to your request for purchasing or procurement documents related to the facial recognition system, SIAC reviewed its records and found several that correspond to your request.

In response to your request for manuals from companies provides FRT system components, SIAC reviewed its records and found none that correspond to your request.

In response to your request for records relating to the sharing of biometric information with AAMVA, SIAC reviewed its records and found none that correspond to your request.

You may appeal this decision within 30 days from the date of this letter. Any appeal should be directed to Commissioner Keith D. Squires, 4501 South 2700 West, Salt Lake City, Utah 84129.

Sincerely,



Steven Hewitt  
Director, Utah Department of Public Safety  
Utah Statewide Information & Analysis  
Center (SIAC)



State of Utah

GARY R. HERBERT  
Governor

SPENCER J. COX  
Lieutenant Governor

Department of Public Safety

KEITH D. SQUIRES  
Commissioner

NANNETTE ROLFE  
Deputy Commissioner

*Emailed Documents  
on 1/4/18*

Date: January 4, 2018

INVOICE

TO: Georgetown University Law Center

ATTN: Clare Garvie

Email: cag104@georgetown.edu

RE: Request for Facial Recognition Records

FROM: State Bureau of Investigation  
Sherri Green  
5500 W. Amelia Earhart Dr. # 100  
Salt Lake City, Utah 84116

Request for copy of records: Facial Recognition Records

Total Cost:	\$ 66.00
Paid via Postal Money Order 23855297174:	\$ 66.00
Total due:	\$ 00.00

Thank you,

Sherri Green  
Records Officer  
State Bureau of Investigation



Clear Form

STATE OF UTAH CONTRACT AMENDMENT

**AMENDMENT # 1 to CONTRACT #096227**

TO BE ATTACHED TO AND MADE A PART OF the above numbered contract by and between the State of Utah, Department of Technology Services, referred to as STATE and Hummingbird Garden Ranch LLC dba Hummingbird Communications, referred to as CONTRACTOR.

**THE PARTIES AGREE TO AMEND THE CONTRACT AS FOLLOWS:**

**1. Contract period:**

- a. 12/22/2008 (Original starting date).
- b. 12/31/2010 (New ending date).

**2. The dollar amount of the change to the contract for this amendment is \$ 12,000.**

**3. The total contract amount is:**

- a. \$ 25,001 (Current Contract Amount).
- b. \$ 12,000 (Contract Amendment Amount).
- c. \$ 37,001 (New Contract Amount).

**4. Other changes:**

a. **The contract now reads:**

- i. **Pricing:** As parties previously agreed.
- ii. **Contract Terms and Conditions:** As parties previously agreed.
- iii. **Scope of Work:** As parties previously agreed.

b. **The contract is amended to read:** Increase to the current contract amount, and extension to the contract end date is made in accordance with the terms and conditions as previously agreed to in Contract No. 096227, with the addition of:

- i. **Pricing:** As previously stated, plus the following wording:

Year 2 software maintenance for the first optional contract extension period of January 1, 2010 thru December 31, 2010: \$12,000

ii. Contract Terms and Conditions: No changes.

iii. Scope of Work: No changes.

5. Effective Date of Amendment: 01/01/2010.

All other conditions and terms in the original contract and previous amendments remain the same.

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

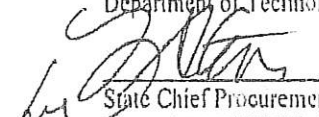
CONTRACTOR:  
  
Contractor's Signature      Nov 12/2009  
Date

Steven Gordon CEO  
Type or Print Name and Title

Hummingbird Garden Ranch LC  
dba Hummingbird Communications

Contact for questions about this contract:  
Alan F. Carlsen, CPA  
afcarlsen@utah.gov

STATE:  
  
CIO / Executive Director,      11/12/09  
Date  
Department of Technology Services

  
State Chief Procurement Officer      11/17/09  
Date

CONTRACT RECEIVED AND  
PROCESSED BY  
DIVISION OF FINANCE NOV 17 2009





STATE OF UTAH  
CONTRACT AMENDMENT

AMENDMENT # 2 To CONTRACT # 096227

TO BE ATTACHED TO AND MADE A PART OF the above numbered contract by and between the State of Utah, Department of Technology Services (DTS), referred to as STATE and, Hummingbird Garden Ranch LLC dba Hummingbird Communications, referred to as CONTRACTOR.

THE PARTIES AGREE TO AMEND THE CONTRACT AS FOLLOWS:

1. Contract period:

12/22/2008 (original starting date)

12/31/2010 (current ending date)

12/31/2011 new ending date

2. Contract amount:

\$ 37,001 (current contract amount)

\$ 12,000 (amendment amount)

\$ 49,001 new contract amount  
(add current amount to amendment amount)

3. Other changes: Increase to the current contract amount, and extension to the contract end date is made in accordance with the terms and conditions as previously agreed to in Contract No. 096227, with the addition of:

Year 3 software maintenance for the second optional contract extension period of January 1, 2011 thru December 31, 2011 for the price of \$12,000 for this additional one year period.

4. Effective Date of Amendment: January 1, 2011

All other conditions and terms in the original contract and previous amendments remain the same.

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

CONTRACTOR

Contractor's signature

Steven Goeschel / CEO  
Type or Print Name and Title

STATE

DTS Executive Director / CIO

Adam Rupp  
Director, Division of Purchasing

PROCESSED BY  
DIVISION OF FINANCE  
Director, Division of Finance  
JAN 06 2011



STATE OF UTAH
CONTRACT AMENDMENT

AMENDMENT # 3 To CONTRACT # 096227

TO BE ATTACHED TO AND MADE A PART OF the above numbered contract by and between the State of Utah, Department of Technology Services referred to as STATE and, Hummingbird Garden Ranch LLC dba Hummingbird Communications, referred to as CONTRACTOR.

THE PARTIES AGREE TO AMEND THE CONTRACT AS FOLLOWS:

1. Contract period:

12/22/2008 (original starting date)
12/31/2011 (current ending date)
12/31/2012 new ending date

2. Contract amount:

\$49,001 (current contract amount)
\$12,000 (amendment amount)
\$61,001 new contract amount
add current amount to amendment amount

3. Other changes: (attach other sheets if necessary):

Increase the contract amount and extend the period of performance in accordance with the terms and conditions established in contract 096227.

4. Effective Date of Amendment: 1/01/2012

All other conditions and terms in the original contract and previous amendments remain the same. IN WITNESS WHEREOF, the parties sign and cause the amendment to be executed.

CONTRACTOR

Contractor's signature: [Signature] Date: Dec 12/2011

Type or Print Name and Title: Steven J. Grechnier, CEO

Kent Beem 12/21/11
DIRECTOR DIVISION OF PURCHASING

STATE

Agency's signature: [Signature] Date: 12/12/11

for Director, Division of Purchasing Date: 12/15/11
DEC 21 2011

CONTRACT RECEIVED AND PROCESSED BY DIVISION OF FINANCE

Table with 3 columns: Agency Contact Person (Phil Bates), Telephone Number (901-209-9343), Fax Number, Email (pbates@utah.gov)



Contract # 096227

### STATE OF UTAH CONTRACT

1. **CONTRACTING PARTIES:** This contract is between the State of Utah - Department of Technology Services referred to as STATE, and the following CONTRACTOR:

Contractor Name:	Hummingbird Garden Ranch LLC	Legal Status of Contractor:	LLC
	dba		
	Hummingbird Communications		
Contractor Street Address:	8721 E Highland Ave	Contractor Federal Tax ID #:	86-0971959
Contractor City:	Scottsdale	State of Utah Vendor #:	V00000134603
Contractor State:	Arizona	State of Utah Commodity Code:	92014, 92045, 92435, 91829
Contractor Zip Code:	85251	Contractor Contact Person:	Steven Greschner, CEO
		Contractor Telephone #:	480-381-0778
		Contractor E-mail address:	Steve@image-search.us

2. **GENERAL PURPOSE OF CONTRACT:** The general purpose of this contract is for Hummingbird Communications, to Provide DTS-DPS with Facial Recognition Software. For additional details, see Attachment B: Contract Pricing and Payment Schedule.

3. **PROCUREMENT (State of Utah Use):** This contract is entered into as a result of the procurement process on State of Utah Multi -Step Bid # JG9031.

4. **CONTRACT PERIOD:** Starting date: December 22, 2008. Ending date: December 31, 2009, unless terminated early or extended in accordance with the terms and conditions of this contract. Renewal options: Four - One Year Each.

5. **CONTRACT COSTS:** This is a contract for software licensing, maintenance and support NTE \$ 25,001. See Attachment B: Contract Pricing and Payment Schedule for detail.


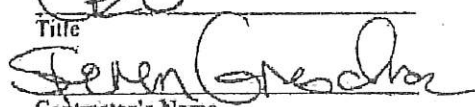
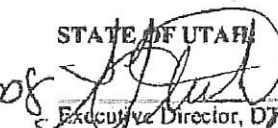
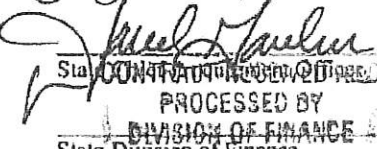
6. **CONTRACT ATTACHMENTS:**

- ATTACHMENT A: *State of Utah Terms and Conditions*
  - ATTACHMENT B: *Contract Pricing and Payment Schedule*
  - ATTACHMENT C: *Department of Technology Services Modified Terms and Conditions*
  - ATTACHMENT D: *Hummingbird Communications Proposal in Response to Request for Proposal # JG9031 and RFP #JG9031*
  - ATTACHMENT E: *Modified Hummingbird Communications Software License Agreement*
  - ATTACHMENT F: *Modified Hummingbird Communications Software Support Agreement*
- Any conflicts between Attachments will be resolved in favor of Attachment A, then C, then B, then D, then E, then F.

7. **DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:**

- a. All other United States federal government and Utah state government laws and regulations applicable to the goods / services authorized by this contract, including the Utah State Procurement Code and Utah Procurement Administrative Rules.

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

<p><b>CONTRACTOR:</b></p> <p>  Contractor's Signature</p> <p><b>CEO</b>  Title</p> <p>  Contractor's Name</p>	<p><b>STATE OF UTAH</b></p> <p>  Date: 12/22/08</p> <p>Executive Director, DTS / State CIO</p> <p>  Date: 12/29/08</p> <p>PROCESSED BY  DIVISION OF FINANCE  State Division of Finance</p>	<p>Date: 12/22/08</p> <p>Date: 12/29/08</p> <p>DEC 30 2008  Date</p>
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Contract # 096227

### STATE OF UTAH CONTRACT

1. **CONTRACTING PARTIES:** This contract is between the State of Utah - Department of Technology Services referred to as STATE, and the following CONTRACTOR:

Contractor Name:	Hummingbird Garden Ranch LLC	Legal Status of Contractor:	LLC
	dba		
	Hummingbird Communications		
Contractor Street Address:	8721 E Highland Ave	Contractor Federal Tax ID #:	86-0971959
Contractor City:	Scottsdale	State of Utah Vendor #:	VC0000134603
Contractor State:	Arizona	State of Utah Commodity Code:	92014, 92045, 92435, 91829
Contractor Zip Code:	85251	Contractor Contact Person:	Steven Greschner, CEO
		Contractor Telephone #:	480-381-0778
		Contractor E-mail address:	Steve@image-search.us

2. **GENERAL PURPOSE OF CONTRACT:** The general purpose of this contract is for Hummingbird Communications, to Provide DTS-DPS with Facial Recognition Software. For additional details, see Attachment B: Contract Pricing and Payment Schedule.

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- ATTACHMENT B: *Contract Pricing and Payment Schedule*
- ATTACHMENT C: *Department of Technology Services Modified Terms and Conditions*
- ATTACHMENT D: *Hummingbird Communications Proposal in Response to Request for Proposal # JG9031 and RFP #JG9031*
- ATTACHMENT E: *Modified Hummingbird Communications Software License Agreement*
- ATTACHMENT F: *Modified Hummingbird Communications Software Support Agreement*

Any conflicts between Attachments will be resolved in favor of Attachment A, then C, then B, then D, then E, then F.

7. **DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:**

- a. All other United States federal government and Utah state government laws and regulations applicable to the goods / services authorized by this contract, including the Utah State Procurement Code and Utah Procurement Administrative Rules.

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

CONTRACTOR:

Contractor's Signature

Title

Contractor's Name

STATE OF UTAH

Executive Director, DTS / State CIO

State Contract Administration Officer

State Division of Finance

12/22/08  
Date

12/22/08  
Date

12/29/08  
Date

DEC 30 2008  
Date

PROCESSED BY  
DIVISION OF FINANCE

## ATTACHMENT A: STATE OF UTAH TERMS AND CONDITIONS

(Changes have been made to Terms and Conditions # 25)

1. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in 63-56, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the State to purchase certain specified services, and other approved purchases for the State.
2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of 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 or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** The Contractor and any and all supplies, services, equipment, and construction furnished under this contract will comply fully with all applicable Federal and State laws and regulations.
4. **RECORDS ADMINISTRATION:** The Contractor shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records shall be retained by the Contractor for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The Contractor agrees to allow State and Federal auditors, and State Agency Staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
5. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with 6716-8, Utah Code Annotated, 1953, as amended.
6. **CONTRACTOR, AN INDEPENDENT CONTRACTOR:** The Contractor shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the State to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the State, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the Contractor by the State. The Contractor shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the State for these contract services. Persons employed by the State and acting under the direction of the State shall not be deemed to be employees or agents of the Contractor.
7. **INDEMNITY CLAUSE:** The Contractor agrees to indemnify, save harmless, and release the State of Utah, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the acts or negligence of the Contractor's officers, agents, volunteers, or employees, but not for claims arising from the State's sole negligence.
8. **EMPLOYMENT PRACTICES CLAUSE:** The 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, the Contractor agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.

9. **SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, 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.
10. **RENEGOTIATION OR MODIFICATIONS:** This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by the same persons or by persons holding the same position as persons who signed the original agreement on behalf of the parties hereto, and attached to the original signed copy of the contract. Automatic renewals will not apply to this contract.
11. **DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the State. The Contractor must notify the State Director of Purchasing within 30 days if debarred by any governmental entity during the Contract period.
12. **TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, 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 ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon sixty (60) days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.
13. **NONAPPROPRIATION OF FUNDS:** The Contractor acknowledges that the State cannot contract for the payment of funds not yet appropriated by the Utah State Legislature. If funding to the State is reduced due to an order by the Legislature or the Governor, or is required by State law, or if federal funding (when applicable) is not provided, the State may terminate this contract or proportionately reduce the services and purchase obligations and the amount due from the State upon 30 days written notice. In the case that funds are not appropriated or are reduced, the State will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and the State will not be liable for any future commitments, penalties, or liquidated damages.
14. **SALES TAX EXEMPTION:** The State of Utah's sales and use tax exemption number is 11736850-010-STC. The tangible personal property or services being purchased are being paid from State funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.
15. **WARRANTY:** The Contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The Contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract.

Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the Contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the State has relied on the Contractor's skill or judgment to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The Contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the Contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract. .

16. **PUBLIC INFORMATION:** Except as identified in writing and expressly approved by the State Division of Purchasing, Contractor agrees that the contract and related Sales Orders and Invoices will be public documents, and may be available for distribution. Contractor gives the State express permission to make copies of the contract, the response to the solicitation, and related Sales Orders and Invoices in accordance with the State of Utah Government Records Access and Management Act. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.
17. **DELIVERY:** Unless otherwise specified in this contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State except as to latent defects, fraud and Contractor's warranty obligations.
18. **ORDERING AND INVOICING:** All orders will be shipped promptly in accordance with the delivery schedule. The Contractor will promptly submit invoices (within 30 days of shipment or delivery of services) to the State. The State contract number and/or the agency purchase order number shall be listed on all invoices, freight tickets, and correspondence relating to the contract order. The prices paid by the State will be those prices listed in the contract. The State has the right to adjust or return any invoice reflecting incorrect pricing.
19. **PAYMENT:** Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. All payments to the Contractor will be remitted by mail unless paid by the State of Utah's Purchasing Card (major credit card).
20. **PATENTS, COPYRIGHTS, ETC.:** The Contractor will release, indemnify and hold the State, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this contract.
21. **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 the State.

22. **DEFAULT AND REMEDIES:** Any of the following events will constitute cause for the State to declare Contractor in default of the contract: 1. Nonperformance of contractual requirements; 2. A material breach of any term or condition of this contract. The State will 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 may do one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this contract and any related contracts or portions thereof; 3. Impose liquidated damages, if liquidated damages are listed in the contract; 4. Suspend Contractor from receiving future solicitations.
23. **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. The State may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.
24. **PROCUREMENT ETHICS:** The 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 or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State, or who 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 (63-56-1002, Utah Code Annotated, 1953, as amended).
25. **CONFLICT OF TERMS:** Contractor Terms and Conditions that apply must be in writing and attached to the 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, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be: 1. *Attachment A: State of Utah Terms and Conditions*; 2. State of Utah Contract Signature Page(s); 3. *Attachment C: Department of Technology Services Terms and Conditions*; 4. *Attachment B: Contract Pricing and Payment Schedule*; 5. *Attachment D: Hummingbird Communications Proposal in Response to RFP # JG9031 and RFP # JG9031*; 6. *Attachment E: Modified Hummingbird Communications Software License Agreement*; and 7. *Attachment F: Modified Hummingbird Communications Software Support Agreement*.
26. **ENTIRE AGREEMENT:** This Agreement, including all Attachments, and documents incorporated hereunder, and the related State Solicitation constitutes the entire agreement between the parties with respect to the subject matter, and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written. The terms of this Agreement shall supersede any additional or conflicting terms or provisions that may be set forth or printed on the Contractor's work plans, cost estimate forms, receiving tickets, invoices, or any other related standard forms or documents of the Contractor that may subsequently be used to implement, record, or invoice services hereunder from time to time, even if such standard forms or documents have been signed or initialed by a representative of the State. The parties agree that the terms of this Agreement shall prevail in any dispute between the terms of this Agreement and the terms printed on any such standard forms or documents, and such standard forms or documents shall not be considered written amendments of this Agreement.

(as of November 3, 2008)



**State of Utah – Hummingbird Communications**  
**Contract Attachment B: Contract Pricing and Payment Schedule**

**Software license fixed pricing, software maintenance fixed fees, and training fixed fees included in contract total:**

	Price:
Image Investigation Software – Unlimited Right to Use License	\$ 1
Computer Hardware	State of Utah will purchase servers, server software, and personal computers from the State Contract as per the recommended hardware list provided.
Prepare Images and Data Enroll the Images – Load the Initial Database Install Central and Search Servers Conduct on-site Training of Operators	\$ 25,000
Software Maintenance and Support (Initial Contract Period) (January 1, 2009 thru December 31, 2009) Year 1 Maintenance included in software price	Included in software price: \$ 0
<b>GRAND TOTAL = Contract Amount on signature page is \$</b> <b>25,001</b>	

**Fixed Pricing for Optional Contract Extension Periods (not currently included in contract total):**

(First Optional Contract Extension Period) (January 1, 2010 thru December 31, 2010 ) Year 2 Maintenance	\$ 12,000
(Second Optional Contract Extension Period) (January 1, 2011 thru December 31, 2011 ) Year 3 Maintenance	\$ 12,000
(Third Optional Contract Extension Period) (January 1, 2012 thru December 31, 2012 ) Year 3 Maintenance	\$ 12,000
(Fourth Optional Contract Extension Period) (January 1, 2013 thru December 31, 2013 ) Year 3 Maintenance	\$ 12,000

**Invoices should be sent monthly following the provision of professional services / acceptance of purchased items to:**

Utah Department of Public Safety  
 Attn: Philip Bates 4501 S. 2700  
 W.  
 Salt Lake City, Utah 84119

Payment will be made in accordance with Contract Attachment A, State T& C # 19 and Contract Attachment C: DTS T&C # 8 and # 9.

**ATTACHMENT C**  
**UTAH DEPARTMENT OF TECHNOLOGY SERVICES (DTS)**  
**DEPARTMENT MODIFIED TERMS AND CONDITIONS**  
**(Changes have been made to DTS T&C # 11)**

1. **NOTICE:** Wherever under this contract one party is required to give formal notice to the other, such notice shall be deemed given upon delivery, if delivered by hand (in which case a signed receipt shall be obtained), or three days after date sent if sent by registered or certified mail, return receipt requested. Formal Notices to the Contractor and to the State shall be addressed as follows:

Contractor:	State of Utah:
Contact Person and Contractor Address as	Contracts Manager
Indicated on Signed FI-84 State of Utah	Department of Technology Services Contract
(Cover) Page of this Contract	1 State Office Building, 6 <sup>th</sup> Floor
	Salt Lake City, Utah 84114

2. **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.
3. **REDUCTION OF FUNDS:** (N/A to Open-Ended Contracts): The maximum amount authorized by this contract shall be reduced or contract terminated if required by Federal/State law, regulation, or action or there is significant under utilization of funds, provided the Contractor shall be reimbursed for all services performed in accordance with this contract prior to date of reduction or termination. If funds are reduced, there will be a comparable reduction in amount of services to be given by the Contractor. The Department will give the Contractor thirty (30) days notice of reduction.
4. **SUSPENSION OF WORK:** Should circumstances arise which would cause the State the need to suspend the work, but not terminate the contract, this will be done by written NOTICE, which meets the NOTICE requirements of this contract. The work may be reinstated upon advance written NOTCIE from the State, to recommence as mutually agreed between the parties. The State understands any such suspension of the work may affect both the time of performance and price to complete the work when reinstated.
5. **WORKERS' COMPENSATION:** The Contractor shall take out, furnish proof, and maintain during the life of this contract workers' compensation insurance for all its employees employed at the site of the project in Utah, and in the event any work is subcontracted, the Contractor agrees to require any of its Subcontractors to similarly provide and furnish proof of workers' compensation insurance for all the latter's employees employed on any site of the project in Utah.
6. **CONFLICT OF INTEREST WITH STATE EMPLOYEES:** In addition to the provisions of State T&C Clause 5, the Contractor certifies, through the execution of the contract, that no person in the State's employment, directly or through subcontract, will receive any private financial interest, direct or indirect, in the contract. The CONTRACTOR will not hire or subcontract with any person having such conflicting interest.
7. **THIRD PARTY CLAIMS INDEMNIFICATION:** Contractor agrees to indemnify the State against third party claims for infringement for materials created and furnished by Contractor, for claims for death, bodily injury, or tangible property damage.

8. **INVOICES:** Each invoice must contain a unique invoice number and a customer account number, detail of work completed (e.g. time x rate) on the contract. The State reserves the right to correct invoices not in accordance with this Contract.
9. **PAYMENT BY THE STATE / INTEREST ON LATE PAYMENTS:** Payments to the Contractor shall generally be made within thirty (30) days of receipt by the State of an accurate invoice and receipt in Finance of the responsible State Project Manager's certification of acceptable completion of work, presuming receipt by the State of a correct, detailed invoice from the Contractor. Utah's Prompt Payment Act, UCA §15-6-2 requires payment within 60 days after receipt of the invoice covering the delivered items or services. If the State's payment is more than 60 days late, interest shall accrue and be charged on payments overdue starting on the 61<sup>st</sup> day that the State's payment may be overdue, until paid, unless this is a disputed payment. UCA §15-6-3 allows late payment interest at 2% above the rate paid by the IRS on refund claims.

The State's payment of invoices shall be sent via mail, or may be paid electronically at the discretion of the State.

10. **EMPLOYMENT PRACTICES OF CONTRACTOR:** In addition to Employment Practices Clause requirements stated in State T&C Clause 8, the following equal opportunity provisions apply to this contract. The Contractor agrees to abide by the provisions of: Section 188 of the Workforce Investment Act of 1998 (WIA) (29 USC 2938), which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and against discrimination to beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIA Title I-financially assisted program or activity; and Title IX of the Education Amendments of 1972 (20 USC 1681 et seq.), as amended, which prohibits discrimination on the basis of sex in education programs.

11. **COPYRIGHT:** Copyright clause is deleted since this is a purchase of licensed software and not custom developed software.

12. **LIABILITY INSURANCE:** The Contractor agrees to provide and to maintain during the performance of the contract, at its sole expense, a policy of liability insurance. The limits of the policy shall be no less than \$500,000.00 for each occurrence and \$1,000,000.00 aggregate. The Contractor further agrees to provide the Contracts Manager for the Department of Technology Services with proof of adequate insurance coverage, in accordance with the NOTICE provisions of this contract.

It shall be the responsibility of the Contractor to require any of their Subcontractor(s) to secure the same insurance coverage as prescribed herein for the Contractor. Evidence of the subcontractor's insurance coverage shall also be provided to the Contracts Manager for the Department of Technology Services, also in compliance with the NOTICE provisions of this contract.

13. **CITING DEPARTMENT IN ADVERTISING / PUBLICITY:** The Contractor agrees to give credit to the Department of Technology Services (DTS) for funding in all written and verbal advertising or discussion of this program such as brochures, flyers, informational materials, talk shows, etc. All formal advertising or public information programs will be coordinated with the DTS Public Information Officer. Any publicity given to the project or services provided herein shall identify the Department of Technology Services as sponsoring agency and shall not be released without prior written approval by the DTS Project Manager.

14. **STATE AGENCY WEB SITE BRANDING:** The Contractor agrees to allow the Department of Technology Services to utilize its DTS logo, or a newer version if replaced in the future, on websites produced under terms of this contract. Contractor further agrees to allow state agencies that DTS is ultimately providing consulting services for, such as UDOT, Health, Tax Commission, etc. to also utilize their own Department web site branding and logo, if requested by that state agency.

15. **DRUG-FREE WORKPLACE:** The Contractor understands that the Department provides a drug-free workplace in accordance with all federal and state laws and regulations. The Contractor agrees to abide by the Department's drug-free workplace policies while on State of Utah premises and the Department of Technology Services will provide the Contractor with a copy of these written "drug-free workplace policies".

16. **OVERPAYMENT/UNDERPAYMENT AUDIT EXCEPTIONS/DISALLOWANCES:** The Contractor agrees that if during or subsequent to the contract performance, a CPA audit, or a State agency audit determines that payments were incorrectly reported or paid, the Department may adjust the payments. In contracts, which include a cost reimbursement budget, Contractor expenditures to be eligible for reimbursement must be adequately documented. The Contractor will, upon written request, immediately refund any overpayments determined by audit and for which payment has been made to the contractor, to the Department. The Contractor further agrees that the Department shall have the right to withhold any or all-subsequent payments under this or other contracts that the Contractor may have with the State until recoupment of overpayment is made. The Department agrees to promptly notify the Contractor in the event any underpayments on this contract are discovered.

17. **OWNERSHIP, PROTECTION, AND USE OF STATE OF UTAH, STATE OF UTAH CLIENT, OR STATE OF UTAH EMPLOYEE RECORDS:** Except for confidential medical records held by direct care providers, the State shall own exclusive title to all information gathered, reports developed, and conclusions reached in performance of this Contract. The 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 the State. The improper use or disclosure by any party 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 the Department, or the Contractor's responsibilities with respect to services purchased under this agreement, is prohibited except on written consent of the state agency employee, state agency client, their attorney, or their responsible parent or guardian. The Contractor will be required to sign a Confidential Information Certification form in situations where they will be given access to confidential computerized records. The Contractor agrees to maintain the confidentiality of records it holds as agent for the State as required by GRAMA, or other applicable federal or state law. 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 the Contractor under the Contract. The Contractor, and any subcontractors under its control, expressly agrees not to use confidential client, or confidential federal, state, or local government data furnished for purposes of contract performance, without prior written permission from the Project Manager for the Department of Technology Services, and appropriate officials of the State Agency.

18. **OWNERSHIP, PROTECTION, AND USE OF CONFIDENTIAL FEDERAL, STATE, OR LOCAL GOVERNMENT INTERNAL BUSINESS PROCESSES AND PROCEDURES:** 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 the Contractor, Contractor's employees, or their Subcontractors, unless prior written consent has been obtained in advance from the Project Manager for the Department of Technology Services.

19. **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 the STATE and must be delivered to the STATE within 10 working days after termination or completion of the 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 clause must either be in the format as originally provided, or in a format that is readily usable by the State or that can be formatted in a way that it can be used. Costs for all of these described items will be considered as included in the basic contract compensation of the work described.

20. **CODE OF CONDUCT:** The Contractor agrees to follow and enforce the Department of Technology Services Code of Conduct. If Contractor is working at facilities controlled by other State agencies, Contractor agrees to follow and enforce the Code of Conduct of these other State Agencies when Contractor is providing services at these facilities under provisions of this contract. The Contractor will assure that each employee or volunteer under Contractor's supervision receives a copy of such Code of Conduct, and a signed statement to this effect must be in each Contractor or Subcontractor employee's/volunteer's file and is subject to inspection and review by the Department monitors. Department of Technology Services agrees to provide Contractor with a copy of any applicable codes of conduct. If a Contractor or Subcontractor is working at any state agency which has a Code of Conduct applicable to this Contract, the Department of Technology Services Project Manager will provide Contractor with a copy in advance of Contractor's on-site contract services performance.
21. **TERMINATION UPON DEFAULT:** In the event this contract is terminated as a result of a default by the Contractor, the Department may procure or otherwise obtain, upon such terms and conditions as the Department deems appropriate, services similar to those terminated, and Contractor shall be liable to the Department for any and all damages arising there from, including, but not limited to, attorneys' fees and excess costs incurred by the Department in obtaining similar services..
22. **CONTRACTOR'S RESPONSIBILITIES / QUALITY OF WORK:** The Department will enter into contractual agreement with the Contractor only. The Contractor shall be responsible for all services as required by the RFP/bid. Contractor warrants that all services shall be performed in a professional and workmanlike manner consistent with best industry practice and in accordance with the Statement of Work.
23. **PAYMENT WITHHOLDING:** The Contractor agrees that the adequate reporting, record keeping, and compliance requirements specified in this contract are a material element of performance and that if, in the opinion of the Department, the Contractor's record keeping practices, compliance, and/or reporting to the Department are not conducted in a timely and satisfactory manner, the Department may withhold part or all payments under this or any other contract until such deficiencies have been remedied. This includes, but is not limited to, Contractors failure to timely provide to the Department of Technology Services Contracts Manager the Contractor's proof of adequate insurance coverage, or 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, the Department agrees to provide ten (10) day advance NOTICE to the 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.
24. **CONTRACTOR ACCESS TO SECURE STATE FACILITIES / CRIMINAL CONVICTION INFORMATION / FORMER FELONS:** The Contractor shall provide (at its own expense) the Department with "sufficient personal information" about its agents or employees, and the agents and employees of its subcontractors (if any) who will enter upon secure premises controlled, held, leased, or occupied by the State during the course of performing this contract so as to facilitate a criminal record check, at state expense, on such personnel by Department. "Sufficient personal information" about its agents or employees, and the agents and employees of its subcontractors (if any) means for the Contractor to provide to the State Project Manager, in advance of any on-site work, a list of the full names of the designated employees, including their social security number, driver license number and state of issuance, and their birth date. Thereafter, on their first site visit, each contractor employee expected to work on-site shall be fingerprinted by the State, and the State is authorized to conduct a federal criminal background check based upon those fingerprints and personal information provided. Contractor, in executing any duty or exercising any right under this contract, shall not cause or permit any of its agents or employees, and the agents and employees of its subcontractors (if any) who have been convicted of a felony and certain misdemeanors to enter upon any premises controlled, held, leased, or occupied by the Department. A felony and misdemeanor are defined by the jurisdiction of the State of Utah regardless of where the conviction occurred.

(DTS T&C Version: August 14, 2008)



## **Hummingbird Communications**

### **Executive Summary**

This offer is presented by Hummingbird Communications in response to the State of Utah's request for quotation to provide Facial Image Recognition Software and License in accordance with Bid JG9031 issued Nov 10, 2008. The major features of the proposal are highlighted in the following Executive Summary.

#### **Purpose of the Response. Requirements, Terms and Conditions:**

Hummingbird Communications (Hummingbird), is proposing an Image Investigation System with 28CFR Case Tracking System that has been designed for Fusion Centers and installed in a Fusion Center Image Investigation environment for over three years.

Hummingbird meets or exceeds all of the requirements set forth in the State of Utah's request for quotation to provide Facial Image Recognition Software and License in accordance with Bid JG9031 issued Nov 10, 2008. Hummingbird complies with and accepts all of the Terms and Conditions of the State of Utah as specified in the bidding document, Bid JG9031.

#### **Company Experience:**

Our company is a leader in Face Recognition and Image Investigation Technology and has been in this line of business for over seven years. Hummingbird has direct referencable experience and expertise in delivering Facial Recognition Image Investigation Systems with 28CFR Case tracking in a Fusion Center environment.

Hummingbird has designed, deployed, and supports Arizona's Counter-Terrorism Information Center, (AcTIC), Image Investigation System. The AcTIC system has been installed and successfully operational for over three (3) years. The AcTIC Image Investigation System currently has over 20 Million images on line and searchable. Most queries take less than 10 seconds to search the entire database and the results are impressive.

#### **Our Offer:**

In response to the State of Utah's interest in Image Investigation technology, Hummingbird has created a special program for fusion centers, offering to donate complete Image Investigation Software Systems which includes Un-Limited Software Licenses to the State of Utah's Fusion Center Operation.

The Image Investigation Unlimited License has a value of one hundred thousand dollars. (\$100,000.00) and includes:

1. Image Investigation Central Server-Unlimited Number of Images
2. Image Investigation Search Server Software-Unlimited Number of Search Servers
3. Image Investigator's Analyst Client Software-Unlimited Investigator Users
4. 28-CFR Compliant Case Tracking Software System

The Fusion Center will need training and professional services to have a fully operational Image Investigation System. Hummingbird has created a special package of training and services to get the Fusion Centers installed and operational for \$25,000.00 that includes:

1. Assisting with Image Enrollment Preparation of Images and Data
2. Enroll the Images, Build and Load the Initial database
3. Install the Central and Search Servers
4. On-Site Training and Installation
5. Software Maintenance and Support

Software maintenance and upgrades are included for the first year, the Fusion Center will need to budget and purchase a software maintenance agreement for the subsequent years that the Fusion Center wants to operate the Image Investigation System at a cost of twelve thousand dollars, (\$12,000.00) per year.

Hummingbird will propose the appropriate hardware required to operate the system, but the Fusion Center may elect to purchase or supply their own appropriate computer and networking equipment.

**Image Investigation System Features and Benefits:**

1. Identify both known and unknown individuals in less than 10 Seconds
2. Locate Individuals with Multiple or Duplicate Identities
3. Identify Individuals from Surveillance Images, Video, Drivers License, Booking Photos, Scanned Images, Police Artist Sketches, Internet Video (U-Tube), social network sites, Face Book, blogs or any image from any number or variety of sources.
4. The Image Investigation System can find people in seconds, where ordinary investigation techniques could take man years to locate the same individuals.
5. Find people who have been on the run for years, clear "Open Warrants" and put new life into Cold Case Investigations.
6. Search multiple databases at the same time, MVD, booking and corrections, JABS, Sexual Predator or others.
7. Users can easily create their own databases
8. The system is designed to share information between agencies and jurisdictions.
9. The RISS Executive Council has offered utilization of its network for this system, to support facial recognition investigations between fusion centers nationwide.
10. 28CFR Compliant Case Tracking built into the system

Unlike other Facial Recognition systems, the Image Investigation system was designed for Fusion Centers and includes software that makes the system automatically 28CFR Part 23 compliant, and with security designs that are audit friendly to support privacy and civil rights concerns. The State of Utah may have a facial recognition system or may have seen other image investigation systems, the difference with the Hummingbird Image Investigation System is that it was designed for Fusion Centers, includes a 28CFR case tracking system, and quite



simply, the Image Investigation System REALLY WORKS and has been a valuable investigation tool.

**Recommendation:**

We recommend that you contact the AcTIC, Arizona Counter Terrorism Investigation Center to discuss their operation and success.

**Search Server Quantity (5)**

HP ProLiant DL320 G5p Server

Dual-Core Intel® Xeon® processor E3110 (3.0GHz, 6MB L2 cache, 65 Watts, 1333MHz FSB)

HP 4GB Unbuffered Advanced ECC PC2-6400 DDR 2x2GB Memory

Microsoft® Windows® Server 2003 R2, Standard Edition + 5 CALS (Pre-Installed)

Integrated Intel® 82801GR Serial ATA Host Controller

HP 2-Bay Drive Cage (1U)

HP 160GB SATA 1.5Gb 7,200 rpm 1" Hard Drive

Embedded NC326i Dual Port Gigabit Server Adapter

HP 1.83m 10A C13-UL US Power Cord

Integrated Lights Out 2 (iLO 2) Standard Management

HP Standard Limited Warranty - Year 1: Parts and on-site Labor; Years 2-3 - Parts Only, Parts: 1 to 5 Business Days, Labor: Next Business Day

**Ethernet Switch Quantity (1)**

HP Procurve 1400-24G Gigabit Ethernet Switch Product

Summary:

The ProCurve Switch 1400-24G provides plug-and-play simplicity for high-bandwidth connectivity. The 1400-24G is a 24-port 10/100/1000 switch with 22 10/100/1000 ports and 2 dual-personality ports. Switch feature silent operation via a fanless design.

Manufacturer Part Number: J9078A #ABA

Product Name: Procurve 1400-24G Gigabit Ethernet Switch

Product Type: Ethernet Switch

Number of Ports: 22

Interfaces/Ports Details: 22 x RJ-45 10/100/1000Base-T Auto-sensing/Auto- Gigabit

Ethernet Port: Yes

Interfaces/Ports: 22 x RJ-45 10/100/1000Base-T LAN

Expansion Slots: (2 Total) SFP (mini-GBIC)

**Analyst Investigation Workstations (Can be PC's or Laptops) Analyst PC Quantity (3 to 4)**

HP Compaq dc7800 Ultra-slim Desktop

Genuine Windows Vista® Business 32-bit

Intel® Core 2 Duo E8300 processor, Intel® Q35 chipset **integrated**

4GB PC2-5300 (DDR2-667) SODIMM 1x2GB

**500GB** 7200RPM SATA 1.5Gb/s Hard Drive 1st

Integrated Intel 82566DM Gigabit Network Connection

HP PS/2 Standard Keyboard HP PS/2 2-Button Optical Scroll Mouse

XP Pro System Recovery CD Kit (Available only with Windows XP Pro OS)

Hummingbird Communications State of Utah - Hummingbird Communications Contract Attachment D Page 19 of 70 11/23/2008 Response to Solicitation JG9031

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BidSync, LLC

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**State Of Utah Proposes Hardware Summary and Detail:**

Central Server Quantity 1

HP ProLiant DL320 G5p SAS/SATA Server \$6,224.00

Search Server Quantity (5)

HP ProLiant DL320 G5p Server Quantity (5) \$16,685.00

Analyst PC's

HP Compaq dc5800 Microtower (Quantity 4) \$9,824.00

24 Port Gigabit Switch

HP Procurve 1400-24G Gigabit Ethernet Switch \$579.00

Proposed Hardware Total:

\$32,990.00

Central Server Quantity 1

HP ProLiant DL320 G5p SAS/SATA Server

Dual-Core Intel® Xeon® processor E3110 (3.0GHz, 6MB L2 cache, 65 Watts, 1333MHz FSB)

HP 4GB Unbuffered Advanced ECC PC2-6400 DDR 2x2GB Memory

Microsoft® Windows® Server 2003 R2, Standard Edition + 5 CALS (Pre-Installed)

Integrated Intel® 82801GR Serial ATA Host Controller

No Item Selected

HP 4-Bay Drive Cage (1U)

HP 500GB 3G SATA 7.2K Hot Plug SATA MDL Hard Drive - 1-year warranty

HP 500GB 3G SATA 7.2K Hot Plug SATA MDL Hard Drive - 1-year warranty

HP 500GB 3G SATA 7.2K Hot Plug SATA MDL Hard Drive - 1-year warranty

HP 500GB 3G SATA 7.2K Hot Plug SATA MDL Hard Drive - 1-year warranty

Embedded NC326i Dual Port Gigabit Server Adapter

HP Slim 12.7mm SATA DVD-RW Optical Drive

Integrated Lights Out 2 (iLO 2) Standard Management

SQL Server-Enterprise Edition

Cost: \$4,883.00

3 Year Warranty \$361.00 Subtotal:

\$5,224.00

Option: SQL Server Enterprise Edition \$14,000.00

## Search Server Quantity (5)

HP ProLiant DL320 G5p Server

Dual-Core Intel® Xeon® processor E3110 (3.0GHz, 6MB L2 cache, 65 Watts, 1333MHz FSB)

HP 4GB Unbuffered Advanced ECC PC2-6400 DDR 2x2GB Memory

Microsoft® Windows® Server 2003 R2, Standard Edition + 5 CALS (Pre-Installed)

Integrated Intel® 82801GR Serial ATA Host Controller

HP 160GB SATA 1.5Gb 7,200 rpm 1" Hard Drive

Embedded NC326i Dual Port Gigabit Server Adapter

HP 1.83m 10A C13-UL US Power Cord

Integrated Lights Out 2 (iLO 2) Standard Management

Cost \$2,976.00

3 Year Warranty \$361.00

Subtotal \$3,337.00

Quantity (5) \$16,685.00

## HP Compaq dc5800 Microtower (Quantity 4)

Genuine Windows Vista® Business with downgrade to Windows XP Professional custom installed

Intel® Q33 Express chipset

Standard PS - dc5 MT Ch

HP dc5800 Country Kit

Intel® Core 2 Duo E8400 processor

4GB PC2-6400 (DDR2-800) 2x2GB

Integrated Intel® Media Accelerator 3100

500GB SATA NCQ HDD SMART IV 1st

500GB SATA NCQ HDD SMART IV 2nd

SATA 48X/32X Combo - 1st

Integrated Intel 82566DM Gigabit Network Connection

HP PS/2 2-Button Optical Scroll Mouse

HP PS/2 Standard Keyboard

XP Pro System Recovery CD Kit (Available only w/Vista Business 32-bit OS) 5-year (parts/labor/next business day on-site) limited warranty - MT

Cost: \$2,456.00

Quantity (4) \$9,824.00

## Ethernet Switch

## Quantity 1

## HP Procurve 1400-24G Gigabit Ethernet Switch Product

## Summary:

The ProCurve Switch 1400-24G provides plug-and-play simplicity for high-bandwidth connectivity. The 1400-24G is a 24-port 10/100/1000 switch with 22 10/100/1000 ports and 2 dual-personality ports. Switch feature silent operation via a fanless design.

Manufacturer: Hewlett-Packard

Manufacturer Part Number: J9078A #ABA

Manufacturer Website Address: [www.hp.com](http://www.hp.com)

Product Name: Procurve 1400-24G Gigabit Ethernet Switch

Product Type: Ethernet Switch

Number of Ports: 22

Interfaces/Ports Details: 22 x RJ-45 10/100/1000Base-T Auto-sensing/Autonegotiating/Auto MDI/MDI-X LAN

Gigabit Ethernet Port: Yes

Interfaces/Ports: 22 x RJ-45 10/100/1000Base-T LAN

Expansion Slots: (2 Total) SFP (mini-GBIC)

Slot Details: 2 x SFP (mini-GBIC) Shared

Input Voltage: 110V AC, 220V AC, 100 V AC to 240 V AC Power Supply, 100 V AC to 240 V AC Power Supply

Form Factor: Rack-mountable

Dimensions: 1.73" Height x 17.42" Width x 6.74" Depth

Weight: 4.38lb

**COST PROPOSAL**

Bidder Name: \_\_\_\_\_

Product: \_\_\_\_\_

**Cost is to be submitted based on the following:**

Initial software cost including software support built into first year cost, if not a hosted service, and software maintenance, training,

Costs for anything else you need to buy to make it work, exclusive of server costs, other hardware costs if cheaper on state contract. If they can provide it cheaper than we can buy on state contract, they should quote it.

Image Investigation Software-Unlimited Right to Use License \$ \_\_\_\_\_

Computer Hardware\* \$ \_\_\_\_\_

Prepare Images and Data

Enroll the Images-Load the Initial Database

Install Central and Search Servers

On-site Training of Operators \$ \_\_\_\_\_

Software Maintenance and Support for One Year \$ \_\_\_\_\_

TOTAL \$ \_\_\_\_\_

Software Maintenance and Support Renewal Options  
Years 2-5 \$ \_\_\_\_\_

\*Will be subject to a cost comparison with WSCA Contractors.

**(Any deviation from this format may result in disqualification of proposal.)**

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20 44

p. 141p. 1



Vendor: **Hummingbird Communications**

STATE OF UTAH



**SOLICITATION NO. JG9031**

Facial Recognition Software

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RESPONSES ARE DUE PRIOR TO:

Nov 26, 2008 3:00:00 PM MST

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RESPONSES MAY BE SUBMITTED ELECTRONICALLY TO:

[www.bidsync.com](http://www.bidsync.com)

RESPONSES MAY BE MAILED OR DELIVERED TO:

State of Utah  
Division of Purchasing  
3150 State Office Building, Capitol Hill  
Salt Lake City, Utah 84114-1061



Vendor: **Hummingbird Communications**



# State of Utah Request for Quotation

Legal Company Name (include d/b/a if applicable)	Federal Tax Identification Number	State of Utah Sales Tax ID Number	
Ordering Address	City	State	Zip Code
Remittance Address (if different from ordering address)	City	State	Zip Code
Type: <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Proprietorship <input type="checkbox"/> Government	Company Contact Person		
Telephone Number (include area code)	Fax Number (include area code)		
Company's Internet Web Address	Email Address		
Discount Terms (for bid purposes, bid discounts less than 30 days will not be considered)	Days Required for Delivery After Receipt of Order (see attached for any required minimums)		
The undersigned certifies that the goods or services offered are produced, mined, grown, manufactured, or performed in Utah. Yes <input type="checkbox"/> No <input type="checkbox"/> . If no, enter where produced, etc.			
Offeror=s Authorized Representative=s Signature	Date		
Type or Print Name	Position or Title		

**REQUEST FOR PROPOSAL - INSTRUCTIONS AND GENERAL PROVISIONS**

**1. SUBMITTING THE PROPOSAL:** (a) The Utah Division of Purchasing and General Services (DIVISION) prefers that proposals be submitted electronically. Electronic proposals may be submitted through a secure mailbox at BidSync (formerly RFP Depot, LLC) ([www.bidsync.com](http://www.bidsync.com)) until the date and time as indicated in this document. It is the sole responsibility of the supplier to ensure their proposal reaches BidSync before the closing date and time. There is no cost to the supplier to submit Utah's electronic proposals via BidSync. (b) Electronic proposals may require the uploading of electronic attachments. The submission of attachments containing embedded documents is prohibited. All documents should be attached as separate files. (c) If the supplier chooses to submit the proposal directly to the DIVISION in writing: The proposal must be signed in ink, sealed, and delivered to the Division of Purchasing, 3150 State Office Building, Capitol Hill, Salt Lake City, UT 84114-1061 by the "Due Date and Time." The "Solicitation Number" and "Due Date" must appear on the outside of the envelope. All prices and notations must be in ink or typewritten. Each item must be priced separately. Unit price shall be shown and a total price shall be entered for each item offered. Errors may be crossed out and corrections printed in ink or typewritten adjacent and must be initialed in ink by person signing offer. Unit price will govern, if there is an error in the extension. Written offers will be considered only if it is submitted on the forms provided by the DIVISION. (d) Proposals, modifications, or corrections received after the closing time on the "Due Date" will be considered late and handled in accordance with the Utah Procurement Rules, section R33-3-209. (e) Facsimile transmission of proposals to DIVISION will not be considered.

**2. PROPOSAL PREPARATION:** (a) Delivery time of products and services is critical and must be adhered to as specified. (b) Wherever in this document an item is defined by using a trade name of a manufacturer and/or model number, it is intended that the words, "or equivalent" apply. "Or equivalent" means any other brand that is equal in use, quality, economy and performance to the brand listed as determined by the DIVISION. If the supplier lists a trade name and/or catalog number in the offer, the DIVISION will assume the item meets the specifications unless the offer clearly states it is an alternate, and describes specifically how it differs from the item specified. All offers must include complete manufacturer's descriptive literature if quoting an equivalent product. All products are to be of new, unused condition, unless otherwise requested in this solicitation. (c) Incomplete proposals may be rejected. (d) Where applicable, all proposals must include complete manufacturer's descriptive literature. (e) By submitting the proposal the offeror certifies that all of the information provided is accurate, that they are willing and able to furnish the item(s) specified, and that prices offered are correct. (f) This proposal may not be withdrawn for a period of 60 days from the due date.

**3. FREIGHT COST:** (a) Where "Freight Cost" is listed as a separate line item, suppliers are to provide product line item pricing FOB Origin Less Freight. On the line item for "Freight Cost" suppliers are to indicate the total freight cost FOB Destination Freight Prepaid, and complete the "Freight Information" document. The DIVISION will analyze freight charges separately from the item cost and determine how the shipment will be routed (either by the supplier, or by the State's carrier). (b) Where there is not a line item for "Freight Cost", suppliers are to provide line item pricing FOB Destination Freight Prepaid. Unless otherwise indicated on the contract/purchase order, shipping terms will be FOB Destination Freight Prepaid.

**4. SOLICITATION AMENDMENTS:** All changes to this solicitation will be made through written addendum only. Answers to questions submitted through RFP Depot shall be considered addenda to the solicitation documents. Bidders are cautioned not to consider verbal modifications.

**5. PROTECTED INFORMATION:** Suppliers are required to mark any specific information contained in their offer which they are claiming as protected and not to be disclosed to the public or used for purposes other than the evaluation of the offer. Each request for non-disclosure must be made by completing the "Confidentiality Claim Form" located at: <http://www.purchasing.utah.gov/contract/documents/confidentialityclaimform.doc> with a specific justification explaining why the information is to be protected. Pricing and service elements of any proposal will not be considered proprietary. All material becomes the property of the DIVISION and may be returned only at the DIVISION's option.

**6. BEST AND FINAL OFFERS:** Discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of assuring full understanding of, and responsiveness to, solicitation requirements. Prior to award, these offerors may be asked to submit best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by a competing offeror.

7. **SAMPLES:** Samples of item(s) specified in this offer, brochures, etc., when required by the DIVISION, must be furnished free of expense to the DIVISION. Any item not destroyed by tests may, upon request made at the time the sample is furnished, be returned at the offeror's expense.

8. **AWARD OF CONTRACT:** (a) The contract will be awarded with reasonable promptness, by written notice, to the responsible offeror whose proposal is determined to be the most advantageous to the DIVISION, taking into consideration price and evaluation factors set forth in the RFP. No other factors or criteria will be used in the evaluation. The contract file shall contain the basis on which the award is made. Refer to Utah Code Annotated 65-56-408. (b) The DIVISION may accept any item or group of items, or overall best offer. The DIVISION can reject any or all proposals, and it can waive any informality, or technicality in any proposal received, if the DIVISION believes it would serve the best interests of the DIVISION. (c) Before, or after, the award of a contract the DIVISION has the right to inspect the offeror's premises and all business records to determine the offeror's ability to meet contract requirements. (d) The DIVISION will open proposals publicly, identifying only the names of the offerors. During the evaluation process, proposals will be seen only by authorized DIVISION staff and those selected by DIVISION to evaluate the proposals. Following the award decision, all proposals become public information except for protected information (see number 5 above). A register of proposals and contract awards are posted at <http://purchasing.utah.gov/vendor/bidtab.html>. (e) Estimated quantities are for bidding purposes only, and not to be interpreted as a guarantee to purchase any amount. (f) Utah has a reciprocal preference law which will be applied against offerors offering products or services produced in states which discriminate against Utah products. For details see Section 63G-6-404 and 63G-6-405, Utah Code Annotated. (g) Multiple contracts may be awarded if the DIVISION determines it would be in its best interest.

9. **DIVISION APPROVAL:** Contracts written with the State of Utah, as a result of this proposal, will not be legally binding without the written approval of the Director of the DIVISION.

10. **DEBARMENT:** The CONTRACTOR certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the CONTRACTOR cannot certify this statement, attach a written explanation for review by the DIVISION.

11. **ENERGY CONSERVATION AND RECYCLED PRODUCTS:** The contractor is encouraged to offer Energy Star certified products or products that meet FEMP (Federal Energy Management Program) standards for energy consumption. The State of Utah also encourages contractors to offer products that are produced with recycled materials, where appropriate, unless otherwise requested in this solicitation.

12. **GOVERNING LAWS AND REGULATIONS:** All State purchases are subject to the Utah Procurement Code, Title 63, Chapter 56 Utah Code Annotated 1953, as amended, and the Procurement Rules as adopted by the Utah State Procurement Policy Board (Utah Administrative Code Section R33). These are available on the Internet at [www.purchasing.utah.gov](http://www.purchasing.utah.gov).

13. **SALES TAX ID NUMBER:** Utah Code Annotated (UCA) 59-12-106 requires anyone filing a bid with the state for the sale of tangible personal property or any other taxable transaction under UCA 59-12-103(1) to include their Utah sales tax license number with their bid. For information regarding a Utah sales tax license see the Utah State Tax Commission's website at [www.tax.utah.gov/sales](http://www.tax.utah.gov/sales). The Tax Commission is located at 210 North 1950 West, Salt Lake City, UT 84134, and can be reached by phone at (801) 297-2200.

(Revision 22 October 2008 - RFP Instructions)

Nov 26, 2008 3:11:27 PM MST

BidSync, LLC

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# STATE OF UTAH



## **SOLICITATION NO. JG9031**

Facial Recognition Software

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RESPONSES ARE DUE PRIOR TO:

Nov 26, 2008 3:00:00 PM MST

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RESPONSES MAY BE SUBMITTED ELECTRONICALLY TO:

[www.bidsync.com](http://www.bidsync.com)

RESPONSES MAY BE MAILED OR DELIVERED TO:

State of Utah  
Division of Purchasing  
3150 State Office Building, Capitol Hill  
Salt Lake City, Utah 84114-1061

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Nov 12, 2008 10:42:00 AM MST

## Bid JG9031 Facial Recognition Software

Bid Number **JG9031**  
 Bid Title **Facial Recognition Software**

Bid Start Date **Nov 10, 2008 3:18:19 PM MST**  
 Bid End Date **Nov 26, 2008 3:00:00 PM MST**  
 Question & Answer **Nov 19, 2008 12:00:00 PM MST**  
 End Date

Bid Contact **Jared Gardner**  
**Purchasing Agent**  
**Purchasing**  
**801-538-3342**  
**jaredgardner@utah.gov**

Contract Duration **1 year**  
 Contract Renewal **4 annual renewals**  
 Prices Good for **60 days**

Bid Comments **The purpose of this request for proposal is to enter into a contract with a qualified firm to provide Facial Image Recognition Software and License. It is anticipated that this RFP may result in a contract award to a Single Contractor.**

**All questions must be submitted via BidSync.**

### Item Response Form

Item **JG9031-1-01 - n/a**  
 Quantity **1 each**  
 Prices are not requested for this item.  
 Delivery Location **State of Utah**  
See Specifications for Details  
 \*  
 \* UT \*  
**Qty 1**

#### **Description**

See RFP document for details on how to submit Cost Proposal





# State of Utah Request for Quotation

Legal Company Name (include d/b/a if applicable)		Federal Tax Identification Number		State of Utah Sales Tax ID Number	
Ordering Address		City		State	Zip Code
Remittance Address (if different from ordering address)		City		State	Zip Code
Type: <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Proprietorship <input type="checkbox"/> Government			Company Contact Person		
Telephone Number (include area code)			Fax Number (include area code)		
Company's Internet Web Address			Email Address		
Discount Terms (for bid purposes, bid discounts less than 30 days will not be considered)			Days Required for Delivery After Receipt of Order (see attached for any required minimums)		
The undersigned certifies that the goods or services offered are produced, mined, grown, manufactured, or performed in Utah. Yes <input type="checkbox"/> No <input type="checkbox"/> . If no, enter where produced, etc.					
Offeror=s Authorized Representative=s Signature			Date		
Type or Print Name			Position or Title		

## REQUEST FOR PROPOSAL - INSTRUCTIONS AND GENERAL PROVISIONS

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10. **DEBARMENT:** The CONTRACTOR certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the CONTRACTOR cannot certify this statement, attach a written explanation for review by the DIVISION.

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Procurement Code, Title 63, Chapter 56 Utah Code Annotated 1953, as amended, and the Procurement Rules as adopted by the Utah State Procurement Policy Board (Utah Administrative Code Section R33). These are available on the Internet at [www.purchasing.utah.gov](http://www.purchasing.utah.gov).

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(Revision 22 October 2008 - RFP Instructions)

## REQUEST FOR PROPOSAL

### *Facial Image Recognition Software System*

Solicitation #JG9031

### PURPOSE OF REQUEST FOR PROPOSAL (RFP)

The purpose of this request for proposal is to enter into a contract with a qualified firm to provide Facial Image Recognition Software and License. It is anticipated that this RFP may result in a contract award to a Single Contractor.

This RFP is designed to provide interested offerors with sufficient basic information to submit proposals meeting minimum requirements, but is not intended to limit a proposal's content or exclude any relevant or essential data. Offerors are at liberty and are encouraged to expand upon the specifications to evidence service capability under any agreement.

The estimated budget for this project is \$200,000.

### ISSUING OFFICE AND RFP REFERENCE NUMBER

The State of Utah Division of Purchasing is the issuing office for this document and all subsequent addenda relating to it, on behalf of the Utah Department of Public Safety, Division of Homeland Security. The reference number for the transaction is Solicitation #JG9031. This number must be referred to on all proposals, correspondence, and documentation relating to the RFP.

### SUBMITTING YOUR PROPOSAL

This RFP is designed to provide interested Offerors with sufficient basic information to submit proposals meeting minimum requirements, but is not intended to limit a proposal's content or exclude any relevant or essential data. Offerors are at liberty and are encouraged to expand upon the specifications to evidence service capability under any agreement.

Proposals must be received by the posted due date and time. Proposals received after the deadline will be late and ineligible for consideration.

The preferred method of submitting your proposal is electronically through BidSync (formerly RFP Depot). BidSync is at the following Internet URL: <http://purchasing.utah.gov/vendor/bid.html>

However, if you alternatively choose to submit your proposal in hard copy format, vendors must submit one original and five (5) identical copies of your proposal must be received no later than (NLT) **3pm Wednesday, November 26, 2008**, at the State of Utah Division of Purchasing, 3150 State Office Building, Capitol Hill, Salt Lake City, Utah 84114, prior to the closing date and time specified. Also, if you submit your proposal in paper form, please also provide one (1) CD electronic Adobe PDF or Microsoft Word file format of your proposal that can be used to build the contract. Proposals received after the 3pm Wednesday, November 26, 2008 deadline, either via BidSync or in paper form, will be late and ineligible for consideration.

If sending via United States Postal Services (USPS), please mail to the State of Utah Division of Purchasing, P.O. Box 141061, Salt Lake City, Utah 84114-1061.

### PREPARING YOUR PROPOSAL

1

\* Organization of Proposal. In order to be deemed responsive to this RFP, all proposals must be organized with labels for the following headings:

**RFP Form:** The State's Request for Proposal (RFP) form completed and signed.

**Executive Summary:** The one or two page executive summary is to briefly describe the Offeror's proposal. The summary should highlight major features of the proposal. It must indicate any requirements that cannot be met by the Offeror. The reader should be able to determine the essence of the proposal by reading the executive summary. Proprietary information reports should be identified in this section.

**Summary Assessment of Products to be Provided / Work to be Performed:** Provide a complete narrative of the Offeror's assessment of the work to be performed, the Offeror's ability and approach, and the resources necessary to fulfill the requirements. This should demonstrate that the Offeror understands the desired overall performance expectations. Clearly indicate any options or alternatives propose.

**Detailed Response:** This section should constitute the major portion of the proposal and must contain at least the following information:

**Point by Point Description of Proposed Solution's Qualifications matched to the RFP**

**Mandatory Requirements:** The primary determinant to be used for mandatory qualification scoring will be a point by point description of how the Offeror's proposed solution meets the stated mandatory qualifications, so that each requirement listed in the RFP's mandatory qualifications is matched with the vendor's proposal description. It is not the State's intention to search through product brochures to attempt to make a determination whether the proposed solution meets the required business needs that we listed in this RFP.

**References:** Certifications and licenses will be required to verify the companies work product, reliability and reputation. References must be included.

Any references must include the following information for each reference given:

Customer name, current postal address, current e-mail address, name, position title, and current telephone number of the principal contact.

A brief description of the solution provided or work performed by the proposed vendor for the referenced organization, in sufficient detail to allow a normal reference check telephone conversation.

Failure to provide sufficient information as stated above so as to allow us to conduct a normal reference check of the claimed qualifications may result in disqualification of your proposal. If the Department of Technology Services determines that proposal reference material is deficient, the Department of Technology Services will contact the Offeror and let them know what is deficient, and it is the responsibility of the Offeror to resolve this issue within two business days after such notice of reference check problems encountered before the Proposal will be disqualified.

## **COST PROPOSAL**

Cost will be evaluated independently from the technical proposal. Please enumerate all costs on the attached Cost Proposal Form.

2

## **STANDARD CONTRACT TERMS AND CONDITIONS**

Any contract resulting from this RFP will include, but not be limited to, the States standard terms and conditions.

## **QUESTIONS**

All questions must be submitted through BIDSYNC (formerly RFP Depot.) Answers will be given via the BIDSYNC site.

**DISCUSSIONS WITH OFFERORS (ORAL PRESENTATION)**

An oral presentation by an offeror to clarify a proposal may be required at the sole discretion of the State. However, the State may award a contract based on the initial proposals received without discussion with the Offeror. If oral presentations are required, they will be scheduled after the submission of proposals. Oral presentations will be made at the offerors expense.

**PROTECTED INFORMATION**

The Government Records Access and Management Act (GRAMA), Utah Code Ann., Subsection 63-2-304, provides in part that:

*the following records are protected if properly classified by a government entity:*

*(1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has provided the governmental entity with the information specified in Section 63-2-308 (Business Confidentiality Claims);*

*(2) commercial information or non-individual financial information obtained from a person if:*

*(a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;*

*(b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and*

*(c) the person submitting the information has provided the governmental entity with the information specified in Section 63-2-308;*

*\* \* \* \* \**

*(6) records the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except that this Subsection (6) does not restrict the right of a person to see bids submitted to or by a governmental entity after bidding has closed; ....*

GRAMA provides that trade secrets, commercial information or non-individual financial information may be protected by submitting a Claim of Business Confidentiality.

To protect information under a Claim of Business Confidentiality, the offeror must:

1. provide a written Claim of Business Confidentiality *at the time the information (proposal) is provided to the state*, and
2. include a concise statement of reasons supporting the claim of business confidentiality (Subsection 632-308(1)).

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3. submit an electronic "redacted" (excluding protected information) copy of your proposal response. Copy must clearly be marked "Redacted Version."

A Claim of Business Confidentiality may be appropriate for information such as client lists and non-public financial statements. Pricing and service elements may not be protected. An entire proposal may not be protected under a Claim of Business Confidentiality. The claim of business confidentiality must be submitted with your proposal on the form, which may be accessed at:

<http://www.purchasing.utah.gov/contract/documents/confidentialityclaimform.doc>

To ensure the information is protected, the Division of Purchasing asks the offeror to clearly identify in the Executive Summary and in the body of the proposal any specific information for which an offeror claims business confidentiality protection as "PROTECTED".

All materials submitted become the property of the state of Utah. Materials may be evaluated by anyone designated by the state as part of the proposal evaluation committee. Materials submitted may be returned only at the State's option.

### **SCOPE OF WORK**

The system must consist of a Central Database Server with 4GB or more of memory where all of the images will be stored. This system also must include 5 search servers with 4GB or more of memory, which will store images and the templates created by the facial recognition software. This system must include at least three to four investigative workstations to include computer hardware and connection to the facial recognition software system. Servers must have Windows 2003 and workstations XP-Pro.

The Central Database Server should also have 1TB disk. The search server should be capable of storing up to 4 million images with room for expansion. The Image Investigation System is designed to use parallel processing, so each of the search servers will contain 1 million images. The investigation workstations should have at least 500GB disk.

Each server must have (2) gigabyte network cards to maximize performance. The system must be network based and the search servers will be located within the Statewide Information & Analysis Center, herein referred to as "SIAC", with a quick network connection so the system can search all of the stored images and present the results within 10-15 seconds. This system must search approximately 250,000 images per second.

The Facial Image Recognition Software System must allow for users to simply and easily create new databases. The system must also allow for a stand-alone image such as a police composite artist rendering, photos of missing or endangered children or other photos where a reason to identify the individual is crucial to be scanned against the current database and produce results.

The Facial Image Recognition Software System must be reliable, fast, accurate, and 28CFR compliant. System must be capable of supporting an unlimited amount of images and easily add new images and databases to the system without taking the system down for extensive reprogramming. Department of Homeland Security has adopted INCITS 385-2004, Information technology - Face Recognition Format for Data Interchange. Only software compliant with this standard will be allowable.

The Facial Image Recognition Software System must include photos in a jpg format to include, driver license photos with the expansion to booking photos, sexual predator photos and federal booking photos and support sub databases,

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i.e.; the photos mentioned above. The search server should store images in jpg format so users and operators can view them easily and independently.

Services to be performed must include the database creation, assisting the SIAC in preparing images and data, installation of the system, on-site training of operators, unlimited image investigation license.

The Utah Division of Homeland Security has the option of purchasing the computer hardware on state contract.

It is our goal to have this bid awarded by December 15, 2008 and a contract signed by December 31, 2008.

**COST PROPOSAL**

Bidder Name: \_\_\_\_\_

Product: \_\_\_\_\_

**Cost is to be submitted based on the following:**

Initial software cost including software support built into first year cost, if not a hosted service, and software maintenance, training,

Costs for anything else you need to buy to make it work, exclusive of server costs, other hardware costs if cheaper on state contract. If they can provide it cheaper than we can buy on state contract, they should quote it. Image Investigation Software-Unlimited Right to Use License \$ \_\_\_\_\_

Computer Hardware\* \$ \_\_\_\_\_

Prepare Images and Data

Enroll the Images-Load the Initial Database

Install Central and Search Servers

On-site Training of Operators \$ \_\_\_\_\_

Software Maintenance and Support for One Year \$ \_\_\_\_\_

TOTAL \$ \_\_\_\_\_

Software Maintenance and Support Renewal Options \$ \_\_\_\_\_  
Years 2-5

\*Will be subject to a cost comparison with WSCA Contractors.

**(Any deviation from this format may result in disqualification of proposal.)**



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## RFP

### PRICE GUARANTEE PERIOD

All pricing must be quoted and guaranteed for the entire term of the contract, including potential contract extensions. If price changes are anticipated in the time periods following the initial term of the contract, they must be specifically described in the vendor's proposal pricing summary.

### MANDATORY

Offeror's Response to the Proposed T&C's: Offeror proposals must either: (1) indicate vendor acceptance of the State and DTS T&C's exactly as presented in this RFP, or (2) if the vendor is proposing different terms and conditions, the vendor proposal submitted in response to this RFP must specifically list word for word the vendor's proposed wording for the specific T&C change requested as the vendor would like them to read.

### STATE'S OPTION TO REJECT PROPOSALS WITH MATERIAL T&C DEVIATIONS

If the Offeror's proposed terms and conditions materially deviate from the State's proposed State and DTS contract terms and conditions, the State of Utah reserves the right to reject the vendor's proposal for this reason, and make the contract award to the next highest scoring vendor's proposal.

### OFFEROR'S RIGHT TO NEGOTIATE CHANGES TO PROPOSED T&C's

Minor deviations in contract terms and conditions proposed by vendors may be negotiated following issuance of the State's proposed contract award letter, which has been our practice in the past, and continues to be our practice. The State's Contracts Analysts have extensive experience negotiating contract terms and conditions (T&C's) with the legal and contract departments of multinational, national, and local firms who have contracted with the State in the past, and plan to continue do so with future vendors unless the requested deviations are excessive or something that the State will just not agree to, in which case the previously described option to reject proposals with material T&C deviations may be exercised.

### QUESTIONS ABOUT THE RFP

All questions must be submitted through BidSync. Answers will be given via the BidSync site. Questions received after **November 19, 2008** may not be answered.

### DISCUSSIONS WITH OFFERORS (ORAL PRESENTATIONS)

An oral presentation by the Offeror to clarify a proposal may be required at the sole discretion of the State. However, the State may award a contract based on the initial proposals received without discussion with the Offeror. If oral presentations are required, they will be scheduled after the submission of proposals. Oral presentations will be made at the Offerors expense.

### PROPRIETARY INFORMATION IN YOUR PROPOSAL

The Government Records Access and Management Act (GRAMA), Utah Code Ann., Subsection 63-2-304, provides in part that:

*the following records are protected if properly classified by a government entity:*

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## RFP

(1) *trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has provided the governmental entity with the information specified in Section 63-2-308 (Business Confidentiality Claims);*

(2) *commercial information or non-individual financial information obtained from a person if:*

(a) *disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;*

(b) *the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and*

(c) *the person submitting the information has provided the governmental entity with the information specified in Section 63-2-308;*

\* \* \*

(6) *records the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except that this Subsection (6) does not restrict the right of a person to see bids submitted to or by a governmental entity after bidding has closed; ....*

To protect information under a Claim of Business Confidentiality, the Offeror must: provide a written Claim of Business Confidentiality at the time the information (proposal) is provided to the state, and include a concise statement of reasons supporting the claim of business confidentiality (Subsection 63-2-308(1)).

Submit an electronic "redacted" (excluding protected information) copy of your proposal response. Copy must clearly be marked "Redacted Version."

A Claim of Business Confidentiality may be appropriate for information such as client lists and non-public financial statements. Pricing and service elements may not be protected. An entire proposal may not be protected under a Claim of Business Confidentiality. The claim of business confidentiality must be submitted with your proposal on the form which may be accessed at:

<http://www.purchasing.utah.gov/contract/documents/confidentialityclaimform.doc>

To ensure the information is protected, the Division of Purchasing asks the Offeror to clearly identify in the Executive Summary and in the body of the proposal any specific information for which an Offeror claims business confidentiality protection as "PROTECTED".

All materials submitted become the property of the state of Utah. Materials may be evaluated by anyone designated by the state as part of the proposal evaluation committee. Materials submitted may be returned only at the State's option.

In non-legalese, this means that the Utah State Procurement Board's recent decision to make all bids, not just the winning Offeror's contract, public information is applicable to Offeror's proposals submitted in response to this RFP.

### **BONDING REQUIREMENTS**

Not required for this solicitation.

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### TERMINOLOGY DEFINITIONS

This section contains definitions throughout this document, including appropriate abbreviations.

- \* Contractor: Successful Offeror who enters into a binding contract.
- \* Determination: A decision by Department's Source Selection Evaluation Team, and endorsed by the Procurement Manager, including finding of fact supporting a decision. A determination becomes part of the procurement file to which it pertains.
- \* Desirable: The terms "may", "can", "should", "preferably", or "prefers" identify a desirable or discretionary item or factor (as opposed to "mandatory").
- \* Evaluation Team Recommendation: A written recommendation prepared by the Procurement Manager and the evaluation team for submission to State Purchasing for contract award, containing all written determinations resulting from the evaluation of proposals, based on predetermined criteria.
- \* Finalist: An Offeror who meets all the mandatory specifications of the Request for Proposal and whose score on evaluation factors are sufficiently high to qualify that Offeror for further consideration by the evaluation team.
- \* Mandatory: The terms "must", "shall", "will", "is required", identify a mandatory item or factor (as opposed to "desirable"). Failure to meet a mandatory item or factor will result in the rejection of the Offeror's proposal.
- \* Offeror: Any person, corporation, partnership, or joint venture that chooses to submit a proposal.
- \* Procurement Manager: A person or designee authorized by the Agency to manage or administer procurements requiring the evaluation of competitive sealed proposals.
- \* Request for Proposals: An "RFP" means all documents, including those attached or incorporated by reference, used for soliciting proposals.
- \* Responsible Offeror: Offeror who submits a responsive proposal and who has furnished, as required, data to prove that their financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services or items of tangible personal property described in the proposal.
- \* Responsive Offer or Responsive Proposal: Offer or proposal that conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to, price, quality, quantity or delivery requirements.
- \* Source Selection Evaluation Team (SSET): Body or committee appointed by Utah Department of Technology Services management, consisting of at least three members, to perform the evaluation of Offeror proposals.

### PROPOSAL EVALUATION AND SELECTION PROCEDURES

**Review of Your Proposal:** Once proposals have been received, they will be initially reviewed for Offerors meeting the stated qualification requirements and for responsiveness to the proposal submittal requirements

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## RFP

identified in the RFP. Proposals meeting these requirements will be considered responsive to the RFP, and will then be evaluated to determine “best value”, using the Evaluation Criteria.

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**Objective.** The objective of the proposal evaluation and selection process is to select the Offeror whose proposed candidate have the highest degree of reliability and whose performance can be expected to best meet the State’s requirements at the lowest overall cost to the State.

**Initial Evaluation.** Each proposal will first be evaluated against the mandatory proposal requirements. Proposals that fail to comply with mandatory requirements will be rejected and will not receive further consideration.

**Detailed Evaluation.** A detailed scoring evaluation will be conducted for those proposals that have passed the initial evaluation. The scoring evaluation will be accomplished in a consistent, uniform manner for all proposals. A Source Selection Evaluation Team will be established. Members of the team will score each proposal according to pre-established evaluation criteria and weights for relative importance. Scores from each team member will be combined into a composite score for each offer.

### SOURCE SELECTION EVALUATION TEAM

The team will be composed of at least three evaluators.

### EVALUATION CRITERIA

A committee will evaluate proposals against the following weighted criteria. Each area of the evaluation criteria must be addressed in detail in proposal.

<u>WEIGHT</u>	<u>EVALUATION CRITERIA</u>
50 %	Cost <i>(Generally cost is weighted between 30 and 50 percent. A weight less than 30% requires approval by the State Director of Purchasing)</i>
20 %	Demonstrated ability to meet the scope of work.
10 %	Demonstrated technical capability (proven track record), etc.
10 %	Qualification and expertise of technical as well as training staff proposed for this project.
10 %	Performance references for similar projects.

### SELECTION OF THE WINNING PROPOSAL

Offeror(s) Achieving Highest Score. The Offeror achieving the highest overall score will be selected for contract award.

Notification to Unsuccessful Offerors. Unsuccessful Offerors will be notified in writing.

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Formal Debriefings. A formal debriefing of the Offeror's proposal evaluation is not planned. Written questions pertaining to the successful Offeror's proposal are permitted and will be answered promptly in writing.

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### CONTRACT AWARD

The State of Utah's Division of Purchasing and General Services will complete the contract award. The Department of Technology Services – Contracts unit will negotiate and finalize the contract with the vendor.

### POTENTIAL CONTRACT

A contract may be established with the Offeror(s) whose proposal(s) has been determined to be the "best value" for the State. There is no guarantee that contract(s) will be awarded, or that any future contract extensions will be awarded. The State reserves the right to cancel this solicitation at any time and not award a contract if it is in the best interest of the State.

It is anticipated that this RFP could result in a single award contract to a single vendor.

The initial contract resulting from this RFP may be awarded for a period of one (1) year.

The contract may be extended beyond the original contract period for up to four (4) – one (1) year each contract extensions, at the State's discretion and by mutual agreement. Proposed pricing must be provided in your proposal to cover this optional contract extension period.

The contract will consist of the contract signature page, which includes the contract parties; a description of the general purpose of contract; the contract period, including optional extensions; the contract amount; and reference inclusions to the attachments made part of the contract, described below:

*Attachment A: State of Utah Modified Terms and Conditions*

*Attachment B: Contract Pricing and Payment Schedule.*

*Attachment C: Department of Technology Services (DTS) Standard Terms and Conditions.*

*Attachment D: Scope of Work, which includes Vendor's Proposal in Response to RFP, RFP Addenda (if any), and the RFP.*

*Attachment E: (If any) Vendor Terms and Conditions – this includes any proposed professional services agreements, support agreements, software license agreements, etc.*

### PROPOSED STATE TERMS AND CONDITIONS TO BE INCLUDED IN THE POTENTIAL CONTRACT

**Attachment A: State of Utah Modified Terms and Conditions:** The State of Utah plans to use the following State contract terms and conditions (T&C's) in any contracts that may result from this RFP. (Additional Department of Technology Services T&C's are described on page 15 of this RFP.). Please note: For consulting services (only) contract, clauses 15 and 17 are normally deleted.

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### ATTACHMENT A: STATE OF UTAH MODIFIED TERMS AND CONDITIONS

(Changes have been made to State T&C # 25)

1. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in 63G-6, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the State to purchase certain specified services, and other approved purchases for the State.
2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of 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 or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** The Contractor and any and all supplies, services, equipment, and construction furnished under this contract will comply fully with all applicable Federal and State laws and regulations.
4. **RECORDS ADMINISTRATION:** The Contractor shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records shall be retained by the Contractor for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The Contractor agrees to allow State and Federal auditors, and State Agency Staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
5. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended.
6. **CONTRACTOR, AN INDEPENDENT CONTRACTOR:** The Contractor shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the State to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the State, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the Contractor by the State. The Contractor shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the State for these contract services. Persons employed by the State and acting under the direction of the State shall not be deemed to be employees or agents of the Contractor.
7. **INDEMNITY CLAUSE:** The Contractor agrees to indemnify, save harmless, and release the State of Utah, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the acts or negligence of the Contractor's officers, agents, volunteers, or employees, but not for claims arising from the State's sole negligence.
8. **EMPLOYMENT PRACTICES CLAUSE:** The 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, the Contractor agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.

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9. **SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision

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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.

10. **RENEGOTIATION OR MODIFICATIONS:** This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by authorized persons of the parties hereto, and attached to the original signed copy of the contract. Automatic renewals will not apply to this contract.
11. **DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the State. The Contractor must notify the State Director of Purchasing within 30 days if debarred by any governmental entity during the Contract period.
12. **TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, 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 ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon sixty (60) days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.
13. **NONAPPROPRIATION OF FUNDS:** The Contractor acknowledges that the State cannot contract for the payment of funds not yet appropriated by the Utah State Legislature. If funding to the State is reduced due to an order by the Legislature or the Governor, or is required by State law, or if federal funding (when applicable) is not provided, the State may terminate this contract or proportionately reduce the services and purchase obligations and the amount due from the State upon 30 days written notice. In the case that funds are not appropriated or are reduced, the State will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and the State will not be liable for any future commitments, penalties, or liquidated damages.
14. **SALES TAX EXEMPTION:** The State of Utah's sales and use tax exemption number is 11736850-010-STC. The tangible personal property or services being purchased are being paid from State funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.
15. **WARRANTY:** The Contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The Contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the Contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the State has relied on the Contractor's skill or judgment to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The Contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the Contractor in writing. If the repaired and/or replaced product proves to be

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inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this

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contract.

16. **PUBLIC INFORMATION:** Contractor agrees that the contract, related Sales Orders, and Invoices will be public documents, and may be available for distribution. Contractor gives the State express permission to make copies of the contract, related Sales Orders, and Invoices in accordance with the State of Utah Government Records Access and Management Act (GRAMA). Except for sections identified in writing and expressly approved by the State Division of Purchasing, Contractor also agrees that the Contractor's response to the solicitation will be a public document, and copies may be given to the public under GRAMA laws. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.
17. **DELIVERY:** Unless otherwise specified in this contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State except as to latent defects, fraud and Contractor's warranty obligations.
18. **ORDERING AND INVOICING:** All orders will be shipped promptly in accordance with the delivery schedule. The Contractor will promptly submit invoices (within 30 days of shipment or delivery of services) to the State. The State contract number and/or the agency purchase order number shall be listed on all invoices, freight tickets, and correspondence relating to the contract order. The prices paid by the State will be those prices listed in the contract. The State has the right to adjust or return any invoice reflecting incorrect pricing.
19. **PAYMENT:** Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. All payments to the Contractor will be remitted by mail unless paid by the State of Utah's Purchasing Card (major credit card).
20. **PATENTS, COPYRIGHTS, ETC.:** The Contractor will release, indemnify and hold the State, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this contract.
21. **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 the State.
22. **DEFAULT AND REMEDIES:** Any of the following events will constitute cause for the State to declare Contractor in default of the contract: 1. Nonperformance of contractual requirements; 2. A material breach of any term or condition of this contract. The State will 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 may do one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this contract and any related contracts or portions thereof; 3. Impose liquidated damages, if liquidated damages are listed in the contract; 4. Suspend Contractor from receiving future solicitations.
23. **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. The State may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.
24. **PROCUREMENT ETHICS:** The 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

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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, or who 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 (63G-6-1002, Utah Code Annotated, 1953, as amended).

25. **CONFLICT OF TERMS:** Contractor Terms and Conditions that apply must be in writing and attached to the 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, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be: 1. Attachment A: State of Utah Modified Terms and Conditions; 2. State of Utah Contract Signature Page(s); 3. Attachment C: Department of Technology Services Terms and Conditions; 4. Contractor Terms and Conditions (if any).
26. **ENTIRE AGREEMENT:** This Agreement, including all Attachments, and documents incorporated hereunder, and the related State Solicitation constitutes the entire agreement between the parties with respect to the subject matter, and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written. The terms of this Agreement shall supersede any additional or conflicting terms or provisions that may be set forth or printed on the Contractor's work plans, cost estimate forms, receiving tickets, invoices, or any other related standard forms or documents of the Contractor that may subsequently be used to implement, record, or invoice services hereunder from time to time, even if such standard forms or documents have been signed or initialed by a representative of the State. The parties agree that the terms of this Agreement shall prevail in any dispute between the terms of this Agreement and the terms printed on any such standard forms or documents, and such standard forms or documents shall not be considered written amendments of this Agreement.

(Revision date: 3 Sept 2008)

### **PORPOSED DEPARTMENT OF TECHNOLOGY SERVICES TERMS AND CONDITIONS TO BE USED IN POTENTIAL CONTRACT**

**Attachment C - Department of Technology Services Terms and Conditions:** The State of Utah plans to use the following Department of Technology Services contract terms and conditions (T&C's) in any contracts that may result from this RFP. (Additional State T&C's are described in Attachment A of this RFP, and both will be included in the contract). Please note: For consulting services contracts, clause 11 can be modified in contract negotiations to exclude any "tools" (proprietary vendor software used for consulting services engagements) that the State does not pay to have developed. Also, the background check clause (T&C # 24) for consultants working on state premises is enforced without exception.

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## RFP

### ATTACHMENT "C" TO CONTRACT

#### UTAH DEPARTMENT OF TECHNOLOGY SERVICES (DTS)

#### DEPARTMENT STANDARD TERMS AND CONDITIONS

1. **NOTICE:** Wherever under this contract one party is required to give formal notice to the other, such notice shall be deemed given upon delivery, if delivered by hand (in which case a signed receipt shall be obtained), or three days after date sent if sent by registered or certified mail, return receipt requested. Formal Notices to the Contractor and to the State shall be addressed as follows:

Contractor:

State of Utah:

Contact Person and Contractor Address as      Contracts Manager

Indicated on Signed FI-84 State of Utah      Department of Technology Services Contract

(Cover) Page of this Contract      1 State Office Building, 6<sup>th</sup> Floor

Salt Lake City, Utah 84114

2. **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.
3. **REDUCTION OF FUNDS:** (N/A to Open-Ended Contracts): The maximum amount authorized by this contract shall be reduced or contract terminated if required by Federal/State law, regulation, or action or there is significant under utilization of funds, provided the Contractor shall be reimbursed for all services performed in accordance with this contract prior to date of reduction or termination. If funds are reduced, there will be a comparable reduction in amount of services to be given by the Contractor. The Department will give the Contractor thirty (30) days notice of reduction.
4. **SUSPENSION OF WORK:** Should circumstances arise which would cause the State the need to suspend the work, but not terminate the contract, this will be done by written NOTICE, which meets the NOTICE requirements of this contract. The work may be reinstated upon advance written NOTCIE from the State, to recommence as mutually agreed between the parties. The State understands any such suspension of the work may affect both the time of performance and price to complete the work when reinstated.
5. **WORKERS' COMPENSATION:** The Contractor shall take out, furnish proof, and maintain during the life of this contract workers' compensation insurance for all its employees employed at the site of the project in Utah, and in the event any work is subcontracted, the Contractor agrees to require any of its Subcontractors to similarly provide and furnish proof of workers' compensation insurance for all the latter's employees employed on any site of the project in Utah.

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6. **CONFLICT OF INTEREST WITH STATE EMPLOYEES:** In addition to the provisions of State T&C Clause 5, the Contractor certifies, through the execution of the contract, that no person in the State's employment, directly or through subcontract, will receive any private financial interest, direct or indirect, in the contract. The CONTRACTOR will not hire or subcontract with any person having such conflicting interest.
7. **THIRD PARTY CLAIMS INDEMNIFICATION:** Contractor agrees to indemnify the State against third party claims for infringement for materials created and furnished by Contractor, for claims for death, bodily injury, or tangible property damage.
8. **INVOICES:** Each invoice must contain a unique invoice number and a customer account number, detail of work completed (e.g. time x rate) on the contract. The State reserves the right to correct invoices not in accordance with this Contract.
9. **PAYMENT BY THE STATE / INTEREST ON LATE PAYMENTS:** Payments to the Contractor shall generally be made within thirty (30) days of receipt by the State of an accurate invoice and receipt in Finance of the responsible State Project Manager's certification of acceptable completion of work, presuming receipt by the State of a correct, detailed invoice from the Contractor. Utah's Prompt Payment Act, UCA §15-6-2 requires payment within 60 days after receipt of the invoice covering the delivered items or services. If the State's payment is more than 60 days late, interest shall accrue and be charged on payments overdue starting on the 61<sup>st</sup> day that the State's payment may be overdue, until paid, unless this is a disputed payment. UCA §15-6-3 allows late payment interest at 2% above the rate paid by the IRS on refund claims.

The State's payment of invoices shall be sent via mail, or may be paid electronically at the discretion of the State.

10. **EMPLOYMENT PRACTICES OF CONTRACTOR:** In addition to Employment Practices Clause requirements stated in State T&C Clause 8, the following equal opportunity provisions apply to this contract. The Contractor agrees to abide by the provisions of:

Section 188 of the Workforce Investment Act of 1998 (WIA) (29 USC 2938), which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and against discrimination to beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIA Title I-financially assisted program or activity; and

Title IX of the Education Amendments of 1972 (20 USC 1681 et seq.), as amended, which prohibits discrimination on the basis of sex in education programs.

11. **COPYRIGHT:** The contractor agrees that any and all Deliverables prepared for the Department, to the extent to which it is eligible under copyright law in any country, shall be deemed a work made for hire, such that all rights, title and interest in the work and Deliverables reside with the Department. The Department reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal or State Government purposes, such software, modifications and documentation. To the extent any work or Deliverable is deemed not to be, for any reason whatsoever, work made for hire, Contractor agrees to assign and hereby assigns all right title and interest, including but not limited to copyright patent, trademark and trade secret, to such work and Deliverables, and all extensions and renewals thereof, to Department. Contractor further agrees to provide all assistance reasonably requested by Department in the

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## RFP

establishment, preservation, and enforcement of its rights in such work and Deliverables, without any additional compensation to Contractor. Contractor agrees to and

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hereby, to the extent permissible, waives all legal and equitable rights relating to the work and Deliverables, including without limitation any and all rights of identification of authorship and any and all rights of approval, restriction or limitation on use or subsequent modifications.

12. **LIABILITY INSURANCE:** The Contractor agrees to provide and to maintain during the performance of the contract, at its sole expense, a policy of liability insurance. The limits of the policy shall be no less than \$500,000.00 for each occurrence and \$1,000,000.00 aggregate. The Contractor further agrees to provide the Contracts Manager for the Department of Technology Services with proof of adequate insurance coverage, in accordance with the NOTICE provisions of this contract.

It shall be the responsibility of the Contractor to require any of their Subcontractor(s) to secure the same insurance coverage as prescribed herein for the Contractor. Evidence of the subcontractor's insurance coverage shall also be provided to the Contracts Manager for the Department of Technology Services, also in compliance with the NOTICE provisions of this contract.

13. **CITING DEPARTMENT IN ADVERTISING / PUBLICITY:** The Contractor agrees to give credit to the Department of Technology Services (DTS) and the Utah Department of Public Safety for funding in all written and verbal advertising or discussion of this program such as brochures, flyers, informational materials, talk shows, etc. All formal advertising or public information programs will be coordinated with the DTS Public Information Officer. Any publicity given to the project or services provided herein shall identify the Department of Technology Services as sponsoring agency and shall not be released without prior written approval by the DTS Project Manager.
14. **STATE AGENCY WEB SITE BRANDING:** The Contractor agrees to allow the Department of Technology Services to utilize its DTS logo, or a newer version if replaced in the future, on websites produced under terms of this contract. Contractor further agrees to allow state agencies that DTS is ultimately providing consulting services for, such as UDOT, Health, Tax Commission, etc. to also utilize their own Department web site branding and logo, if requested by that state agency.
15. **DRUG-FREE WORKPLACE:** The Contractor understands that the Department provides a drug-free workplace in accordance with all federal and state laws and regulations. The Contractor agrees to abide by the Department's drug-free workplace policies while on State of Utah premises and the Department of Technology Services will provide the Contractor with a copy of these written "drug-free workplace policies".
16. **OVERPAYMENT / UNDERPAYMENT AUDIT EXCEPTIONS / ADJUSTMENTS / DISALLOWANCES:** The Contractor agrees that if during or subsequent to the contract performance, a CPA audit, or a State agency audit determines that payments were incorrectly reported or paid, the Department may adjust the payments. In contracts, which include a cost reimbursement budget, Contractor expenditures to be eligible for reimbursement must be adequately documented. The Contractor will, upon written request, immediately refund any overpayments determined by audit and for which payment has been made to the contractor, to the Department. The Contractor further agrees that the Department shall have the right to withhold any or all-subsequent payments under this or other contracts that the Contractor may have with the State until recoupment of overpayment is made. The Department agrees to promptly notify the Contractor in the event any underpayments on this contract are discovered.

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17. OWNERSHIP, PROTECTION, AND USE OF STATE OF UTAH, STATE OF UTAH CLIENT, OR STATE OF UTAH EMPLOYEE RECORDS: Except for confidential medical records held by direct care providers, the State shall own exclusive title to all information gathered, reports developed, and conclusions reached in performance of this Contract. The Contractor may not use, except in meeting its obligations under this contract,

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information gathered, reports developed, or conclusions reached in performance of this Contract without the express written consent of the State. The improper use or disclosure by any party 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 the Department, or the Contractor's responsibilities with respect to services purchased under this agreement, is prohibited except on written consent of the state agency employee, state agency client, their attorney, or their responsible parent or guardian. The Contractor will be required to sign a Confidential Information Certification form in situations where they will be given access to confidential computerized records. The Contractor agrees to maintain the confidentiality of records it holds as agent for the State as required by GRAMA, or other applicable federal or state law. 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 the Contractor under the Contract. The Contractor, and any subcontractors under its control, expressly agrees not to use confidential client, or confidential federal, state, or local government data furnished for purposes of contract performance, without prior written permission from the Project Manager for the Department of Technology Services, and appropriate officials of the State Agency.

18. OWNERSHIP, PROTECTION, AND USE OF CONFIDENTIAL FEDERAL, STATE, OR LOCAL GOVERNMENT INTERNAL BUSINESS PROCESSES AND PROCEDURES: 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 the Contractor, Contractor's employees, or their Subcontractors, unless prior written consent has been obtained in advance from the Project Manager for the Department of Technology Services.

19. 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 the STATE and must be delivered to the STATE within 10 working days after termination or completion of the 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 clause must either be in the format as originally provided, or in a format that is readily usable by the State or that can be formatted in a way that it can be used. Costs for all of these described items will be considered as included in the basic contract compensation of the work described.

20. CODE OF CONDUCT: The Contractor agrees to follow and enforce the Department of Technology Services Code of Conduct. If Contractor is working at facilities controlled by other State agencies, Contractor agrees to follow and enforce the Code of Conduct of these other State Agencies when Contractor is providing services at these facilities under provisions of this contract. The Contractor will assure that each employee or volunteer under Contractor's supervision receives a copy of such Code of Conduct, and a signed statement to this effect must be in each Contractor or Subcontractor employee's/volunteer's file and is subject to inspection and review by the Department monitors. Department of Technology Services agrees to provide Contractor with a copy of any applicable codes of conduct. If a Contractor or Subcontractor is working at any state agency which has a Code of Conduct applicable to this Contract, the Department of Technology Services Project Manager will provide Contractor with a copy in advance of Contractor's on-site contract services performance.

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21. **TERMINATION UPON DEFAULT:** In the event this contract is terminated as a result of a default by the Contractor, the Department may procure or otherwise obtain, upon such terms and conditions as the Department deems appropriate, services similar to those terminated, and Contractor shall be liable to the Department for any and

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all damages arising there from, including, but not limited to, attorneys' fees and excess costs incurred by the Department in obtaining similar services..

22. **CONTRACTOR'S RESPONSIBILITIES / QUALITY OF WORK:** The Department will enter into contractual agreement with the Contractor only. The Contractor shall be responsible for all services as required by the RFP/bid. Contractor warrants that all services shall be performed in a professional and workmanlike manner consistent with best industry practice and in accordance with the Statement of Work.
23. **PAYMENT WITHHOLDING:** The Contractor agrees that the adequate reporting, record keeping, and compliance requirements specified in this contract are a material element of performance and that if, in the opinion of the Department, the Contractor's record keeping practices, compliance, and/or reporting to the Department are not conducted in a timely and satisfactory manner, the Department may withhold part or all payments under this or any other contract until such deficiencies have been remedied. This includes, but is not limited to, Contractor's failure to timely provide to the Department of Technology Services Contracts Manager the Contractor's proof of adequate insurance coverage, or 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, the Department agrees to provide ten (10) day advance NOTICE to the 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.
24. **CONTRACTOR ACCESS TO SECURE STATE FACILITIES / CRIMINAL CONVICTION INFORMATION / FORMER FELONS:** The Contractor shall provide (at its own expense) the Department with sufficient personal information about its agents or employees, and the agents and employees of its subcontractors (if any) who will enter upon secure premises controlled, held, leased, or occupied by the State during the course of performing this contract so as to facilitate a criminal record check, at state expense, on such personnel by the Department. "Sufficient personal information" about its agents or employees, and the agents and employees of its subcontractors (if any) means for the Contractor to provide to the State Project Manager, in advance of any on-site work, a list of the full names of the designated employees, including their social security number, driver license number and state of issuance, and their birth date. Thereafter, on their first site visit, each contractor employee expected to work onsite shall be fingerprinted by the State, and the State is authorized to conduct a federal criminal background check based upon those fingerprints and personal information provided. Contractor, in executing any duty or exercising any right under this contract, shall not cause or permit any of its agents or employees, and the agents and employees of its subcontractors (if any) who have been convicted of a felony and certain misdemeanors to enter upon any premises controlled, held, leased, or occupied by the Department. A felony and misdemeanor are defined by the jurisdiction of the State of Utah, regardless of where the conviction occurred. (July 1, 2008 version)

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## Question and Answers for Bid #JG9031 - Facial Recognition Software

### OVERALL BID QUESTIONS

There are no questions associated with this bid. If you would like to submit a question, please click on the "Create New Question" button below.



## MODIFIED HUMMINGBIRD COMMUNICATIONS SOFTWARE LICENSE AGREEMENT

**Unlimited-Users License Grant:** Hummingbird Communications ("Hummingbird") grants to Customer (State of Utah) a nonexclusive and nontransferable license to use the Hummingbird software, Fusion Center Image Investigation System with 28CFR Case Tracking in object code form: (i) installed in a single location on hard disks or other storage devices of up to the number of computers owned or leased by the State of Utah Fusion Center. Customer may make one (1) archival copy of the Software provided Customer affixes to such copy all copyright, confidentiality, and proprietary notices that appear on the original. Customer must agree purchase software maintenance after the warranty period, years 2 thru 5.

EXCEPT AS EXPRESSLY AUTHORIZED ABOVE, CUSTOMER SHALL NOT: COPY, IN WHOLE OR IN PART, SOFTWARE OR DOCUMENTATION; MODIFY THE SOFTWARE; REVERSE COMPILE OR REVERSE ASSEMBLE ALL OR ANY PORTION OF THE SOFTWARE; OR RENT, LEASE, DISTRIBUTE, SELL, OR CREATE DERIVATIVE WORKS OF THE SOFTWARE.

Customer agrees that aspects of the licensed materials, including the specific design and structure of individual programs, constitute trade secrets and/or copyrighted material of Hummingbird. Customer agrees not to disclose, provide, or otherwise make available such trade secrets or copyrighted material in any form to any third party without the prior written consent of Hummingbird. Customer agrees to implement reasonable security measures to protect such trade secrets and copyrighted material. Title to Software and documentation shall remain solely with Hummingbird.

LIMITED WARRANTY. Hummingbird warrants that for a period of three hundred sixty five (365) days from the date of shipment from Hummingbird: (i) the media on which the Software is furnished will be free of defects in materials and workmanship under normal use; and (ii) the Software substantially conforms to its published specifications. Except for the foregoing, the Software is provided AS IS. This limited warranty extends only to Customer as the original licensee. Customer's exclusive remedy and the entire liability of Hummingbird and its suppliers under this limited warranty will be, at Hummingbird or its service center's option, repair, replacement, or refund of the Software if reported (or, upon request, returned) to the party supplying the Software to Customer. In no event does Hummingbird warrant that the Software is error free or that Customer will be able to operate the Software without problems or interruptions.

This warranty does not apply if the software (a) has been altered, except by Hummingbird, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Hummingbird, (c) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident, or (d) is used in ultra-hazardous activities.

IN NO EVENT WILL HUMMINGBIRD OR ITS SUPPLIERS BE LIABLE FOR ANY LOST REVENUE, PROFIT, OR DATA, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY ARISING OUT OF

THE USE OF OR INABILITY TO USE THE SOFTWARE EVEN IF HUMMINGBIRD OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. In no event shall Hummingbird's or its suppliers' liability to Customer, whether in contract, tort (including negligence), or otherwise, exceed the price paid by Customer. The foregoing limitations shall apply even if the above-stated warranty fails of its essential purpose.

The above warranty DOES NOT apply to any beta software, any software made available for testing or demonstration purposes, any temporary software modules or any software for which Hummingbird does not receive a license fee. All such software products are provided AS IS without any warranty whatsoever.

This License is effective until terminated. Customer may terminate this License at any time by destroying all copies of Software including any documentation. This License will terminate immediately without notice from Hummingbird if Customer fails to comply with any provision of this License. Upon termination, Customer must destroy all copies of Software.

Software, including technical data, is subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Customer agrees to comply strictly with all such regulations and acknowledges that it has the responsibility to obtain licenses to export, re-export, or import Software.

This License shall be governed by and construed in accordance with the laws of the State of Utah, United States of America, as if performed wholly within the state and without giving effect to the principles of conflict of law. If any portion hereof is found to be void or unenforceable, the remaining provisions of this License shall remain in full force and effect.

**MODIFIED HUMMINGBIRD COMMUNICATIONS  
SOFTWARE MAINTENANCE AGREEMENT**

This Software Maintenance Agreement is entered into on the 22nd of December 2008 (the "Maintenance Agreement") between the Hummingbird Communications ("Hummingbird"), hereinafter referred to as "the PROVIDER," and the State of Utah, hereinafter referred to as "the RECIPIENT."

WHEREAS, the PROVIDER, are developers of the SOFTWARE and Support Materials identified as Hummingbird Fusion Center Image Investigation System with 28CFR Case Tracking Software.

WHEREAS, the RECIPIENT has evaluated the SOFTWARE and has expressed interest in using this system; and

WHEREAS, the RECIPIENT wishes to engage the PROVIDER to perform various maintenance services in connection with the SOFTWARE and Support Materials and the PROVIDER desires to provide such maintenance services;

WHEREAS, the RECIPIENT has executed the License Agreement for the SOFTWARE; and

NOW THEREFORE, in consideration of the mutual promises and agreements set forth in this Maintenance Agreement, PROVIDER and RECIPIENT agree as follows:

**1. Maintenance Services**

In accordance with the terms of this Maintenance Agreement, the PROVIDER will furnish the installation, support for the SOFTWARE.

**Coverage of Maintenance Agreement**

The SOFTWARE covered by this Maintenance Agreement is as follows:  
Hummingbird Fusion Center Image Investigation System with 28CFR Case Tracking

The manuals, handbooks, and other written materials furnished by the PROVIDER for use with the SOFTWARE (the "Documentation") are:

- ③ User's Manual

**Support Policy Descriptions**

In accordance with the terms of this Maintenance Agreement, the PROVIDER will furnish one or more of the following support services (the "Services") for the SOFTWARE. *Installation and Basic Operation* support is required. The remaining available support services can optionally be added for supplementary coverage.

State of Utah - Hummingbird Communications Contract Attachment F

**Support Policy #1: Installation and Basic Operation (Required)**

Support for the proper installation of the current release of the SOFTWARE, and any subsequent patches or updates to the version, on an unlimited number of workstations and servers, provided the servers meet Hummingbird's minimum configuration requirements.

**Customized Project (Optional)**

At RECIPIENT's request, the PROVIDER will consider developing modifications or additions that materially change the utility, efficiency, functional capability, or application of the SOFTWARE ("Enhancements") at such charge and on such schedule as the parties may mutually agree in writing. One example would be to customize Condor in order to transform it into a turn-key opportunistic high throughput environment for a specific application.

**Training**

The PROVIDER will provide 5 days on site standard training sessions in the use of the SOFTWARE per Term or Renewal Term for RECIPIENT's personnel at such time and location as the parties may mutually agree.

**"Hotline" Support for contacting the PROVIDER**

The PROVIDER will provide the following communication mechanisms for the RECIPIENT to use when asking for support:

**(a) Telephone Support.** PROVIDER shall maintain a telephone hotline during regular business hours (8 a.m. to 4:30 p.m. Monday-Friday Arizona-Time) to assist RECIPIENT in reporting errors.

**(b) Internet Email.** PROVIDER shall maintain an email address for the express purpose of providing contracted support.

**Limitations on Hot-line support**

RECIPIENT agrees that its point of contact for maintenance and support of the SOFTWARE will be limited to two (2) designated employees of RECIPIENT at any one

time, who will act as the support liaison between the PROVIDER and RECIPIENT, and that hotline support services for the SOFTWARE subject to this Maintenance Agreement will be available to RECIPIENT through electronic mail communication or by telephone.

**Timeliness of Incident Resolution**

PROVIDER shall use reasonable effort to provide modifications or additions to correct errors in the SOFTWARE reported by RECIPIENT under the conditions described in Section 5, "RECIPIENT Support." Upon receipt of notice of an error, PROVIDER will assign a priority level as determined by the RECIPIENT to the error according to the following criteria:

**Priority A** – An error that results in the SOFTWARE being substantially or completely nonfunctional or inoperative.

**Priority B** – An error that results in the SOFTWARE operating or performing other than as represented in the Documentation, but which does not have a material adverse impact on the performance of the SOFTWARE.

**New Releases**

The PROVIDER shall be responsible for providing technical support and correcting errors for the most recent release of the SOFTWARE provided to RECIPIENT; additionally, the PROVIDER shall continue to support only the current release. The RECIPIENT will be entitled to any new features and enhancements made to the Fusion Center Image Investigation System with 28 CFR Case Tracking

**Fee Assessment**

	<b>Annual Cost</b>	<b>Minimum Length of Agreement</b>
Support Policy Installation and Basic Operation (Required)	\$12,000.00 per year	12 months
	\$48,000.00	Years 2 thru 5

Total Annual Maintenance Fee for the Initial Term of this Maintenance Agreement:

Commencement Date: The date on which services under this Maintenance Agreement shall begin is the date the contract is signed.

The Initial Term and Renewal Term of this Maintenance Agreement shall be:

Initial Term: Year 1 (Included-No Charge)

Contract Term: (4 Years) Years 2 thru 5.

Renewal Term: After Year 5, pricing to be agreed upon by both parties

**2. Maintenance Fee and Expenses**

RECIPIENT will pay the PROVIDER the fee(s) set forth in this Maintenance Agreement on the Contract Commencement Date in years 2-5. The cost of software maintenance is fixed for years 2-5 at a rate of \$12,000.00 per year.

RECIPIENT shall pay the PROVIDER for agreed upon services outside the scope of this Maintenance Agreement on a time and material basis at the PROVIDER's then prevailing rates, and only with RECIPIENT's prior written approval. RECIPIENT is responsible for the payment of any taxes assessed in connection with payments due under this Maintenance Agreement except for any tax based solely on the PROVIDER's net income.

Upon RECIPIENT's prior written approval, RECIPIENT shall reimburse the PROVIDER for any and all reasonable travel and living expenses incurred by the PROVIDER in performing services outside the scope of this Maintenance Agreement. These expenses shall be billed to RECIPIENT, and RECIPIENT shall pay these billings within forty-five (45) days of the date such services were rendered.

### **3. Term and Termination**

(a) **Term.** This Maintenance Agreement shall commence on the contract state date indicated on the contract signature page of the contract between Hummingbird and the State of Utah, and continue as indicated on the contract signature page. This Maintenance Agreement shall thereafter renew for successive periods as agreed upon by the parties. All terms and conditions of this Maintenance Agreement shall apply during the Renewal Term.

(b) **Termination.** This Maintenance Agreement shall terminate (i) immediately upon termination or expiration of RECIPIENT's right to use the SOFTWARE; (ii) upon expiration of the then-current term, provided that contract termination is made in accordance with Contract Attachment A: State T&C # 12 or Contract Attachment C: DTS T&C # 21 (iii) or upon thirty (30) days advance written notice if the other party has breached this Maintenance Agreement and has not cured such breach within such notice period.

### **4. Warranty and Remedies**

The PROVIDER warrants that it will use reasonable efforts to perform the services to conform to generally accepted industry standards, provided that: (a) the SOFTWARE has not been modified, changed, or altered by anyone other than the PROVIDER; (b) the operating environment, including both hardware and systems software, meets the PROVIDER's recommended specifications; (c) the computer hardware is in good operational order and is installed in a suitable operating environment; (d) RECIPIENT promptly notifies the PROVIDER of its need for service; (e) RECIPIENT provides adequate troubleshooting information and access so that the PROVIDER can identify and address problems; and (f) all fees due to the PROVIDER have been paid.

THERE ARE NO OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS

OR IMPLIED, WITH RESPECT TO THIS MAINTENANCE AGREEMENT, AND

State of Utah - Hummingbird Communications Contract Attachment F

THE SERVICES TO BE PROVIDED BY THE PROVIDER UNDER IT INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

RECIPIENT ACKNOWLEDGES AND AGREES THAT UNDER NO CIRCUMSTANCES SHALL HUMMINGBIRD BE LIABLE FOR ANY LOSS, COST, EXPENSE, OR DAMAGE TO RECIPIENT IN AN AMOUNT THAT COLLECTIVELY EXCEEDS THE ANNUAL MAINTENANCE FEE. END USER ACKNOWLEDGES AND AGREES THAT THE PROVIDER, SHALL NOT BE LIABLE TO END USER FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL, CONSEQUENTIAL DAMAGES OR SIMILAR DAMAGES, INCLUDING ANY LOST PROFITS OR LOST DATA ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE.

RECIPIENT WILL INDEMNIFY, DEFEND, AND HOLD HARMLESS PROVIDER, ITS FACULTY, STAFF, STUDENTS, OR REGENTS AGAINST ANY LOSS, DAMAGE, EXPENSE, OR COST, INCLUDING REASONABLE ATTORNEYS' FEES, ARISING OUT OF ANY CLAIM, DEMAND, PROCEEDING OR LAWSUIT RELATED TO RECIPIENT'S UNAUTHORIZED USE OR MISUSE OF THE SOFTWARE.

## **5. Recipient Support**

The level of support that the PROVIDER can provide is dependent upon the cooperation of RECIPIENT and the quantity of information that RECIPIENT can provide.

If the PROVIDER cannot reproduce a problem or if the RECIPIENT cannot successfully gather adequate troubleshooting information, the PROVIDER may need to travel to the site, if the problem turns out to be something unrelated to the PROVIDER's software, the RECIPIENT may be required to pay the PROVIDER'S out of pocket expenses.

## **6. Recipient Responsibility**



The RECIPIENT shall not distribute the SOFTWARE to any third party. The RECIPIENT shall not make any modifications to the SOFTWARE, unless otherwise allowed under the License Agreement.

## **7. Right to Work Product**

All error corrections, enhancements, new releases, and any other work product created by the PROVIDER creator(s) in connection with the support services

provided under this Maintenance Agreement ("Work Product") are and shall remain the exclusive property of the PROVIDER or the PROVIDER creator(s), regardless of whether the RECIPIENT, its employees, or agents may have contributed to the conception, joined in its development, or paid the PROVIDER for the development or use of the Work Product. Such Work Product shall be considered SOFTWARE, and subject to the terms and conditions contained herein and in the License Agreement.

#### 8. General

- (a) This Maintenance Agreement may not be modified or altered except by a written instrument duly executed by both parties.
- (b) This Maintenance Agreement and performance hereunder shall be governed by and construed in accordance with the laws of the State of UTAH without regard to its conflict of laws rules.
- (c) If any provision of this Maintenance Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.
- (d) The RECIPIENT may not subcontract, assign, or transfer its rights, duties or obligations under this Maintenance Agreement to any person or entity, in whole or in part, without the prior written consent of the PROVIDER.
- (e) The waiver or failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further right hereunder.

RECIPIENT ACKNOWLEDGES THAT END USER HAS READ THIS MAINTENANCE AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE LEGALLY BOUND BY IT.

WHEREFORE, the parties have caused this Maintenance Agreement to be executed by their duly authorized representatives.



Hummingbird Communications

By: *Steve Gischer*

Title: *CEO*

Date: *12/22/2008*



State of Utah

By: *STEPHEN FLETCHER*

Title: *STATE CIO*

Date: *12/22/2008*

### CLAIM OF BUSINESS CONFIDENTIALITY

Pursuant to Utah Code Ann., Subsections 63-2-304(1) and (2), and in accordance with Section 63-2-308, Hummingbird Communications (company name) asserts a claim of business confidentiality to protect the following information submitted as part of a Request for Proposals.

This claim is asserted because this information requires protection as it includes:

trade secrets as defined in Section 13-24-2 ("Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy).


commercial information or non-individual financial information obtained from a person if: (a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future; [and] (b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access.

This statement of reasons supporting the claim of business confidentiality applies to the following information in this proposal:

Page	Paragraph	Reason
4 thru 18	ALL	Trade Secrets
22-41	ALL	Trade Secrets)
43-60	ALL	Trade Secrets
61-63	ALL	References of Individuals in Law Enforcement (Need to Know Only

Please use additional sheets if needed.

You will be notified if a record claimed to be protected herein under Utah Code Ann. § 63-2-304(1) or (2) is classified public or if the governmental entity determines that the record should be released after balancing interests under Utah Code Ann. § 63-2-201(5)(b) or Utah Code Ann. § 63-2-401(6). See Utah Code Ann. § 63-2-308.

Signed: 

Date:  
November 22, 2008

Steven Greschner, CEO Hummingbird Communications  
Printed Name and Title



# Utah Statewide Information & Analysis Center

## Information Privacy Policy

### **Mission**

The Statewide Information and Analysis Center (SIAC) is a public safety partnership designed to appropriately collect, analyze, and disseminate intelligence to enhance the protection of Utah's citizens, communities, and critical infrastructure.

### **Purpose**

The SIAC Information Privacy Policy ("Privacy Policy") establishes authoritative guidelines and procedures for the roles and responsibilities of SIAC staff and partners, to include users of any SIAC maintained technology systems, regarding the manner in which information is sought, collected, handled, stored, retained, archived, accessed, disseminated and purged; and disclosed within the SIAC, as well as with other governmental entities, private entities, and the general public; in order to enforce strict protection of the privacy rights, civil rights, and civil liberties enjoyed by United States citizens under federal and state law.

### **Statutory Authority**

The Utah Department of Public Safety is granted statutory authority under Utah Code Ann. §53-10-302 to:

- A. Upon request, provide assistance and specialized law enforcement services to local law enforcement agencies [53-10-302 (1)].
- B. Conduct financial investigations regarding suspicious cash transactions, fraud, and money laundering [53-10-302 (2)].

- C. Investigate organized crime, extremist groups, and others promoting violence [53-10-302 (3)].
- D. Investigate criminal activity of terrorist groups [53-10-302 (4)].
- E. Cooperate and exchange information with other (Utah) state agencies and with other law enforcement agencies of government, both within and outside of the state, to obtain information that may achieve more effective results in the prevention, detection, and control of crime and apprehension of criminals [53-10-302 (6)].
- F. Create and maintain a statewide criminal intelligence system [53-10-302 (7)] as defined in 28 CFR Part 23.3 b (1).
- G. Provide specialized case support and investigate illegal drug production, cultivation, and sales [53-10-302 (8)].
- H. Investigate, follow-up, and assist in highway drug interdiction cases [53-10- 302 (9)].

### **Policy Applicability and Legal Compliance**

This Privacy Policy applies to information about individuals and organizations obtained by the SIAC in furtherance of its analytical mission. In adopting this Privacy Policy, the SIAC shall implement it as an internal operating policy, along with other necessary policies and applicable laws protecting privacy, civil rights, and civil liberties.

This Privacy Policy provides authoritative guidance and direction, and establishes the policies and procedures regarding the manner in which information is collected, received, maintained, stored, accessed, disclosed, or disseminated to SIAC personnel, governmental agencies ,private contractors, private entities, and the general public.

All other information which furthers an administrative or other non-analytical purpose (such as personnel files, or information regarding fiscal, regulatory, or other matters associated with the operation of the SIAC as a governmental entity) or which does not identify an individual or organization will not be governed by this policy, but will be handled in a manner which complies with all applicable privacy laws, regulations, and internal policies.

All SIAC users including assigned or detailed personnel, information technology service providers, private contractors, and other authorized participants in any SIAC operational component shall be provided with a copy and comply with this Privacy Policy and all applicable laws protecting privacy, civil rights, and civil liberties.

### **Governance and Oversight**

The Utah Department of Public Safety has the primary responsibility for the operation of the SIAC.

A Governance Board, established by the Utah Department of Public Safety:

- A. provides oversight of SIAC operations,
- B. is responsible for the review and approval of all SIAC policies including the Privacy Policy,

- C. is responsible for ensuring audits of all SIAC records for compliance with the Privacy Policy and applicable laws, and
- D. may recommend the suspension of a participant agency for due cause and recommend, if appropriate, the reinstatement of a suspended participant agency.

The SIAC Bureau Chief will designate a trained Privacy Officer who is responsible for handling reported errors and violations. The Privacy Officer will be the focal point for ensuring that the SIAC adheres to the Privacy Policy. The SIAC Bureau Chief, with the assistance of the SIAC Privacy Officer, shall retain responsibility for ensuring that the Privacy Policy is rigorously implemented reviewed, and updated annually.

The designated Privacy Officer can be contacted at [SIAC@utah.gov](mailto:SIAC@utah.gov) or 801.256.2360.

### **Retention of Information**

The primary sources of information to the SIAC are other governmental entities, including other Utah law enforcement agencies and SIAC Intelligence Liaison Officers, various information systems operated by governmental entities, and searches of publicly available records including those accessible through the Internet.

The SIAC will only seek, collect, or retain information that was collected in a fair and lawful manner and is:

- A. Based on reasonable suspicion that an individual or organization has committed or is involved in, supporting, facilitating or planning a criminal offense or criminal (including terrorist) conduct.
- B. Relevant to the assessment of criminal information; investigation and prosecution of suspected criminal (including terrorist) incidents; the resulting justice system response; the enforcement of sanctions, orders, or sentences; or the prevention of crime.
- C. Useful in a crime or threat analysis or otherwise in furtherance of the public safety or homeland security responsibilities of the SIAC; provided that the source of the information is reliable or limitations on the quality of the information have been identified.

The SIAC will not directly or indirectly seek, retain, or accept information about individuals or organizations solely on the basis of their religious, political, or social views or activities; their participation in a particular noncriminal organization or lawful event; or their races, ethnicities, citizenship, places of origin, ages, disabilities, genders, or sexual orientations. Such information will only be sought, collected and retained if it is:

- A. Relevant to whether an individual or organization has engaged in, is engaging in, or is planning criminal (including terrorist) activity.
- B. Relevant to ongoing law enforcement investigations or emergency situations.

- C. Needed by the SIAC or partner agencies to identify an individual or to provide services to the individual or accommodate an individual's religious, ethnic, or cultural requests or obligations.

### **Classification of Information Regarding Validity and Reliability**

SIAC personnel will, upon receipt of information, assess the information to determine its nature, usability, and quality. As appropriate, personnel will classify the information (or ensure that the originating agency has classified the information) as outlined in the SIAC Standard Operating Procedures.

Such classification requirements do not apply to analytical products and other information obtained from or originated by a federal, state, or local entity that has itself evaluated the validity and reliability of information in accordance with these principles or the conventions of the intelligence and law enforcement communities.

The classification of existing information will be re-evaluated and updated when new information is gathered that has an impact on the validity and reliability of retained information.

### **Tips, Leads and Suspicious Activities Reports**

The SIAC routinely receives tips, leads, and suspicious activity reports (SAR). SIAC personnel evaluate and assess the information and, where appropriate, forward it to partner agencies in accordance with applicable SIAC policies and procedures for a valid public safety or law enforcement purpose. The SIAC adheres to national standards for the suspicious activity reporting process, including the use of a standard reporting format and commonly accepted data collection codes and a sharing process that complies with the Information Sharing Environment (ISE) Functional Standard for suspicious activity reporting.

SIAC personnel are required to adhere to the following practices and procedures for the receipt, collection, assessment, storage, access, dissemination, retention, and security of tips, leads and SAR information. SIAC personnel will:

- A. prior to allowing access to or dissemination of the information, ensure that attempts to validate or refute the information have taken place and that the information has been assessed for sensitivity and confidence by subjecting it to an evaluation or screening process to determine its credibility and value, and categorize the information as unsubstantiated or uncorroborated if attempts to validate or determine the reliability of the information have been unsuccessful;
- B. store the information using the same storage method used for data that rises to the level of reasonable suspicion and includes an audit and inspection process, supporting documentation, and labeling of the data to distinguish it from other information;
- C. allow access to or disseminate the information using the same (or a more restrictive) access or dissemination method that is used for data that rises to the level of reasonable suspicion (e.g., "need-to-know" and "right-to-know" access or dissemination);

- D. regularly provide access to or disseminate the information in response to an interagency inquiry for law enforcement, homeland security, or public safety and analytical purposes, or provide an assessment of the information to any agency, entity, individual, or the public when credible information indicates potential imminent danger to life or property.

The SIAC's SAR process includes safeguards to ensure, to the greatest degree possible, that only information regarding individuals involved in activities that have been determined to be consistent with criminal or terrorism activities will be documented and shared through the ISE, eGuardian, and the SAR Data Repository. These safeguards are intended to ensure that information that could violate civil rights and civil liberties will not be intentionally or inadvertently gathered, documented, processed, and shared.

SAR information submitted into an external SAR repository, such as ISE, eGuardian, or SAR Data Repository retained by the SIAC will be accessed by or disseminated only to persons within the SIAC or, as expressly approved by the appropriate authority for the applicable SAR repository, to include users of the system who are authorized to have access and need the information for specific purposes authorized by law. Access and disclosure of personal information will only be allowed to agencies and individual users that comply with the principles set forth in 28 CFR Part 23, need access to the information for legitimate law enforcement and public protection purposes, and will use the information only for the performance of official duties in accordance with law.

#### **Information Quality Assurance**

The SIAC will make every reasonable effort to ensure that information sought or retained is:

- A. derived from dependable and trustworthy sources of information,
- B. accurate,
- C. current/relevant,
- D. complete, and
- E. merged with other information about the same individual or organization only when the applicable standard has been met.

Such standards must be met when records are used to make any determination about an individual. The SIAC shall notify recipient agencies if information provided by the SIAC is determined to be inaccurate, incomplete, includes incorrectly merged information, is out of date, cannot be verified, or lacks adequate context such that the rights of the subject individual may be affected.

SIAC personnel will appropriately review all information to ensure its suitability and approve or deny its retention prior to the information being retained within any SIAC system.

The classifying of retained information will be reevaluated when new information is gathered that has an impact on the SIAC's confidence in the validity or reliability of retained information.



The SIAC requires certain basic descriptive information to be entered and electronically associated with data (or content) that is to be accessed, used, and disclosed, including:

- A. the name of the originating department, component, and subcomponent;
- B. the date the information was collected, and where feasible, the date its accuracy was last verified;
- C. the title and contact information for the person to who questions regarding the information should be directed; and
- D. articulation of an authorized law enforcement purpose for collecting and retaining the information.

The SIAC will attach (or ensure that the originating agency has attached) specific labels and descriptive metadata to information that will be used, accessed, or disseminated to clearly indicate any legal restrictions on information sharing based on information sensitivity or classification.

The SIAC shall keep a record of all sources of information retained. In this context, "source" refers to the individual or entity which provided the information to the SIAC. If the source is an agency, governmental entity, or other organization, such as a corporation or association, this requirement can be met by maintaining the name of the agency, governmental entity, or organization, as long as the specific unit of that agency, governmental entity, or organization which provided the information is identified.

### **Acquiring and Receiving Information**

The SIAC will comply with applicable accepted information gathering (acquisition and access) and investigative techniques as outlined in 28 CFR Part 23 regarding criminal intelligence information, and require similar compliance from information-originating agencies.

External agencies that access and share information with the SIAC are governed by the laws and rules governing those individual agencies, as well as by applicable federal and state laws.

The SIAC will contract only with commercial database entities that demonstrate that their methods for gathering personally identifiable information comply with applicable local, state, tribal, territorial, and federal laws, statutes, and regulations and that these methods are not based on misleading information collection practices.

The SIAC will not directly or indirectly receive, seek, accept, or retain information from an individual or nongovernment information provider if the SIAC knows or has reason to believe that the individual or information provider is legally prohibited from obtaining the specific information sought or disclosing it to the SIAC.

Information acquired, received or accessed by the SIAC from other sources will only be analyzed:

- A. by qualified individuals who have successfully completed a background check and appropriate security clearance, if applicable, and have been selected, approved, and trained accordingly;
- B. to further crime (including terrorism) prevention, enforcement, force deployment, or prosecution objectives and priorities established by the SIAC and partner agencies;
- C. to provide tactical and/or strategic intelligence on the existence, identification, and capability of individuals and organizations suspected of having engaged in or engaging in criminal (including terrorist) activities;
- D. to provide threat and risk assessments from which local, state, and federal agency leadership can base decisions (i.e., enhance/reduce security postures, prioritize and allocate resources, and increase awareness).

### **Merging of Information from Different Sources**

Personal identifying information sufficient to allow merging will utilize reasonable steps to identify the subject and may include the name (full or partial) and, in most cases, one or more of the following: date of birth; law enforcement or corrections system identification number; individual identifiers, such as fingerprints, photographs, physical description, height, weight, eye and hair color, race, ethnicity, tattoos, or scars; social security number; driver's license number; or other biometrics, such as DNA, retinal scan, or facial recognition. The identifiers or characteristics that, when combined, could clearly establish that the information from multiple records is about the same individual or organization may include the name, federal or state tax ID number, office address, and telephone number.

### **Information Sharing, Dissemination, and Disclosure**

Access to or disclosure of records retained by the SIAC will be provided only to persons within the SIAC or in other governmental agencies who are authorized to have access and have a legitimate law enforcement, public protection, public prosecution, public health or justice purpose pursuant to Utah Code Ann. § 63G-2-206. Additionally, such disclosure or access shall only be granted for the performance of official duties in accordance with law and procedures applicable to the agency for which the person is employed. An audit trail will be kept of access by or dissemination of information to such persons.

The SIAC will comply with court orders for dissemination issued in compliance with Utah Code Ann. § 63G-2-207. Records of all such orders and information disclosed shall be kept.

### **Sharing Information with Those Responsible for Public Protection, Safety, or Public Health**

Information retained by the SIAC may be accessed or disseminated to those responsible for public protection, safety, or public health only for public protection, safety, or public health purposes and only in the performance of official duties in accordance with applicable laws and procedures.

Criminal intelligence information may be disseminated to law enforcement, homeland security, or counterterrorism agencies for any type of investigative, preventive, or intelligence activity when the information falls within the law enforcement, counterterrorism, or national security responsibility of the receiving agency; or, may assist in preventing a crime or the use of violence, or any conduct dangerous to human life or property; or, to officials within the U.S. Department of Justice Office of Justice Programs when they are monitoring or auditing the SIAC's compliance with 28 CFR Part 23. Participating agencies that access information from the SIAC must comply with all applicable dissemination limitations or practices imposed by the SIAC or the originator of the information.

An audit trail will be kept of the access by or dissemination of information to such persons.

Nothing in this policy shall limit the dissemination, including unsolicited, of an assessment of criminal intelligence information to a government official or to any other individual, when necessary to avoid danger to life or property.

#### **Sharing Information for Specific Purposes**

Information gathered and records retained by the SIAC may be accessed or disseminated for specific purposes upon request by persons authorized by law to have such access and only for those users and purposes specified in the law.

An audit trail will be kept for five years of requests for access to information for specific purposes and of what information is disseminated to each person in response to the request.

#### **Disclosing Information to the Public**

Information gathered and records retained by the SIAC may be accessed or disclosed to a member of the public only if the information is defined by Utah Code to be public record or otherwise appropriate for release to further the SIAC mission and is not exempt from disclosure by the Utah Government Records Access Management Act (GRAMA) or applicable provisions of law. Such information may be disclosed only in accordance with the law and procedures applicable to the SIAC for this type of information.

An audit trail will be kept of all requests and of what information is disclosed to a member of the public.

There are several categories of information that will ordinarily not be provided to the public:

- A. Criminal investigative information and criminal intelligence information. These records are classified as protected under Utah Code Ann. § 63G-2-305.
- B. Information containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy under Utah Code Ann. § 63G-2-302 or other applicable federal law or regulation.
- C. Threat, vulnerability, and risk assessments and event/situation planning documents. Utah Code Ann. § 63G-2-106 protects records of a governmental entity or political subdivision

regarding security measures designed for the protection of persons or property, public or private. These records are not subject to the Utah Government Records Access Management Act.

- D. Proprietary data/information submitted by government, public, and private sector partners related to critical infrastructure that falls within the definition of Protected Critical Infrastructure Information (PCII) under the Critical Infrastructure Information Act of 2002.
- E. Other records and information as set forth by federal and state law.

A record or part of a record that has a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack is exempted from disclosure requirements under various sections of the Utah Code, including but not limited to Utah Code Ann. § 63G-2-305. This includes a record, vulnerability assessment, risk planning document, needs assessment, or threat assessment assembled, prepared, or maintained to prevent, mitigate, or respond to an act of terrorism.

### **Privacy Safeguards**

The employees and users of the participating agencies and of the SIAC's information service providers will comply with all applicable laws protecting privacy, civil rights, and civil liberties in the collection, use, analysis, retention, destruction, sharing, and disclosure of information.

Agencies external to the SIAC may not disseminate information received from the SIAC without specific approval of the originator of the information, and will be subject to the same restrictions on access as provided in Utah Code Ann. § 63G-2-206, unless directed otherwise.

Information gathered and records retained by the SIAC will not be:

- A. sold, published, exchanged, or disclosed for commercial purposes;
- B. disclosed or published without prior notice to the contributing agency that such information is subject to re-disclosure or publication;
- C. disseminated to unauthorized persons.

The SIAC will include an appropriate handling notice on all transmitted documents when information is disseminated.

The SIAC shall not confirm the existence or nonexistence of information to any person or agency that would not be eligible to receive the information itself.

### **Disclosing Information to the Individual about Whom Information has Been Gathered**

Upon satisfactory verification (fingerprints, driver's license, or other specified identifying documentation) of his or her identity and subject to the conditions specified below, an individual is entitled to know the existence of and to review the information about him or her that has been gathered and retained by the SIAC. The individual may obtain a copy of the information for the purpose of challenging the accuracy or completeness of the information. The SIAC's response to

the request for information will be made within a reasonable time and in a form that is readily intelligible to the individual. A record will be kept of all requests and of what information is disclosed to an individual.

If an individual requests information about him or her that originates with another agency, the SIAC Privacy Officer will refer the individual to the source agency.

To the extent information is maintained in information systems controlled by the State of Utah, the SIAC will comply with the Utah Government Records Access Management Act and other applicable laws and regulations governing the disclosure of information to the individual about whom information has been gathered. To the extent consistent with these laws and regulations, the existence, content, and source of the information will not be made available to an individual when:

- A. Disclosure would interfere with ongoing investigations [Utah Code Ann. § 63G-2-305].
- B. Disclosure would endanger the life or safety of an individual [Utah Code Ann. § 63G-2-305].
- C. The information is in a criminal intelligence system subject to 28 CFR Part 23 [28 CFR 23.20(e)].
- D. The information concerns security measures designed for the protection of persons or property, public or private [Utah Code Ann. § 63G-2-106].
- E. The information could reasonably be expected to reveal the identity of a source not generally known outside of government [Utah Code Ann. § 63G-2-305].
- F. The information could reasonably be expected to reveal investigative techniques, procedures, policies, or orders not generally known outside of government [Utah Code Ann. § 63G-2-305].
- G. Other authorized basis for denial exists.

### **Complaints and Corrections**

If an individual has complaints or objections to the accuracy or completeness of information retained about him or her *originating with the SIAC*, the SIAC Privacy Officer will inform the individual of the procedure for submitting complaints or requesting corrections, by mail, e-mail, or in person. A record will be kept of all complaints and requests for corrections, the responsive action taken, if any, and a brief explanation of the rationale. An initial response to a complaint or request for correction must be made within ten working days of receipt of the complaint or request.

The request will document the individual's understanding of the record, the basis for his/her belief that the record is inaccurate, and the nature of the relief requested. The request should include all appropriate documentation.

Upon receipt of a complaint or request for correction, the SIAC Privacy Officer will consent to the correction, remove the record, or state in writing a basis for the denial of the complaint or request. All denials will be reviewed and approved by the SIAC Bureau Chief.

If an individual has complaints or objections to the accuracy or completeness of information about him or her that *originates with another agency*, the SIAC Privacy Officer will notify the source agency of the complaint or correction request and use reasonable efforts to coordinate with the source agency to ensure that the individual is provided with applicable complaint submission or correction procedures. SIAC personnel will make all reasonable efforts to assist agencies in resolving complaints and/or making corrections. A record will be kept of all complaints and correction requests, regardless of the originating agency, and the resulting action taken, if any.

If an individual has a complaint or objection to the accuracy or completeness of terrorism-related information that has been or may be shared through ISE, eGuardian or the SAR Data Repository that (a) is held by the SIAC; (b) allegedly resulted in harm to the complainant; and (c) is exempt from disclosure, the SIAC will inform the individual of the procedure for submitting (if needed) and resolving complaints or objections.

Complaints should be addressed to Privacy Officer at SIAC, 410 West 9800 South, Sandy, Utah 84070 or SIAC@utah.gov. The SIAC will acknowledge the complaint and state that it will be reviewed, but will not confirm the existence of the information that is exempt from disclosure, unless otherwise required by law. Any personal information originating with the SIAC will be reviewed within 30 days and confirmed, corrected or deleted from SIAC data/records if it is determined to be erroneous, include incorrectly merged information, or is out of date. If there is no resolution within 30 days, the SIAC will not share the information until such time as the complaint has been resolved.

Unless the requested relief is granted, a final response must provide a brief discussion of the basis for a decision to deny the requested relief as well as information about the process of obtaining further review, reconsideration, or appeal from the initial determination. The appellate authority belongs to the Commissioner of the Department of Public Safety.

### **Security Safeguards**

A SIAC employee will be designated and trained to serve as the SIAC Security Officer.

The SIAC will operate in a secure facility protecting the facility from external intrusion. The SIAC will utilize secure internal and external safeguards against network intrusions. Access to SIAC databases from outside the facility will only be allowed over secure networks.

The SIAC will secure tips, leads, and SAR information in a separate repository system that is the same as or similar to the system that secures data rising to the level of reasonable suspicion under 28 CFR Part 23.

The SIAC will store information in a manner such that it cannot be added to, modified, accessed, destroyed, or purged except by personnel authorized to take such actions.

Access to SIAC information will only be granted to SIAC personnel and partners whose position and job duties require such access, who have successfully completed a background check and appropriate security clearance (if applicable), and have been selected, approved, and trained accordingly.

Whenever possible, queries made to SIAC data applications will be automatically logged into each respective data system identifying the user, date, and time of the query.

The SIAC will utilize record logs to maintain records of requested, sought, collected, and disseminated information.

To prevent inadvertent public records disclosure, risk and vulnerability assessments will not be stored with publicly available data.

Violations of this policy or internal operating policies at the SIAC will be reported to the SIAC Bureau Chief or his or her designee.

#### **Destruction of Information**

All information stored in the SIAC database other than analytical product will be reviewed for record retention (validation or purged) at least every five (5) years. Information may be reviewed through automated or other means. Records need not be individually examined to comply with this requirement when purging. The date and means of review will be documented.

When information has no further value or meets criteria for removal according to this Privacy Policy or according to applicable law, it will be purged, destroyed, deleted, or returned to the submitting source.

The SIAC will delete information or return it to the source, unless it is validated as specified in 28 CFR Part 23.

The SIAC will actively research suspected errors and deficiencies and will make every reasonable effort to ensure that information will be corrected or deleted from the system when:

- A. The information is erroneous, misleading, obsolete, or otherwise unreliable.
- B. The source of the information did not have authority to gather the information or to provide the information to the SIAC.
- C. The source of the information used prohibited means to gather the information, except when the source did not act as an agent to a bona fide law enforcement officer.

## **Accountability and Enforcement Regarding Information System Transparency**

This Information Privacy Policy will be made available to the public on request and through any public web sites providing information about the SIAC.

The SIAC's Privacy Officer will be responsible for receiving and responding to inquiries and complaints about privacy, civil rights, and civil liberties protections in the SIAC's information systems.

### **Accountability for Activities**

Primary responsibility for the operation of the SIAC information systems— including operations; coordination of personnel; the receiving, seeking, retention, evaluation, information quality, analysis, destruction, sharing, and disclosure of information; and the enforcement of this policy resides with the SIAC Bureau Chief or his designee.

The SIAC will strive to protect information from unauthorized access, modification, theft, or sabotage, whether internal or external and whether due to natural or human-caused disasters or intrusions.

The SIAC will adopt and follow procedures and practices by which it can ensure and evaluate the compliance of users with the use of data systems, provisions of this policy and applicable law. This will include logging access of these systems and periodic auditing of these systems, so as to not establish a pattern of the audits. A record of the audit will be maintained by the SIAC.

The SIAC will maintain an audit trail of accessed, requested, or disseminated information. An audit trail will be kept for five years of requests for access to information for specific purposes and of what information is disseminated to each person in response to the request.

The SIAC will require any individuals authorized to use the system to agree to comply with the provisions of this policy. The SIAC will provide a printed and/or electronic copy of this policy to all SIAC and non-SIAC personnel who provide services and will require of both a written acknowledgement of receipt of this policy and a signed agreement to comply with this policy and the provisions it contains.

At the direction of the SIAC Governance Board, independent, non-SIAC personnel will conduct audits and inspections of the information contained in SIAC's record management system at least once per year. All audits will be conducted in a manner that protects the confidentiality, sensitivity, and privacy of all stored information.

SIAC management may order periodic, internal audits of its information systems to ensure compliance with this privacy policy.

The SIAC, in consultation with the SIAC Governance Board and the DPS Legal Advisor, will periodically review and update the provisions protecting privacy, civil rights, and civil liberties in



this policy and make appropriate changes in response to changes in applicable law, technology, the purpose and use of the information systems, and public expectations.

The SIAC's personnel or other authorized users shall report violations, or suspected violations, of SIAC policies relating to protected information to the SIAC's Privacy Officer and/or the SIAC Bureau Chief.

### **Inadvertent Disclosure**

The SIAC will notify an individual about whom personal information was or is reasonably believed to have been breached or obtained by an unauthorized person and access to which threatens physical, reputational, or financial harm to the person. The notice will be made promptly and without unreasonable delay following discovery or notification of the access to the information consistent with the legitimate needs of law enforcement. The SIAC shall investigate the scope of the release of information and, if necessary, reasonably restore the integrity of any information system affected by this release.

With regard to computerized data that includes personal information that the SIAC does not own, SIAC personnel shall notify the owner or licensee of the information of any breach of the security of the data immediately following discovery, if the personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

The notification required by this section may be delayed if the SIAC or other law enforcement agency determines that the notification will impede a criminal investigation. The notification required by this section shall be made after the law enforcement agency determines that it will not compromise the investigation.

For purposes of this section, "breach of the security of the system" means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by the SIAC. Good faith acquisition of personal information by an employee or partner of the SIAC for the purposes of the SIAC mission is not a breach of the security of the system, provided that the personal information is not used or subject to further unauthorized disclosure.

For purposes of this section, "personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

- A. Social security number.
- B. Driver's license number or Utah Identification Card number.
- C. Account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.
- D. Medical information.
- E. Health insurance information.

For purposes of this section, "personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

For purposes of this section, "medical information" means any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional.

For purposes of this section, "health insurance information" means an individual's health insurance policy number or subscriber identification number, any unique identifier used by a health insurer to identify the individual, or any information in an individual's application and claims history, including any appeals records.

For purposes of this section, "notice" may be provided by one of the following methods:

- A. Written notice.
- B. Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set in Section 7001 of Title 15 of the U.S. Code.
- C. Substitute notice, if the cost of providing notice is deemed "excessive", or the SIAC does not have sufficient contact information. Substitute notice shall consist of an e-mail notice when the SIAC has an e-mail address for the subject person(s) or other reasonable means of providing notice.

### **Enforcement**

If a user is suspected of or found to be in noncompliance with the provisions of this policy regarding the collection, use, retention, destruction, sharing, classification, or disclosure of information, the SIAC will take appropriate action based on the facts and circumstances of the specific incident. This includes the following:

- A. Suspend or discontinue access to information by the user.
- B. Counsel, reprimand, suspend, demote, transfer, or terminate the person as permitted by applicable personnel policies.
- C. Apply other sanctions or administrative actions as provided by DPS rules and regulations or as provided in SIAC personnel policies.
- D. If the user is from an agency external to the SIAC, request that the relevant agency, organization, contractor or service provider employing the user initiate proceedings to discipline the user or enforce the policy's provisions.
- E. Refer the matter to appropriate authorities for criminal prosecution, if appropriate.

Participating employees of the SIAC who perform an act forbidden by law may be charged with official misconduct, under Utah Code Ann. § 76-8- 201.

The SIAC reserves the right to restrict the qualifications and number of personnel having access to SIAC information and to suspend or withhold service to any personnel violating this privacy

policy. The SIAC reserves the right to deny access to any participating agency user who fails to comply with the applicable restrictions and limitations of the SIAC's privacy policy.

### **Training**

All reasonable efforts will be made to coordinate training efforts among all SIAC participants, where appropriate, to maximize the opportunity for training.

The SIAC will require the following individuals to participate in training programs regarding the implementation of and adherence to this Privacy policy:

- A. all SIAC employees and full-time contractors and consultants,
- B. all SIAC Intelligence Liaison Officers (ILOs), and participating analysts, and
- C. personnel providing information technology services or other services to the SIAC.

The SIAC will provide training to personnel authorized to share protected information through the ISE, SAR Data Repository, or eGuardian regarding the SIAC's requirements and policies for collection, use, and disclosure of protected information.

The SIAC's Privacy Policy training programs will cover:

- A. purposes of the Information Privacy Policy;
- B. substance and intent of the provisions of the policy relating to collection, use, analysis, retention, destruction, sharing, and disclosure of information retained by the SIAC;
- C. how to implement the policy in the day-to-day work of the user, whether a paper or systems user;
- D. the impact of improper activities associated with infractions within or through the SIAC;
- E. mechanisms for reporting violations of the SIAC's Privacy Policy; and
- F. the nature and possible penalties for policy violations, including possible transfer, dismissal, civil and criminal liability, and immunity, if any.

## Appendix A: Glossary of Terms and Definitions

### *Access*

In respect to privacy, an individual's ability to view, modify, and contest the accuracy and completeness of personally identifiable information collected about him or her. Access is an element of the Organization for Economic Co-operation and Development's (OECD) Fair Information Principles (FIPs). See *Fair Information Principles (FIPs)*.

With regard to the SAR Data Repository (SDR), access refers to the business rules, means, and processes by and through which ISE participants obtain terrorism-related information, to include homeland security information, terrorism information, and law enforcement information acquired in the first instance by another SDR participant

### *Acquisition*

The means by which an ISE participant obtains information through the exercise of its authorities; for example, through human intelligence collection or from a foreign partner. For the purposes of this definition, acquisition does not refer to the obtaining of information widely available to other SDR participants through, for example, news reports or to the obtaining of information shared with them by another ISE participant who originally acquired the information.

### *Audit Trail*

Audit trail is a generic term for recording (logging) a sequence of activities. In computer and network contexts, an audit trail tracks the sequence of activities on a system, such as user log-ins and log-outs. More expansive audit trail mechanisms would record each user's activity in detail—what commands were issued to the system, what records and files were accessed or modified, etc. Audit trails are a fundamental part of computer security, used to trace unauthorized users and uses. They can also be used to assist with information recovery in the event of a system failure.

### *Authentication*

Authentication is the process of validating the credentials of a person, computer process, or device. Authentication requires that the person, process, or device making the request provide a credential that proves it is what or who it says it is.

### *Biometrics*

Biometrics methods can be divided into two categories: physiological and behavioral. Implementations of the former include face, eye (retina or iris), finger (fingertip, thumb, finger length or pattern), palm (print or topography), and hand geometry. The latter includes voiceprints and handwritten signatures.

### *Civil Rights*

The term “civil rights” is used to imply that the state has a role in ensuring that all citizens have equal protection under the law and equal opportunity to exercise the privileges of citizenship regardless of race, religion, gender, or other characteristics unrelated to the worth of the individual. Civil rights are, therefore, obligations imposed on government to promote equality. More specifically, they are the rights to personal liberty guaranteed to all United States citizens by the Thirteenth and Fourteenth Amendments and by acts of Congress.

### *Civil Liberties*

Civil liberties are fundamental individual rights, such as freedom of speech, press, or religion; due process of law; and other limitations on the power of the government to restrain or dictate the actions of individuals. They are the freedoms that are guaranteed by the Bill of Rights – the first ten Amendments to the Constitution of the United States. Civil liberties offer protection to individuals from improper government action and arbitrary governmental interference. Generally, the term “civil rights” involves positive (or affirmative) government action, while the term “civil liberties” involves restrictions on government.

### *Confidentiality*

Confidentiality is closely related to privacy but is not identical. It refers to the obligations of individuals and institutions to use information under their control appropriately once it has been disclosed to them. One observes rules of confidentiality out of respect for, and to protect and preserve the privacy of, others. See *Privacy*.

### *Credentials*

Information that includes identification, and proof of identification, that is used to gain access to local and network resources. Examples of credentials are user names, passwords, smart cards, and certificates.

### *Criminal Intelligence Information or Data*

Information deemed relevant to the identification of and the criminal activity engaged in by an individual who or organization that is reasonably suspected of involvement in criminal acts. The record is maintained in a criminal intelligence system per 28 CFR Part 23. Reasonable suspicion applies to the information. The record is maintained per 28 CFR Part 23.

### *Criminal Intelligence System*

The arrangements, equipment, facilities, and procedures used for the receipt, storage, interagency exchange or dissemination, and analysis of criminal intelligence information [28 CFR Part 23.3 b (1)].

### *Data*

Includes, documents, inert symbols, signs, descriptions, or measures.

### *Disclosure*

The release, transfer, provision of access to, or divulging of personally identifiable information in any other manner—electronic, verbal, or in writing—to an individual, agency, or organization outside of the agency who collected it.

### *Homeland Security Information*

As defined in Section 892(f)(1) of the Homeland Security Act of 2002 and codified at 6 U.S.C. § 482(f)(1), homeland security information means any information possessed by a federal, state, or local agency that (a) relates to a threat of terrorist activity; (b) relates to the ability to prevent, interdict, or disrupt terrorist activity; (c) would improve the identification or investigation of a suspected terrorist or terrorist organization; or (d) would improve the response to a terrorist act.

### *Identification*

A process whereby a real-world entity is recognized and its identity established. Identity is operationalized in the abstract world of information systems as a set of information about an entity that uniquely differentiates it from other similar entities. The set of information may be as small as a single code, specifically designed as an identifier, or a collection of data, such as a given and family name, date of birth, and address. An organization's identification process consists of the acquisition of the relevant identifying information.

### *Information*

The use of data to extract meaning. Information includes any data about people, organizations, events, incidents, or objects, regardless of the medium in which it exists. Information received by law enforcement agencies can be categorized into three general areas: general data, tips and leads data, and criminal intelligence data.

Furthermore, information is data that may include records, documents, or files pertaining to law enforcement operations, such as computer-aided dispatch (CAD) data, incident data, and management information; data that is maintained in a records management, CAD system, etc., for statistical/retrieval purposes. Information may be either resolved or unresolved. The record is maintained per statute, rule, or policy.

### *Information Privacy*

Information privacy is the interest individuals have in controlling or at least significantly influencing the handling of data about themselves.

### *Information Quality*

The accuracy and validity of the actual values of the data, data structure, and database/data repository design. The elements of information quality are accuracy, completeness, currency, reliability, and context/meaning.

### *Information Sharing Environment (ISE)*

In accordance with Section 1016 of the Intelligence Reform and Terrorism Prevention Act (IRTPA), as amended, the ISE will be composed of policies, procedures, and technologies linking the resources (people, systems, databases, and information) of state, local, and tribal (SLT) and federal entities and the private sector to facilitate terrorism information sharing, access, and collaboration.

### *Intelligence System*

See *Criminal Intelligence System*.

### *Investigation*

As used by this policy, in addition to its traditional meaning, investigation includes the necessary research and analysis of law enforcement and threat information to determine reasonable suspicion and the likelihood of potential criminal activity. Investigation also includes the research and analysis techniques used to assist open investigations when reasonable suspicion has already been established.

### *Law*

As used by this policy, law includes any local, state, or federal statute, ordinance, regulation, executive order, policy, or court rule, decision, or order as construed by appropriate local, state, or federal officials or agencies.

### *Law Enforcement Information*

For purposes of this policy, law enforcement information means any information obtained by or of interest to a law enforcement agency or official that is both (a) related to terrorism or the security of our homeland and (b) relevant to a law enforcement mission, including but not limited to information pertaining to an actual or potential criminal, civil, or administrative investigation or a foreign intelligence, counterintelligence, or counterterrorism investigation; assessment of or response to criminal threats and vulnerabilities; the existence, organization, capabilities, plans, intentions, vulnerabilities, means, methods, or activities of individuals or groups involved or suspected of involvement in criminal or unlawful conduct or assisting or associated with criminal or unlawful conduct; the existence, identification, detection, prevention, interdiction, or disruption of or response to criminal acts and violations of the law; identification, apprehension, prosecution, release, detention, adjudication, supervision, or rehabilitation of accused persons or criminal offenders; and victim/witness assistance.

### *Logs*

Logs are a necessary part of an adequate security system, as they are needed to ensure that data is properly tracked and only authorized individuals are getting access to the data.

### *Metadata*

In its simplest form, metadata is information (data) about information, more specifically information about a particular content. An item of metadata may describe an individual content item or a collection of content items. Metadata is used to facilitate the understanding, use, and management of information. The metadata required for this will vary based upon the type of information and context of use.

### *Operational Components*

These include Intelligence Analysis, Intelligence Liaison Officer Program, and Critical Infrastructure Protection.

### *Personal Data*

Personal data refers to any personally identifiable information that relates to an identifiable individual (or data subject). See also *Personally Identifiable Information*.

### *Personal Information*

See *Personally Identifiable Information*.

### *Personally Identifiable Information*

Personally identifiable information is one or more pieces of information that when considered together or when considered in the context of how it is presented or how it is gathered is sufficient to specify a unique individual. The pieces of information can be:

- A. Personal characteristics (such as height, weight, gender, sexual orientation, date of birth, age, hair color, eye color, race, ethnicity, scars, tattoos, gang affiliation, religious affiliation, place of birth, mother's maiden name, distinguishing features, and biometrics information, such as fingerprints, DNA, and retinal scans).
- B. A unique set of numbers or characters assigned to a specific individual (including name, address, phone number, social security number, e-mail address, driver's license number, financial account or credit card number and associated PIN number, Automated Integrated Fingerprint Identification System [AIFIS] identifier, or booking or detention system number).
- C. Descriptions of event(s) or points in time (for example, information in documents such as police reports, arrest reports, and medical records).
- D. Descriptions of location(s) or place(s) (including geographic information systems [GIS] locations, electronic bracelet monitoring information, etc.).



## *Persons*

Executive Order 12333 defines “United States persons” as United States citizens, aliens known by the intelligence agency concerned to be permanent resident aliens, an unincorporated association substantially composed of United States citizens or permanent resident aliens, or a corporation incorporated in the United States, except for a corporation directed and controlled by a foreign government or governments. For the intelligence community and for domestic law enforcement agencies, “persons” means United States citizens and lawful permanent residents.

## *Privacy*

The term “privacy” refers to individuals’ interests in preventing the inappropriate collection, use, and release of personally identifiable information. Privacy interests include privacy of personal behavior, privacy of personal communications, and privacy of personal data. Other definitions of privacy include the capacity to be physically alone (solitude); to be free from physical interference, threat, or unwanted touching (assault, battery); or to avoid being seen or overheard in particular contexts.

## *Privacy Policy*

A privacy policy is a written, published statement that articulates the policy position of an organization on how it handles the personally identifiable information that it gathers and uses in the normal course of business. The policy should include information relating to the processes of information collection, analysis, maintenance, dissemination, and access. The purpose of the privacy policy is to articulate that the agency will adhere to those legal requirements and agency policy determinations that enable gathering and sharing of information to occur in a manner that protects personal privacy interests. A well-developed and – implemented privacy policy uses justice entity resources wisely and effectively; protects the agency, the individual, and the public; and promotes public trust.

## *Protected Critical Infrastructure Information (PCII) Program*

The Protected Critical Infrastructure Information (PCII) Program, established pursuant to the Critical Infrastructure Information Act of 2002 (CII Act), creates a framework which enables members of the private sector to voluntarily submit confidential information regarding the nation’s critical infrastructure to the Department of Homeland Security (DHS) with the assurance that the information, if it satisfies the requirements of the CII Act, will be protected from public disclosure. The PCII Program seeks to facilitate greater sharing of critical infrastructure information among the owners and operators of the critical infrastructures and government entities with infrastructure protection responsibilities, thereby reducing the nation’s vulnerability to terrorism.

### *Protected Information*

Protected information is information about United States citizens and lawful permanent residents that is subject to information privacy or other legal protections under the Constitution and laws of the United States. For the (federal) intelligence community, protected information includes information about "United States persons" as defined in Executive Order 12333. Protected information may also include other information that the U.S. government expressly determines by Executive Order, international agreement, or other similar instrument should be covered.

With regards to state government, protected information is defined in the Utah Government Records Access and Management Act. See Utah State Code 63G-2-305. While a detailed explanation can be found in the statute, protected information essentially refers to records that contain information that, if released could have an adverse effect on government operations that would outweigh the societal benefits of disclosure.

### *Public*

#### A. Public includes:

1. Any person and any for-profit or nonprofit entity, organization, or association;
2. Any governmental entity for which there is no existing specific law authorizing access to the agency's information;
3. Media organizations; and
4. Entities that seek, receive, or disseminate information for whatever reason, regardless of whether it is done with the intent of making a profit, and without distinction as to the nature or intent of those requesting information from the agency.

#### B. Public does not include:

1. Employees of the agency;
2. People or entities, private or governmental, who assist the agency in the operation of the justice information system, and agency in the operation of the justice information system; and
3. Public agencies whose authority to access information gathered and retained by the agency is specified in law.

### *Public Access*

Public access relates to what information can be seen by the public, that is, information whose availability is not subject to privacy interests or rights.

### *Reasonable Suspicion*

“Reasonable suspicion” (or, criminal predicate) is established when information exists which establishes sufficient facts to give a trained law enforcement or criminal investigative agency officer, investigator, or employee a basis to believe that there is a reasonable possibility that an individual or organization is involved in a definable criminal activity or enterprise.” US Department of Justice, Code of Federal Regulations 28 Part 23.20(c).

### *Record*

Any item, collection, or grouping of information that includes personally identifiable information and is maintained, collected, used, or disseminated by or for the collecting agency or organization.

### *Retention*

Keeping or holding of data, records, information, and/or intelligence. The act of retaining something or the condition of being retained.

### *Right to Privacy*

The right to be left alone, in the absence of some reasonable public interest in gathering, retaining, and sharing information about a person’s activities. Invasion of the right to privacy can be the basis for a lawsuit for damages against the person or entity violating a person’s privacy.

### *Security*

Security refers to the range of administrative, technical, and physical business practices and mechanisms that aim to preserve privacy and confidentiality by restricting information access to authorized users for authorized purposes. Computer and communications security efforts also have the goal of ensuring the accuracy and timely availability of data for the legitimate user set, as well as promoting failure resistance in the electronic systems overall.

### *Security Policy*

A security policy is different from a privacy policy. A security policy alone may not adequately address the protection of personally identifiable information or the requirements of a privacy policy in their entirety. A security policy addresses information classification, protection, and periodic review to ensure that information is being stewarded in accordance with an organization’s privacy policy. See *Privacy Policy*.

### *Storage*

In a computer, storage is the place where data is held in an electromagnetic or optical form for access by a computer processor. There are two general usages:

- A. Storage is frequently used to mean the devices and data connected to the computer through input/output operations—that is, hard disk and tape systems and other forms

of storage that do not include computer memory and other in-computer storage. This meaning is probably more common in the IT industry than meaning B.

- B. In a more formal usage, storage has been divided into (1) primary storage, which holds data in memory (sometimes called random access memory or RAM) and other “built-in” devices such as the processor’s L1 cache, and (2) secondary storage, which holds data on hard disks, tapes, and other devices requiring input/output operations.

Primary storage is much faster to access than secondary storage because of the proximity of the storage to the processor or because of the nature of the storage devices. On the other hand, secondary storage can hold much more data than primary storage.

With regard to the SDR, storage (or retention) refers to the storage and safeguarding of terrorism-related information, to include homeland security information, terrorism information, and law enforcement information relating to terrorism or the security of our homeland by both the originator of the information and any recipient of the information.

#### *Suspicious Activity*

Defined in the ISE-SAR Functional Standard as “observed behavior reasonably indicative of preoperational planning related to terrorism or other criminal activity. Examples of suspicious activity include surveillance, photography of facilities, site breach or physical intrusion, cyberattacks, testing of security, etc.

#### *Suspicious Activity Report (SAR) Information*

Official documentation of observed behavior reasonably indicative of preoperational planning related to terrorism or other criminal activity. Suspicious activity report (SAR) information offers a standardized means for feeding information repositories or data analysis tools. Patterns identified during SAR information analysis may be investigated in coordination with the reporting agency and, if applicable, a state or regional fusion center. SAR information is not intended to be used to track or record ongoing enforcement, intelligence, or investigatory activities, nor is it designed to support interagency calls for service.

#### *Terrorism Information*

Consistent with Section 1016(a)(4) of IRTPA, all information relating to (a) the existence, organization, capabilities, plans, intentions, vulnerabilities, means of finance or materials support, or activities of foreign or international terrorist groups or individuals or of domestic groups or individuals involved in transnational terrorism, (b) threats posed by such groups or individuals to the United States, United States persons, or United States interests or to those interests of other nations, (c) communications of or by such groups or individuals, or (d) other groups or individuals reasonably believed to be assisting or associated with such groups or individuals.

### *Tips and Leads Information or Data*

Uncorroborated report or information generated from inside or outside the agency that alleges or indicates some form of possible criminal activity. Tips and leads can also be referred to as suspicious incident report (SIR) information, suspicious activity report (SAR) information, and/or field interview reports (FIRs). Tips and leads information does not include incidents that do not have an offense attached, criminal history records, or CAD data. Tips and leads information is maintained in a secure system, similar to data that rises to the level of reasonable suspicion.

A tip or lead can come from a variety of sources, including, but not limited to, the public, field interview reports, and anonymous or confidential sources. This information has some suspicion or is based on a level of suspicion that is less than "reasonable suspicion," but without further inquiry or analysis, it is unknown whether the information is accurate or useful. Tips and leads information falls between being of no use to law enforcement and being extremely valuable depending on the availability of time and resources to determine its meaning.

<b>STATE OF UTAH</b> Utah Statewide Information & Analysis Center <b>POLICY AND PROCEDURES</b>	REF. Facial Recognition 1-12-1	PAGE 1 of 2
	EFFECTIVE DATE 10-31-11	REVISION DATE 00-00-00
SUBJECT: Facial Recognition System		

### I. Purpose

To establish the Utah Statewide Information & Analysis Center (SIAC) policy regarding the use of the Facial Recognition System, in providing lead material for the identification of suspects in criminal investigations.

### II. Definitions

- A. **SIAC:** Utah's Statewide Information & Analysis Center.
- B. **Submission/Request:** A request received by the SIAC to utilize Facial Recognition in support of a criminal investigation. Submissions will not contain original evidence.
- C. **Enrolled Image:** Any image contained in the Facial Recognition System such as; booking, prison, Utah drivers' license, and Utah ID photos that are used to compare to a submission or request.

### III. Policy

- A. **PRIVACY AND SECURITY** - Use of Facial Recognition as an investigative tool will fall under the same guidelines (UCA 53-10-104 (9), (10) and CFR 28 part 23) as all SIAC intelligence databases as well as under the SIAC Privacy Policy.
  - 1. All Utah Drivers licenses, ID photos, and all other photos contained and enrolled in the Facial Recognition database will remain in the custody and control of the Utah Department of Public Safety.
  - 2. Images received in a request or submission will not be stored as enrolled images within the Facial Recognition System.
  - 3. Images enrolled in the Facial Recognition System will not be released to anyone other than law enforcement and only in conjunction with an authorized criminal investigation.
  - 4. Only requests or submissions received in accordance with 'Proper Use' guidelines will qualify for use of the Facial Recognition System.
- B. **PROPER USE** - The Facial Recognition System is designed to be used in conjunction with, and as a supplement to traditional investigative procedures.
  - 1. Facial Recognition requests can only be submitted in conjunction with an official law enforcement investigation.
  - 2. Law enforcement officers/agencies must provide information demonstrating an active investigation is ongoing.

3. A case/department/intelligence report number and type of criminal investigation are required with every request for a facial recognition investigation.
4. The results of a submission are for lead purposes only, and any further confirmation as to the identity of the submission shall be the sole responsibility of the requestor.
5. Results and images of all submissions will be disseminated to the requesting agency and only the original request and case will be maintained on file.

#### **C. RECORD KEEPING**

1. A Facial Recognition request and any results of the inquiry will be maintained in accordance with appropriate current SIAC document maintenance and destruction policies.
2. A searchable, computerized Facial Recognition Database will house a record of all request and results. The database will automatically set a purge date for each case file.
3. Facial Recognition searches that result in a positive investigative outcome (i.e. identification, location, arrest, conviction, recovery, etc.) will also be maintained within the Facial Recognition Database.

#### **D. DISSEMINATION**

1. All images and results from the facial recognition system must be approved by a Supervisor prior to dissemination.
2. All results produced by the SIAC as a result of a Facial Recognition search are disseminated by secured electronic means (such as an official government email address). Non-electronic disseminations will be conducted personally or by phone with the requestor or designee.
3. Media disseminations will occur only with SIAC management and requestor authority.

#### **E. GENERAL AUTHORITY**

1. Any submission or request not addressed in this Policy and Procedure must be approved by SIAC executive management.
3. All policies and procedures regarding submission / dissemination will be in accordance with SIAC policy.



State of Utah

GARY R. HERBERT  
*Governor*

SPENCER J. COX  
*Lieutenant Governor*

Department of Public Safety

KEITH D. SQUIRES  
*Commissioner*

April 30, 2015

Dear Major Redd,

On April 9, 2015 my team and I conducted an audit of the SIAC's Records Management System (Fusion Core) in response to your request and according to SIAC's Information Privacy Policy XV.F.

The audit found that the entries into Fusion Core were in compliance with the requirements of the SIAC's Information Privacy Policy VI.L.3-5.

The results of the audit are attached. Should you have any questions or concerns please feel free to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Chelsey Burns".

Chelsey Burns

Field Services Supervisor

Utah Bureau of Criminal Identification





# SIAC Facial Recognition System

## FOUR IMPORTANT PHOTOGRAPH CRITERIA

- 1 LIGHTING
- 2 DISTANCE
- 3 ANGLE
- 4 EYES

## FACIAL RECOGNITION SYSTEM

The Statewide Information and Analysis Center (SIAC) has made its Facial Recognition System software available to be used to identify suspects, witnesses, and missing persons.

The software uses approximately 17 algorithms to measure features of the face. A facial image is loaded into the system and is compared to other enrolled images such as driver licenses, state identification cards, and booking photos, returning results within seconds.

Currently there are over 5 million Utah driver license & state identification card photos as well as 500,000 booking images from various Utah jails and prisons enrolled in the system. Images can be searched against the system for any law enforcement investigation.

## SUBMISSION

Use of the software requires an active law enforcement investigation and submission of a good quality image with a level frontal view of the suspect's face.

[publicsafety.utah.gov/  
investigations.siac.html](http://publicsafety.utah.gov/investigations.siac.html)

[siac@utah.gov](mailto:siac@utah.gov)

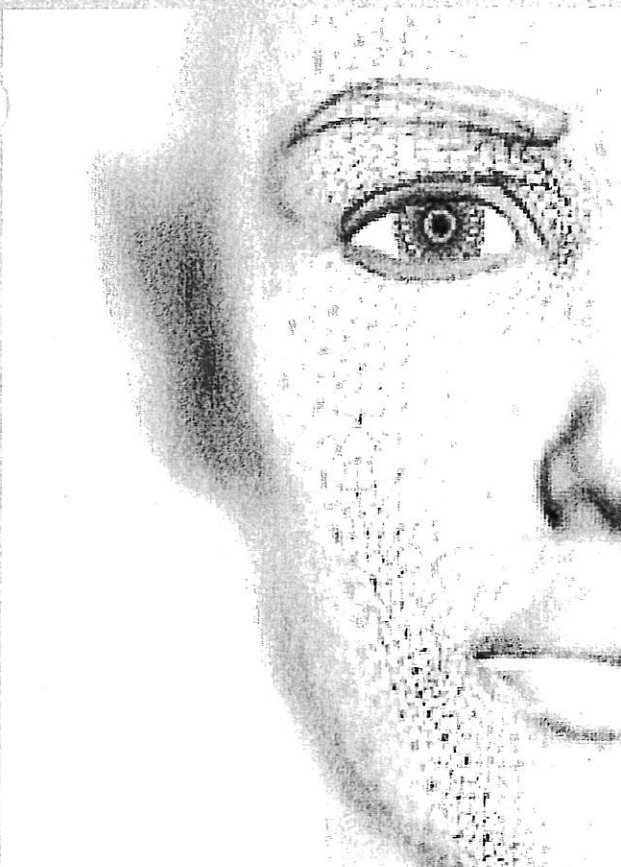
801-256-2360 (O)

801-256-2359 (F)

410 West 9800 South

Suite 370

Sandy, Utah 84070



A well-lit, frontal image 6-10 feet in distance with eyes open will produce the best results. Submit pictures in high resolution (300 dpi or more) .jpgs.

The Utah Statewide Information & Analysis Center maintains an uncompromising commitment to all applicable laws protecting privacy, civil rights, and civil liberties in the collection, use, analysis, retention, destruction, sharing and disclosure

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**THE FEDERAL BUREAU OF INVESTIGATION  
CRIMINAL JUSTICE INFORMATION SERVICES DIVISION**

**AND**

**THE UTAH DEPARTMENT OF PUBLIC SAFETY**

**CONCERNING THE SEARCH OF PROBE PHOTOS AGAINST THE  
UTAH DEPARTMENT OF PUBLIC SAFETY PHOTO REPOSITORY**

**I. PURPOSE**

The purpose of this Memorandum of Understanding (MOU) is to document the agreed responsibilities and functions of the Parties with respect to conducting searches of the Utah Department of Public Safety (DPS) facial recognition (FR) photo repository, which contains mug shots, corrections photos and drivers' license (DL) photos. These searches will be performed for the purpose of comparing FBI Facial Analysis, Comparison, and Evaluation (FACE) Services Unit probe photos against photos housed in the Utah DPS's FR photo repository and obtaining information that will advance active FBI investigations, apprehend wanted fugitives or known or suspected terrorists, and locate missing persons nationwide. A probe photo refers to the photo of the subject of an active FBI investigation that is submitted for search against a photo repository. The anticipated result of that search will be a photo gallery of potential matches. These potential matches (candidates) will be forwarded to the FBI, along with any associated information stored with the photo in the Utah DPS FR system. The FBI FACE Services Unit will then perform comparisons of the candidate photo(s) against the probe photo(s) to determine their value as investigative leads.

**II. PARTIES**

- A. The FBI, Criminal Justice Information Services (CJIS) Division, Biometric Services Section (BSS), FACE Services Unit provides investigative support to FBI field offices and headquarters divisions. The CJIS Division, through its Assistant Director, is the FBI's point of contact (POC) for this MOU. For certain day-to-day operations of the activities described by this MOU, the FBI's POC with the Utah DPS will be the FACE Services' Management Unit and its Management and Program Analysts.
- B. The Utah DPS provides a variety of public safety services such as law enforcement, communications, criminal identification, regulatory licensing,

criminal and arson investigation, forensic analysis, training, safety education and emergency management. For the purposes of this MOU, the Utah DPS POC is the Commissioner of the Utah DPS. For certain day-to-day operations of the activities described by this MOU, the FACE Services Unit will contact the Utah DPS POC Major Jeff Carr.

### III. AUTHORITIES

- A. The FBI enters into this MOU pursuant to Title 28, United States Code (U.S.C.) Sections 533 and 534; Title 28, Code of Federal Regulations Section 0.85; Title 42, U.S.C. Section 3771; and Title 18, U.S.C. Chapter 123.
- B. The State of Utah is authorized to share DL information with the FBI for authorized law enforcement purposes pursuant to Title 18, U.S.C. Section 2721 (b)(1).
- C. The Utah DPS enters into this MOU pursuant to the Governmental Records Access and Management Act; Utah Code Ann. 63G-2-206.

### IV. BACKGROUND INFORMATION

- A. The FACE Services Unit provides a facial recognition service in which FBI Special Agents, or other authorized FBI personnel, submit to the FBI CJIS Division a photo of the subject of an active FBI investigation. These probe photos are compared to photographs in databases authorized for use by the FBI (i.e., FR databases maintained by state motor vehicle departments/agencies, law enforcement, or other government agencies). In this case, a probe photo is sent to the Utah DPS. The Utah DPS compares the probe photo to its database, and candidates produced as a result of the search are sent by the Utah DPS to the FACE Services Unit. The FACE Services Unit compares Utah DPS candidate list against the submitted probe in an effort to narrow down to the one or two most-likely candidates. These candidates are then provided to the requesting FBI contributor for use as an investigative lead. The number of candidates produced and provided to the FACE Services Unit as a result of these searches is dependent upon the searching threshold set by the individual agency.
- B. The intent of this service is not to provide a positive identification, but to provide the FBI Special Agent with an investigative lead and analysis to support that lead. The FBI will utilize the Utah DPS FR photo repository to supplement information provided by existing FBI photo database searches.

## V. SPECIFIC RESPONSIBILITIES

### A. The FBI will:

1. Submit probe photos, via Law Enforcement Online (LEO)-to-LEO e-mail, to the Utah DPS for the purposes of comparing the probe photos with photos in the Utah DPS FR photo repository. The LEO is accredited and approved by the FBI for Sensitive-but-Unclassified law enforcement information.
2. Manually analyze, compare, and evaluate the returned candidate photo gallery against the probe photo to determine the most-likely candidate.
3. If necessary, request additional biographical information associated with each photo determined to be a most-likely candidate via a secure email communication.
4. Submit the photo(s) of the most-likely candidate(s) to be searched against the Next Generation Identification Interstate Photo System in order to:
  - a. Locate any additional photos and associated information relating to the "most likely" candidate(s).
  - b. Identify additional potential candidates and associated information.

The results of this search will be compared and analyzed against the original probe photo(s). Once the analysis is complete, the one or two most-likely candidate photos, along with their associated information, will be provided to the requesting FBI Special Agent as an investigative lead.

5. Store photo images and text associated with the DL of the most-likely candidate(s) to the probe in the FBI case management system for record keeping purposes.
6. Immediately destroy all other gallery photos and associated information.

**B. The Utah DPS will:**

1. Apply for a LEO e-mail account through the LEO Operations Unit.
2. Compare the FACE Services Unit-submitted probe photo against the Utah DPS FR photo repository.
3. Return electronic photos of all possible candidates to the FACE Services Unit via LEO e-mail.
4. Upon request, return additional biographical information associated with each photo determined to be a most-likely candidate.
5. Ensure that only authorized Utah DPS personnel will handle requests submitted by the FBI CJIS Division. Authorized Utah DPS personnel refer to personnel who are currently trained to perform FR queries against the Utah DPS FR photo repository for law enforcement purposes. Names of these predetermined Utah DPS personnel will be submitted to the FBI CJIS Division for the purpose of the FACE Services Unit establishing and maintaining communications contact with those Utah DPS personnel who will be providing services to the FACE Services Unit.
6. Destroy all probe photo images, and any associated data submitted from the FACE Services Unit, once the search has been completed and the response has been sent to the FACE Services Unit via LEO.
7. Ensure that photos received from the FACE Services Unit will not be electronically transmitted by any internal or external Utah DPS systems except as necessary to effectuate this agreement.
8. Prohibit the sharing and/or dissemination of any information associated with FBI FACE Services' requests beyond the authorized Utah DPS personnel unless required by Utah state law. If sharing or dissemination is required, the Utah DPS will notify FBI FACE Services Unit as soon as possible and before the release of the information.

**VI. PRIVACY AND SECURITY**

- A. The information involved in the MOU may identify U.S. persons, whose information is protected by the Privacy Act of 1974. The FBI will ensure that all such information will be handled lawfully pursuant to the provisions thereof. Conversely, the Utah DPS will comply with its own state's privacy laws.

- B. For purposes of this MOU, Personally Identifiable Information (PII) is defined as information which can be used to distinguish or trace an individual's identity, including any personal information which is linked or linkable to a specific individual. Examples of PII are name, social security number, date of birth, place of birth, citizenship, mother's maiden name, and photographs, fingerprints, and other biometrics.
- C. Each party that discloses PII is responsible for making reasonable efforts to ensure that the information disclosed is accurate, complete, timely, and relevant.
- D. Each party will immediately report to the other party each instance in which information received from the other party is used, disclosed, or accessed in an unauthorized manner (including any information losses or breaches).
- E. All transmissions of probes submitted by the FACE Services Unit to the Utah DPS and responses returned to the FACE Services Unit will be made through a LEO-to-LEO e-mail connection.
- F. The Utah DPS will ensure user accounts and authorities granted to its personnel are maintained in a current and secure "need-to-know" status.
- G. Both FBI requests and Utah DPS responses will contain PII, and LEO e-mail is approved and authorized to ensure security of information contained in these transmissions.
- H. All hardcopy facial images determined by the FACE Services Unit not to be a most-likely candidate, along with all associated textual information, will be disposed via confidential trash. All electronic facial images, including those saved on thumb drives, determined by the FACE Services Unit not to be a most-likely candidate, along with all associated textual information, will be deleted.
- I. Photo images of the most-likely candidate will be retained by the FACE Services Unit in the FBI case management system. All others will be destroyed by the FACE Services Unit.
- J. The information and/or documents provided by Utah DPS to the FACE Services Unit will contain PII about persons retained in the Utah DPS FR system. The FACE Services Unit will use this information for lawful/authorized purposes only.
- K. Each party shall be responsible for the safeguarding of any equipment used by it to access records and shall limit access to authorized users with a need to know the information and who have been properly instructed as to their duties and responsibilities under this MOU.

- L. Each party shall implement procedures to ensure that such equipment is located in a secure area and to prevent information, including any printed copies of records, from being viewed by individuals not authorized to use the equipment and from being viewed by individuals not authorized to see or have access to this information.

**VII. EFFECT OF THIS AGREEMENT**

- A. This MOU is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable by law or otherwise against any of the parties, their parent agencies, the U.S., or the officers, employees, agents, or other associated personnel thereof. The parties will seek to resolve any disputes regarding this MOU by mutual consultation.
- B. This MOU is not an obligation or commitment of funds, nor a basis for transfer of funds, but rather is a basic statement of the understanding between the parties of the matters described herein. Unless otherwise agreed in writing, each party shall bear its own costs in relation to this MOU. Expenditures by each party will be subject to its budgetary processes and to the availability of funds and resources pursuant to applicable laws, regulations, and policies. The parties expressly acknowledge that the language in this MOU in no way implies that funds will be made available for such expenditures.
- C. This MOU does not constitute an agreement for any party to assume or waive any liability or claim under any applicable law.
- D. Each party is responsible for ensuring that information it discloses was not knowingly obtained or maintained in violation of any law or policy applicable to the disclosing party, and that information is only made available to the receiving party as may be permitted by laws, regulations, policies, or procedures applicable to the disclosing party.
- E. Each party will provide appropriate training regarding the responsibilities under this MOU to individuals whose information-sharing activities are covered by the provisions of this MOU.

**VIII. EFFECTIVE DATE, MODIFICATION, AND TERMINATION**

- A.** This agreement shall be effective when executed by all of the parties and will continue in effect until terminated. This agreement may be modified at any time by written consent of all parties.
- B.** This MOU may be terminated, with respect to any party, at any time upon written notice of withdrawal to all other parties. Any party desiring to withdraw from this MOU will endeavor to provide such written notification to all parties at least thirty (30) days prior to withdrawal. This MOU will be reviewed annually to ensure that the terms remain current, complete, and relevant.
- C.** This MOU, in eight distinct sections, is the exclusive statement of the parties with respect to its subject matter and supersedes any and all prior agreement, negotiations, representations, and/or proposals, written or verbal, relating to its subject matter.



FOR THE FEDERAL BUREAU OF INVESTIGATION



David Cuthbertson  
Assistant Director  
Criminal Justice Information  
Services Division

3/22/13  
Date

FOR THE UTAH DEPARTMENT OF PUBLIC SAFETY



Lance Davenport  
Commissioner  
Utah Department of Public Safety

01 April 13  
Date