

STATE OF UTAH CONTRACT UTAH SCHOOLS FOR THE DEAF AND THE BLIND

1. CONTRACTING PARTIES: This contract is between the Utah Schools for the Deaf and the Blind, referred to as the State Entity or USDB, and the following Contractor:

<u>Brackenwood Consulting LLC</u>			
	Name		
<u>10808 South River Front Parkway, Suite 352</u>			
	Address		
<u>South Jordan</u>	<u>UT</u>	<u>84095</u>	
City	State	Zip	

LEGAL STATUS OF CONTRACTOR

Sole Proprietor

Non-Profit Corporation

For-Profit Corporation

Partnership

Government Agency

Point of Contact: Martin Atterbury Phone # 385-528-9088 Email: Martin.Atterbury@brackenwoodconsulting.com
Vendor # VC227144 Commodity Code # 20837

2. GENERAL PURPOSE OF CONTRACT: The general purpose of this contract is to provide: Production Database Application for the Utah State Instructional Materials Access Center. This includes consulting, hosting, maintenance, and training services for the application.

3. PROCUREMENT: This contract is entered into as a result of the procurement process of Solicitation # USDB19032, in FY2019.

4. CONTRACT PERIOD: Effective Date: 3/18/2019 Termination Date: 3/17/2024 unless terminated early or extended in accordance with the terms and conditions of this contract. Renewal options (if any): N/A.

5. CONTRACT COSTS: CONTRACTOR will be paid a maximum of \$173,600.00 for costs authorized by this contract. Additional information regarding cost may be found in the Cost Sheet and other attachments.

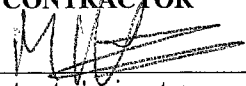
6. ATTACHMENT A: State of Utah Standard Terms and Conditions for Goods and Services
ATTACHMENT B: State of Utah Standard Information Technology Terms and Conditions
ATTACHMENT C: Scope of Work
ATTACHMENT D: Cost Sheet
Any conflicts between Attachment A and the other Attachments will be resolved in favor of Attachment A.

7. DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:
a. All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.
b. Utah State Procurement Code, Procurement Rules, and Contractor's response to Solicitation #USDB19032 dated 2/1/2019.

8. Each signatory below represents that he or she has the requisite authority to enter into this contract.

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

CONTRACTOR




Contractor's signature

13/03/2019
Date

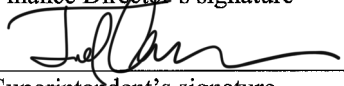
Martin Atterbury, Owner
Type or Print Name and Title

UTAH SCHOOLS FOR THE DEAF AND THE BLIND



Finance Director's signature

3/14/2019
Date



Superintendent's signature

3/14/19
Date

<u>Chad Hinds</u>	<u>801-629-4811</u>	<u>801-629-4896</u>	<u>chadh@usdb.org</u>
Agency Contact Person	Telephone Number	Fax Number	Email

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

1. **DEFINITIONS:** The following terms shall have the meanings set forth below:
 - a) "**Confidential Information**" means information that is deemed as confidential under applicable state and federal laws, including personal information. The State Entity reserves the right to identify, during and after this Contract, additional reasonable types of categories of information that must be kept confidential under federal and state laws.
 - b) "**Contract**" means the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference. The term "Contract" shall include any purchase orders that result from this Contract.
 - c) "**Contract Signature Page(s)**" means the State of Utah cover page(s) that the State Entity and Contractor signed.
 - d) "**Contractor**" means the individual or entity delivering the Procurement Item identified in this Contract. The term "Contractor" shall include Contractor's agents, officers, employees, and partners.
 - e) "**Custom Deliverable**" means the Work Product that Contractor is required to deliver to DTS under this Contract.
 - f) "**Procurement Item**" means a supply, a service, Custom Deliverable, construction, or technology that Contractor is required to deliver to the State Entity under this Contract.
 - g) "**Response**" means the Contractor's bid, proposals, quote, or any other document used by the Contractor to respond to the State Entity's Solicitation.
 - h) "**Solicitation**" means an invitation for bids, request for proposals, notice of a sole source procurement, request for statement of qualifications, request for information, or any document used to obtain bids, proposals, pricing, qualifications, or information for the purpose of entering into this Contract.
 - i) "**State Entity**" means the department, division, office, bureau, agency, or other organization identified on the Contract Signature Page(s).
 - j) "**State of Utah**" means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
 - k) "**Subcontractors**" means a person under contract with a contractor or another subcontractor to provide services or labor for design or construction, including a trade contractor or specialty contractor.
 - l) "**Work Product**" means every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor or Contractor's Subcontractors (either alone or with others) pursuant to this Contract. Work Product shall be considered a work made for hire under federal, state, and local laws; and all interest and title shall be transferred to and owned by DTS. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any DTS intellectual property, Contractor's intellectual property (that it owned or licensed prior to this Contract) or Third Party intellectual property
2. **GOVERNING LAW AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** At all times during this Contract, Contractor and all Procurement Items delivered and/or performed under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. If this Contract is funded by federal funds, either in whole or in part, then any federal regulation related to the federal funding, including CFR Appendix II to Part 200, will supersede this Attachment A.
4. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by the State Entity to Contractor under this Contract. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, the State of Utah, federal auditors, State Entity staff, or their designees, access to all such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Contract.
5. **PERMITS:** If necessary Contractor shall procure and pay for all permits, licenses, and approvals necessary for the execution of this Contract.
6. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** The Status Verification System, also referred to as "E-verify", only applies to contracts issued through a Request for Proposal process, to sole sources that are included within a Request for Proposal, and when Contractor employs any personnel in Utah.
 - a. Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
 - b. Contractor shall require that each of its Subcontractors certify by affidavit, as to their own entity, under penalty of perjury, that each Subcontractor has registered and is participating in the Status Verification System to verify the work eligibility status of Subcontractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
 - c. Contractor's failure to comply with this section will be considered a material breach of this Contract.
7. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State Entity or the State of Utah, unless disclosure has been made to the State Entity.

8. **INDEPENDENT CONTRACTOR:** Contractor and Subcontractors, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State Entity or the State of Utah.
9. **CONTRACTOR RESPONSIBILITY:** Contractor is solely responsible for fulfilling the contract, with responsibility for all Procurement Items delivered and/or performed as stated in this Contract. Contractor shall be the sole point of contact regarding all contractual matters. Contractor must incorporate Contractor's responsibilities under this Contract into every subcontract with its Subcontractors that will provide the Procurement Item(s) to the State Entity under this Contract. Moreover, Contractor is responsible for its Subcontractors compliance under this Contract.
10. **INDEMNITY:** Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors, and shall fully indemnify, defend, and save harmless the State Entity and the State of Utah from all claims, losses, suits, actions, damages, and costs of every name and description arising out of Contractor's performance of this Contract caused by any intentional act or negligence of Contractor, its agents, employees, officers, partners, or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the sole fault of the State Entity. The parties agree that if there are any limitations of the Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property.
11. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees.
12. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, which amendment will be attached to this Contract. Automatic renewals will not apply to this Contract, even if identified elsewhere in this Contract.
13. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, proposed for debarment, or declared ineligible by any governmental department or agency, whether international, national, state, or local. Contractor must notify the State Entity within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by any governmental entity during this Contract.
14. **TERMINATION:** This Contract may be terminated, with cause by either party, in advance of the specified expiration date, upon written notice given by the other party. The party in violation will be given ten (10) days after written notification to correct and cease the violations, after which this Contract may be terminated for cause immediately and subject to the remedies below. This Contract may also be terminated without cause (for convenience), in advance of the specified expiration date, by the State Entity, upon thirty (30) days written termination notice being given to the Contractor. The State Entity and the Contractor may terminate this Contract, in whole or in part, at any time, by mutual agreement in writing.

On termination of this Contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved and conforming Procurement Items ordered prior to date of termination. In no event shall the State Entity be liable to the Contractor for compensation for any Good neither requested nor accepted by the State Entity. In no event shall the State Entity's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State Entity for any damages or claims arising under this Contract.
15. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Contractor, this Contract may be terminated in whole or in part at the sole discretion of the State Entity, if the State Entity reasonably determines that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (ii) that a change in available funds affects the State Entity's ability to pay under this Contract. A change of available funds as used in this paragraph includes, but is not limited to a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.

If a written notice is delivered under this section, the State Entity will reimburse Contractor for the Procurement Item(s) properly ordered and/or Services properly performed until the effective date of said notice. The State Entity will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.
16. **SALES TAX EXEMPTION:** The Procurement Item(s) under this Contract will be paid for from the State Entity's funds and used in the exercise of the State Entity's essential functions as a State of Utah entity. Upon request, the State Entity will provide Contractor with its sales tax exemption number. It is Contractor's responsibility to request the State Entity's sales tax exemption number. It also is Contractor's sole responsibility to ascertain whether any tax deduction or benefits apply to any aspect of this Contract.
17. **WARRANTY OF PROCUREMENT ITEM(S):** Contractor warrants, represents and conveys full ownership and clear title, free of all liens and encumbrances, to the Procurement Item(s) delivered to the State Entity under this Contract. Contractor warrants for a period of one (1) year that: (i) the Procurement Item(s) perform according to all specific claims that Contractor made in its Response; (ii) the Procurement Item(s) are suitable for the ordinary purposes for which such Procurement Item(s) are used; (iii) the Procurement Item(s) are suitable for any special purposes identified in the Contractor's Response; (iv) the Procurement Item(s) are designed and manufactured in a commercially reasonable manner; (v) the Procurement Item(s) are manufactured and in all other respects create no harm to persons or property; and (vi) the Procurement Item(s) are free of defects. Unless otherwise specified, all Procurement Item(s) provided shall be new and unused of the latest model or design.

Remedies available to the State Entity under this section include, but are not limited to, the following: Contractor will repair or replace Procurement Item(s) at no charge to the State Entity within ten (10) days of any written notification informing Contractor of the Goods not performing as required under this Contract. If the repaired and/or replaced Procurement Item(s) prove to be inadequate, or fail its essential purpose, 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 Entity may otherwise have under this Contract.
18. **CONTRACTOR'S INSURANCE RESPONSIBILITY.** The Contractor shall maintain the following insurance coverage:

- a. Workers' compensation insurance during the term of this Contract for all its employees and any Subcontractor employees related to this Contract. Workers' compensation insurance shall cover full liability under the workers' compensation laws of the jurisdiction in which the work is performed at the statutory limits required by said jurisdiction.
- b. Commercial general liability [CGL] insurance from an insurance company authorized to do business in the State of Utah. The limits of the CGL insurance policy will be no less than one million dollars (\$1,000,000.00) per person per occurrence and three million dollars (\$3,000,000.00) aggregate.
- c. Commercial automobile liability [CAL] insurance from an insurance company authorized to do business in the State of Utah. The CAL insurance policy must cover bodily injury and property damage liability and be applicable to all vehicles used in your performance of Services under this Agreement whether owned, non-owned, leased, or hired. The minimum liability limit must be \$1 million per occurrence, combined single limit. The CAL insurance policy is required if Contractor will use a vehicle in the performance of this Contract.
- d. Other insurance policies required in the Solicitation.

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

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

19. RESERVED.

20. **PUBLIC INFORMATION:** Contractor agrees that this Contract, related purchase orders, related pricing documents, and invoices will be public documents and may be available for public and private distribution in accordance with the State of Utah's Government Records Access and Management Act (GRAMA). Contractor gives the State Entity and the State of Utah express permission to make copies of this Contract, related sales orders, related pricing documents, and invoices in accordance with GRAMA. Except for sections identified in writing by Contractor and expressly approved by the State of Utah Division of Purchasing and General Services, Contractor also agrees that the Contractor's Response will be a public document, and copies may be given to the public as permitted under GRAMA. The State Entity and the State of Utah are not obligated to inform Contractor of any GRAMA requests for disclosure of this Contract, related purchase orders, related pricing documents, or invoices.
21. **DELIVERY:** All deliveries under this Contract will be F.O.B. destination with all transportation and handling charges paid for by Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State Entity, except as to latent defects or fraud. Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract.
22. **ACCEPTANCE AND REJECTION:** The State Entity shall have thirty (30) days after delivery of the Procurement Item(s) to perform an inspection of the Procurement Item(s) to determine whether the Procurement Item(s) conform to the standards specified in the Solicitation and this Contract prior to acceptance of the Procurement Item(s) by the State Entity.
If Contractor delivers nonconforming Procurement Item(s), the State Entity may, at its option and at Contractor's expense: (i) return the Procurement Item(s) for a full refund; (ii) require Contractor to promptly correct or replace the nonconforming Procurement Item(s); or (iii) obtain replacement Procurement Item(s) from another source, subject to Contractor being responsible for any cover costs. Contractor shall not redeliver corrected or rejected Procurement Item(s) without: first, disclosing the former rejection or requirement for correction; and second, obtaining written consent of the State Entity to redeliver the corrected Procurement Item(s). Repair, replacement, and other correction and redelivery shall be subject to the terms of this Contract.
23. **INVOICING:** Contractor will submit invoices within thirty (30) days of the delivery date of the Procurement Item(s) to the State Entity. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to this Contract. The prices paid by the State Entity will be those prices listed in this Contract, unless Contractor offers a prompt payment discount within its Response or on its invoice. The State Entity has the right to adjust or return any invoice reflecting incorrect pricing.
24. **PAYMENT:** Payments are to be made within thirty (30) days after a correct invoice is received. All payments to Contractor will be remitted by mail, electronic funds transfer, or the State of Utah's Purchasing Card (major credit card). If payment has not been made after sixty (60) days from the date a correct invoice is received by the State Entity, then interest may be added by Contractor as prescribed in the Utah Prompt Payment Act. The acceptance by Contractor of final payment, without a written protest filed with the State Entity within ten (10) business days of receipt of final payment, shall release the State Entity and the State of Utah from all claims and all liability to the Contractor. The State Entity's payment for the Procurement Item(s) and/or Services shall not be deemed an acceptance of the Procurement Item(s) and is without prejudice to any and all claims that the State Entity or the State of Utah may have against Contractor. The State of Utah and the State Entity will not allow the Contractor to charge end users electronic payment fees of any kind.
25. **INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY:** Contractor will indemnify and hold the State Entity and the State of Utah harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities, and costs in any action or claim brought against the State Entity or the State of Utah for infringement of a third party's copyright, trademark, trade secret, or other proprietary right. The parties agree that if there are any limitations of Contractor's liability, such limitations of liability will not apply to this section.

26. **OWNERSHIP IN INTELLECTUAL PROPERTY:** The State Entity and Contractor each recognizes that each has no right, title, or interest, proprietary or otherwise, in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing. All Procurement Item(s), documents, records, programs, data, articles, memoranda, and other materials not developed or licensed by Contractor prior to the execution of this Contract, but specifically manufactured under this Contract shall be considered work made for hire, and Contractor shall transfer any ownership claim to the State Entity.
27. **OWNERSHIP IN CUSTOM DELIVERABLES:** In the event that Contractor provides Custom Deliverables to DTS, pursuant to this Contract, Contractor grants the ownership in Custom Deliverables, which have been developed and delivered by Contractor exclusively for DTS and are specifically within the framework of fulfilling Contractor's contractual obligations under this contract. Custom Deliverables shall be deemed work made for hire, such that all intellectual property rights, title and interest in the Custom Deliverables shall pass to DTS, to the extent that the Custom Deliverables are not recognized as work made for hire, Contractor hereby assigns to DTS any and all copyrights in and to the Custom Deliverables, subject to the following:

1. Contractor has received payment for the Custom Deliverables,
2. Each party will retain all rights to patents, utility models, mask works, copyrights, trademarks, trade secrets, and any other form of protection afforded by law to inventions, models, designs, technical information, and applications ("Intellectual Property Rights") that it owned or controlled prior to the effective date of this contract or that it develops or acquires from activities independent of the services performed under this contract ("Background IP"), and
3. Contractor will retain all right, title, and interest in and to all Intellectual Property Rights in or related to the services, or tangible components thereof, including but not limited to (a) all know-how, intellectual property, methodologies, processes, technologies, algorithms, software, or development tools used in performing the Services (collectively, the "Utilities"), and (b) such ideas, concepts, know-how, processes and reusable reports, designs, charts, plans, specifications, documentation, forms, templates, or output which are supplied or otherwise used by or on behalf of Contractor in the course of performing the Services or creating the Custom Deliverables, other than portions that specifically incorporate proprietary or Confidential Information or Custom Deliverables of DTS (collectively, the "Residual IP"), even if embedded in the Custom Deliverables.
4. Custom Deliverables, not including Contractor's Intellectual Property Rights, Background IP, and Residual IP, may not be marketed or distributed without written approval by DTS.

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

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

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

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

32. **PUBLICITY:** Contractor shall submit to the State Entity for written approval all advertising and publicity matters relating to this Contract. It is within the State Entity's sole discretion whether to provide approval, which approval must be in writing.
33. **WORK ON STATE OF UTAH OR ELIGIBLE USER PREMISES:** Contractor shall ensure that personnel working on State of Utah premises shall: (i) abide by all of the rules, regulations, and policies of the premises; (ii) remain in authorized areas; (iii) follow all instructions; and (iv) be subject to a background check, prior to entering the premises. The State of Utah or Eligible User may remove any individual for a violation hereunder.
34. **CONTRACT INFORMATION:** During the duration of this Contract the State of Utah Division of Purchasing is required to make available contact information of Contractor to the State of Utah Department of Workforce Services. The State of Utah Department of Workforce Services may contact Contractor during the duration of this Contract to inquire about Contractor's job vacancies within the State of Utah.
35. **WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.
36. **SUSPENSION OF WORK:** Should circumstances arise which would cause the State Entity to suspend Contractor's responsibilities under this Contract, but not terminate this Contract, this will be done by formal written notice pursuant to the terms of this Contract. Contractor's responsibilities may be reinstated upon advance formal written notice from the State Entity.
37. **CHANGES IN SCOPE:** Any changes in the scope of the services to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of services.
38. **PROCUREMENT ETHICS:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or to any person in any official capacity who 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.
39. **ATTORNEY'S FEES:** In the event of any judicial action to enforce rights under this Contract, the prevailing party shall be entitled its costs and expenses, including reasonable attorney's fees incurred in connection with such action.
40. **TRAVEL COSTS:** If travel expenses are permitted by the Solicitation, then all travel costs associated with the delivery of Services under this Contract will be paid according to the rules and per diem rates found in the Utah Administrative Code R25-7. Invoices containing travel costs outside of these rates will be returned to Contractor for correction.
41. **DISPUTE RESOLUTION:** Prior to either party filing a judicial proceeding, the parties agree to participate in the mediation of any dispute. The State Entity, after consultation with Contractor, may appoint an expert or panel of experts to assist in the resolution of a dispute. If the State Entity appoints such an expert or panel, State Entity and Contractor agree to cooperate in good faith in providing information and documents to the expert or panel in an effort to resolve the dispute.
42. **ORDER OF PRECEDENCE:** In the event of any conflict in the terms and conditions in this Contract, the order of precedence shall be: (i) this Attachment A; (ii) Contract Signature Page(s); (iii) the State of Utah's additional terms and conditions, if any; (iv) any other attachment listed on the Contract Signature Page(s); and (v) Contractor's terms and conditions that are attached to this Contract, if any. Any provision attempting to limit the liability of Contractor or limit the rights of the State Entity or the State of Utah must be in writing and attached to this Contract or it is rendered null and void.
43. **SURVIVAL OF TERMS:** Termination or expiration of this Contract shall not extinguish or prejudice the State Entity's right to enforce this Contract with respect to any default of this Contract or defect in the Procurement Item(s) that has not been cured, or of any of the following clauses, including: Governing Law and Venue, Laws and Regulations, Records Administration, Remedies, Dispute Resolution, Indemnity, Newly Manufactured, Indemnification Relating to Intellectual Property, Warranty of Procurement Item(s), Insurance.
44. **SEVERABILITY:** The invalidity or unenforceability of any provision, term, or condition of this Contract shall not affect the validity or enforceability of any other provision, term, or condition of this Contract, which shall remain in full force and effect.
45. **ERRORS AND OMISSIONS:** Contractor shall not take advantage of any errors and/or omissions in this Contract. The Contractor must promptly notify the State of any errors and/or omissions that are discovered.
46. **ENTIRE AGREEMENT:** This Contract constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.

(Revised April 16, 2018)

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

This is for a contract of information technology procurement items and must be accompanied by the State of Utah Standard Terms and Conditions. The definitions in Attachment A apply to this Attachment.

1. DEFINITIONS:

- a. "Access to Secure State Facilities, Data, and Technology" means Contractor will (A) enter upon secure premises controlled, held, leased, or occupied by the State of Utah; (B) maintain, develop, or have access to any deployed hardware, software, firmware, or any other technology, that is in use by the State of Utah; or (C) have access to or receive any State Data or Confidential Information during the course of performing this Contract.
- b. "Authorized Persons" means the Contractor's employees, officers, partners, Subcontractors or other agents of Contractor who need to access State Data to enable the Contractor to perform its responsibilities under this Contract.
- c. "Custom Deliverable" means the Work Product that Contractor is required to deliver under this Contract.
- d. "Data Breach" means the unauthorized access by a non-authorized person(s) which results in unauthorized acquisition of State Data and compromises the security, confidentiality, or integrity of State Data. It is within State Entity's sole discretion to determine whether the unauthorized access is a Security Incident or a Data Breach.
- e. "Federal Criminal Background Check" means an in depth background check conducted and processed by the FBI that covers all states. Federal Criminal Background Check reports will show if applicant has had any criminal cases filed against them that violated federal criminal law.
- f. "Non-Public Data" means data, other than personal data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by the State of Utah and the federal government because it contains information that is exempt by state, federal and local statutes, ordinances, or administrative rules from access by the general public as public information.
- g. "Personal Data" means data that includes information relating to a person that identifies the person by a person's first name or first initial and last name and has any of the following personally identifiable information (PII): government-issued identification numbers (e.g., Social Security, driver's license, passport); financial account information; including account number, credit or debit card numbers; or protected health information (PHI) relating to a person.
- h. "Protected Health Information" (PHI) means individually identifiable health information transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. PHI excludes education records covered by the Family Educational Rights and Privacy Act (FERPA), as amended, 20 U.S.C. 1232g, records described at 20 U.S.C. 1232g(a)(4)(B)(iv) and employment records held by a covered entity in its role as employer.
- i. "Security Incident" means the potentially unauthorized access by non-authorized persons to State Data that Contractor believes could reasonably result in the use, disclosure or theft of State Data within the possession or control of the Contractor. A Security Incident may or may not turn into a Data Breach. It is within the State Entity's sole discretion to determine whether the unauthorized access is a Security Incident or a Data Breach.
- j. "State Data" means all Confidential Information, Non-Public Data, Personal Data, and Protected Health Information that is created or in any way originating with the State of Utah whether such data or output is stored on the State of Utah's hardware, Contractor's hardware, or exists in any system owned, maintained or otherwise controlled by the State of Utah or by the Contractor. State Data also includes any federal data that the State of Utah controls or maintains that is protected under federal laws, statutes, and regulations.
- k. "Work Product" means every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor or Contractor's Subcontractors (either alone or with others) pursuant to this Contract. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any State of Utah or State Entity intellectual property, Contractor's intellectual property (that it owned or licensed prior to this Contract) or Third Party intellectual property.

2. CONTRACTOR ACCESS TO SECURE STATE FACILITIES, STATE DATA, AND TECHNOLOGY: If an employee of Contractor or a Subcontractor is required to complete a Federal Criminal Background Check or said employee of Contractor or a Subcontractor will have Access to Secure State Facilities, State Data, and Technology, Contractor shall provide State Entity with sufficient personal information (at Contractor's own expense) so that a Federal Criminal Background Check may be completed by State Entity, at State Entity's expense.

3. DRUG-FREE WORKPLACE: Contractor agrees to abide by the State Entity's drug-free workplace policies while on the State Entity's premises. The State Entity will provide Contractor with a copy of these written drug-free workplace policies upon request.

4. CODE OF CONDUCT: If Contractor is working at facilities controlled or owned by the State of Utah, Contractor agrees to follow and enforce the State Entity's applicable code of conduct.

5. HARDWARE WARRANTY: Contractor agrees to warrant and assume responsibility for all hardware portions of any Good or Custom Deliverable, that it licenses, contracts, or sells to DTS under this Contract, for a period of one (1) year. Contractor acknowledges that all warranties granted to DTS by the Uniform Commercial Code of the State of Utah apply to this Contract. Product liability disclaimers and/or warranty disclaimers from Contractor are not applicable to this Contract. In general, the Contractor warrants that the hardware:

(a) will perform as specified in the Proposal; (b) will live up to all specific claims listed in the Proposal; (c) will be suitable for the ordinary purposes for which the hardware is used; (d) will be suitable for any special purposes that DTS has relied on Contractor's skill or judgment to consider when it advised DTS about the hardware in the Proposal; (e) the hardware has been properly designed and manufactured; and (f) is free of significant defects or unusual problems about which DTS has not been warned.

6. **SOFTWARE WARRANTY:** Contractor warrants that for a period of ninety (90) days from the date of Acceptance that the software portions of the Procurements Items, that Contractor licenses, contracts, or sells to the State Entity under this Contract, will: (a) perform in accordance with the specific claims provided in the Response and any specifications agreed to in writing between the State Entity and Contractor; (b) be suitable for the ordinary purposes for which such software is used; (c) be suitable for any special purposes that the State Entity has relied on Contractor's skill or judgment to consider when it advised the State Entity about the software in its Response; (d) have been properly designed and manufactured; and (e) be free of significant defects or unusual problems about which the State Entity has not been warned. Contractor shall use commercially reasonable efforts to provide work-around solutions or patches to reported software problems.
7. **UPDATES AND UPGRADES:** Contractor grants to the State Entity a non-exclusive, non-transferable license to use upgrades and updates provided by Contractor during the term of this Contract. Such upgrades and updates are subject to the terms of this Contract. The State Entity shall download, distribute, and install all updates as released by Contractor during the Contract Period.
8. **TECHNICAL SUPPORT AND MAINTENANCE:** If technical support and maintenance is a part of the Procurement Item that Contractor provides under this Contract, Contractor will use commercially reasonable efforts to respond to the State Entity in a reasonable time.
9. **SECURE PROTECTION AND HANDLING OF STATE DATA:** If Contractor is given State Data as part of this Contract, the protection of State Data shall be an integral part of the business activities of Contractor to ensure that there is no inappropriate or unauthorized use of State Data. To the extent that Contractor is given State Data, Contractor shall safeguard the confidentiality, integrity, and availability of the State Data and comply with the conditions outlined below. The State Entity reserves the right to verify Contractor's adherence to the following conditions to ensure they are met during the life of the Contract:
 1. **Network Security:** Contractor agrees at all times to maintain network security that - at a minimum - includes: network firewall provisioning, intrusion detection, and regular third party penetration testing. Contractor also agrees to maintain network security that conforms to one of the following:
 - (1) Those standards the State of Utah applies to its own network, found outlined in *DTS Policy 5000-0002 Enterprise Information Security Policy* (copy available upon request);
 - (2) Current standards set forth and maintained by the National Institute of Standards and Technology, including those at: <http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r4.pdf>; or
 - (3) Any generally recognized comparable standard that Contractor then applies to its own network and is approved by the State Entity in writing.
 2. **State Data Security:** Contractor agrees to protect and maintain the security of State Data with protection that is at least as good as or better than that maintained by the State of Utah as identified in *DTS Policy 5000-0002*. These security measures include but are not limited to maintaining secure environments that are patched and up to date with all appropriate security updates as designated (ex. Microsoft Notification). The State Entity reserves the right to determine if Contractor's level of protection adequately meets the State Entity's security requirements.
 3. **State Data Transmission:** Contractor agrees that any and all transmission or exchange of system application data with the State Entity shall take place via secure means (ex. HTTPS or FTPS).
 4. **State Data Storage:** Contractor agrees that all State Data will be stored and maintained in data centers in the United States. Contractor agrees that no State Data at any time will be processed on or transferred to any portable or laptop computing device or any portable storage medium, except for devices that are used and kept only at Contractor's United States data centers, unless such medium is part of the Contractor's designated backup and recovery process. Contractor shall permit its employees and Subcontractors to access non-State Data remotely only as required to provide technical support. Contractor may provide technical user support on a 24/7 basis using a Follow the Sun model, unless otherwise prohibited by this contract.
 5. **State Data Encryption:** Contractor agrees to store all data provided to Contractor, including State, as well as any backups made of that data, in encrypted form using no less than 128 bit key and include all data as part of a designated backup and recovery process.
 6. **Password Protection:** Contractor agrees that any portable or laptop computer that has access to the State Entity or State of Utah network, or stores any State Data is equipped with strong and secure password protection.
 7. **State Data Re-Use:** Contractor agrees that any and all data exchanged shall be used expressly and solely for the purpose enumerated in this Contract. Contractor further agrees that no State Data of any kind shall be transmitted, exchanged, or otherwise passed to other Contractors or interested parties except on a case-by-case basis as specifically agreed to in writing by the State Entity.
 8. **State Data Destruction:** The Contractor agrees that upon expiration or termination of this Contract it shall erase, destroy, and render unreadable all State Data from all non-state computer systems and backups, and certify in writing that these actions have been completed within thirty (30) days of the expiration or termination of this Contract or within seven (7) days of the request of the State Entity, whichever shall come first, unless the State Entity provides Contractor with a written directive. It is understood by the parties that the State Entity's written directive may request that certain data be preserved in accordance with applicable law.

9. **Services Shall Be Performed Within United States:** Contractor agrees that all of the services related to State Data will be performed by Contractor and Subcontractor(s) within the borders and jurisdiction of the United States.
10. **SECURITY INCIDENT NOTIFICATION:** Contractor shall immediately inform the State Entity of any Security Incident. Contractor may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement and seeking external expertise as mutually agreed upon, defined by law or contained in this Contract. Discussing Security Incidents with the State Entity should be handled on an urgent, as-needed basis as part of Contractor's communication and mitigation processes, defined by law or contained in this Contract.
11. **DATA BREACH RESPONSIBILITIES:** Contractor agrees to comply with all applicable laws that require the notification of individuals in the event of a Data Breach or other events requiring notification in accordance with DTS Policy 5000-0002 Enterprise Information Security Policy (copy available upon request). Contractor shall immediately inform the State Entity of any Data Breach. In the event of a Data Breach or other event requiring notification under applicable law (Utah Code § 13-44-101 thru 301 et al), Contractor shall: (a) cooperate with the State Entity by sharing information relevant to the Data Breach; (b) promptly implement necessary remedial measures, if necessary; (c) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in relation to the Data Breach; and (d) in accordance with applicable laws indemnify, hold harmless, and defend the State Entity and the State of Utah against any claims, damages, or other harm related to such Data Breach. If the Data Breach requires public notification, all communication shall be coordinated with the State Entity. Contractor shall be responsible for all notification and remedial costs and damages.
12. **STATE INFORMATION TECHNOLOGY POLICIES:** If applicable, Contractor agrees to comply with the following State of Utah Department of Technology Policies which are available upon request:
1. **DTS Policy 4000-0001, Enterprise Application and Database Deployment Policy:** The Enterprise Application and Database Deployment Policy requires any Contractor developing software for the State to develop and establish proper controls that will ensure a clear separation of duties between developing and deploying applications and databases to minimize security risk; to meet due diligence requirements pursuant to applicable state and federal regulations; to enforce contractual obligations; and to protect the State's electronic information and information technology assets.
 2. **DTS policy 4000-0002, Enterprise Password Standards Policy:** Any Contractor developing software for the State must ensure it is built to follow the password requirements outlined in the Enterprise Password Standards Policy.
 3. **DTS Policy 4000-0003, Software Development Life Cycle Policy:** The Software Development Life Cycle Policy requires any Contractor developing software for the State to work with DTS in implementing a Software Development Lifecycle (SDLC) that addresses key issues of security, accessibility, mobile device access, and standards compliance.
 4. **DTS Policy 4000-0004, Change Management Policy:** Per the Change Management Policy, any Goods or Custom Deliverables furnished or Services performed by Contractor which have the potential to cause any form of outage or to modify DTS's or the State of Utah's infrastructure must be reviewed by the DTS Change Management Committee. Following this notification, any outages or Data Breaches which are a direct result of Contractor's failure to comply with DTS instructions and policies following notification will result in Contractor's liability for any and all damages resulting from or associated with the outage or Data Breach.
13. **ELECTRONIC DELIVERY:** Contractor may electronically deliver any Procurement Item to the State Entity or provide any Procurement Item for download from the Internet, if approved in writing by the State Entity. Contractor must take all reasonable and necessary steps to ensure that the confidentiality of those electronic deliveries is preserved in the electronic delivery process, and is reminded that failure to do so may constitute a breach of obligations owed to the State Entity under this Contract. Contractor warrants that all electronic deliveries will be free of known, within reasonable industry standards, malware, bugs, Trojan horses, etc. Any electronic delivery that includes State Data that Contractor processes or stores must be delivered within the specifications of this Contract.
14. **OWNERSHIP IN CUSTOM DELIVERABLES:** In the event that Contractor provides Custom Deliverables to the State Entity, pursuant to this Contract, Contractor grants the ownership in Custom Deliverables, which have been developed and delivered by Contractor exclusively for the State Entity and are specifically within the framework of fulfilling Contractor's contractual obligations under this Contract. Custom Deliverables shall be deemed work made for hire, such that all intellectual property rights, title and interest in the Custom Deliverables shall pass to the State Entity. To the extent that the Custom Deliverables are not recognized as work made for hire, Contractor shall assign to the State Entity any and all copyrights in and to the Custom Deliverables, subject to the following:
1. Contractor has received payment for the Custom Deliverables,
 2. Each party will retain all rights to patents, utility models, mask works, copyrights, trademarks, trade secrets, and any other form of protection afforded by law to inventions, models, designs, technical information, and applications ("Intellectual Property Rights") that it owned or controlled prior to the effective date of this contract or that it develops or acquires from activities independent of the services performed under this contract ("Background IP"), and
 3. Contractor will retain all right, title, and interest in and to all Intellectual Property Rights in or related to the services, or tangible components thereof, including but not limited to (a) all know-how, intellectual property, methodologies, processes, technologies, algorithms, software, or development tools used in performing the Services (collectively, the "Utilities"), and (b) such ideas, concepts, know-how, processes and reusable reports, designs, charts, plans, specifications, documentation, forms, templates, or output which are supplied or otherwise used by or on behalf of Contractor in the course of performing the Services or creating the Custom Deliverables, other than portions that specifically incorporate proprietary or Confidential Information or Custom Deliverables of the State Entity (collectively, the "Residual IP"), even if embedded in the Custom Deliverables.

Contractor agrees to grant to the State Entity a perpetual, irrevocable, royalty-free license to use Contractor's Background IP, Utilities, and Residual IP, as defined above, solely for the State Entity and the State of Utah to use the Custom Deliverables. The State Entity reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for the State Entity's and the State of Utah's internal purposes, such Custom Deliverables.

- 15. PROTECTION AND USE OF RECORDS:** The State Entity shall own exclusive title to all information gathered, reports developed, and conclusions reached in performance of this Contract. Contractor may not use, except in meeting its obligations under this Contract, information gathered, reports developed, or conclusions reached in performance of this Contract without the express written consent of the State Entity.
- 16. RETURN OF DOCUMENTS AND DATA:** All documents and data pertaining to work required by this Contract will be the property of the State Entity, and must be delivered to State Entity within thirty (30) working days after termination or expiration of this Contract, regardless of the reason for contract termination, and without restriction or limitation to their future use. Any documents and data that may be returned under provisions of this Section must either be in the format as originally provided, or in a format that is readily usable by the State Entity or that can be formatted in a way that it can be used. The costs for returning documents and data to the State Entity are included in this Contract.
- 17. SURVIVORSHIP:** Any terms that by their nature would survive the expiration of, completion, or termination of this contract shall survive.
- 18. COMPLIANCE WITH ACCESSIBILITY STANDARDS:** Contractor shall comply with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973. Contractors must also adhere to Utah Administrative rule R895-14-1-3-3, which states that vendors developing new websites or applications are required to meet accessibility guidelines subject to rule R895 and correct any items that do not meet these guidelines at no cost to the agency; and Rule R895-14-1-4-2, which states that vendors proposing IT products and services shall provide Voluntary Product Accessibility Template® (VPAT™) documents.
- 19. RIGHT TO AUDIT:** Contractor agrees to, upon written request, permit the State Entity, or a third party designated by the State Entity, to perform an assessment, audit, examination, or review of all of Contractor's sites and environments - including physical, technical, and virtual sites and environments - in order to confirm Contractor's compliance with this Contract; associated Scopes of Work; and applicable laws, regulations, and industry standards.

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

- 20. TIME IS OF THE ESSENCE:** The Procurement Items shall be completed by any applicable deadline stated in this Contract. For all services, time is of the essence. Contractor shall be liable for all damages to the State Entity and the State of Utah, and anyone for whom the State of Utah may be liable, as a result of Contractor's failure to timely complete the services required under this Contract.
- 21. STANDARD OF CARE:** The services of Contractor and its Subcontractors shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the services that are the subject of this Contract. Contractor shall be liable to the State Entity and the State of Utah for claims, liabilities, additional burdens, penalties, damages, or third party claims (i.e. another Contractor's claim against the State of Utah), to the extent caused by wrongful acts, errors, or omissions that do not meet this standard of care.

(Revision Date: 6/15/2016)

Attachment C: Scope of Work

The scope of work for this contract includes a made to order production database application and value-added extensions that will allow USIMAC to produce, store, deliver, track, and replace into inventory the educational products needed by Utah students. This solution will be cloud based. The scope of work includes the solution proposed in Brackenwood Consulting's response to the RFP.

In addition to providing a made to order production database application, Brackenwood Consulting will:

1. Provide an established database migration plan with staff having expertise in this area referred to as an ETL that will provide a smooth transition to the new system from our current management system.
2. Provide a one-week on-site staff training for a new system implementation with support documentation provided by the vendor.
3. Provide automated system optimizations and data backups with preparation plans for disaster recovery.
4. Include processes for USIMAC to be more productive and available to its customers as requested, this would including reporting, time worked on individual jobs and bill of materials for orders.
5. Includes processes and systems that will help in the production, management, tracking, and delivery of USIMAC materials for Utah students.

Requirements

1. A web interface for patrons capable of browsing available inventory, place orders, and view order status. Browsers include Microsoft, Google, Apple and Firefox.
 - a. Must include customer authentication, customer contact, shipping information, and USIMAC approval capability.
 - b. Ability to attach necessary documentation to orders, attachments would be typical of other cloud based application abilities. Any number of files and any file type may be uploaded and associated with that order.
 - c. Ability to search multiple databases, external to the Production Database application, such as national databases, if the ability to do so is available.
2. An inventory circulation management system that includes tracking inventory, as all educational items produced are returned into a repository in order to be available to students throughout the State of Utah, includes the ability to see when specific events occur and by whom.
3. Customizable data entry fields, and operational production windows in the production database application that are built to suit.
4. Accessibility to blind and visually impaired users, in the production database application, extensions, and customer portals. This should be within level A in accordance of the reference guide found on <https://www.w3.org/WAI/WCAG21/quickref/>
5. The ability to customize labeling of product.
6. A supply inventory management system.
7. The ability to have simultaneous users actively entering data and managing the application without errors. If two users simultaneously create an order, the orders are queued and handled one at a time. If two users simultaneously update the same order, timestamps will prevent the order processed second from updating the earlier order. Users will be notified when this error occurs.
8. Ongoing consulting on a regular and as needed basis. Five hours per week of support/maintenance and training to include the length of the contract.

Reporting Capabilities

The production database will have the ability to produce the following standard reports:

1. Orders
2. Project Assigned by Employee
3. Text Book Reconciliation
4. Cost of Operations

Any additional reports would need to be agreed upon by a contract amendment between both parties.

Technology requirements for Cloud Solution

Architecture

1. Solution should have LDAP or Google Apps for Education integration support for automating the creation and management of user accounts.
2. Solution should provide SSO support with LDAP and/or Google Apps for Education
3. Should be a cloud based solution with redundancy failover
4. Solution must be accessible via a web browser

Client Requirements

1. Solution supports Microsoft Windows OS or MAC OS
2. Solution supports latest web browser versions of Google Chrome, Internet Explorer, Safari and Firefox
3. Solution supports Apple IOS and Android mobile devices
4. Solution should be optimized for use with mobile devices both functionally and visually

Project Management Approach and Timeline:

Governance

The following project governance plan is intended to create regular touchpoints between the project and key sponsors, stakeholders and contributors during the lifecycle of the project. Correct project governance ensures that all necessary stakeholders are kept updated of progress and issues on a project with the opportunity to intervene and course correct where necessary. The below is based on our experience of large projects within an enterprise setting, it is possible to scale in either direction to ensure stakeholder needs are being met.

Governance Item	Purpose	Audience	Frequency
Sprint Planning and Retrospective	<ol style="list-style-type: none">1) Define scope for next sprint2) Review progress from completed sprint3) Track tasks assigned across the team4) Review RAID Log5) Collaboratively troubleshoot issues	Active project participants	Weekly, aligned to sprints

Steering Committee	<ol style="list-style-type: none"> 1) Primarily a decision making forum 2) Review critical risks and issues 3) Track performance to plan and review overall high level project status 	Project Sponsor and Senior Stakeholders	Monthly
Project Status Report	<ol style="list-style-type: none"> 1) Email report of project status, including progress made that week and focus areas for the next 2) Overall RAG status of the project 3) Key successes and challenges 	All stakeholders	Weekly

Project Roles and Responsibilities

Project Manager/Business Analyst

- Overall PM responsibility for Project
- Stakeholder Identification and Management
- Responsible for timely and accurate Project Reporting and Governance
- Maintain RAID log and ensure Risks and Issues are proactively dealt with
- Create and maintain detailed project plan to track progress
- Ensure invoices are accurate and timely with project costs accurately tracked
- Responsible for Change Request Process
- Accurate capture of system requirements
- Define and execute system testing approach
- Co-ordinate User Acceptance Test

Technical Architect/Developer

- Architecture
- Technical Design
- Product and Licensing Decisions
- Product Development
- Unit Testing
- Assist with execution of System Testing
- Assist with User Acceptance Testing

USDB Responsibilities

- Providing input into and approving Requirements Matrix
- Attending Weekly Working Groups and Monthly Steering Committees
- Overall Product Acceptance (UAT)
- Change Request Approval
- Timely payment of invoices

High Level Project Plans

The high level plan below outlines the anticipated sprint sequence and overall duration of the project. It is expected to take 19 weeks to be able to cut over to the new system with support automation tasks

scheduled for delivery away from the critical path. Following the go live, we propose to offer one week of dedicated onsite support to help manage the transition to the new solution.

	W1	W2	W3	W4	W5	W6	W7	W8	W9	W10	W11	W12	W13	W14	W15	W16	W17	W18	W19	W20	W21	W22	
Development	Sprint 1 - Infra Framework and Cloud Configuration - DB Installation - DB Migration		Sprint 2 - Data base and Services Development - Barcode Scanner Design			Sprint 3 - Google Authentication Integration - External Search Functionality - Document Management System			Sprint 4 - PBN Client Development		Sprint 5 - Teacher Client Development - Mobile Optimisation		Sprint 6 - USDB Client		Sprint 7 - Barcode Scanner implementation		Final Preparation and Critical Bug Fixes		G O L I V E			Support & Housekeeping Automation	
Testing	Test Case Prep	Test Execution	Test Case Prep	Test Case Execution	Test Case Execution	Test Case Prep	Test Case Execution	Test Case Execution	Test Case Prep	Test Case Execution	Test Case Prep	Test Case Execution	Test Case Prep	Test Case Execution	Test Case Prep	Test Case Execution	UAT Execution			Onsite Support	Test Case Prep	Test Case Execution	
Implementation									Agree Implementation Strategy - Create Runbook		Create User & Training Docs						User Training Sessions					Create Support Docs	

Test Strategy

Testing of the application is essential to ensure that it behaves as specified, the objective of testing is to ensure that the application is fit for use once the decision is taken to promote to live and that all major bugs have been identified and resolved.

The testing effort will be split into two distinct phases:

System Testing: Conducted as part of each development sprint to prove that new functionality behaves as expected. Test cases will be created and mapped to the requirements to ensure that all required functionality is tested and fit for purpose before being promoted to user acceptance testing. Test execution and test data creation will be conducted by Brackenwood Consulting. It is recommended that test cases are reviewed by USDB prior to execution to ensure that all standard use cases have been captured and are tested.

Any bugs found in testing will be addressed in the sprint if time allows or added to the backlog for a future sprint if the remediation work is sufficiently large.

User Acceptance Testing: This will be a separate and final phase at the end of the project, it is designed to be executed by USDB to ensure they are confident in the functionality of the product. It will serve as the product acceptance phase and the application will be made ‘live’ once UAT is signed off.

Application Support: Support Requests

First point of call for interaction between users of the application and the support team will be the raising of a support ticket. By raising a support ticket we can track the request through the lifecycle and ensure that each and every request has been dealt with in a timely and satisfactory manner. Three methods of contacting the support team and raising a support ticket will be offered:

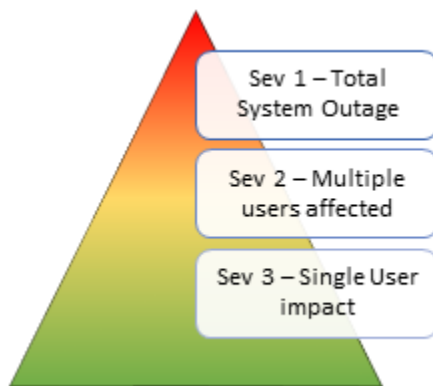
- 1) Phone – our support staff will be available to take your call, office numbers, cell phones and escalation contacts will be provided to ensure your needs can be serviced as quickly as possible.
- 2) Email – A dedicated support mailbox will be provided for less urgent requests or queries to be submitted to the support team.

3) 'Contact Support' Button within the Application – This will allow users to log their questions or requests to the support team directly from within their web browser.

Incident Management

An incident is defined as a disruption to service, this could either be total outage to the system or an issue affecting a single user or function. Support should be contacted immediately if detected by a user and an incident will be raised. Support staff will also deploy automated service monitoring to catch issues as early as possible which include daily ready for business checks. Incidents will be classified by impact severity to ensure that the most critical issues are prioritized appropriately, and application availability maximized.

Support priority during an incident is to restore the service as quickly as possible while ensuring that key stakeholders are informed of the issue, updated on progress with a clear articulation of the recovery steps and time.



Problem Management

In our experience, with the intense focus on incident recovery a common shortfall of many support models is a failure to identify and address the root cause of outages and instability. This results in multiple outages, support requests and user frustration for identical issues. We will ensure that any Severity 1 or Severity 2 outage across the infrastructure or application is investigated until the root cause of the issue can be ascertained. Corrective measures will then be put in place to address the issue at root to minimize the risk of the outage occurring again.

Ongoing updates will be provided as part of either a monthly service review to ensure all problems are managed through to closure and users are aware of progress.

Knowledge Management

Documentation will be created which describes the functionality, technical design and the common support processes for the USIMAC application. These technology focused documents will help preserve critical information about the application for future enhancement or replacement projects, and will also expedite the training of new staff. This is a key control for mitigating the risk of a single point of failure with a key person dependency and to help seamlessly manage staff turnover.

Documentation will include all details of infrastructure, software and versions to ensure the system has an accurate configuration recorded. This will help manage version control and security patch schedules.

Event Management

In the event of a major activity affecting the system, the support team will co-ordinate the event. Ensuring that a mutually agreeable time is chosen, should the system require downtime, and communicating status updates throughout the event until service is restored. Examples of this could include Disaster Recovery tests to prove the redundancy capability as well as scheduled maintenance activity.

Monthly Service Reporting Dashboard

As part of the ongoing consultancy engagement, Brackenwood Consulting will create a Service Quality Review (SQR) Pack on a monthly basis. This pack will be used to measure the quality of the USIMAC service for the previous month, identify long term stability/performance trends and notify USDB of any upcoming maintenance windows or events. The SQR pack will be sent to USDB for review on the final Friday of each month, walkthroughs of the SQR can be scheduled as required and in person if requested. The following KPI's are anticipated to be included:

Incident Data – Number of incidents, broken down by severity and trended on a monthly basis.

User Request Data – Volume data including closure metrics.

System Availability Percentage – Availability expressed as a percentage of total required time, minus outages caused by incidents. This provides a high level and holistic KPI on system availability.

Upcoming System Changes or Events – Opportunity to flag upcoming maintenance or outage windows.

Support Automation

Brackenwood Consulting will automate eligible support operations where possible. This provides a cost-effective means of supporting the application by minimizing the number of hours required to identify issues or execute repetitive scheduled tasks. It is proposed this will include:

- 1) **Automated Ready For Business Check** – A series of preprogrammed checks across the application before the start of the business day. These will ensure the application is up and running with no issues before users log in. If issues are identified then it provides an opportunity to resolve before users are impacted.
- 2) **Automated Monitoring** – Critical components of the application will be monitored automatically triggering alerts for investigation by the support team if required. This might for example include the health of key services or remaining space left on critical database tables.
- 3) **Housekeeping Tasks** – Standard housekeeping tasks such as data backups or DB optimization will be automated.

Service Level Agreements

A service level agreement describes the agreed response or resolution time between service USDB and Brackenwood Consulting (the supplier). The following SLA's will be instituted:

Availability (%) – 95%

User Requests – Acknowledged same day and ETA provided

Incident Response Times:

Sev 1 – Worked on immediately with regular updates provided, recovery conference call convened to manage timely resolution.

Sev 2 – Worked on immediately with regular updates provided

Sev 3 – Acknowledged same day and ETA provided

Data Transfer upon Contract Expiration or Termination

Upon contract expiration or termination, if required, arrangements will be made for Brackenwood Consulting to transfer the USIMAC application or associated application data that resides in the cloud on non-state infrastructure and the source code to USDB.

Attachment D: Cost Sheet

1. The price for the USIMAC Database Production Application for the products and services identified in the technical proposal is \$173,600.00. This price includes implementation, enhancements, consultant, training, maintenance and support, hosting, data migration, and all other costs for the five year term of the contract.
2. Cost Breakdown

Component 1 - Application Build		
<i>Total Payment split evenly across 3 milestones:</i>		
	Expected Date	Amount Due
Milestone 1:		
Infrastructure Configuration sprint completed	8 weeks after contract signed	\$ 31,166.67
Milestone 2:		
Development and System Testing Complete	16 weeks after contract signed	\$ 31,166.67
Milestone 3:		
System delivered, stable and signed off as live.	22 weeks after contract signed	\$ 31,166.67
Total Cost		\$ 93,500.00

Component 2 - Support and Hosting Charges	
<i>Payments to be made quarterly:</i>	
Quarterly Charge	\$ 4,350.00
Items in scope of payments:	
Quarterly Support Charge: (starting in 3 rd quarter)	\$ 3,450.00
Quarterly Hosting Charge:	\$ 900.00
If the contract is terminated early by USDB for convenience then USDB will pay for the remaining quarterly hosting charges that are left on the contract	
Total Lifecycle Support and Hosting Charges (5 years)	
\$ 80,100.00	

3. Hourly rate for any proposed consultants:

Martin Atterbury	Title: Project Manager	\$53.125/ hour
Tom Hagan	Title: Developer/Designer	\$53.125/ hour

4. Training is Included in the rate quoted.

5. The contract is fixed price which means that Brackenwood Consulting agrees to build and support the USIMAC application to the high-level specification for the price given in this cost sheet.

As requirements evolve it is possible that additional features become desired or essential. These scope additions will be handled by a Change Request process which extends the scope and cost of the engagement and must be completed by an amendment signed by both parties. These extensions will also be considered fixed price, with estimation conducted by Brackenwood Consulting to determine the additional cost of the work before being presented and agreed by USDB.

No work will be started on scope additions until the project change request has been costed, submitted and approved. This ensures that USDB has total control over the cost of the project and does not risk unexpected budget over run.