

SERVICE LEVEL AGREEMENT
FOR
ELECTRONIC TRANSACTION AND SERVICES
TO
UTAH COUNTY

THIS SERVICE LEVEL AGREEMENT (SLA) is made and entered into this 12th day of September, 2000, by and between Utah County and E-Utah (hereinafter "the Network") as an initiative of the State of Utah, to be approved by the Utah Electronic Commerce Council (hereinafter "the Board") under the authority of the Utah Chief Information Officer, upon the following premises:

RECITALS

WHEREAS, the State of Utah has entered into that certain Contract for Network Manager Services (hereinafter, "Master Contract") with Utah Interactive, Inc., a for-profit Utah corporation (hereinafter "Network Manager"), to provide electronic access to public records and transactions through a gateway network (hereinafter "the Network"), said Master Contract is attached hereto as "Exhibit A," and

WHEREAS, pursuant to the Master Contract, the Network Manager is to negotiate an agreement with data-providing Utah governmental agencies for the provision of such agencies' public records while protecting and securing from unauthorized and inappropriate access to non-public government records;

NOW THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the amount and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENTS

SECTION 1: Statement of Purpose.

The purpose of this agreement is to define circumstances and responsibilities relating to providing on-line electronic access and, if applicable, transactions at Utah County's discretion through the Network to certain Non-Confidential Records maintained in electronic form, or which will in the future be maintained in electronic form, by Utah County.

SECTION 2: Term of Agreement.

This Agreement shall be in full force and effect after the date it is fully signed. Thereafter, this Agreement shall continue for successive monthly periods upon the same terms, provisions and conditions as provided in this Agreement, except that at either party's option, this Agreement may be terminated at any time upon thirty (30) days' advance written notice to the other party.

SECTION 3: Definition of Terms.

- a. Data records - information maintained in electronic form for communication or processing.
- b. Network users - individuals or organizations who use the Network for computer assisted research, information retrieval and electronic transactions.
- c. Department(s) - a Utah County section or unit serviced by Utah County's internal computer section, and whose data files are available to other sections or units of Utah County, and sometimes to other agencies besides Utah County.
- d. Public Record(s) - a record that is not private, controlled, or protected and that is not exempt from disclosure.

- e. Non-Confidential Records – Public Records and such Private records as the department director may authorize. Such to be outlined in a Schedule A to this agreement.
- f. Application - the development of one particular database of Non-Confidential Records on the Network or the Software Bridge to one particular database of Non-Confidential Records stored elsewhere for information lookup or one particular electronic transaction for gathering data or processing requests from the public (such as filings or permit applications) and the user interface to allow public access and/or interaction with the same on-line.
- g. Transaction – the electronic filing or gathering or dissemination of data by a department for a governmental purpose.
- h. "Premium services" means those services or information that are made available in such a way that they have commercial value or add convenience to the user.

SECTION 4: Utah County Responsibilities.

Utah County will:

- a. Oversee the timely and effective performance of this Agreement from Utah County's perspective, and assist the Network in resolving constructively any problems thereunder and any new issues that arise in connection therewith.
- b. Provide reasonable levels of support to any Utah County central data or computer department and to any Utah County department(s), in placing on-line with the Network, Utah County's non-confidential records as mutually agreed between Utah County and the Network, with due regard to the workload and priorities of the Network, and with due regard to the desires and needs of users of, and subscribers to, the Network.
- c. Direct the central Utah County data or computer department to perform as follows:
 - i. When requested, help in interpreting the department's Non-Confidential Record data for users or subscribers to the Network, provide a point of contact for such interpretation; provide advice on display screen designs when consulted, and cooperate with the Network in placing onto the Network, Utah County Non-Confidential Records as mutually agreed between Utah County and the Network, with due regard to the workload and priorities of the Network, and with due regard to the desires and needs of users of, and subscribers to, the Network.
 - ii. Provide computer access for the Network to Utah County Non-Confidential Records as permitted by Utah County, subject to interruption of service pursuant to SECTION 9, by an acceptable method, such as by electronic transmission, by disk, by email, or by some other acceptable method.
 - iii. Provide reasonable response time of on-line electronic inquiry within limitations of Utah County system resources and budget constraints.
 - iv. Provide reasonable levels of problem determination support to help isolate problems when requested, and if the problem resides on Utah County's end of the system, provide reasonable fixes or repairs consistent with Utah County's operational priorities.
 - v. Have final control and responsibility for security authorization of the Network (in cooperation with any department(s)) in granting access to its data to the Network (the Network users will not directly access Utah County system; it is only the Network host that accesses the system or transactions).
- d. Direct Utah County department(s) to perform as follows:

- i. When requested by the Network, help in interpreting the Non-Confidential Record data for users or subscribers of the Network; provide a point of contact within the department for such interpretation; provide advice on display screen designs when consulted; and cooperate with the Network in placing Non-Confidential Records onto the Network as permitted by Utah County, but only if desired by the Network users or subscribers. Utah County may also volunteer such assistance to the Network at Utah County's initiative.
 - ii. In the absence of a central Utah County data or computer department, perform those duties and responsibilities outlined in subparagraph c. of this SECTION 4.
- e. Assist the Network in determining the information from Utah County necessary to comply with the cost recovery portions of the Utah Public Records law as necessary.
 - f. To cooperate in establishing with the Network a recommendation to the Board of a reasonable charge for any access or transaction for which the same is appropriate.

SECTION 5: Network Responsibilities.

The Network agrees:

- a. To recognize that authorized on-line access or transactions provides no right to possession or ownership of Utah County data records at any time.
- b. To take all reasonable precautions to protect against unauthorized access to Utah County's data records.
- c. To provide all equipment, software, and supplies necessary to establish electronic access to Utah County Non-Confidential Records.
- d. To abide by Utah County's administrative regulations which may now be in force or effect or which may in the future become effective.
- e. To recognize there is no express or implied ownership of Utah County's equipment by the payment of any fee or charge to Utah County.
- f. In the event of for-a-charge access to any Utah County Non-Confidential Records or transactions, if any, to prepare and submit to Utah County a monthly statement accurately reflecting usage associated with same, and if any portion is payable to Utah County by statute, to bill, collect and remit the same monthly along with the statement, in accordance with the standard terms of the Master Contract.
- g. To keep such records as are required to document usage associated with providing access to Utah County's Non-Confidential Records and to provide Utah County access to these usage records at reasonable times for auditing purposes, if so requested by Utah County.
- h. To cooperate with Utah County and its department(s) in placing data records onto the Network as permitted by Utah County but only if desired by the Network users or subscribers, including securing proper access from the appropriate authority for, and providing necessary security to, each type of Non-Confidential Record desired, and only to the extent of reasonable Network resources.
- i. To recommend to Utah County and the Board priorities for development and revision of department applications, and to periodically reexamine the priority assigned as may be necessary, and to work diligently to accomplish each department application in accordance with the relative priority among all department applications.
- j. To lead the process of determining such premium service applications in order to provide resources to develop, maintain, manage, operate and expand the network, including conducting market research,

and to develop, in cooperation with Utah County, a recommendation to the Board on which services to provide, including proposed data access charges.

SECTION 6: Illegal Provisions.

If any provision of this Agreement shall be declared to be illegal, void or unenforceable by a court of competent jurisdiction, the other provisions shall not be affected but shall remain in full force and effect.

SECTION 7: Termination for Cause.

At Utah County's option, this Agreement may be terminated immediately upon the occurrence of any of the following:

- a. The Network's allowance of unauthorized access prohibited by this Agreement.
- b. The Network's material breach of any term, provisions or condition of this Agreement.

At the option of the Network and subject to review and concurrence by the Board, a particular service application may be terminated if there is insufficient interest demonstrated by the Network users or subscribers in it; and this Agreement or a particular service may be terminated immediately for a continuing failure of Utah County to keep fresh and updated in accordance with the schedule between the Network and Utah County, the information to which electronic access is furnished by the Network.

SECTION 8: Utah County Copyright and Content Non-Supervision Acknowledgment.

Utah County represents to the Network that the content materials furnished to the Network by Utah County for electronic access on the Network do not violate any third party's copyright rights under federal law. Further, Utah County acknowledges that the Network exercised no control, censorship, or direction over the content of Utah County's Non-Confidential Records or the links Utah County may request to other non-Network sites which may be made available on the Network.

SECTION 9: Interruption of Service.

Utah County shall use its best efforts to provide adequate and uninterrupted service under the terms of this Agreement. However, Utah County shall not be liable for interruption of service when the same shall be due to circumstances beyond the control of Utah County, its agents or employees, including but not limited to unanticipated equipment malfunction or periodic maintenance or update of the computer system or systems upon which such data records reside which could not have been prevented with regular maintenance.

SECTION 10: Assignment.

This agreement may not be assigned by the Network without the prior written consent of Utah County and any such assignment of this Agreement without such permission shall be null and void.

SECTION 11: Notices.

All notices shall be in writing and shall be directed to the parties to this agreement as shown below or by electronic means mutually agreed to by the parties:

To the Board: Mr. Alan C. Sherwood
Chair, Utah Electronic Commerce Council
116 State Capitol
Salt Lake City, Utah 84114

To the Network: Richard L. Brown
Network General Manager
Utah Interactive, Inc.
Post Office Box 3266
Salt Lake City, Utah 84110

To Utah County: Jerry D. Grover
Commission Chairman
Utah County
100 East Center Street, Suite 2300
Provo, UT 84606

SECTION 12: Data Records to be Accessed.

The Non-Confidential Records and transactions to be accessed under this Agreement are as follows:

- a. Those listed on the attached Schedule A.
- b. Such others as may in the future be mutually agreed between Utah County and the Network by executing a Schedule A Addendum.

SECTION 13: Electronic Commerce with the State.

In addition to developing applications which will permit electronic access to Utah County Non-Confidential Records, the Network and Utah County will cooperate in exploring ways in which it may be possible to further develop applications which will permit electronic filing of documents and electronic communications and other transactions from the Network users or subscribers with Utah County, with the goal of developing such applications as may be appropriate, with due regard for any limitations or constraints upon either entity.

SECTION 14: Utah County Access to Records from Other State Agencies with a Fee.

Utah County is able to access free-of-charge all state information on the Network for which an electronic access charge is associated, if Utah County has Internet access. Utah County acknowledges that neither the Board nor the Network governs Internet access for state agencies. For information from other state agencies which is available on the Network and for which an electronic access charge is associated, Utah County acknowledges and agrees that such access is governed by Board policy. That policy currently provides that a department may obtain a department account with the Network to obtain for-charge electronic access to records from other agencies without charge, PROVIDED that such records are accessed for internal use only, and that such records are neither resold nor furnished by Utah County outside its jurisdiction.

SECTION 15: Construction.

This Agreement shall be construed in accordance with the laws of the State of Utah.

SECTION 16: Paragraph headings.

The paragraph headings are inserted in this Agreement for convenience only and shall not be used in interpreting this Agreement.

SECTION 17: Total agreement.

This agreement constitutes the complete and exclusive statement of the agreement between the parties hereto. No amendment, waiver or alteration of this Agreement shall be effective unless signed by an authorized officer of each of the parties to this Agreement. Any oral agreement or representation shall bind neither Utah County nor the Network.

SECTION 18: Incorporation of Clauses from Master Contract.

To the extent relevant, those clauses found in the Contract For Network Manager's Services (hereinafter the Master Contract) dated May 7, 1999 by and between Utah Interactive, Inc., and the State of Utah, are incorporated herein by reference as though fully set out. Any provision in this agreement found to be in conflict with the Master Contract shall be resolved in favor of the contract.

IN WITNESS TO THEIR AGREEMENT TO ALL THE ABOVE AND FOREGOING, the parties hereto have herein below executed this Agreement the day and year first above written:

Utah County

By Jerry D. Grover Date _____
Jerry D. Grover, Chairman
Board of County Commissioners, Utah County, Utah

The Network

By Richard L. Brown Date 10 April 2001
Richard L. Brown, General Manager

The Board

By Alan Sherwood Date _____
Alan Sherwood, Chair

SCHEDULE A SUMMARY

Initial Electronic Access and Transaction Projects

<u>Department/Project/Priority</u>	<u>Statutory Fee*</u>	<u>Network EA Charge**</u>	<u>Total</u>
Utah County/Property Tax Payments	\$0	\$1.00	\$1.00

(*if any)

(**subject to the State approval)

"EXHIBIT A"

CONTRACT FOR NETWORK MANAGER SERVICES

THIS CONTRACT is between the State of Utah, hereinafter referred to as "the State", and Utah Interactive , Inc., a for-profit corporation, hereinafter referred to a "UII".

WHEREAS, the State has worked diligently to create an opportunity for providing enhanced electronic access to public services and information for Utah citizens in the most cost-effective, progressive, and cooperative means possible; and

WHEREAS, E-Utah; hereinafter referred to as the "Network", is poised to become a significant public access, economic development and educational tool for the State of Utah and its residents; and

WHEREAS, the Network will significantly benefit the State through:

1. Increased public services with minimal use of tax dollars;
2. Enhanced public access to State government;
3. Equality of access to State government regardless of geographic locations;
4. Increased efficiency of State government agencies and offices without budget increases through electronic commerce transactions;
5. Providing additional resources to State agencies and offices and to assist them in information management, access, and electronic commerce functions as the project grows;
6. Providing both Network services at no cost and Premium Services, for which an access charge will be assessed as recommended by the Utah Electronic Commerce Council, hereinafter referred to as the UECC;
7. Enhancing access to services and information of political subdivisions; and

WHEREAS, in order to effectuate electronic access and commerce for citizens with government throughout the State, the Governor's Office, Chief Information Officers' Section issued a Request for Proposal for a Government Services and Information Network (Electronic Gateway Service) RFP # RA9000 on January 8, 1999 and amendments on February 3, 1999 and February 16, 1999, referred to hereinafter collectively as the "RFP", seeking proposals for a private network manager; and

WHEREAS, UII submitted a proposal in response to the RFP, and such proposal was determined by the proposal review committee and the Division of Purchasing to be the one best suited to the goals of the State, which proposal is hereinafter referred to as the "UII Proposal"; and

WHEREAS, the State desires to contract with UII to serve as the Network Manager and to establish, develop, operate, maintain and expand the Network as mutually agreed to by UII and the State; and

WHEREAS the Network will provide increased electronic access and commerce among Utah residents, businesses, and other government entities;

NOW THEREFORE, the parties agree as follows:

1. PURPOSE OF THE NETWORK.

The purpose of the Network and this contract is to realize the vision of the Governor and the Utah Legislature in meeting the goals set forth in the Utah Information Technology Act and may be summarized as follows:

A. To create and provide a significant and diligently promoted public service to Utah citizens and businesses by:

- (1) Expanded business and citizen access to government services and information;
- (2) Offering an easy and convenient process for these groups to conduct transactions with State government online;
- (3) Accelerating the development and delivery of an increased volume of quality, online government services;
- (4) Improving the level of customer service from State government; and

B. To provide such public service without increasing the tax burden on the citizens of Utah, through utilization of private capital and management and appropriate payment for the same.

2. TERM OF CONTRACT AND RENEWALS

This Contract shall be for a term of four (4) years, commencing May 7, 1999, and expiring at 12:00 a.m., May 6, 2003, unless earlier terminated by the State.

At the option of the State, the Contract may be renewed for a period of two (2) additional years by written notice from the State on or before October 31, 2002, of its decision to extend the Contract period through May 6, 2005.

At the option of the State, the Contract may be renewed for an additional period of two (2) additional years by written notice from the State on or before October 31, 2004, of its decision to extend the Contract period through May 6, 2007.

At the option of the State, the Contract may be renewed for a period of two (2) additional years by written notice from the State on or before October 31, 2006, of its decision to extend the Contract period through May 6, 2009.

3. RELATIONSHIP OF PARTIES

E-Utah will be overseen by the Utah Electronic Commerce Council (UECC), an advisory board to the State Chief Information Officer (CIO). Routine contract administrative activities will be implemented through the contract administrator, who is the state electronic commerce coordinator, working in concert with UII. Final statutory and decision-making authority for this contract resides with the CIO. The duties and responsibilities of the UECC and UII are as follows:

A. Notwithstanding any other provisions contained herein, it is expressly agreed that UII is an independent contractor in the performance of each and every part of this Contract. As such UII is solely liable for all labor and expenses in furtherance of such performance hereunder. It is expressly agreed that UII and any of its subcontractors and agents, officers and employees in the performance of this Contract shall act in an independent capacity and not as officers or employees of the State. It is further expressly agreed that this Contract shall not be construed as a partnership or joint venture between UII or any subcontractor and the State of Utah.

B. UII may become an agent of the State only by the expressed written consent of the State.

C. UII will not pledge any assets of the State in its care, custody or control, or cause any type of lien to attach to such.

D. UII will provide network manager services in exchange for the opportunity to earn a reasonable profit from the Network's premium services. Premium Services are those services or information that are made available in such a way that they have commercial value or add convenience to the user. UII will develop and operate the Network which will serve in a manner which is self-supporting and cost effective. Much of the information access will be provided free to Network users. Free services will be funded from the proceeds

of the premium services. The development of premium or free services will include adequate integration with state agency systems to ensure that necessary records are created and populated appropriately. The Network will be self-supporting with UII receiving its compensation from the net proceeds of premium services.

E. The UECC will establish priorities and policies and approve or disapprove Service Level Agreements (agreements between the Network and a State Agencies or political subdivisions that define circumstances and responsibilities relating to providing on-line electronic access and/or transactions, which are at the agencies' or political subdivisions' discretion.) The UECC will review and approve or disapprove a service management plan for activities, schedules and deliverables. UII will submit the plan to the UECC within 60 days of the commencement of this contract. The plan shall also include but not be limited to a detailed description of the proposed network security architecture (define) and other core or shared services. The plan will also describe how maintenance, back-up disaster recovery and the design and updating of the State Home Page will be implemented. UII will also submit a revised budget plan for the operation of the Network within 60 days of the commencement of this contract.

F. As a contractor for the State, UII will deliver and disburse funds as agreed between UII, UECC and any state entity as negotiated in separate Service Level Agreement. All funds handling procedures shall be approved by the UECC and the Utah State Treasurer. UII will keep, maintain and be a custodian of all Network financial and operation records.

G. UII will disclose information in accordance with the Government Records Management Act (GRAMA) and will follow other relevant state and federal statutes, rules and regulations applicable to assuring privacy and confidentiality. Service level agreements will specify the process for disclosure. Any disclosure that is not specified in the service

level agreement shall only be disclosed through the express written authorization of the data custodian.

4. HARDWARE AND SOFTWARE AGREEMENTS

A. UII will provide hardware, and provide or develop software as outlined in the UII Proposal, and such other hardware and software as may be necessary to make the Network operational.

B. Upon completion of the initial four year term of the contract, UII will provide to the State at no cost, and without additional terms or conditions, a complete copy, together with any software updates or upgrades made by UII, of all application and network software (hereinafter collectively "The Software") developed either by UII or by any or all of its Affiliate Network Companies and implemented on the network (Corporations who are wholly owned subsidiaries of the National Information Consortium, Inc. that serve as the Network Managers for state gateway service initiatives.) UII will also include with The Software complete documentation and source code. The State shall be granted a perpetual for-use-only license to The Software including rights to modify the code and application as the State deems appropriate. An exclusion to this provision applies to software or documentation created by third parties and purchased by UII, or one of its Affiliate Network Companies. The Software shall be delivered to the State no later than the end of the term of the contract unless otherwise agreed to mutually by the parties to this contract. This provision also remains in effect for any additional software created by UII or an Affiliate Network Company implemented on the Network during any subsequent contract extension, amendment or renewal period.

C. If this Agreement is terminated by the State "for cause" or by UII for reasons other than those identified in section 15 and 16 prior to the end of the initial contract term, the State shall be entitled to the license at the time termination is effective. If this Agreement is terminated by the State without cause the State reserves the right to negotiate terms for licensure of software. The State reserves the right to acquire equipment at fair market value at the termination of this contract in coordination with UII's leasing agent.

D. License shall be limited to State use and may not be sublicensed to political subdivisions; however, if the State has a joint program through the Network with a political subdivision at the time the license is granted or before the termination of the contract, the license may continue to be used for such a program only.

E. UII shall deposit on a quarterly basis, the most recent version of all network application source code in escrow with a neutral third party to be mutually chosen by UII and the State. Over the term of the contract UII will have the authority to remove superseded source code. The source code shall be delivered to the State by the Escrow Agent in the event UII: (i) is declared insolvent through bankruptcy proceedings, (ii) is unable to perform its obligations to the State under the Contract, or (iii) as otherwise provided in its agreement with the Escrow Agent.

UII acknowledges that the State will review, approve and subsequently receive from UII, an executed copy of the software escrow agreement between UII and the Escrow Agent to the State. UII will notify the State in writing of any amendments to such agreements, any change in Escrow Agent, or of any replacement or successor escrow arrangements. The Escrow Agent will provide written notification to the State's Contract Administrator, at least semiannually, detailing all account activity during the previous period.

F. All Network trademarks, trade names, logos and other identifiers, Internet uniform resource locators, Internet addresses and e-mail addresses obtained or developed pursuant to this Contract shall be the property of the State.

5. CONNECTIONS BETWEEN INFORMATION NETWORK AND STATE AGENCIES

Costs associated with and maintenance of communication links from State facilities to UII facilities for Network purposes, including but not limited to leased circuits from telephone or cable companies, shall be paid as expenses by UII.

6. NETWORK SERVICE

A. UII shall negotiate with and obtain written Service Level Agreements from each separate data-providing entity (hereinafter, "DPE") from which electronic access or transactions are desired.

B. Subscribers (customers who apply for and receive from the network, a user name and password in order to access the services they desire) will be required to execute a contract for services. All contracts with subscribers and all SLAs shall be subject to approval and continuing monitoring by the UECC.

C. UII will enter into an SLA with each agency or political subdivision who provides information to UII for the Network or which has a transaction which furnishes information to the agency or political subdivision. These agreements will be signed by the agencies' authorized representative(s) and will be approved by the UECC. Only information that is legally and ethically distributable, as determined by the state agency, in its capacity as the

legal custodian of the respective data, will be included on the Network. The SLA will detail what information will be accessed or transactions performed, how it will be accessed and provided to the public or how the transaction will generally operate with the agency, any statutory fees or enhanced access charges, and what, if any special requirements must be satisfied by the individual customers to qualify for access to the information or to perform the transaction. The agency and UII will agree on a schedule for collection and payment of any statutory fee required. Once an agreement has been reached and approved by the UECC, the public information application will be developed according to the agency's SLA.

D. Since UII's software developer creating the application may see some confidential information while working with the agency representative in determining which data fields are required, UII's employees must satisfy any privacy and confidentiality requirements that the agency may require prior to beginning work.

E. All SLA's or other requests regarding the Network from non-state level political subdivisions must be approved by the UECC through the service request process. The UECC shall establish the priority of such requests.

7. DISTRIBUTION OF NETWORK REVENUES

A. The establishment of all charges to Network users shall be reviewed by the UECC. The UECC will review and approve any and all Network use or data access charges for fairness, reasonableness, and appropriateness. UII may at any time recommend changes in charges to the UECC.

B. In establishing Network use or data access charges the UECC shall consider the following factors:

- (1) A commitment to the public policy requirement to provide electronic access to public records at the most reasonable rate possible and to improve government service to its citizens and businesses by allowing transactions online.
- (2) That the charges may be adjusted to permit funding of special projects and enhancement of public service.
- (3) The entrepreneurial and start-up nature of the business and attendant risk of capital for UII and the need to earn a reasonable profit on Network operations.
- (4) The need to invest in the reasonable expansion, maintenance and improvement to online network transactions and information services.
- (5) Any other reasonable factors which in the opinion of UECC should be considered.

C. In the event that costs which UII pays State agencies for data or data access are reduced or increased as a result of legislation or State regulatory administrative changes, such reductions or increases shall be passed on directly to subscribers and users of the information network unless otherwise approved in writing by the UECC.

8. NETWORK MANAGER REMUNERATION AND REVENUE DISTRIBUTION

Flow of funds will be determined through Service Level Agreements with Data Custodians as approved by the UECC and the State Treasurer. Within the framework of the revenue distribution procedure addressed in Section 7 above, the distribution of all funds attributable to Network transactions and subscriptions will be in the following order unless otherwise mutually agreed to between UII and the State in writing.

- Payment of statutory fees.

- Payment of all Network operating expenses and costs of sale. These expenses include but are not limited to the core and ongoing costs of the operating the Network as well as applications development costs associated with the deployment of free and premium services.
- Payment of reasonable and necessary expenses of the UECC as mutually agreed by the Board and UII as stated in the UECC budget plan.
- All remaining funds will be retained by UII.

9. FINANCES, RECORDS AND REPORTING

A. UII shall handle all revenue from Network operations as determined in accordance with Section 8. UII shall establish one or more accounts in financial institutions which are federally insured for deposit of revenue from Network operations and shall furnish the State with the names of the institutions, the account numbers, and the names of those persons having signatory authority.

B. All UII documents and records pertaining to operation of the Network will be available for inspection, auditing, and copying by the State, or other authorized representatives designated by the State, at any reasonable time. UII corporate records remain property of the corporation and are not subject to public inspections. Monthly income statements and balance sheets for the Network will be provided to the State by UII.

C. To the extent an audit report discloses any discrepancies in the UII charges, billings, or financial records, and following a period for review and verification of the amount by UII, UII will adjust the payment as soon as reasonable possible, but not to exceed 90 days. UII shall cooperate to assure that verification is completed in a timely manner.

D. UII also agrees to make other changes requested by the State, which are agreed to by UII and the UECC, to comply with recommendations resulting from any audit. Any such audit will be performed by a competent and reputable Certified Public Accountant licensed in Utah or a member of a 'big six' accounting firm.

E. The accounting system is to include a numbered chart of accounts, books of original entry of all transactions, appropriate subsidiary ledgers, a general ledger which includes to-date postings and an audit trail through financial statements. Such books may either be maintained on paper or on computer with appropriate backup. UII shall from the beginning of this Contract adopt the calendar year ending December 31st for reporting purposes.

F. UII will report activities to the State as follows:

(1) Within 120 days after the close of UII's fiscal year, UII will submit to the State an annual financial report and audit. These reports must be certified by an independent certified public accountant (selected by UII) who may be the accountant or a member of the firm of accountants who regularly audit the books and accounts of UII. The submitted audit information must include, but is not limited to, the audited financial statements, auditor opinions, reports on internal control, findings and recommendations and management letters. In addition, UII is subject to any further audit and review determined necessary by the State after furnishing reasonable notice to UII.

(2) Develop and regularly update, in cooperation with the data custodians, a draft Network strategic plan for presentation to the UECC on at least an annual basis.

(3) Report to the UECC on a periodic basis concerning potential new applications, services and related issues. UII will strive to improve access to, and the

utility of the public information and transactions available through the Network by exploring and recommending ways to:

- a. Expand the amount and kind of public services and information available free of charge;
- b. Increase the utility of the public information presented, the transactions available, and the form in which both are provided;
- c. Expand the base of users who access the public services and information;
- d. Improve individual and business access to public services and information through implementing improvements in technology; and,
- e. Make recommendations designed to increase the effectiveness and resources of the Network.
- f. Redesign and maintain the State of Utah website and the agreed upon Network pages

(4) UII will measure Customer satisfaction including Web surveys and report results to the UECC on a schedule to be agreed to by the UECC and UII but no less than on an annual basis, and

(5) UII will measure and report to the UECC on growth trends and usage of the Network, as well as hits, access, transactions and other performance measures or metrics as mutually agreed upon by the UECC and UII. Working in cooperation with the UECC, UII will submit the details of the proposed service measures either as part of the service management plan for Network wide indicators and as part of the Service Level Agreements for application specific indicators.

(6) UII will utilize the state's payment card processor for payment card transactions, with the provision that UII will receive state rates negotiated as part of the state of Utah contract with First Security Bank, during the life of that contract unless otherwise determined by the State.

(7) UII shall provide annually to the Utah State Auditor, 211 State Capitol Building, Salt Lake City, UT 84114, a Statement on Auditing Standards 70 Report (SAS-70).

10. PERSONNEL PRACTICES

A. The hiring, recruitment, management, training, and firing of UII employees will be the responsibility of UII. The State's only involvement in the personnel affairs of UII shall be limited to disclosure of the names and positions of officers and employees of UII, except within its role as auditor.

B. No officer, employee, or director of UII shall receive a salary, except as and for services performed by such officer, employee, or director, or member for UII on behalf of the Network.

C. UII shall be responsible for all required costs attributable to its officers and employees, including but not limited to, worker's compensation premiums and deductible, unemployment compensation tax withholding contributions, tax withholding contributions, and similar items.

11. INCORPORATION BY REFERENCE

The provisions of the RFP and the UII Proposal are hereby incorporated into this Contract and made a part hereof. If there is any conflict among the provisions of the RFP, the UII Proposal, this Contract, and the laws of the State, then those conflicts will be resolved in the following order precedence:

1. Utah law
2. Standard Terms and Conditions Contract Attachment A
3. Contract Attachment B
4. The RFP and addenda & the UII Proposal, equally.

This Contract may be amended only by mutual expressed written consent.

12. INSURANCE AND BONDS

UII shall provide the UECC written proof of the following insurance provided by a qualified firm authorized/admitted to do business in Utah:

- A. General comprehensive liability insurance policy in the amount of at least \$1,000,000.
- B. Workers' compensation insurance coverage as required by State law on all UII employees.
- C. Fidelity bond in the amount of at least \$100,000 per UII employee.

13. **CHANGES IN INFORMATION NETWORK**

A. Network operations and development shall be generally in accordance with the UII Proposal, the RFP and this contract as described in Section 11, and Section 13.B.

B. A planned material change in Network operations cannot be made by UII without the prior written consent of the UECC. A "material change" includes, but is not limited to, a change which is substantial and which increases response time to inquires, adds to the complexity of Network use, diminishes services provided to users, or results in a comparable impact on operations noticeable by users.

C. UII will provide to the UECC at least thirty (30) days prior written notice of a planned material change in Network operations.

D. UII shall timely provide to the UECC such other management reports as the UECC may reasonably request.

14. **NOTICES**

Each party may change its designation for notice following written notice to the other party to this Contract.

UECC

Mr. Alan C. Sherwood
Chair, Electronic Commerce Council
State Office Building

Salt Lake City, Utah

UII

Joseph Nemelka and Richard L. Brown

Utah Interactive, Inc.

Salt Lake City, Utah

Notices by the parties to one another shall be given in writing to the persons identified above or to such other persons as may be subsequently identified in a written notice. Such notices shall be effective on the date of receipt if sent by U.S. first-class or restricted delivery mail, postpaid, or by any reputable overnight delivery service, prepaid.

15. TERMINATION OF CONTRACT

The State shall have the right to terminate this Contract for cause, subject to cure, by providing written notice of termination to UII. Such notice shall specify the time, the specific provision of this Contract or "for cause" reason that gives rise to the termination and shall specify reasonable appropriate action that can be taken by UII to avoid termination of the Contract. The State shall provide a period of up to sixty (60) days, unless otherwise specified in this Contract, for UII to cure breaches and deficiencies of its performance obligations under this Contract.

The State may terminate this Contract at any time, and without cause, if directed to do so by statute.

16. TERMINATION FOR CAUSE

A. For purposes of this Contract, the phrase "for cause" shall mean, but not be limited to:

- (1) Any material breach or evasion by UII of the terms or conditions of this Contract and its amendments, if any; or,
- (2) Substantial cessation of Network services by the Network; or,
- (3) Fraud, misappropriation, embezzlement, malfeasance, significant misfeasance, or illegal conduct by UII, its officers, or directors; or,
- (4) Dissolution of UII or forfeiture of its company existence; or,
- (5) Amendment of the States's enabling authority making the network substantially impractical; or,
- (6) An adverse judicial decision by a court of competent jurisdiction, which has the effect of rendering Network operations no longer feasible; or,
- (7) Insolvency of UII; or,
- (8) Material breach of an SLA; or,
- (9) Negligent disclosure of any confidential information; or,
- (10) Legislation materially alters the ability of UII to operate the Network; or,
- (11) UII may terminate this Contract if the key premium service applications do not generate sufficient revenue to support the basic core functions required to operate the Network.

17. CONTINUATION OF OPERATIONS DURING TRANSITION PERIOD

If for any reason this contract shall be terminated or upon expiration of the Contract without extension, or at the end of any extension UII shall, at the option of the State, continue to operate under this Contract as Network Manager in accordance with all terms and conditions of this

Contract, together with any amendments or modifications in existence at such time, for a period of up to twelve (12) months from the time of expiration or notification of termination from the State to UII. The intent of this provision is to insure continuation of information network operations while a successor network manager is chosen and installed. The State shall notify UII at the earliest possible opportunity but in any event, no later than the date of notification of termination, or the notifications dates set forth in Section 2 above whichever is earlier that it shall continue operations and the duration of time for such continuation.

18. PATENT, COPYRIGHT, TRADEMARK, TRADE SECRET INDEMNITY

UII warrants that its proposed operation of the Network does not and shall not infringe on the United States patent, copyright, trademark or trade secret right of any person or entity. The State shall be provided with prompt notice of any such claim of infringement and UII shall have the exclusive right to defend or settle such claim at UII's option. The State shall cooperate with UII in its defense or settlement of such claim at no expense and no liability to the State.

19. MARKETING

It is recognized that UII and its affiliated companies intend to use its experience with the State, the UECC and DPE's as a marketing tool with third parties. It is agreed that UII may make references to and use the State as a reference. If UII intends to claim that the State "endorses" UII or use the State seal, UECC or Network logo or claim representations made by the State, all such material must be submitted to UECC for review and approval prior to use by UII.

20. LIABILITY

A. The State, its agents, and employees shall not be legally responsible for errors due to problems caused by UII's operation of the Network.

B. UII agrees for itself, its agents, employees, and assigns to hold harmless, indemnify and defend the State, its agents and employees from any actions arising out of UII's negligence or material failure to perform under the terms of this Contract.

C. UII agrees that it has no right of subrogation or contribution from the State for any judgment rendered against UII to the extent such judgement results from UII's negligence or material failure to perform under the terms of this contract.

21. ASSIGNMENT

UII may not assign any of its rights or delegate any of its duties hereunder unless done pursuant to prior written consent of the State, which consent shall not be unreasonably withheld.

22. CLAIMS

This Contract shall be construed according to the laws of the State of Utah. Any legal proceedings against the State regarding this solicitation or any resultant contract shall be brought in the State's administrative, legislative, or judicial forums.

23. **ENTIRE AGREEMENT**

This Contract, including any documents incorporated by reference, constitutes the entire agreement of the parties and supersedes all other prior written or oral contracts between the parties with respect to the subject matter hereof. This Contract may be amended only by a writing signed by the parties thereto.