

In the Supreme Court of the State of Utah

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In re: Application of Rasa Public Benefit Corporation

AMENDED ORDER FOR AUTHORIZATION TO PRACTICE LAW

Based upon the Utah Supreme Court's plenary and constitutionally granted authority to regulate the practice of law in Utah, and the tenets of Standing Order 15, the Utah Supreme Court orders that Rasa Public Benefit Corporation is authorized to practice law within the regulatory sandbox and subject to the restrictions outlined below.

The Court has reviewed the original recommendation of the Office of Legal Services Innovation ("Innovation Office"), dated November 6, 2020, and the amended recommendation dated August 10, 2022, for Rasa Public Benefits Corporation ("Rasa") to be authorized to practice law.

Initial authorization was for Sudbury Consulting and Code for America to develop a software platform to assist Utah consumers in determining whether they are eligible for expungement of their criminal record under Utah's Clean Slate law. The entity was authorized as a "software provider with lawyer involvement" at the moderate risk level. Code for America then left the project, and Sudbury Consulting was authorized as an ABS to hire Alternative Legal Providers to provide low-cost expungement assistance while under the oversight of a lawyer.

Now, the entity seeks authorization under the entity name Rasa Public Benefit Corporation, to clarify that its authorization for expungement includes 402 reductions, and to receive a waiver of Rule 1.15 and Rule 14-1001 requiring an IOLTA account.

The Innovation Office has assessed the risk of harm to Rasa's targeted consumers relative to the risk of harm they currently face and has determined that the risk of harm presented by Rasa's service is Moderate.

In light of the Court's responsibility to the public to effectively regulate the practice of law in Utah and in keeping with the tenets of Standing Order 15, the Court now orders as follows:

1. Rasa Public Benefit Corp. is authorized to offer legal services through the following models:

- a. Lawyers sharing profits with nonlawyers
 - b. Alternative Legal Provider with lawyer involvement
 - i. ALPs offering:
 - 1. Legal information and legal process assistance
 - 2. Legal advice related to expungement eligibility, 402 reductions, legal process, and legal documents.
 - 3. Assist individuals with form completion; draft and file expungement and 402 reduction pleadings;
 - 4. Discuss client cases with prosecutors and advocate for 402 reductions, in order to help clients become eligible for an expungement (does not include in court assistance).
 - ii. Lawyer involvement including:
 - 1. Create robust training materials and trainings for ALP trainees;
 - 2. Supervise and evaluate ALP trainees' skills assessment to ensure they understand the legal landscape and process, and can apply concepts with accuracy;
 - 3. Provide shadow opportunities for ALP trainees for the first three months of service provision, review all paperwork completed by ALPs before it is filed;
 - 4. Conduct periodic checks to ensure high quality work continues on an ongoing basis;
 - 5. Supervise ALPs and manage all Rasa cases to ensure the applicable filing requirements and deadlines are met;
 - 6. Complete regular performance reviews of ALPs to provide regular feedback and improve Rasa's services; and
 - 7. Promptly address any complaints received with the person who handled the matter.
 - c. Software provider with lawyer involvement
2. Rasa Public Benefit Corp. is authorized to provide legal services across the following legal service areas:
- a. Expungement
 - b. 402 reduction
 - c. Employment
3. The following Rules of Professional Conduct are waived:
- a. Rule 1.15 and Rule 14-1001 which require an attorney to maintain an IOLTA account. Rasa believes that using both the software platform and ALPs will enable the entity to offer to clear a person's record for approximately \$500; representation by a lawyer for the same task costs approximately \$2000-\$3000. Due to this business pricing structure, maintaining an IOLTA account is extremely time

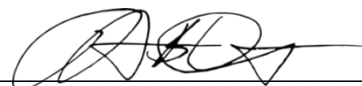
consuming and does not yield much interest as the money is put in and almost immediately moved to the operation account.

- b. Rasa is required to hold customer and/or client fees and/or expenses in an account that earns interest or dividends and remit the interest or dividends earned on those accounts, net any reasonable service fees or charges, to the Utah Bar Foundation. Rasa must remit the interest or dividend to the Foundation at least quarterly. Along with the remittance, Rasa must provide the Foundation with a report stating the name of the entity, the amount of the remittance, the rate and type of interest or dividend applied, and the average monthly balance on the account or accounts.
4. Rasa shall conform to the Moderate Innovation reporting requirements imposed by the Innovation Office.
 5. Rasa will prominently display the following disclosure requirements:
 - a. Innovation Office Badge
 - b. Nonlawyer service provider disclosure

If Rasa wishes to alter these conditions or requirements, it must submit any such change to the Innovation Office for further assessment. The Innovation Office will assess the proposed change and may permit the change if it deems the change does not materially increase the risks to consumers. If the Innovation Office finds a material increase in risk, then it will present the issue to the Court for further consideration.

This authorization is granted for the duration of the existence of the Sandbox, or until exit and permanent licensure at the discretion of the Court. Authorization is subject to Rasa's compliance with the conditions and requirements set forth in the Innovation Office Manual and the Innovation Office Recommendation to the Court and to a verification by the Innovation Office that the entity's services are not causing material harm to consumers.

DATED this 21st day of September, 2022.



Matthew B. Durrant
Chief Justice

Section One: Provider Information (Code for America)

1. Entity or Individual Provider Name*

Code for America

2. Contact Employee Name*

Meilani Santillán

3. Contact Employee Email

4. Principal Business Address*

5. Mailing Address

Same

6. Contact Employee Telephone Number*

[main number]

7. Please indicate your proposed entity's legal status*

- Law Firm Partnership
- Professional Corporation
- For-Profit Corporation - Privately Held
- For-Profit Corporation - Publicly Held
- Non-profit - Legal Services
- **Non-profit - Not Legal Services**
- Individual Provider
- Other:

8. If you are an individual provider, indicate your professional status

- Lawyer with UT law license in good standing
- Licensed Paralegal Professional with UT license in good standing
- Lawyer with law license from another US state in good standing
- Other professional (e.g. doctor, accountant, social worker, etc.) with active professional license in good standing
- Business
- **Not applicable**
- Other:

9. Please provide any applicable professional license identification number(s)

Include the licensing authority with your number; e.g. UT State Bar #5432; UT CPA #98765

N/A

Section One: Provider Information (Sudbury Consulting, LLC)

2. **Entity or Individual Provider Name***
Sudbury Consulting, LLC
3. **Contact Employee Name***
Noella Sudbury
4. **Contact Employee Email**
5. **Principal Business Address***
6. **Mailing Address**
Same
7. **Contact Employee Telephone Number***
8. **Please indicate your proposed entity's legal status***
 - Law Firm Partnership
 - Professional Corporation
 - For-Profit Corporation - Privately Held
 - For-Profit Corporation - Publicly Held
 - Non-profit - Legal Services
 - Non-profit - Not Legal Services
 - Individual Provider
 - **Other: Limited Liability Company**
9. **If you are an individual provider, indicate your professional status**
 - **Lawyer with UT law license in good standing**
 - Licensed Paralegal Professional with UT license in good standing
 - Lawyer with law license from another US state in good standing
 - Other professional (e.g. doctor, accountant, social worker, etc.) with active professional license in good standing
 - Business
 - Not applicable
 - **Other:**
10. **Please provide any applicable professional license identification number(s)**
Include the licensing authority with your number; e.g. UT State Bar #5432; UT CPA #98765

Noella Sudbury: UT State Bar #12682

Section Two: Your Proposal

Utah Supreme Court Standing Order 15

3.3.2 Within the Innovation Office's Regulatory Scope

Individuals and entities that carry out the following activities are within the scope of the Innovation Office's regulatory authority and are subject to this Standing Order's requirements:

- (a) Partnerships, corporations, and companies entirely owned and controlled by lawyers; individual lawyers with an active Utah Bar license; and legal services nonprofits partnering with a nonlawyer-owned entity to offer legal services as contemplated by Rule 5.4B;
- (b) Nonlawyer owned entities, or legal entities in which nonlawyers are partial owners (for profit or nonprofit):
 - (i) offering legal practice options whether directly or by partnership, joint venture, subsidiary, franchise, or other corporate structure or business arrangement, not authorized under the Rules of Professional Conduct in effect prior to [Month] [Date], 2020, or under Utah Supreme Court Rule of Professional Practice 14-802; or
 - (ii) practicing law through technology platforms, or lawyer or nonlawyer staff, or through an acquired law firm.

<<https://tinyurl.com/usorder15>>

The Sandbox will only accept proposals for innovative legal services that (1) cannot be offered without modifications under the present Rules of Professional Conduct, or (2) are considered unauthorized practice of law. *

This application is NOT for proposals for services which may already be offered under the proposed rule 5.4(A) which impact a Utah lawyer's capacity to share fees for legal services.

Read the full proposed changes here: <<https://tinyurl.com/rule54A>>

- I understand (checkbox)

10. Which of the following categories are the most applicable category for your proposed business, service, or product? *

For reference, please see the excerpt listed above from "Utah Supreme Court Standing Order 15."

- **3.3.2 (a) - (Sudbury Consulting, LLC)**
- 3.3.2 (b) (i)
- **3.3.2 (b) (ii) - (CfA)**

11. Tell us about your proposed legal services offering *

An estimated 1 in 4 Utahns have a criminal record. While Utah law permits individuals to petition the court to have certain records expunged, due to cost, complexity, and lack of affordable legal representation, the vast majority of individuals who would be eligible to expunge their records never obtain relief. As a result, most Utahns with criminal records continue to be burdened by the estimated 45,000 collateral consequences that come with a criminal record, including lack of meaningful access to jobs, housing, and education.¹

To help address this issue, the Utah State Legislature unanimously passed Utah's Clean Slate law in 2019. This law provides automatic expungement relief to individuals with qualifying misdemeanor records, meaning they no longer need to petition the court to receive an expungement.² While we anticipate the law will make a big difference in the lives of Utahns in need of legal expungement services, there is no notification requirement in the law. In order to benefit from the law, individuals must know that it exists, and understand how it impacts their legal rights.

Sudbury Consulting, LLC and Code for America plan to collaborate on the development of a technological solution that provides information about Utah's Clean Slate law and legal advice to people with criminal records in Utah. We hope to also be able to partner with Utah's Department of Public Safety (DPS) and Commission on Criminal and Juvenile Justice (CCJJ) to further broaden the impact of this work. More specifically, we aim to help people with criminal records access their criminal history, understand what it means, learn whether they have been impacted by Utah's Clean Slate law, and whether they might be eligible for petition-based expungement under Utah law. We believe that designing a tool that is human-centered, user-friendly, and comprehensive enough to provide this type of service will be a great improvement to the current expungement legal services landscape.

We also aim to have our work in Utah create a national model as more states adopt Clean Slate policies that provide automatic record clearance. We see this as an opportunity for Utah to set an example for other states and contribute to the national access to justice conversation.

¹Jeffrey Selbin, Justin McCrary, & Joshua Epstein, *Unmarked? Criminal Record Clearing and Employment Outcomes*, *The Journal of Criminal Law and Criminology*, Vol. 108, No. 1 (2017) at 15 (noting "people with criminal records are subjected to roughly 45,000 sanctions, disabilities, disqualifications, or other negative consequences.")

² Code for America is currently in partnership with the Utah Administrative Office of the Courts to help implement Utah's Clean Slate law. More specifically, Code for America has a data sharing agreement with the AOC and has been asked to help identify cases that may be clean slate eligible under the law. As we work together to develop and implement our proposed computer tool, we hope to build on this partnership with the AOC, and explore additional ways we can collaborate to ensure that individuals have access to the most current and accurate information about their Clean Slate eligibility.

More About Code for America

At Code for America, we believe the two biggest levers for improving people's lives at scale are technology and government. So, we build technology in partnership with government to dramatically improve the services and benefits available to people to improve the conditions of their lives. The Clear My Record team at Code for America works with state governments to fundamentally rethink the process of record clearance, leveraging technology and human-centered design to reinvest in communities by removing barriers to employment, housing, health, and education.

As part of our Clear My Record initiative, this project will allow us to deliver impact to people in Utah with criminal records who have benefitted from Utah's Clean Slate law or are eligible for relief under other existing laws. In order for people to benefit from the law, they must know about this type of relief, what it means in the context of their criminal record, and understand what opportunities exist for them to pursue that their criminal record formerly prevented.

12. Why is your proposal eligible to enter the Sandbox? *

Identify the specific model, service or product innovations that are not permitted under the traditional rules governing professional conduct and/or the practice of law.

Utah Rules of Professional Conduct prohibit lawyers from working in partnership with non-lawyers (here, a non-profit tech company) to provide legal services facilitated by technology. Sandbox approval is needed here to build a technological tool that will analyze a person's criminal record and provide free information and legal advice about whether a person has benefitted from Utah's Clean Slate law and/or is eligible for criminal record expungement, or other legal remedies under Utah law.

13. Please describe your target consumer(s)

E.g. single parents making <\$50,000 in a custody dispute, first generation college students in a landlord-tenant dispute; renters 40+ years planning for retirement; college educated entrepreneurs seeking legal advice in starting a business.

People with criminal records seeking to learn whether they have benefitted from Utah's Clean Slate law or looking to obtain broader legal advice about their criminal records, eligibility for expungement, and employment opportunities. As Utah's Clean Slate law is implemented, we anticipate that many people with criminal records will be seeking legal advice on whether they are eligible for relief under the new law, how that impacts their record, and if they have additional criminal case records not eligible for "clean slate relief," whether those records are or could become eligible for petition-based expungement. We also hope to provide general legal advice concerning the legal effect of a criminal record expungement and how this legal benefit improves access to opportunity.

14. Which service provision categories are you seeking to employ in the Sandbox? *

- Lawyer employees
- Completing legal documents
- Less than 50% nonlawyer ownership
- 50% or more nonlawyer ownership
- Non-lawyer provider with lawyer involvement
- **Software provider with lawyer involvement**
- Nonlawyer advice on legal process only
- Nonlawyer provider without lawyer involvement
- Software provider without lawyer involvement
- Other:

15. Which legal service categories are you seeking to offer in the Sandbox? *

At this time, the Utah Supreme Court is only authorizing Sandbox participants to offer services in the following categories.

- Accident/Injury
- Adult Care
- Business
- **Criminal - Expungement ONLY**
- Discrimination
- Domestic Violence
- Education
- **Employment**³
- End of Life Planning
- Financial Issues
- Immigration
- Healthcare
- Housing - Rental
- Marriage and Family
- Military
- Native American and Tribal Issues
- Public Benefits
- Real Estate

Part Three: Risk Assessment

This Sandbox operates under an oversight system guided by the assessment and measurement of risk to consumers of legal services. The Innovation Office has identified three central risks of consumer harm with which we are primarily concerned:

³ As we roll out the criminal record expungement tool, we may also build on our efforts to provide general information and legal advice about the impacts of a criminal record on prospective employment opportunities. For instance, while an individual may successfully expunge their record, it may still be visible to particular licensing agencies or other potential employers in certain sectors. We are hoping our site can provide information to individuals who have questions about what individuals and entities have continuing access to their record, even after the expungement process is complete.

1. Consumer achieves an inappropriate or otherwise flawed legal result.
2. Consumer fails to exercise legal rights through ignorance or bad advice.
3. Consumer purchases an unnecessary or inappropriate legal service.

In this section, you will explain the likelihood that your targeted consumers currently experience each of the three central risks, supported by data as available.

You should be as specific as possible in identifying risks, proposed data, and mitigation plans. We understand there is a lack of data generally available about how people consume legal services and we assume that you will have to rely on proxy data in many instances.

Risk One: consumer achieves an inappropriate or otherwise flawed legal result.

The consumer exercises legal rights and accesses a legal service, but the consumer is subject to x% risk of legal failure under the legal service models available to them in the present market.

16. How are your target consumers presently at risk of achieving an inaccurate/inappropriate legal result? *

Under current Utah regulation of legal services, how are your target consumers likely to receive incorrect legal advice or lose a legal action? What factors (income, legal service cost, time) currently increase your target customers' risk of inaccurate/inappropriate legal outcomes?

Under existing Utah law, individuals must petition the court to get their criminal records expunged. This current petition-based process is so expensive, time-intensive, and complex that few people eligible to expunge their records make it through the process.⁴ As a result, most Utahns with criminal records eligible for expungement are at a very high risk of never obtaining relief and continuing to live their lives with the estimated 45,000 collateral consequences of a criminal record, including lack of meaningful access to jobs, housing, and education.⁵ This is not an appropriate legal result.

Individuals with criminal records have three options in Utah's existing legal market: (1) hire a private attorney; (2) take advantage of the very limited free or low bono legal services available; (3) represent themselves. All three of these options present risks of inaccurate or inappropriate legal results.

⁴ According to estimates from the Utah Department of Public Safety, 1 in 4 individuals (approximately 750,000 people) in Utah have some type of criminal record, and yet data obtained from the Utah Administrative Office of the Courts shows that there are only 2 to 3,000 expungement petitions filed in Utah each year. While not every criminal record is eligible for expungement under Utah law, many records are, and there is a significant gap in legal services. While there is no Utah specific research done on this topic, data from other states estimates that less than 6% of those eligible to expunge their records end up obtaining relief. See e.g., Prescott, J.J. and Starr, Sonja B., *Expungement of Criminal Convictions: An Empirical Study* (March 16, 2019), Available at SSRN: <https://ssrn.com/abstract=3353620> or <http://dx.doi.org/10.2139/ssrn.3353620>.

⁵See U.S. Commission on Civil Rights, *COLLATERAL CONSEQUENCES: The Crossroads of Punishment, Redemption, and the Effects on Communities* (2019) ("Individuals with criminal histories face barriers to voting, serving on a jury, holding public office, securing employment, obtaining housing, receiving public assistance, owning a firearm, getting a driver's license, qualifying for financial aid and college admission.")

Private lawyers provide expungement services, but legal assistance is costly, and many individuals in need of help cannot afford to hire an attorney. Research shows that individuals with criminal records often face huge barriers to employment, and yet, employment is needed to pay an attorney to help expunge a criminal record. While hiring a lawyer to help expunge a criminal record provides the client with the best chance of making it through the process, even these services are not error-free. Indeed, we heard from many seasoned and experienced lawyers who volunteered for Salt Lake County's Expungement Day event that they never knew how complicated the expungement process was, or how nuanced it could be, and that they struggled to navigate individuals through the required steps. While volunteer lawyers were able to help individuals start the process in high volume, many individuals' legal needs extended beyond the event, requiring people to complete the complex, multi-step process on their own.

Individuals without resources to hire a private attorney may qualify for help from Utah Legal Services,⁶ have the option of attending the few and infrequent low- or pro-bono legal clinics,⁷ or they can try to represent themselves. People who attempt to navigate the process on their own are at high risk of losing out on legal remedies, missing deadlines, and never successfully completing the process. In short, Utah's process for expungement is not well-designed to serve everyone who is eligible.

17. Under your proposed legal service/model, how would your target consumers be at risk of achieving an inaccurate/inappropriate legal result? *

Ideally, we will be able to partner with Utah's CCJJ to access official criminal history data that informs the legal advice that will be provided by the tool. This is the best way to minimize the risk of inappropriate legal results. However, to keep this project moving forward, or if we are unsuccessful in our efforts to secure a data partnership with the state of Utah, we may require people to self-report information about their criminal history that will be analyzed by the tool. This type of self-reporting carries the risk of user errors or inaccuracies. We intend to mitigate this risk by advising users to obtain an official copy of their record before using the tool. We will also utilize user-testing, iterative content development, and move as quickly as possible to secure a partnership that allows us to draw from the state's official criminal history data.

Because most individuals in the target market cannot access expungement legal assistance, there is almost no risk that our proposed tool will leave the target market in a worse position. In

⁶ Utah Legal Services can help individuals with an income up to 125% of the federal poverty level for the household's size. However, there is only one full-time attorney and one paralegal focusing on expungement. In addition, Utah Legal Services cannot represent non-citizens, barring many Utahns with a criminal record from receiving the help that they need.

⁷ Very few low bono and pro bono expungement legal services are available. Salt Lake County has committed to putting on two free Expungement Day events per year, and has a grant for one full-time Expungement Navigator through the end of 2020. The University of Utah's free expungement clinic was recently eliminated. And while Utah's Self Help Center can help individuals navigate the criminal record expungement process, there are limits on the type of assistance they can provide, and there is more demand for these services than they are able to accommodate.

addition, while having a lawyer is helpful, lawyers are not error proof and may sometimes provide incomplete or flawed advice.

The criteria for obtaining an expungement is statutory and we are confident that computer code can be used to analyze criminal history data with high accuracy. In fact, we anticipate that by using technology, we may actually achieve a *lower error rate* than what would occur with human review.

That being said, no tool is perfect and there are potential risks to our tool. The two biggest risks we see with our proposed tool are that: (1) a person will be told they are eligible for a criminal record expungement when that is not the case; or (2) a person will be told that they are not eligible for a criminal record expungement when they actually are.⁸ There is also a smaller, but additional risk that a person believes they are now eligible for certain employment opportunities when that is not the case, or vice versa.

In spite of these risks, it is very unlikely that use of the tool will lead to an inaccurate or inappropriate legal result. This is because the main function of the tool will be to tell individuals (1) whether they have benefitted from Utah's Clean Slate law; and (2) if they have a criminal record that is not eligible to be cleared under Utah's Clean Slate law, whether that record might be eligible for expungement under Utah law.

Once Utah's Clean Slate law is implemented, there will be a list of individuals who have benefitted from the law. Assuming we are able to partner with government agencies to securely access that list, the tool will simply tell an individual whether their name is on that list. Therefore, there is little to no risk or error here. And even before a data-sharing partnership is in place, the tool will help an individual understand whether they are likely to receive relief, how to access and understand their criminal record, and what it may mean for their opportunities.

If an individual has a record that is not Clean Slate eligible, but the tool determines that an individual would be eligible for an expungement under the petition-based process, the tool will recommend that the individual apply for an expungement with the Utah Department of Public Safety's Bureau of Criminal Identification (BCI), the required first step to obtaining a legal expungement under Utah law. If there is an error in the computer tool, and BCI determines the person is not in fact eligible for an expungement, the person will not be able to obtain the certificates necessary to file expungement paperwork with the court. In other words, any errors with the tool will be caught early, before any legal proceedings are initiated, making it very unlikely that there will be any inaccurate legal results.

The only other risk of an inaccurate legal result may be in cases where an individual is not currently eligible for an expungement, but legal remedies exist that could help an individual become eligible. For example, a person may have too many felonies to qualify for an expungement, but may obtain a "402 reduction" to convert one or more of the felonies into

⁸ This second risk--the failure to exercise a legal right due to bad advice, is discussed in more detail in Question 20.

misdemeanors. See Utah Code § 76-3-402. Once this legal action is complete, a person may meet the statutory criteria to obtain an expungement. While we have not decided whether we will attempt to provide this type of nuanced advice, if we do, there may be more risk of an inaccurate legal result here. More specifically, a person may be told to take an action that is not warranted, or they may file a motion with the court that will not end up affecting their expungement eligibility.

18. How do you plan to identify the risk of your consumers achieving an inaccurate or inappropriate legal result? How do you plan to track and mitigate this risk in your proposed legal service/model? *

The first way we will mitigate risk is in the product design and testing phase of the project. Code for America and Sudbury Consulting, LLC will work with a panel of legal expungement practitioners and subject matter experts to ensure that people who use our service are provided with accurate and reliable information. As part of our product development process, we will work closely with people with records to understand their needs and questions, and with legal practitioners to understand the available legal remedies and pathways for opportunities. To the extent possible, we will also leverage the research Code for America does as part of their Clean Slate implementation work with the UT AOC.

In addition, we will take the following two steps to identify, track, and mitigate the risk of inaccurate legal results.

- 1. Pending our ability to secure grant funding to cover the cost of applications, we will offer to help the first 25 individuals who are predicted by our tool to be eligible for an expungement apply to BCI for certificates to verify that the tool's legal determinations are accurate.** Under Utah law, individuals seeking to expunge their records must first apply to BCI to obtain certificates of eligibility. See Utah Code § 77-40-105. If our proposed computer tool determines that an individual is eligible for a petition-based expungement, the individual will be directed to file with BCI an expungement application to obtain certificates needed to file with the court. The cost of this application is \$65 (not waivable), and once an individual applies, BCI staff conducts their own analysis to determine whether someone is eligible. If it turns out that BCI determines that an individual who has applied is *not eligible* to expunge their record, they will receive a denial letter from BCI and will not be able to obtain the certificates of eligibility needed to initiate court proceedings.

We propose testing the tool's accuracy by recruiting 25 individuals determined to be eligible by our proposed tool, to apply for an expungement (free of charge) and sign a third party release, allowing BCI to share the results of their determination with our team. We will then compare the tool's first 25 legal determinations to BCI's determinations to see whether they match and the tool is working. If the determinations do not match, we will work with our panel of legal expungement practitioners and subject matter experts to

figure out why. If it is due to flaws in the tool's logic, we will make needed adjustments to improve future accuracy.

- 2. Pending our ability to recruit a panel of 8-10 attorneys with expungement training or expertise, we will review and audit the tool's first 25 legal determinations that a person is not eligible for an expungement.** As noted above, there may be instances where an individual is not legally eligible for a criminal record expungement, but could become eligible if they took advantage of other available legal remedies to adjust the nature of their record (e.g., a 402 reduction that reduces a felony conviction record to a misdemeanor conviction record). To ensure that the tool is providing accurate legal advice in these more complex and nuanced cases, we hope to work with a panel of 8-10 attorneys who have legal expungement training or expertise, to review and analyze the accuracy of the tool's legal recommendations. In order to facilitate this review, we will ask permission from individuals using the site to have their criminal record independently reviewed by an attorney. There will be no contact made between the attorney and the individual using the tool.

If the person consents to having their criminal record shared with an attorney reviewer, it will be independently reviewed by at least 3 attorneys from the panel who will be asked to analyze the record and provide a legal opinion on whether the individual is eligible for an expungement, and if not, whether additional legal steps could be taken to help a client become eligible for an expungement. This review would then be compared to the advice generated by the computer tool to check for accuracy, and identify and correct any errors. If the first 25 legal determinations generated from the tool are less than 80% accurate, additional testing will be proposed before the tool becomes broadly available.

Risk Two: Consumer fails to exercise legal rights through ignorance or bad advice.

The consumer does not believe that accessing a legal service would be a good use of their time/money and chooses not to access a legal service currently offered in the legal market.

19. How are your target consumers presently at risk of failing to exercise legal rights through ignorance or bad advice? *

Under current Utah regulation of legal services, how are your target consumers likely to incorrectly conclude that they do not have legal rights to exercise? What legal service models currently on the market take more time/money than your target market would gain if they chose to exercise their legal rights?

Most individuals legally eligible for a criminal record expungement under Utah law never apply for one, and many who start the process, never successfully complete it. Therefore, target consumers are presently at high risk of failing to exercise legal rights available to them.

One of the most complex parts of the process is determining whether an individual is eligible for an expungement under Utah law. As a result, most people eligible for expungement relief in Utah are not accessing the benefits. With the implementation of Utah's Clean Slate law, people

with eligible convictions will receive the benefit of the expungement automatically, but there is no mechanism to drive awareness of the benefit and no scalable means to ensure that people know what that relief means for them in the context of their criminal record. People need to be aware of and understand the legal implications of a criminal record expungement in order to take advantage of opportunities now open to them.

20. How would your target consumers be at risk of failing to exercise legal rights through ignorance or bad advice using your service or model? *

Due to the cost and complexity of the current system, most individuals in need of criminal record expungement never make it through the process. We are hoping that our tool will result in greater access to information to target consumers. Our intention is that people who visit our digital service become knowledgeable about their legal rights and the next steps and opportunities available to them.

The biggest risk of our tool is that a person will be told that they are not eligible for a criminal record expungement when they actually are. If a person is mistakenly told that they are not eligible for a criminal record expungement, they may fail to exercise their legal right to get their criminal record expunged, thereby missing out on access to better employment, housing, educational, and other opportunities.

21. How do you plan to identify whether the risk of your consumers failing to exercise legal rights through ignorance or bad advice? How do you plan to track and mitigate this risk in your proposed legal service/model? *

Code for America engages in a number of qualitative and quantitative strategies to gather feedback from people who use our service. We develop software using an agile, iterative software development process, which enables us to start small, gather real-time feedback, iterate and improve the service based on that feedback. This approach ensures that we are building software that actually meets the needs of people, and it also ensures that we can mitigate the risks associated with developing a tool that provides bad legal advice.

As we develop the tool, we plan to work with both individuals with records and Utah legal expungement experts to design the logic and test the accuracy of the tool's legal expungement determinations. By consulting lawyers in the product design phase who have demonstrated expertise in legal expungement services, we will ensure that the tool is designed to provide sound legal advice to consumers, especially in the more complex or nuanced cases. By working with individuals who have criminal records, we will ensure that the legal advice and next steps generated by the tool can be clearly understood and interpreted.

In addition to taking a careful approach to the product development process, we plan to use the following strategy to track and mitigate the risk that a consumer will fail to exercise an existing legal right to expungement relief:

1. Pending the ability to recruit a panel of 8-10 trained Utah legal expungement experts, we will facilitate an independent review and audit of the expungement determination tool.

The biggest risk of our tool is that a person will be told they are not eligible to expunge their record, when in fact, they are. In order to mitigate this risk, we will work with trained Utah legal expungement experts to conduct an independent review of the first 25 legal determinations that a person is not eligible to expunge their record. In order to accomplish this review, we will ask the first 25 people who receive a determination that they are *not* eligible for criminal record expungement whether they would be interested in an attorney conducting a review of that determination. If the individual consents, the individual's record will be shared with 3 attorneys from the panel, who will conduct an independent review of the record. Those attorneys will not make contact with the individual record-holder, but instead, offer a legal opinion to our team. That legal opinion will be compared to the advice generated by the tool. If 2 of the 3 panel members determine that the computer tool generated an error, and the individual is actually eligible for an expungement, the individual will be notified that after further review, they may actually be eligible for an expungement, and will be provided information about how to start that process.

If the first 25 determinations are not at least 80% accurate, more testing will be required before the product becomes broadly available.

Risk Three: Consumer purchases an unnecessary or inappropriate legal service.

The consumer exercises legal rights and accesses a legal service, but the consumer purchases a service which does not adequately serve their legal needs.

22. How are your target consumers presently at risk of purchasing an unnecessary or inappropriate legal service? *

Under current Utah regulation of legal services, how are your target consumers likely to purchase a legal service they do not need? How likely are your target consumers to buy the wrong legal service?

As noted above, most consumers do not have the resources needed to hire an attorney to help them expunge their criminal records, therefore most individuals in the target market are at high risk of not being able to access the legal services they need.

Because it is difficult for individuals to determine whether they meet the legal criteria to be eligible for an expungement under Utah law, the ones who can afford to pay the \$65 fee may choose to apply to BCI to receive a determination. According to conversations with BCI staff, many individuals who apply for an expungement are not even close to meeting the legal requirements necessary to access the process. Therefore, we expect that in the current market, many individuals are presently at risk of paying an application fee to start a legal process that they are not eligible to access.

It is worth noting that this risk also occurs when an individual hires an attorney. Because attorneys have access only to Utah public court records, they have no ability to know whether an individual might have criminal records in other states that might disqualify them for relief. While attorneys can ask clients whether they have criminal records in other states, and advise them that this may disqualify them from an expungement, some clients don't know, or do not accurately self report this information. As a result, clients may be directed to apply for an expungement, when they will not be eligible for expungement relief.

In addition, while we would hope that court records and criminal repository records usually match, there are instances where a person's official criminal history contains different or additional information that did not show up in court records. Because attorneys do not have visibility into these records without paying to access them, there is some risk that they will tell individuals to apply for an expungement, and they end up not being eligible.

23. How would your target consumers be at risk of purchasing an unnecessary or inappropriate legal service using your service or model? *

There is very minimal risk that individuals using our tool will purchase an unnecessary or inappropriate legal service. We will not charge people for use of the computer tool that we build and we will thoroughly vet any legal service referrals listed on our website.

The biggest risk with our tool is that based on an inaccurate legal determination, someone pays BCI a \$65 fee to apply for a certificate of eligibility for an expungement, and they are told they are ineligible. We hope to identify and mitigate this risk in our product design phase and using the review and audit method outlined in question 22. We also hope to mitigate this risk by working in data-sharing partnership with the Department of Public Safety and the Commission on Criminal and Juvenile Justice (CCJJ).

24. How do you plan to identify whether the risk of your consumers purchasing an unnecessary or inappropriate legal service is occurring and how you plan to mitigate this risk? How do you plan to track and mitigate this risk in your proposed legal service/model? *

When our tool generates a legal determination, we will include on our website referrals to legal services organizations and clinics where individuals can access no or low-cost legal attorneys to discuss any advice generated by the tool. We aim to thoroughly vet all referral listings to help mitigate against the risk a person visiting our site is referred to a legal services entity from which they unnecessarily or inappropriately need to pay for legal services.

In addition, we will ask individuals who have received a determination that they are eligible for an expungement to report back to us if they apply to BCI for a certificate and they are told they are ineligible. This will help us to track and identify errors and adjust the software to prevent future errors. Finally, pending the ability to obtain grant funding, and as outlined more fully in

question 19 above, we will offer the first 25 individuals who are deemed eligible for an expungement by our tool the opportunity to apply for certificates free of charge. We will use third party releases to allow the information to be shared with our team, so we can ensure that our tool's prediction that someone is eligible turns out to be the case.

25. What other potential material risks does your proposed legal service offering/model hold for targeted consumers? How do you specifically plan to identify and control for those risks? *

To consider, if applicable and not already addressed: risks around holding of client money, risks around data protection and cybersecurity, risks around money laundering, and risks around real or perceived conflicts of interest.

We anticipate that our tool will be open-source, cloud-based software. We aim to work in partnership with the Utah Commission on Criminal and Juvenile Justice (CCJJ) to access existing criminal history and/or court records so that the service can provide individualized, relevant information and legal advice to people seeking to better understand and interpret their criminal records.

In order for our tool to have the most meaningful impact, we need to work in partnership with Utah government agencies to access criminal history information. The biggest risks of our tool are that (1) someone other than the individual record holder will use our tool to improperly access another person's criminal history and (2) a possible data breach that exposes sensitive data to outside parties.

- 1) We will mitigate the risk of someone using our tool to improperly access another person's record by incorporating an identity verification process. This process may include, but is not limited to:
 - a) Verification questions such as:
 - i) Name, DOB
 - ii) Last four of SSN
 - iii) Current/previous addresses
 - iv) Etc
 - b) Two-step verification using SMS
 - c) Codes provided by mail
 - d) Partnering with community-based organizations

We may also create accounts for users to store personalized information. In this case we will follow industry best practices for strong authentication and secure user account management.

- 2) We will take a series of precautions to mitigate the risk of a data breach, including but not limited to:
 - a) Ensure that the internal networking and infrastructure of the application is secure. This is often accomplished by partnering with a secure cloud hosting provider such as AWS GovCloud or Aptible.

- b) Minimize access to sensitive authentication keys and passwords
- c) Ensure all data exchanges take place over secure, encrypted channels using strong authentication
- d) Ensure sensitive data is encrypted both in transit and at rest
- e) Adopt industry best practices for web application development to prevent common vulnerabilities such as SQL Injection or Cross-Site Scripting
- f) Access and store only the minimal amount of data necessary to meet the end user need
- g) Other steps as appropriate based on evolving cyber security risk assessments.

26. Please indicate which categories of data you will be able to provide at regular intervals to the Innovation Office. *

- Non-financial outcome data (legal result achieved)
- Financial outcome data (monetary benefits received or penalties prevented)
- **Output data (number of consumers served, case filings in areas where service leads to litigation)**
- **Returns for error fixes**
- **Consumer satisfaction survey data**
- Consumer demographic data
- Price data
- Consumer complaint data
- Other:

27. Please describe your consumer complaint process. *

As part of our consumer satisfaction survey, we will include a process to submit feedback, and commit to contact individuals within 2 weeks, and direct them to additional support/help as needed.

Part Four: Benefits to Utah Customers

In line with the Regulatory Objective, the Innovation Office is also assessing the potential benefits of proposed offerings to the Utah legal market.

28. Will your service contribute to having MORE legal services for Utah consumers? How so? *

Yes. As explained above, free or low bono expungement legal services are extremely limited. By using technology, we hope to provide legal expungement services free of charge to any and all individuals with Utah criminal records. Given the digital, user-friendly, and accessible nature of our software, we anticipate a huge increase in people accessing expungement legal services than those currently able to retain legal counsel or receive help from free or low bono navigation services and legal clinics.

29. Will your service contribute to having BETTER legal services for Utah consumers? How so? *

Yes. Most people eligible to expunge their criminal records cannot afford an attorney, so they attempt to navigate the process themselves, or they do not try, and continue to live with the collateral consequences of a criminal record. By leveraging technology, our service will aim to help people in Utah expunge their records at a scale that is not possible in our existing legal market. Assuming we are successful in securing a partnership with CCJJ, we will be able to provide free access to a person's criminal history record (which is currently available only to individuals who pay for it), and help individuals learn how to read and understand their own criminal histories, which are complicated and confusing. In addition to providing advice to individuals about the legal remedies available to expunge or pardon a criminal record, we hope to take the additional step of helping individuals understand how a criminal record expungement can remove the barriers to employment, housing, education, and other opportunities, and what next steps they may want to take to pursue those opportunities.

It is our understanding that this type of service does not exist in this legal market, and certainly does not exist to serve everyone who is eligible for a legal expungement in Utah.

30. Will your service contribute to having LESS EXPENSIVE legal service options available to Utah consumers? How so? *

Yes. Our service will be delivered at no cost to the individual with the criminal record seeking to understand their criminal history and the legal remedies available to them.

31. How is your proposal adapted to Utah legal requirements?

E.g. staffed by UT licensed attorneys, built to complete state legal forms.

We will work with UT licensed attorneys to test the tool, and to the extent we link to or rely on forms, they will be court reviewed and approved.

32. Please explain how your proposal is ready to implement if authorized to enter the Sandbox.

The Office of Innovation is only authorized to consider proposals which are ready to begin offering legal services not currently authorized in Utah at the time of authorization.

In order for individuals to trust the source of the information and legal advice we intend to provide, we think it is important to partner with the Government to deliver our service. To that end, and in anticipation of filing this application, we have approached the Utah Commission on Criminal and Juvenile Justice (CCJJ) to host the tool on their website. CCJJ already has an existing data partnership with BCI, the official criminal record repository for the state of Utah, and data source needed to design and implement our tool.

If our proposal is approved, CCJJ has expressed interest in hosting the tool on its website, and BCI has expressed willingness to explore options for sharing the data needed to make the tool work. Code for America will offer this service free of charge to Utah consumers and stands ready to begin the development process. With the execution of any needed data security and data sharing agreements, Code for America is excited to expand its tool to ensure the most meaningful impact for people. Sudbury Consulting LLC will work with Code for America and other Utah legal expungement experts to design, test, and audit the tool to ensure its long term accuracy.

33. Is there anything else you want us to know about your proposed legal service?

Your application will be made publicly available. If there is any specific information within your application for which you would claim business confidentiality, please provide (1) a written claim of business confidentiality, and (2) a concise statement of reasons supporting the claim of business confidentiality. *

Please note the following law: "Any person who provides to a governmental entity a record that the person believes should be protected under 63G-2-305(1) [trade secrets] or (2) [commercial information or non individual financial information] or both Subsections 63G-2-305(1) and (2) shall provide with the record: (A) a written claim of business confidentiality; and (B) a concise statement of reasons supporting the claim of business confidentiality."

- **I understand (checkbox)**

Please attach any supplemental materials you wish considered alongside this application.

You may upload up to five (5) word processing documents, PDFs, spreadsheets, presentations, or images which are up to 100 MB in size per document.

34. If you have supplemental materials you wish considered alongside this application form which you cannot upload in the previous question, please indicate so here.

- Yes I have supplemental materials.
- **I do not have supplemental materials at this time.**