



STATE OF UTAH COOPERATIVE CONTRACT

1. CONTRACTING PARTIES: This contract is between the Utah Division of Purchasing and the following Contractor:

Banjo, Inc.

Name

1526 W. Ute Blvd.

Street Address

Park City

UT

84098

City

State

Zip

Vendor # VC224852 Commodity Code #: 920-05 Legal Status of Contractor: For-Profit Corporation

Contact Name: Jessie Councilman Phone Number: (505) 610-0722 Email: jessie@teambanjo.com

2. CONTRACT PORTFOLIO NAME: Public Safety.

3. GENERAL PURPOSE OF CONTRACT: Provide Public Safety and Emergency Event Monitoring Solutions.

4. PROCUREMENT: This contract is entered into as a result of the procurement process on FY2018. Solicitation# SK19019-1

5. CONTRACT PERIOD: Effective Date: Friday, July 19, 2019. Termination Date: Thursday, July 18, 2024 unless terminated early or extended in accordance with the terms and conditions of this contract.

6. Administrative Fee (if any): 0.25%.

7. Prompt Payment Discount Details (if any): NA.

- 8. ATTACHMENT A: Standard Terms and Conditions for Information Technology
- ATTACHMENT B: Scope of Work
- ATTACHMENT C: Price Schedule
- ATTACHMENT D: Banjo Master Services Agreement

Any conflicts between Attachment A and the other Attachments will be resolved in favor of Attachment A.

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

- a. All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.
- b. Utah Procurement Code, Procurement Rules, and Contractor's response to solicitation #SK19019-1.

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

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed. Notwithstanding verbal or other representations by the parties, the "Effective Date" of this Contract shall be the date provided within Section 5 above.

CONTRACTOR

Jessie Councilman 7/16/2019
 Contractor's signature Date

Jessie Councilman Chief of Staff
 Type or Print Name and Title

DIVISION OF PURCHASING

Christopher Hughes Jul 16, 2019
 Christopher Hughes (Jul 16, 2019) Date
 Director, Division of Purchasing

**ATTACHMENT A: STATE OF UTAH STANDARD INFORMATION TECHNOLOGY TERMS AND CONDITIONS
STATE OF UTAH COOPERATIVE INFORMATION TECHNOLOGY CONTRACT**

This is a State Cooperative Contract for information technology products and services meaning all computerized and auxiliary automated information handling, including: (a) systems design and analysis; (b) acquisition, storage, and conversion of data; (c) computer programming; (d) information storage and retrieval; (e) voice, radio, video, and data communications; (f) requisite systems controls; (g) simulation; and (h) all related interactions between people and machines.

1. DEFINITIONS:

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

- s. "Services" means the furnishing of labor, time, or effort by Contractor as set forth in this Contract, including but not limited to installation, configuration, implementation, technical support, warranty maintenance, and other support services. For the avoidance of doubt, the products and services provided by Contractor under this Contract shall be deemed "Services" and not "Goods" or "Custom Deliverables."
 - t. "Solicitation" means the documents used by the Division to solicit Contractor's Proposal for the Goods, Custom Deliverables, or Services identified in this Contract.
 - u. "Public Data" means all Confidential Information, Non-Public Data, Personal Data, and Protected Health Information that is created or in any way originating with the State of Utah or an Eligible User whether such data or output is stored on the State of Utah's or an Eligible User's hardware, Contractor's hardware, or exists in any system owned, maintained or otherwise controlled by the State of Utah, an Eligible User, or by Contractor. Public Data includes any federal data, that the State of Utah or an Eligible User controls or maintains, that is protected under federal laws, statutes, and regulations.
 - v. "State of Utah" means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
 - w. "Subcontractors" means subcontractors or subconsultants, at any tier, that are under the direct or indirect control or responsibility of Contractor, and includes all independent contractors, agents, employees, or anyone else for whom the Contractor may be liable, at any tier, including a person or entity that is, or will be, providing or performing an essential aspect of this Contract, including Contractor's manufacturers, distributors, and suppliers.
 - x. "Work Product" means every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor or Contractor's Subcontractors (either alone or with others) pursuant to this Contract. Work Product shall be considered a work made for hire under federal, state, and local laws; and all interest and title shall be transferred to and owned by the ordering Eligible User. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any Eligible User intellectual property, Contractor's intellectual property (that it owned or licensed prior to this Contract) or Third Party intellectual property.
2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
 3. **LAWS AND REGULATIONS:** At all times during this Contract, Contractor and all the Goods delivered under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements.
 4. **NO WAIVER OF SOVEREIGN IMMUNITY:** In no event shall this Contract be considered a waiver by the Division, an Eligible User, or the State of Utah of any form of defense or immunity, whether sovereign immunity, governmental immunity, or any other immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.
 5. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by Eligible Users to Contractor under this Contract. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, State of Utah auditors, federal auditors, Eligible Users or any firm identified by the Division, access to all such records. Contractor must refund to the Division any overcharges brought to Contractor's attention by the Division or the Division's auditor and Contractor is not permitted to offset identified overcharges by alleged undercharges to Eligible Users.
 6. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** This Status Verification System, also referred to as "E-verify", requirement only applies to contracts issued through a Request for Proposal process and to sole sources that are included within a Request for Proposal.
 - (1) Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws including Section 63G-12-302, Utah Code, as amended.
 - (2) Contractor shall require that the following provision be placed in each subcontract at every tier: "The subcontractor shall certify to the main (prime or general) contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with applicable immigration laws including Section 63G-12-302, Utah Code, as amended, and to comply with all applicable employee status verification laws. Such affidavit must be provided prior to the notice to proceed for the subcontractor to perform the work."
 - (3) Contractor's failure to comply with this section will be considered a material breach of this Contract.
 - (4) Contractor shall protect, indemnify, and hold harmless the Division, the Eligible Users, and the State of Utah, and anyone that the State of Utah may be liable for, against any claim, damages, or liability arising out of or resulting from violations of the above Status Verification System Section whether violated by employees, agents, or contractors of the following: (a) Contractor; (b) Subcontractor at any tier; and/or (c) any entity or person for whom the Contractor or Subcontractor may be liable.

7. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made to the Division.
8. **CONFLICT OF INTEREST WITH STATE EMPLOYEES:** Contractor agrees to comply and cooperate in good faith with all conflict of interest and ethic laws including Section 63G-6a-2404, Utah Procurement Code, as amended.
9. **INDEPENDENT CONTRACTOR:** Contractor's legal status is that of an independent contractor, and in no manner shall Contractor be deemed an employee or agent of the Division, the Eligible Users, or the State of Utah, and therefore is not entitled to any of the benefits associated with such employment. Contractor, as an independent contractor, shall have no authorization, express or implied, to bind the Division, the Eligible Users, or the State of Utah to any agreements, settlements, liabilities, or understandings whatsoever, and agrees not to perform any acts as an agent for the Division, the Eligible Users, or the State of Utah. Contractor shall remain responsible for all applicable federal, state, and local taxes, and all FICA contributions.
10. **CONTRACTOR ACCESS TO SECURE Public FACILITIES, PUBLIC DATA, AND TECHNOLOGY:** An employee of Contractor or a Subcontractor may be required to complete a Federal Criminal Background Check, if said employee of Contractor or a Subcontractor will have Access to Secure Public Facilities, Public Data, and Technology. Contractor shall provide the Eligible User with sufficient personal information (at Contractor's own expense) so that a Federal Criminal Background Check may be completed by the Eligible User, at the Eligible User's expense. The Eligible User will also provide Contractor with a Disclosure Form and Confidentiality Agreement which must be filled out by Contractor and returned to the Eligible User. Additionally, each employee of Contractor or a Subcontractor, who will have Access to Secure Public Facilities, Public Data, and Technology, will be scheduled by the Eligible User to be fingerprinted, at a minimum of one week prior to having such access. At the time of fingerprinting, said employee of Contractor or a Subcontractor will disclose, in full, any past record of felony or misdemeanor convictions. The Eligible User is authorized to conduct a Federal Criminal Background Check based upon the fingerprints and personal information provided. The Eligible User may use this same information to complete a Name Check in the Utah Criminal Justice Information System (UCJIS) every two years and reserves the right to revoke Access to Secure State Facilities, Data, and Technology granted in the event of any negative results. Contractor agrees to notify the Eligible User if an arrest or conviction of any employee of Contractor or a Subcontractor that has Access to Secure Public Facilities, Public Data and Technology occurs during this Contract. Contractor, in executing any duty or exercising any right under this Contract, shall not cause or permit any of its employees or employees of a Subcontractor (if any) who have been convicted of a felony or misdemeanor to have Access to Secure Public Facilities, Public Data, and Technology. A felony and misdemeanor are defined by the laws of the State of Utah, regardless of where the conviction occurred.
11. **DRUG-FREE WORKPLACE:** Contractor agrees to abide by the Eligible User's drug-free workplace policies while on the Eligible User's or the State of Utah's premises.
12. **CODE OF CONDUCT:** If Contractor is working at facilities controlled or owned by the State of Utah, Contractor agrees to follow and enforce the applicable code of conduct which will be provided upon request by Contractor to the Eligible User. Contractor will assure that each employee or each employee of Subcontractor(s) under Contractor's supervision receives a copy of such code of conduct.
13. **INDEMNITY CLAUSE:** Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors, and shall fully indemnify, defend, and save harmless the Division, the Eligible Users, and the State of Utah from all claims, losses, suits, actions, damages, and costs of every name and description arising out of Contractor's performance of this Contract to the extent caused by any intentional wrongful act or negligence of Contractor, its agents, employees, officers, partners, or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the sole fault of the Division, the Eligible User, or the State of Utah. The parties agree that if there are any limitations of the Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property.
14. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by the following employment laws: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90 which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order, dated December 13, 2006, which prohibits unlawful harassment in the work place. Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind of any of Contractor's employees.
15. **SEVERABILITY:** A declaration or order by any court that any provision of this Contract is illegal and void shall not affect the legality and enforceability of any other provision of this Contract, unless the provisions are mutually dependent.
16. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, which amendment will be attached to this Contract. Automatic renewals will not apply to this Contract.
17. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract, by any governmental department or agency, whether international, national, state, or local. Contractor must notify the Division within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any contract by any governmental entity during this Contract.
18. **TERMINATION:** This Contract may be terminated, with cause by either party, in advance of the specified expiration date, upon written notice given by the other party. The party in violation will be given ten (10) days after written notification to correct and cease the violations, after which this Contract may be terminated for cause immediately and subject to the remedies below. This Contract may also be terminated without cause (for convenience), in advance of the specified expiration date, by the Division, upon thirty (30) days written termination notice being given to the Contractor. The Division and the Contractor may terminate this Contract, in whole or in part, at any time, by mutual agreement in writing.

If Services apply to this Contract, then Contractor shall be compensated for the Services properly performed under this Contract up to the effective date of the notice of termination. Contractor agrees that in the event of such termination for cause or without cause, Contractor's sole remedy and monetary recovery from the Division, the Eligible Users, or the State of Utah is limited to full payment for all work properly performed as authorized under this Contract up to the date of termination as well as any reasonable monies owed as a result of Contractor having to terminate other contracts necessarily and appropriately entered into by Contractor pursuant to this Contract.

- 19. SUSPENSION OF WORK:** Should circumstances arise which would cause the Division to suspend Contractor's responsibilities under this Contract, but not terminate this Contract, this will be done by formal written notice pursuant to the terms of this Contract. Contractor's responsibilities may be reinstated upon advance formal written notice from the Division.
- 20. NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Contractor, this Contract may be terminated in whole or in part at the sole discretion of the Division or an Eligible User, if it is reasonably determined that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (ii) that a change in available funds affects an Eligible User's ability to pay under this Contract. A change of available funds as used in this paragraph, includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.
- If a written notice is delivered under this section, the Eligible User will reimburse Contractor for the Goods or Services properly ordered until the effective date of said notice. The Eligible User will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.
- 21. SALES TAX EXEMPTION:** The Goods, Custom Deliverables, or Services being purchased by the Eligible Users under this Contract are being paid from the Eligible User's funds and used in the exercise of the Eligible User's essential function as an Eligible User. The Eligible User will provide Contractor with a copy of its sales tax exemption number upon request. It is the Contractor's responsibility to request the sales tax exemption number from the Eligible User.
- 22. TITLE AND OWNERSHIP WARRANTY:** Contractor warrants, represents and conveys full ownership, clear title free of all liens and encumbrances to any Good or Custom Deliverable delivered to the Eligible Users under this Contract. Contractor fully indemnifies the Eligible Users for any loss, damages or actions arising from a breach of this warranty without limitation.
- 23. HARDWARE WARRANTY:** Contractor agrees to warrant and assume responsibility for all hardware portions of any Good or Custom Deliverable, that it licenses, contracts, or sells under this Contract, for a period of one (1) year. Contractor acknowledges that all warranties granted to the Division and Eligible Users by the Uniform Commercial Code of the State of Utah apply to this Contract. Product liability disclaimers and/or warranty disclaimers from Contractor are not applicable to this Contract. In general, the Contractor warrants that the hardware: (a) will perform as specified in the Proposal; (b) will live up to all specific claims listed in the Proposal; (c) will be suitable for the ordinary purposes for which the hardware is used; (d) will be suitable for any special purposes that the Division has relied on Contractor's skill or judgment to consider when it advised the Division about the hardware in the Proposal; (e) the hardware has been properly designed and manufactured; and (f) is free of significant defects or unusual problems about which Eligible User has not been warned.
- 24. SOFTWARE WARRANTY:** Contractor warrants that for a period of ninety (90) days from the date of Acceptance that the software portions of the Goods and Custom Deliverables, that Contractor licenses, contracts, or sells to the Eligible Users under this Contract, will: (a) perform in accordance with the specific claims provided in the Proposal; (b) be suitable for the ordinary purposes for which such Goods and Custom Deliverables are used; (c) be suitable for any special purposes that the Eligible User has relied on Contractor's skill or judgment to consider when it advised the Eligible User about the Goods or Custom Deliverables in its Proposal; (d) have been properly designed and manufactured; and (e) be free of significant defects or unusual problems. Contractor agrees to provide the Eligible Users with bug fixes, including informing the Eligible Users of any known software bugs or software defects that may affect the Eligible User's use of the software during the Contract.
- 25. WARRANTY REMEDIES:** Upon breach of the hardware or software warranty, Contractor will repair or replace (at no charge to the Eligible Users) the Goods or Custom Deliverables whose nonconformance is discovered and made known to Contractor. If the repaired and/or replaced products prove to be inadequate, or fail to meet the performance of its essential purpose, Contractor will refund the full amount of any payments that have been made for the failing products. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity.
- 26. UPDATES AND UPGRADES:** Contractor grants to the Eligible Users a non-exclusive, non-transferable license to use upgrades and updates provided by Contractor during the term of this Contract. Such upgrades and updates are subject to the terms of this Contract. The Eligible Users shall download, distribute, and install all updates as released by Contractor during this Contract, and Contractor strongly suggests that the Eligible Users also download, distribute, and install all upgrades as released by Contractor during this Contract.
- 27. BUG FIXING AND REMOTE DIAGNOSTICS:** Contractor shall use commercially reasonable efforts to provide work-around solutions or patches to reported software problems. With an Eligible User's prior written authorization, Contractor may perform remote diagnostics to work on reported problems, subject to Contractor's obligation of this Contract. In the event that an Eligible User declines remote diagnostics, Contractor and the Eligible User may agree to on-site technical support, subject to the terms of this Contract.
- 28. TECHNICAL SUPPORT AND MAINTENANCE:** If technical support and maintenance is a part of the Goods or Custom Deliverables that Contractor provides under this Contract, Contractor will use commercially reasonable efforts to respond, in a reasonable time, when technical support or maintenance requests regarding the Goods or Custom Deliverables are made to Contractor.
- 29. SECURE PROTECTION AND HANDLING OF PUBLIC DATA:** If Contractor is given Public Data as part of this Contract, the protection of Public Data shall be an integral part of the business activities of Contractor to ensure that there is no inappropriate or unauthorized use of Public Data. To the extent that Contractor is given Public Data, Contractor shall safeguard the confidentiality,

integrity and availability of the Public Data and comply with the following conditions outlined below. Eligible Users reserve the right to verify Contractor's adherence to the following conditions to ensure they are met during the life of the contract:

1. **Network Security:** Contractor agrees at all times to maintain network security that - at a minimum - includes: network firewall provisioning, intrusion detection, and regular third party penetration testing. Contractor also agrees to maintain network security that conforms to one of the following:

(1) Those standards the State of Utah applies to its own network, found outlined in *DTS Policy 5000-0002 Enterprise Information Security Policy* (copy available upon request);

(2) Current standards set forth and maintained by the National Institute of Standards and Technology, includes those at: <http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r4.pdf>; or

(3) Any generally recognized comparable standard that Contractor then applies to its own network and approved by DTS in writing.

2. **Public Data Security:** Contractor agrees to protect and maintain the security of Public Data with protection that is at least as good as or better than that maintained by the State of Utah which will be provided by an Eligible User upon Contractor's request. These security measures included but are not limited to maintaining secure environments that are patched and up to date with all appropriate security updates as designated (ex. Microsoft Notification). Eligible User reserves the right to determine if Contractor's level of protection adequately meets the Eligible User's security requirements.

3. **Public Data Transmission:** Contractor agrees that any and all transmission or exchange of system application data with the Eligible Users and State of Utah and/or any other parties expressly designated by the State of Utah, shall take place via secure means (ex. HTTPS or FTPS).

4. **Public Data Storage:** Contractor agrees that all Public Data will be stored and maintained in data centers in the United States. Contractor agrees that no Public Data at any time will be processed on or transferred to any portable or laptop computing device or any portable storage medium, except for devices that are used and kept only at Contractor's United States data centers, unless such medium is part of the Contractor's designated backup and recovery process. Contractor shall permit its employees and Subcontractors to access non-Public Data remotely only as required to provide technical support. Contractor may provide technical user support on a 24/7 basis using a Follow the Sun model, unless otherwise prohibited by this contract.

5. **Public Data Encryption:** Contractor agrees to store all data provided to Contractor, including State, as part of its designated backup and recovery process in encrypted form, using no less than 128 bit key and include all data as part of a designated backup and recovery process.

6. **Password Protection:** Contractor agrees that any portable or laptop computer that has access to the Eligible Users or State of Utah networks, or stores any Public Data is equipped with strong and secure password protection.

7. **Public Data Re-Use:** Contractor agrees that any and all data exchanged shall be used expressly and solely for the purpose enumerated in this Contract. Contractor further agrees that no Public Data of any kind shall be transmitted, exchanged, or otherwise passed to other Contractors or interested parties except on a case-by-case basis as specifically agreed to in writing by the Eligible Users.

8. **Public Data Destruction:** The Contractor agrees that upon expiration or termination of this Contract it shall erase, destroy, and render unreadable all Public Data from all non-state computer systems and backups, and certify in writing that these actions have been completed within thirty (30) days of the expiration or termination of this Contract or within seven (7) days of the request of the Eligible User, whichever shall come first, unless the Eligible User provides Contractor with a written directive. It is understood by the parties that the Eligible User's written directive may request that certain data be preserved in accordance with applicable law.

9. **Services Shall Be Performed Within United States:** Contractor agrees that all of the Services related to Public Data that it provides to the Eligible Users will be performed by Contractor and Subcontractor(s) within the borders and jurisdiction of the United States.

30. **SECURITY INCIDENT OR DATA BREACH NOTIFICATION:** Contractor shall immediately inform an Eligible User of any Security Incident or Data Breach.

1. **Incident Response:** Contractor may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement and seeking external expertise as mutually agreed upon, defined by law or contained in this Contract. Discussing Security Incidents with the Eligible User should be handled on an urgent as-needed basis, as part of Contractor's communication and mitigation processes, defined by law or contained in this Contract.

2. **Security Incident Reporting Requirements:** Contractor shall report a Security Incident to the Eligible User immediately if Contractor reasonably believes there has been a Security Incident.

3. **Breach Reporting Requirements:** If Contractor has actual knowledge of a confirmed Data Breach that affects the security of any Public Data that is subject to applicable data breach notification law, Contractor shall: (a) promptly notify the Eligible User within 24 hours or sooner, unless shorter time is required by applicable law; (b) take commercially reasonable measures to address the Data Breach in a timely manner; and (c) be responsible for its Data Breach responsibilities, as provided in the next Section.

31. **DATA BREACH RESPONSIBILITIES:** This Section only applies when a Data Breach occurs. Contractor agrees to comply with all applicable laws that require the notification of individuals in the event of a Data Breach or other events requiring notification in accordance with DTS Policy 5000-0002 Enterprise Information Security Policy (copy available upon request). In the event of a Data Breach or other event requiring notification under applicable law (Utah Code § 13-44-101 thru 301 et al), Contractor shall: (a) cooperate with the Eligible User by sharing information relevant to the Data Breach; (b) promptly implement necessary remedial measures, if necessary; (c) document responsive actions taken related to the Data Breach, including any post-incident review of

events and actions taken to make changes in business practices in relation to the Data Breach; and (d) in accordance with applicable laws indemnify, hold harmless, and defend DTS and the State of Utah against any claims, damages, or other harm related to such Data Breach. If the Data Breach requires public notification, all communication shall be coordinated with the Eligible User. Contractor shall be responsible for all notification and remedial costs and damages.

32. STATE INFORMATION TECHNOLOGY POLICIES: If Contractor is providing an Executive Branch Agency of the State of Utah with Goods or Custom Deliverables it is important that contractors follow the same policies and procedures that DTS follows for their own internally developed goods and deliverables to minimize security risk, ensure applicable State and Federal laws are followed, address issues with accessibility and mobile device access, and prevent outages and data breaches within the State of Utah's environment. Contractor agrees to comply with the following DTS Policies which are available upon request:

1. **DTS Policy 4000-0001, Enterprise Application and Database Deployment Policy:** The Enterprise Application and Database Deployment Policy requires any Contractor developing software for the State to develop and establish proper controls that will ensure a clear separation of duties between developing and deploying applications and databases to minimize security risk; to meet due diligence requirements pursuant to applicable state and federal regulations; to enforce contractual obligations; and to protect the State's electronic information and information technology assets.
2. **DTS policy 4000-0002, Enterprise Password Standards Policy:** Any Contractor developing software for the State must ensure it is built to follow the password requirements outlined in the Enterprise Password Standards Policy.
3. **DTS Policy 4000-0003, Software Development Life Cycle Policy:** The Software Development Life Cycle Policy requires any Contractor developing software for the State to work with DTS in implementing a Software Development Lifecycle (SDLC) that addresses key issues of security, accessibility, mobile device access, and standards compliance.
4. **DTS Policy 4000-0004, Change Management Policy:** Per the Change Management Policy, any Goods or Custom Deliverables furnished or Services performed by Contractor which have the potential to cause any form of outage or to modify DTS's or the State of Utah's infrastructure must be reviewed by the DTS Change Management Committee. Following this notification, any outages or Data Breaches which are a direct result of Contractor's failure to comply with DTS instructions and policies following notification will result in Contractor's liability for any and all damages resulting from or associated with the outage or Data Breach.

33. PUBLIC INFORMATION: Contractor agrees that this Contract, any related purchase orders, related invoices, related pricing lists, and the Proposal will be public documents, and may be available for distribution in accordance with the State of Utah's Government Records Access and Management Act (GRAMA). Contractor gives the Division, the Eligible Users, and the State of Utah express permission to make copies of this Contract, any related purchase orders, related invoices, related pricing lists, and Proposal in accordance with GRAMA. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation. The Division, the Eligible Users, or the State of Utah will not inform Contractor of any request for a copy of this Contract, including any related purchase orders, related invoices, related pricing lists, or the Proposal.

34. DELIVERY: Unless otherwise specified in this Contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by Contractor. Contractor is responsible for including any freight charges due by the Eligible User to Contractor when providing quotes to the Eligible User unless otherwise specified in this Contract. Invoices listing freight charges that were not identified in the quote prior to shipment, unless otherwise specified in this Contract, will be returned to the Contractor to remove such costs. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the Eligible Users except as to latent defects, fraud, and Contractor's warranty obligations.

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

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

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

37. ORDERING AND INVOICING: All orders will be shipped promptly in accordance with the delivery schedule. Contractor will promptly submit invoices (within 30 days of shipment or delivery of services) to the appropriate Eligible User. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to an order under this Contract. The prices paid by the Eligible User will be those prices listed in this Contract, unless Contractor offers a discount at the time of the invoice. It is Contractor's obligation to provide correct and accurate invoicing. The Eligible User has the right to adjust or return any invoice reflecting incorrect pricing.

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

39. PAYMENT:

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

2. Unless otherwise stated in this Contract, all payments to Contractor will be remitted by mail, by electronic funds transfer, or by the Eligible User's purchasing card (major credit card). The Division will not allow Contractor to charge electronic payment fees of any kind.

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

4. Contractor agrees that if during, or subsequent to the Contract an audit determines that payments were incorrectly reported or paid by the Eligible Users to Contractor, then Contractor shall, upon written request, immediately refund to the Eligible Users any such overpayments.

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

Contractor will release, indemnify, and hold the Division, the Eligible Users, and the State of Utah harmless from liability or damages of any kind or nature, including Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article, or appliance furnished or used in Contractor's performance of this Contract. Additionally, if such a claim or liability is based upon an allegation that a Good, Custom Deliverable, or Service furnished by Contractor infringes on any right protected by any patent, copyright, trademark, trade secret, and/or proprietary right of any third party, Contractor agrees to indemnify and hold harmless the Division, the Eligible Users, and the State of Utah for any judgments, settlements, reasonable costs, and reasonable attorneys' fees resulting from such a claim or liability. Contractor shall defend all actions brought upon such matters to be indemnified hereunder and pay all costs and expenses incidental thereto; however, the Eligible Users shall have the right, at its option, to participate in the defense of any such action without relieving Contractor of any obligation hereunder.

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

42. OWNERSHIP IN CUSTOM DELIVERABLES: In the event that Contractor provides Custom Deliverables to the Eligible Users, pursuant to this Contract, Contractor grants the ownership in Custom Deliverables, which have been developed and delivered by Contractor exclusively for Eligible Users and are specifically within the framework of fulfilling Contractor's contractual obligations under this contract. Custom Deliverables shall be deemed work made for hire, such that all intellectual property rights, title and interest in the Custom Deliverables shall pass to the Eligible Users, to the extent that the Custom Deliverables are not recognized as work made for hire, Contractor hereby assigns to the Eligible Users any and all copyrights in and to the Custom Deliverables, subject to the following:

1. Contractor has received payment for the Custom Deliverables,

2. Each party will retain all rights to patents, utility models, mask works, copyrights, trademarks, trade secrets, and any other form of protection afforded by law to inventions, models, designs, technical information, and applications ("Intellectual Property Rights") that it owned or controlled prior to the effective date of this contract or that it develops or acquires from activities independent of the services performed under this contract ("Background IP"), and

3. Contractor will retain all right, title, and interest in and to all Intellectual Property Rights in or related to the services, or tangible components thereof, including but not limited to (a) all know-how, intellectual property, methodologies, processes, technologies, algorithms, software, or development tools used in performing the Services (collectively, the "Utilities"), and (b) such ideas, concepts, know-how, processes and reusable reports, designs, charts, plans, specifications, documentation, forms, templates, or output which are supplied or otherwise used by or on behalf of Contractor in the course of performing the Services or creating the Custom Deliverables, other than portions that specifically incorporate proprietary or Confidential Information or Custom Deliverables of Eligible Users (collectively, the "Residual IP"), even if embedded in the Custom Deliverables.

4. Custom Deliverables, not including Contractor's Intellectual Property Rights, Background IP, and Residual IP, may not be marketed or distributed without written approval by the Eligible Users.

Contractor agrees to grant to the Eligible Users a perpetual, irrevocable, royalty-free license to use Contractor's Background IP, Utilities, and Residual IP, as defined above, solely for the Eligible Users and the State of Utah to use the Custom Deliverables. The Eligible Users reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for the Eligible User's internal purposes, such Custom Deliverables. For the Goods delivered that consist of Contractor's scripts and code and are not considered Custom Deliverables or Work Product, for any reason whatsoever, Contractor grants the

Eligible User a non-exclusive, non-transferable, irrevocable, perpetual right to use, copy, and create derivative works from such, without the right to sublicense, for the Eligible User's internal business operation under this Contract. The Eligible User and the Division may not participate in the transfer or sale of, create derivative works from, or in any way exploit Contractor's Intellectual Property Rights, in whole or in part.

- 43. OWNERSHIP, PROTECTION AND USE OF RECORDS:** Except for confidential medical records held by direct care providers, the Eligible Users shall own exclusive title to all information gathered, reports developed, and conclusions reached in performance of this Contract. Contractor may not use, except in meeting its obligations under this Contract, information gathered, reports developed, or conclusions reached in performance of this Contract without the express written consent of the Eligible User. Contractor agrees to maintain the confidentiality of records it holds for the Eligible Users as required by applicable federal, state, or local laws. Eligible Users shall own and retain unlimited rights to use, disclose, or duplicate all information and data (copyrighted or otherwise) developed, derived, documented, stored, or furnished by Contractor under this Contract. Contractor, and any Subcontractors under its control, expressly agrees not to use an Eligible User's confidential data without prior written permission from Eligible User.
- 44. PROTECTION, AND USE OF CONFIDENTIAL FEDERAL, STATE, OR LOCAL GOVERNMENT INTERNAL BUSINESS PROCESSES AND PROCEDURES:** In the event that the Eligible User provides Contractor with confidential federal or state business processes, policies, procedures, or practices, pursuant to this Contract, Contractor agrees to hold such information in confidence, in accordance with applicable laws and industry standards of confidentiality, and not to copy, reproduce, sell, assign, license, market, transfer, or otherwise dispose of, give, or disclose such information to third parties or use such information for any purpose whatsoever other than the performance of this Contract. The improper use or disclosure by any party of protected internal federal or state business processes, policies, procedures, or practices is prohibited. Confidential federal or state business processes, policies, procedures, or practices shall not be divulged by Contractor or its Subcontractors, except for the performance of this Contract, unless prior written consent has been obtained in advance from the Eligible User.
- 45. PROTECTION, AND RETURN OF DOCUMENTS AND DATA UPON CONTRACT TERMINATION OR COMPLETION:** All documents and data pertaining to work required by this Contract will be the property of the Eligible Users, and must be delivered to the Eligible Users within thirty (30) working days after termination or expiration of this Contract, regardless of the reason for contract termination, and without restriction or limitation to their future use. The costs for returning documents and data to the Eligible Users are included in this Contract.
- 46. CONFIDENTIALITY:** Confidential Information may be disclosed to the Contractor under the terms of this Contract. If Confidential Information is disclosed to Contractor then Contractor agrees to adhere to the following:
- Contractor will: (a) limit disclosure of any Confidential Information to Authorized Persons who have a need to know such Confidential Information in connection with the current or contemplated business relationship between the parties to which this Contract relates, and only for that purpose; (b) advise its Authorized Persons of the proprietary nature of the Confidential Information and of the obligations set forth in this Contract and require such Authorized Persons to keep the Confidential Information confidential; (c) shall keep all Confidential Information strictly confidential by using a reasonable degree of care, but not less than the degree of care used by it in safeguarding its own confidential information; and (d) not disclose any Confidential Information received by it to any third parties, except as otherwise agreed to in writing by the Eligible Users. Contractor will promptly notify the Eligible Users of any misuse or misappropriation of Confidential Information that comes to Contractor's attention.
- Contractor shall be responsible for any breach of this duty of confidentiality contract by any of their officers, agents, subcontractors at any tier, and any of their respective representatives, including any required remedies and/or notifications under applicable law (Utah Code Section 13-44-101 thru 301 et al). Contractor shall indemnify, hold harmless, and defend the Division, the Eligible Users, and State of Utah from claims related to a breach of these confidentiality requirements by Contractor or anyone for whom the Contractor is liable. This duty of confidentiality shall be ongoing and survive the term of this Contract.
- 47. ASSIGNMENT/SUBCONTRACT:** Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Contract, in whole or in part, without the prior written approval of the Division.
- 48. DEFAULT AND REMEDIES:** Any of the following events will constitute cause for the Division to declare Contractor in default of this Contract: (a) nonperformance of contractual requirements or (b) a material breach of any term or condition of this Contract. The Division will issue a written notice of default providing a fourteen (14) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the Division may do one or more of the following: (a) exercise any remedy provided by law; (b) terminate this Contract and any related contracts or portions thereof; (c) impose liquidated damages, if liquidated damages are listed in the contract; (d) suspend Contractor from receiving future solicitations; or (e) request a full refund of the Goods, Custom Deliverables, or Services furnished by Contractor that are defective or Services that were inadequately performed under this Contract.
- 49. TERMINATION UPON DEFAULT:** In the event this Contract is terminated as a result of a default by Contractor, the Division may procure or otherwise obtain, upon such terms and conditions as the Division deems appropriate, Goods, Custom Deliverables, or Services similar to those terminated, and Contractor shall be liable to the Division to the extent awarded by a judge of competent jurisdiction for any and all cover costs and damages arising therefrom, including attorneys' fees, excess costs and fees, and cost of cover together with incidental or consequential damages, incurred by the Division in obtaining similar Goods, Custom Deliverables, or Services.
- 50. FORCE MAJEURE:** Neither party to this Contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control or internet service interruptions or cyber attacks (including denial of service attacks and data security breaches by third-parties). The Division and the Eligible Users may immediately terminate this Contract after determining such delay will reasonably prevent successful performance of this Contract.

51. PROCUREMENT ETHICS: Contractor understands that a person who is interested in any way in the sale of any supplies, services, products, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or who in any official capacity participates in the procurement of such supplies, services, products, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.

52. CONTRACTOR'S INSURANCE RESPONSIBILITY. The Contractor shall maintain the following insurance coverage:

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

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

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

53. RESERVED

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

55. ENTIRE AGREEMENT: This Contract shall constitute the entire agreement between the parties, and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.

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

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

58. CONTRACT INFORMATION: During the duration of this Contract, the Division of Purchasing is required to make available contact information of Contractor to the State of Utah Department of Workforce Services. The State of Utah Department of Workforce Services may contact Contractor during the duration of this Contract to inquire about Contractor's job vacancies.

59. COMPLIANCE WITH ACCESSIBILITY STANDARDS: Contractor shall comply with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973. Contractors must also adhere to Utah Administrative rule R895-14-1-3-3, which states that vendors developing new websites or applications are required to meet accessibility guidelines subject to rule R895 and correct any items that do not meet these guidelines at no cost to the agency; and Rule R895-14-1-4-2, which states that vendors proposing IT products and services shall provide Voluntary Product Accessibility Template® (VPAT™) documents. Contractor acknowledges that all Goods and Custom Deliverables that it licenses, contracts, or sells to DTS under this contract are accessible to people with disabilities.

60. RIGHT TO AUDIT: Contractor agrees to, upon written request, permit Division, or a third party designated by the Division, to perform an assessment, audit, examination, or review of all of Contractor's sites and environments - including physical, technical, and virtual sites and environments - in order to confirm Contractor's compliance with this Contract; associated Scopes of Work; and applicable laws, regulations, and industry standards. Contractor shall fully cooperate with such assessment by providing access to knowledgeable personnel; physical premises; records; technical and physical infrastructures; and any other person, place, or object which may assist the Division or its designee in completing such assessment. In addition, upon request, Contractor shall provide the

Division with the results of any audit performed by or on behalf of Contractor that would assist the Division or its designee in confirming Contractor's compliance with this Contract; associated Scopes of Work; and applicable laws, regulations, and industry standards.

61. **LARGE VOLUME DISCOUNT PRICING:** Eligible Users may seek to obtain additional volume discount pricing for large orders provided Contractor is willing to offer additional discounts for large volume orders. No amendment to this Contract is necessary for Contractor to offer discount pricing to an Eligible User for large volume purchases.
62. **ELIGIBLE USER PARTICIPATION:** Participation under this Contract by Eligible Users is voluntarily determined by each Eligible User. Contractor agrees to supply each Eligible User with Goods based upon the same terms, conditions and prices of this Contract.
63. **INDIVIDUAL CUSTOMERS:** Each Eligible User that purchases Goods from this Contract will be treated as if they were individual customers. Each Eligible User will be responsible to follow the terms and conditions of this Contract. Contractor agrees that each Eligible User will be responsible for their own charges, fees, and liabilities. Contractor shall apply the charges to each Eligible User individually. The Division is not responsible for any unpaid invoice.
64. **QUANTITY ESTIMATES:** The Division does not guarantee any purchase amount under this Contract. Estimated quantities are for Solicitation purposes only and are not to be construed as a guarantee.
65. **ORDERING:** Orders will be placed by the using Eligible User directly with Contractor. All orders will be shipped promptly in accordance with the terms of this Contract.
66. **REPORTS AND FEES:**
 1. **Administrative Fee:** Contractor agrees to provide a quarterly administrative fee to the State in the form of a check, EFT or online payment through the Division's Automated Vendor Usage Management System. Checks will be payable to the "State of Utah Division of Purchasing" and will be sent to State of Utah, Division of Purchasing, 3150 State Office Building, Capitol Hill, PO Box 141061, Salt Lake City, UT 84114. The Administrative Fee will be the amount listed in the Solicitation and will apply to all purchases (net of any returns, credits, or adjustments) made under this Contract.
 2. **Quarterly Reports:** Contractor agrees to provide a quarterly utilization report, reflecting net sales to the State during the associated fee period. The report will show the dollar volume of purchases by each Eligible User. The quarterly report will be provided in secure electronic format through the Division's Automated Vendor Usage Management System found at: <https://statecontracts.utah.gov/Vendor>.
 3. **Report Schedule:** Quarterly utilization reports shall be made in accordance with the following schedule:

<u>Period End</u>	<u>Reports Due</u>
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31
 4. **Fee Payment:** After the Division receives the quarterly utilization report it will send Contractor an invoice for the total quarterly administrative fee owed to the Division. Contractor shall pay the quarterly administrative fee within thirty (30) days from receipt of invoice.
 5. **Timely Reports and Fees:** If the quarterly administrative fee is not paid by thirty (30) days of receipt of invoice or quarterly utilization reports are not received by the report due date, then Contractor will be in material breach of this Contract.

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

67. **TIME IS OF THE ESSENCE:** The Services shall be completed by any applicable deadline stated in this Contract. For all Services, time is of the essence.
68. **PERFORMANCE EVALUATION:** The Division may conduct a performance evaluation of Contractor's Services, including Contractor's Subcontractors, if any. Results of any evaluation may be made available to the Contractor upon Contractor's request.
69. **ADDITIONAL INSURANCE REQUIREMENTS:**
 1. Professional liability insurance in the amount as described in the Solicitation for this Contract, if applicable.
 2. Any other insurance policies described or referenced in the Solicitation for this Contract.
 3. Any type of insurance or any increase of limits of liability not described in this Contract which the Contractor requires for its own protection or on account of any federal, state, or local statute, rule, or regulation shall be its own responsibility, and shall be provided at Contractor's own expense.
 4. The carrying of insurance required by this Contract shall not be interpreted as relieving the Contractor of any other responsibility or liability under this Contract or any applicable law, statute, rule, regulation, or order. Contractor must provide proof of the above listed policies within thirty (30) days of being awarded this Contract.
70. **STANDARD OF CARE:** The Services of Contractor and its Subcontractors shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the Services that are the subject of this Contract.
71. **STATE REVIEWS, LIMITATIONS:** The Division reserves the right to perform plan checks, plan reviews, other reviews, and/or comment upon the Services of Contractor.

72. TRAVEL COSTS: The following will apply unless otherwise agreed to in the contract: All travel costs associated with the delivery of Services under this Contract will be paid according to the rules and per diem rates found in the Utah Administrative Code R25-7. Invoices containing travel costs outside of these rates will be returned to the Contractor for correction.

(Revision Date: February 28, 2019)

ATTACHMENT B – SCOPE OF WORK

Public Safety and Emergency Event Monitoring Solution

I. Scope of Work

The State of Utah Division of Purchasing has established this State Contract to be used by the Division's Eligible Users¹ for software solutions that provide:

1. Live artificial intelligence capable of accessing, compiling, analyzing and validating thousands of live data sources simultaneously to provide real-time information to Eligible Users (i.e., law enforcement, cities, counties, state agencies, etc.), and other relevant data streams.
2. The Solution would provide real time content discovery by location across all media networks (i.e., social media platforms, Facebook, Twitter, Instagram, news outlets, blogs, etc.), as well as live 911 calls, automatic vehicle location (police, fire, EMS, Planes, Trains, etc.), traffic applications, weather, public cameras, satellites, traffic cameras, alarm centers, sensors (air quality, chemical, etc.).
3. Solution would comb through these networks/resources and identify real-time events.
4. Solution would help multiple agencies better service the public through quicker response times to real time events.
5. Solution would timely prioritize the effective distribution of information to law enforcement and other end users.

Artificial Intelligence systems will be internal to Contractor's provided solutions. The State is seeking to remove the uncertainty that comes from utilizing and integrating with third-party solutions. When relying on other providers for critical components, there is a risk of having no control over changes, stability, connectivity, or access to these solutions causing the system to not function.

II. Requirements

Minimum Requirements

1. Contractor's solutions must be FBI Criminal Justice Information System (CJIS) Ready and able to meet the certification requirements of the Utah Bureau of Criminal Identification (BCI) to become a certified to host Utah CJIS Data.
 - a. For CJIS requirements see Attachment B.1 - CJIS Security Policy_v5-7_20180816.pdf within the published RFP.

¹ Eligible User(s) means the State of Utah's government departments, institutions, agencies, political subdivisions (i.e., colleges, school districts, counties, cities, etc.), and, as applicable, nonprofit organizations, agencies of the federal government, or any other entity authorized by the laws of the State of Utah to participate in State Cooperative Contracts will be allowed to use this Contract.

- b. For BCI requirements see Attachment B.2 - Utah BCI Agency Questionnaire.xlsx within the published RFP.
2. Contractor will process data in its systems.
3. Contractor's system will deliver information while maintaining the source user's anonymity (Removal of all Personally Identifiable Information (PII). While pulling from many sources it would ensure that the end deliverable is free of information identifying the person posting or submitting the information.
4. Contractor's system will pull information and analyze data from various systems (Social Media, Internet Sites, State Internal Systems, Video and Imaging systems, etc.)
5. Contractor will ensure that all development is not outsourced or offshore, outside the continental United States.

III. New Technology

Pursuant to Utah Administrative Rule R33-12-502 this contract may be modified to incorporate new technology or technological upgrades associated with the procurement item being solicited, including new or upgraded: (i) systems; (ii) apparatuses; (iii) modules; (iv) components; and (v) other supplementary items. Further, a maintenance or service agreement associated with the procurement item under the resulting contract(s) may be modified to include any new technology or technological upgrades. Any contract modification incorporating new technology or technological upgrades will be specific to the procurement item being solicited and substantially within the scope of the original procurement or contract.

Attachment C: Price Schedule
Contract AR3205 - Public Safety and Emergency Event Monitoring Solution

Contractor Name: Banjo, Inc.

Costing Considerations & Instructions

1. Costs not provided on this Price Schedule, may not be charged/billed under the resulting contract.

Implementation and Annual Maintenance Costs						
Product	Initial Contract Term					
	Year 1 Cost	Year 2 Cost	Year 3 Cost	Year 4 Cost	Year 5 Cost	
Initial Implementation	\$ 1,020,000					
Initial User Training	\$ 111,000					
Licensing	\$ 2,606,670	\$ 2,737,004	\$ 2,873,854	\$ 3,017,546	\$ 3,168,424	
Annual Maintenance		\$ 1,203,600	\$ 1,263,780	\$ 1,326,969	\$ 1,393,317	
Ongoing User Training						
ANNUAL TOTALS:	\$ 3,737,670	\$ 3,940,604	\$ 4,137,634	\$ 4,344,515	\$ 4,561,741	Implementation and Annual Maintenance
						\$ 20,722,163.66

*Estimate is provided for cost evaluation purposes only, and is not to be construed as a guarantee. DTS and DHRM expect the flexibility to purchase licenses at quantities above or below the provided estimate.

Developer, Customization, Training, etc. Costs

If additional costs will be charged for development, customization, training, etc., during the life of the 5-year contract, enter the hourly rates associated with such costs below. Insert additional lines as necessary. If zero is entered for any cell or if any cell is left blank, the State will assume that the related services are either provided at no cost or built into another cost item.

Position Title	Position Duties	Cost per Hour
Junior Software Engineer	Development/Customization	\$ 131.25 / hour
Mid-Level Software Engineer	Development/Customization	\$ 161.53 / hour
Senior Software Engineer	Development/Customization	\$ 201.92 / hour
Junior Software Project Manager	Development/Customization	\$ 116.31 / hour
Mid-Level Software Project Manager	Development/Customization	\$ 145.38 / hour
Senior Software Project Manager	Development/Customization	\$ 181.73 / hour
Junior Customer Engagement	Customization/Training	\$ 116.31 / hour
Mid-Level Customer Engagement	Customization/Training	\$ 145.38 / hour
Senior Customer Engagement	Customization/Training	\$ 181.73 / hour
Average Developer / Customization / Training Cost		\$ 153.50 / hour

Optional Future Enhancements

If additional costs will be charged for future enhancements to the proposed solution enter the hourly rates associated with such enhancements below. Insert additional lines as necessary. If zero is entered for any cell or if any cell is left blank, the State will assume that the related services are either provided at no cost or built into another cost item.

Position Title	Position Duties	Cost per Hour
Junior Software Engineer	Developer	\$ 131.25 / hour
Mid-Level Software Engineer	Developer	\$ 161.53 / hour
Senior Software Engineer	Developer	\$ 201.92 / hour
Junior Software Project Manager	Development/Customization	\$ 116.31 / hour
Mid-Level Software Project Manager	Development/Customization	\$ 145.38 / hour
Senior Software Project Manager	Development/Customization	\$ 181.73 / hour
Junior Customer Engagement	Customization/Training	\$ 116.31 / hour
Mid-Level Customer Engagement	Customization/Training	\$ 145.38 / hour
Senior Customer Engagement	Customization/Training	\$ 181.73 / hour
Average Optional Future Enhancements to RMITS System		\$ 153.50 / hour

Value Added Services/Solutions

Offeror is to provide the complete product description, product cost driver, and product costs for all other offerings Offeror is proposing under its proposal.

Attachment C: Price Schedule
Contract AR3205 - Public Safety and Emergency Event Monitoring Solution

Contractor Name: Banjo, Inc.

<u>Product Description</u>	<u>Product Cost Driver</u>	<u>Product Cost</u>
<p>Add On Modules (Developed Based on Agency Specific Needs)</p> <p>In addition to our Live Time Intelligence™ offering, additional modules are also available, such as our solution for Homelessness, Opioids, as well as custom module creation.</p>	<p>Labor to design, develop and test new module based on labor rates. Module subscription price is calculated based on: (1) The number of licenses (i.e., number of users) and (2) Scalers (i.e., population of area serviced, size of area serviced in square miles)</p>	<p><i>Varies based on module characteristics and number of licenses and population and coverage area.</i></p> <p>- Limiting modules to only those needed by customer ensures the Eligible User receives the best value for each dollar spent in relation to the solutions and features received.</p>
<p>Add On Alerts</p> <p>In addition to the 5 user defined alerts provided, additional alerts are available. Event based rules generate alerts that are received via the Eligible User's mobile or desktop devices.</p>	<p># of custom alerts established by the Eligible User</p>	<p><i>Varies based on number of custom alerts created by the Eligible User.</i></p> <p>- Limiting alerts to only those needed by the customer ensures the Eligible User receives the best value for each dollar spent in relation to the solutions and features received.</p>
<p>Enhanced Infrastructure Services</p> <p>Customers may require additional infrastructure services to scale or adjust to changing business needs. Examples include but may not be limited to, data storage, bandwidth, AI services, data transfer, compute resources, etc.)</p>	<p>Costs associated with additional infrastructure required to serve enhanced platform services</p>	<p><i>Varies based on customer requirements.</i></p> <p>- Selecting only those enhancement features required by the customer ensures the Eligible User receives the best value for each dollar spent in relation to the solutions and features received.</p>
<p>Camera Signal Ingestion</p> <p>As customers identify or add additional camera sensors into their jurisdictions they can increase the return of those investments by adding that signal into the Live Time Intelligence™ platform.</p>	<p>Cost of additional infrastructure required to process and ingest camera signals; cost varies with the number of cameras</p>	<p><i>Varies based on number of cameras and type of data stream</i></p> <p>- Pricing only camera signals used by the customer ensures the Eligible User receives the best value for each dollar spent in relation to the solutions and features received.</p>
<p>Audio Signal Ingestion</p> <p>As customers identify or add additional audio sensors into their jurisdictions they can increase the return of those investments by adding that signal into the Live Time Intelligence™ platform.</p>	<p>Cost of additional infrastructure required to process and ingest audio signals; cost varies with the number of audio signals</p>	<p><i>Varies based on number of audio signals and type of data stream</i></p> <p>- Pricing only audio signals used by the customer ensures the Eligible User receives the best value for each dollar spent in relation to the solutions and features received.</p>

Attachment C: Price Schedule
Contract AR3205 - Public Safety and Emergency Event Monitoring Solution

Contractor Name: Banjo, Inc.

<p>Other Signal Ingestion</p> <p>As customers identify or add additional sensors into their jurisdictions, they can increase the return of those investments by adding that signal into the Live Time Intelligence™ platform. Examples include but may not be limited to, additional AVL sensors and air quality sensors.</p>	<p>Cost of additional infrastructure required to process and ingest signals; cost varies with the number of audio signals</p>	<p>Varies based on number of signals and type of data stream.</p> <p>- Pricing only signals used by the customer ensures the Eligible User receives the best value for each dollar spent in relation to the solutions and features received.</p>
<p>Camera Signal Artificial Intelligence Processing</p> <p>As customers identify or add additional camera sensors into their jurisdictions they can increase the return of those investments by adding that signal into the Live Time Intelligence™ platform. Examples include but may not be limited to, vehicle detection, vehicle color, and objects on the road.</p>	<p>Cost of additional infrastructure required to perform artificial intelligence algorithms on camera signals; cost varies with the number of cameras, type of data stream, and algorithms used</p>	<p><i>Varies based on number of cameras and type of data stream.</i></p> <p>- Limiting AI processing to only those camera signals required by customer ensures the Eligible User receives the best value for each dollar spent in relation to the solutions and features received.</p>
<p>Audio Signal Artificial Intelligence Processing</p> <p>As customers identify or add additional audio sensors into their jurisdictions they can increase the return of those investments by adding that signal into the Live Time Intelligence™ platform. Examples include but may not be limited to, speech recognition and natural language processing.</p>	<p>Cost of additional infrastructure required to perform artificial intelligence algorithms on audio signals; cost varies with the number of audio signals, type of data stream, and algorithms used</p>	<p><i>Varies based on number of audio signals and type of data stream.</i></p> <p>- Limiting AI processing to only those audio signals required by customer ensures the Eligible User receives the best value for each dollar spent in relation to the solutions and features received.</p>
<p>Other Signal Artificial Intelligence Processing</p> <p>As customers identify or add additional sensors into their jurisdictions, they can increase the return of those investments by adding that signal into the Live Time Intelligence™ platform. Examples include but may not be limited to, object recognition, scene detection, natural language processing, named entity extraction and audio speech recognition.</p>	<p>Cost of additional infrastructure required to run additional artificial intelligence algorithms on signals; cost varies with the number of signals, type of data stream, and algorithms used</p>	<p><i>Varies based on number of signals and type of data stream.</i></p> <p>- Limiting AI processing to only those signals required by customer ensures the Eligible User receives the best value for each dollar spent in relation to the solutions and features received.</p>
<p>Additional Compliance Solutions</p> <p>Customers may require additional accommodations to address new or changing compliance controls. Examples include but may not be limited to GovCloud, FedRamp, and HIPAA.</p>	<p>Cost of implementation and support for additionally requested compliance requirements</p>	<p><i>Varies based on the specifications of the compliance requirements.</i></p> <p>- Pricing any additional compliance requirements requested by the customer ensures the Eligible User receives the best value for each dollar spent in relation to the solutions and features received.</p>

Attachment C: Price Schedule
Contract AR3205 - Public Safety and Emergency Event Monitoring Solution

Contractor Name: Banjo, Inc.

<p>Additional Training & Professional Services</p> <p>Customers may purchase additional staffing support from Team Banjo for additional training blocks, special event planning / support or for mission-critical events as needed.</p>	<p># of trainers, # of hours</p>	<p><i>Varies based on number customer needs.</i></p> <p>- Limiting additional paid services to only those required by customer ensures the Eligible User receives the best value for each dollar spent in relation to the solutions and features received.</p>
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PRICE OVERVIEW:

For Utah State Contract # AR3205, the cost to Utah Executive Branch and the University of Utah **\$3,737,670**.

The Cost Breakdown is as follows: **\$2,606,670** for Licensing, **\$1,020,000** for Initial Implementation, **\$111,000** for Initial User Training

This cost includes:

- Live Time Intelligence Platform + Child Abduction Recovery Module + Initial Implementation + Initial User Training
- Campus Security for the University of Utah
- Coverage for A9all 29 Utah Counties
- Coverage for 23 Utah Cities; *13 cities with populations >50k, 10 cities with significant relevance*
- Data Signal Ingestion for Audio & Other (e.g., CAD, AVL, IoT Sensors, etc) signals; max 3 signals per entity
- Data Signal Ingestion and Artificial Intelligence Processing for Video signals; up to 1,000 UDOT cameras
- Seat Licenses; 50 for the State (e.g., DPS, Office of the AG, etc), 20 for Medium Cities/Counties w/ population >100K, 10 for Small Cities/Counties w/ population >50K, 5 for Micro Cities/Counties w/ population <50K
- 5 user defined alerts (i.e., event based rules) for each Seat License
- Initial User Training for all Seat Licenses

**ATTACHMENT D - BANJO
MASTER SERVICES AGREEMENT**

This BANJO MASTER SERVICES AGREEMENT is between Banjo, Inc. (“**Banjo**”) and the undersigned customer (“**Customer**”), and is entered into and made effective as of the last date written below (the “**Effective Date**”). This Banjo Master Services Agreement consists of the Terms and Conditions and other attachments hereto, amendments and Service Orders (as defined below) (collectively, this “**Agreement**”). This Agreement supplements and incorporates by reference the complete State of Utah Cooperative Contract AR3205, including Attachment A: State of Utah Standard Information Technology Terms and Conditions State of Utah Cooperative Information Technology Contract (the “**Contract**”).

IN WITNESS WHEREOF, the duly authorized representatives of each of the parties hereto have executed this Agreement.

Customer:

[Enter Customer Name]

BANJO, INC.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Customer Address for Notifications:

[Enter customer address]

TERMS AND CONDITIONS

1. Definitions

1.1 The following terms, when used in this Agreement will have the following meanings:

“Affiliates” means an entity that directly or indirectly Controls, is Controlled by, or is under common Control with another entity, so long as such Control exists. For the purposes of this definition, **“Control”** means beneficial ownership of 50% or more of the voting power or equity in an entity.

“Confidential Information” means any information or data disclosed by either party that is marked or otherwise designated as confidential or proprietary. Banjo’s source code, software, algorithms, know-how, formulas, processes, schematics, product development plans, forecasts and strategies are Confidential Information. However, “Confidential Information” will not include any information which (a) is in the public domain through no fault of receiving party; (b) was properly known to receiving party, without restriction, prior to disclosure by the disclosing party; (c) was properly disclosed to receiving party, without restriction, by another person with the legal authority to do so; or (d) is independently developed by the receiving party without use of or reference to the disclosing party’s Confidential Information.

“Customer Data” means electronic data and other information submitted or made available by Customer to Banjo in connection with the Services, including data from Customer Data Sources.

“Customer Data Sources” means those data sources made available by Customer to Banjo from time to time pursuant to a separate addendum to this Agreement.

“Documentation” means the printed and digital instructions, on-line help files, technical documentation and user manuals made available by Banjo for the Services.

“Permitted Purpose” means receiving the Services for the purpose of public health and safety, emergency management and/or law enforcement at the national, state and local level, as applicable.

“Related Agencies” means those emergency response and/or law enforcement agencies associated with the Customer as listed on Appendix A attached hereto.

“Service” means the specific Banjo SaaS platform or other service identified in a Service Order.

“Service Order” means a service or sales order, quote or other similar document that sets forth the specific Services and pricing therefor, and that references this Agreement and is mutually executed by the parties.

“Third Party Content” means content made available through a data source other than Customer.

2. Services

2.1 Provision of Services. Subject to the terms and conditions of this Agreement, Banjo will make the Services available to Customer pursuant to this Agreement, and hereby grants Customer a personal, limited, non-exclusive, non-transferable right to access and use the Services for Customer’s internal use only for the Permitted Purpose. With Banjo’s prior written consent, Customer may permit its third party contractors, subject to confidentiality and use obligations at least as restrictive as those set forth in this Agreement, to access and use the Services solely in connection with services provided by such third party contractors to Customer. Customer will be liable in connection with any such use by its third party contractors.

2.2 Customer Limitations. The rights granted herein are subject to the restrictions in this Section 2.2 (collectively, the **“License Restrictions”**). Customer **will not** (nor will it permit any third party to):

- a. use the Services to conduct any surveillance, monitoring (including credit reporting and credit monitoring), profiling, tracking, spying or aggregating data on any individual or groups of individuals in violation of people’s civil liberties or in violation of applicable law;
- b. allow its individual end users to access the Service for any personal use, or use the Service for Customer’s human resource purposes,

- including monitoring employees;
- c. reverse engineer, decompile, disassemble or otherwise create, attempt to create or derive the source code underlying the Services;
- d. transfer, resell, re-distribute, lease, license, or assign Services or otherwise offer the Services on a standalone basis, or permit any third party (other than contractors, as expressly set forth above) to access the Services;
- e. use the Services to build a similar or competitive product or service or for the purpose of obtaining unauthorized access to the Services;
- f. remove any proprietary notices, attributions (whether of Banjo or otherwise) or labels from the Services, including any resulting signals, alerts or Third Party Content, as applicable;
- g. violate any codes of conduct, rules, guidelines, policies or other notices Banjo provides Customer or publishes in connection with the Service with respect to Third Party Content; or
- h. use the Services in an unlawful manner or otherwise outside the scope expressly permitted hereunder.

In addition, Customer will ensure that its users do not use temporary email addresses or share user accounts among multiple individuals, and Banjo may terminate the accounts of any users that violate this Agreement.

2.3 Customer Responsibilities and Covenants.

(a) Customer will (i) be responsible for all use of the Services and Documentation under its account (whether or not authorized), including by third party contractors, (ii) be solely responsible for decisions it makes as a result of the use of the Services, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services and Documentation and notify Banjo promptly of any such unauthorized access or use and (iv) be responsible for obtaining and maintaining any equipment, software and ancillary services needed to connect to, access or otherwise use the Services, including as set forth in the Documentation. Customer will be solely responsible for its failure to maintain such equipment, software and services.

(b) Customer shall use the Services in compliance with all applicable laws, including those that pertain to the privacy rights and civil liberties of individuals, as applicable.

2.4 Related Agency. Any Related Agency of Customer will have the right to enter into a Service Order executed by such Related Agency and Banjo (“Related Agency **Service Order**”), and this Agreement will apply to each such Related Agency Service Order as if such Related Agency were a signatory to this Agreement. With respect to such Related Agency Service Orders, such Related Agency becomes a party to this Agreement and references to Customer in this Agreement are deemed to be references to such Related Agency. Each Related Agency Service Order is an obligation of the Related Agency that executes such Related Agency Service Order and Customer, on a joint and several basis.

3. **Fees**

3.1 Fees. Customer will pay Banjo the fees set forth in the Service Orders within the period described in the Contract. Interest shall accrue on past due amounts at the rate of one and one half percent (1.5%) per month, but in no event greater than the highest rate of interest allowed by law, calculated from the date such amount was due until the date that payment is received by Banjo. Except as otherwise specified herein or in any applicable Service Order (a) fees are quoted and payable in United States dollars and (b) payment obligations are non-cancelable and non-pro-ratable for partial months, and fees paid are non-refundable, except as expressly set forth herein.

3.2 Taxes. All amounts and fees stated or referred to in this Agreement are exclusive of taxes, duties, levies, tariffs, and other governmental charges (collectively, “**Taxes**”). Customer shall be responsible for payment of all Taxes and any related interest and/or penalties resulting from any payments made hereunder, other than any taxes based on Banjo’s net income.

4. **Proprietary Rights and Confidentiality**

4.1 Banjo’s Ownership Rights. All right, title, and interest in and to the Services and all intellectual

property rights in the Services will remain vested in Banjo. Except for the express rights granted hereunder, Banjo reserves all rights, title and interests in and to the Services and Banjo's Confidential Information.

4.2 Confidentiality. Each party agrees that it will use the Confidential Information of the other party solely in accordance with the provisions of this Agreement and it will not disclose, or permit to be disclosed, the same directly or indirectly, to any third party without the other party's prior written consent, except as otherwise permitted hereunder. However, either party may disclose Confidential Information (a) to its employees, officers, directors, attorneys, auditors, financial advisors and other representatives who have a need to know and are legally bound to keep such information confidential by confidentiality obligations consistent with those of this Agreement; and (b) as required by law (in which case the receiving party will provide the disclosing party with prior written notification thereof, will provide the disclosing party with the opportunity to contest such disclosure, and will use its reasonable efforts to minimize such disclosure to the extent permitted by applicable law. Neither party will disclose the terms of this Agreement to any third party, except that either party may confidentially disclose such terms to actual or potential lenders, investors or acquirers. Each party agrees to exercise due care in protecting the Confidential Information from unauthorized use and disclosure. In the event of actual or threatened breach of the provisions of this Section or the License Restrictions, the non-breaching party will be entitled to seek immediate injunctive and other equitable relief, without waiving any other rights or remedies available to it. Each party will promptly notify the other in writing if it becomes aware of any violations of the confidentiality obligations set forth in this Agreement.

4.3 Aggregated Information. Notwithstanding anything to the contrary, Banjo shall have the right to aggregate, collect, comingle and analyze data and other information relating to the provision, use and performance of the Services and shall be free (during and after the term hereof) to (i) use such

data and other information to develop and improve the Services and other Banjo offerings, and (ii) disclose such data and other information in an aggregated format that does not identify Customer or any individual.

5. Term and Termination

5.1 Term. The term of this Agreement will commence on the Effective Date and continue until terminated as set forth below. Except as set forth in a Service Order, the term of such Service Order will automatically renew for successive renewal terms equal to the length of the initial term of such Service Order, unless either party provides the other party with written notice of non-renewal at least thirty (30) days prior to the end of the then-current term. All such renewals will be subject to then-current pricing.

5.2 Termination. Each party may terminate this Agreement upon written notice in the event (a) the other party commits any material breach of this Agreement and fails to remedy such breach within thirty (30) days after written notice of such breach or (b) subject to applicable law, upon the other party's liquidation, commencement of dissolution proceedings or assignment of substantially all its assets for the benefit of creditors, or if the other party becomes the subject of bankruptcy or similar proceeding that is not dismissed within sixty (60) days. Banjo may also terminate this Agreement or a Service Order, as applicable, immediately upon notice if Banjo reasonably determines that its provision of any of the Services is prohibited by applicable law, or has become impractical or unfeasible for any legal or regulatory reason; provided, that Banjo will provide Customer with a pro rata refund of any prepaid fees for unearned Services.

5.3 Survival. Upon termination of this Agreement Customer will discontinue any further use of the Services and all rights and obligations will immediately terminate, except that any terms or conditions that by their nature should survive such termination will survive, including the License Restrictions and terms and conditions relating to payment, proprietary rights and confidentiality,

disclaimers, indemnification, limitations of liability and termination, and the general provisions below.

6. Warranties and Disclaimers

6.1 Banjo. Banjo warrants that it will maintain the Services in a manner which minimizes errors and interruptions in the Services and perform the Services in a professional and workmanlike manner. For breach of the express warranty set forth above, Customer's exclusive remedy shall be (a) the re-performance of the deficient Services, and (b) if Banjo cannot re-perform such deficient Services as warranted, either party may terminate the deficient Services, and Customer shall be entitled to recover a pro-rata portion of the fees paid to Banjo for such deficient Services.

6.2 DISCLAIMERS. The Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, but Banjo shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled unavailability of the Services. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT ANY WARRANTIES OF ANY KIND, AND EACH PARTY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, ACCURACY AND FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, BANJO DOES NOT WARRANT OR GUARANTEE THE ACCURACY OF THE SERVICES (INCLUDING ANY INFORMATION OR DATA PROVIDED THEREIN) OR THAT ANY OR ALL SECURITY THREATS, VULNERABILITIES OR ATTACKS WILL BE ANTICIPATED, REPORTED OR ALERTED.

7. Indemnification

7.1 Indemnity by Banjo. Banjo will defend Customer, its Affiliates and their respective officers, directors, employees, agents, successors and assigns (collectively, "**Customer Parties**") against any claim, demand, suit, or proceeding ("**Claim**") made or brought against any of them by a third party alleging that the use of the Services as permitted hereunder infringes or misappropriates a United States patent,

copyright or trade secret and will indemnify Customer Parties against any damages, liabilities, losses, judgments, costs and expenses (including, reasonable attorneys' fees and costs) finally awarded against (or any settlement approved by Banjo) Customer in connection with any such Claim; provided that (a) Customer will promptly notify Banjo of such Claim, (b) Banjo will have the sole and exclusive authority to defend and/or settle any such Claim (provided that Banjo may not settle any Claim without Customer's prior written consent, which will not be unreasonably withheld, unless it unconditionally releases Customer of all related liability) and (c) Customer reasonably cooperates with Banjo in connection therewith. If the use of the Services by Customer has become, or in Banjo's opinion is likely to become, the subject of any claim of infringement, Banjo may at its option and expense (i) procure for Customer the right to continue using and receiving the Services as set forth hereunder; (ii) replace or modify the Services to make it non-infringing (with comparable functionality); or (iii) if the options in clauses (i) or (ii) are not reasonably practicable, terminate this Agreement and provide a pro rata refund of any prepaid fees for unearned Services. Banjo will have no liability or obligation with respect to any Claim if such Claim is caused in whole or in part by (A) compliance with designs, guidelines, plans or specifications provided by Customer; (B) use of the Services by Customer not in accordance with this Agreement; (C) Third Party Content; or (D) the combination, operation or use of the Services with other applications, portions of applications, product(s) or services where the Services would not by themselves be infringing (clauses (A) through (D), collectively, "**Excluded Claims**"). This Section states Banjo's sole and exclusive liability and obligation, and Customer's exclusive remedy, for any claim of any nature related to infringement or misappropriation of intellectual property.

7.2 Indemnification by Customer. Customer will defend Banjo, its Affiliates and their respective officers, directors, employees, agents, successors and assigns (collectively, "**Banjo Parties**") against any Claim made or brought against any of them by a

third party arising out of the use of the Services by Customer, the Related Agencies or their respective third party contractors, Banjo's access to the Customer Data Sources and Banjo's use of the Customer Data as contemplated herein, any Excluded Claim, or Customer's breach of any of its representations, warranties and obligations set forth in this Agreement. Customer will indemnify Banjo Parties against any damages, liabilities, losses, judgments, costs and expenses (including, reasonable attorneys' fees and costs) finally awarded against (or any settlement approved by Customer) Banjo in connection with any such Claim; provided that (a) Banjo will promptly notify Customer of such Claim, (b) Customer will have the sole and exclusive authority to defend and/or settle any such Claim (provided that Customer may not settle any Claim without Banjo's prior written consent, which will not be unreasonably withheld, unless it unconditionally releases Banjo of all liability) and (c) Banjo reasonably cooperates with Customer in connection therewith.

8. LIMITATION OF LIABILITY

UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY (WHETHER IN TORT, CONTRACT, OR OTHERWISE) WILL BANJO BE LIABLE TO CUSTOMER OR ANY THIRD PARTY UNDER THIS AGREEMENT, THE CONTRACT OR OTHERWISE FOR (i) ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY CHARACTER, INCLUDING DAMAGES FOR LOSS OF GOODWILL, LOST PROFITS, LOST SALES OR BUSINESS, LOST CONTENT OR DATA OR BUSINESS INTERRUPTION OR (ii) ANY DIRECT DAMAGES, COSTS, OR LIABILITIES IN EXCESS OF THE AMOUNTS PAID BY CUSTOMER UNDER THE APPLICABLE SERVICE ORDER DURING THE TWELVE (12) MONTHS PRECEDING THE INCIDENT OR CLAIM.

9. General

9.1 Export Compliance. Each party will comply with the export laws and regulations of the United States, European Union and other applicable jurisdictions in providing and using the Services.

9.2 [Reserved.].

9.3 Assignment; Delegation. Neither party hereto may assign or otherwise transfer this Agreement, in whole or in part, without the other party's prior written consent. Notwithstanding the foregoing, Banjo may assign this Agreement without Customer's consent to a successor to all or substantially all of Banjo's assets or business related to this Agreement, or in connection with a merger or consolidation. In addition, Customer agrees that Banjo may have any of its obligations performed through an Affiliate of Banjo, provided that Banjo will remain responsible for its obligations hereunder and will be liable for such Affiliate's performance hereunder as if it were Banjo hereunder. Any attempted assignment, delegation, or transfer by either party in violation hereof will be null and void. Subject to the foregoing, this Agreement will be binding on the parties and their successors and assigns.

9.4 Amendment; Waiver. No amendment or modification to this Agreement, nor any waiver of any rights hereunder, will be effective unless assented to in writing by both parties. Any such waiver will be only to the specific provision and under the specific circumstances for which it was given, and will not apply with respect to any repeated or continued violation of the same provision or any other provision. Failure or delay by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.

9.5 Relationship. Neither party will have the authority to obligate or bind the other in any manner, and nothing herein contained will give rise or is intended to give rise to any rights of any kind to any third parties.

9.6 Unenforceability. If a court of competent jurisdiction determines that any provision of this Agreement is invalid, illegal, or otherwise unenforceable, such provision will be enforced as nearly as possible in accordance with the stated intention of the parties, while the remainder of this Agreement will remain in full force and effect and bind the parties according to its terms.

- 9.7 Governing Law. This Agreement will be governed as described in the Contract.
- 9.8 Notices. Any notice required or permitted to be given hereunder will be given in writing by personal delivery, certified mail, return receipt requested, or by overnight delivery. Notices to Customer must be sent to the email or other address set forth in the applicable Service Order. Notices to Banjo must be sent to the following address: Banjo, Inc., 833 Main Street, Redwood City, CA 94063, Attn: Customer Support.
- 9.9 Entire Agreement; Counterparts. This Agreement, including the AR3205 State Contract and the Contract comprise the entire agreement between Customer and Banjo with respect to its subject matter, and supersedes all prior and contemporaneous proposals, statements, sales materials or presentations and agreements (oral

and written). No oral or written information or advice given by Banjo, its agents or employees will create a warranty or in any way increase the scope of the warranties in this Agreement. There shall be no force or effect to any different terms of any pre-printed purchase order or similar forms of Customer, even if signed by the parties after the date hereof. This Agreement, including amendments hereto and Sales Orders, may be executed in two or more counterparts, including by facsimile or electronic signature transmission, with the same force and effect as if each of the signatories had executed the same instrument.

9.10 [Reserved.]

9.11 Interpretation. For purposes hereof, “including” means “including without limitation”.

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Annex A

Related Agencies

[TO BE LISTED BY DEAL]