



Police Department

February 28, 2020

Jason Koebler

RE: GRAMA Request filed via MuckRock.com on January 29, 2020.

Dear Mr. Koebler:

On January 29, 2020 the Park City Police Department received the above request. You requested the following records related to Banjo Utah (Park City Police Department).

- 1) All instructional materials, presentations and presentation materials (including recorded video and audio, PowerPoint files, prepared remarks, and slides formats), and other guidance on the use of Banjo. This includes A) any notes taken during meetings that discussed the use of Banjo, B) any explanations (whether internally or externally generated) of how Banjo works, and C) any other document that has been used to help explain the use of Banjo, including internal documentation, public relations materials, and executive summaries.
  - Pursuant to Utah Code Ann. § 63G-2-103(22)(b)(v) the Park City Police Department denies your request for any notes taken during meetings that discussed the use of Banjo.
- 2) A copy of any privacy impact assessments, use policies, standard operating procedures, data retention policies, legal opinions, warranties, non-disclosure agreements, contracts, liability waivers, insurance agreements, Requests for Proposals, Responses to Requests for Proposal, Memorandums of Understanding, Letters of Interest, usage policies, or informal agreements between the police department and Banjo.
  - Please see attached Agreement.
- 3) A copy of any funding opportunity announcements, grant applications and grantor status/progress reports, reports to legislative bodies, annual reports that mention Banjo, as well as audit records, including but not limited to security audits of the software, misuse reports, and reports to oversight bodies.
  - The Park City Police Department does not have any records responsive to this request.

- 4) Any digital communications including but not limited to emails and text messages) as well as documents, (including but not limited to PDF, word processing, excel, and slide documents) that mention Banjo.
  - Please see below.
- 5) Any case reports in which Banjo was used.
  - Park City Police Department's investigation unit is aware of 3 current cases where Banjo was used:
    - Case 20-01956 – Park City Municipal Corporation hereby denies your GRAMA request regarding Park City Police Case #20-01956. This incident is part of an active investigation with Park City Police Department and is, therefore, classified as a protected record under GRAMA 63G-2-305(10)(a)(b)(c).
    - Case 20-02209 – Park City Municipal Corporation hereby denies your GRAMA request regarding Park City Police Case #20-02209. This incident is active with the prosecutor's office and is, therefore, a protected record under GRAMA 63G-2-305(10)(a)(b)(c).
    - Case 20-01706 – Park City Municipal Corporation hereby denies your GRAMA request regarding Park City Police Case #20-01706. This incident is being screened for charges by the State Bureau of Investigations and is, therefore, properly classified as a Protected Record under GRAMA 63G-305(10)(a)(b)(c).
- 6) Any digital communications (including but not limited to emails and text messages) with Banjo representatives.
  - Please see below.

In response to #4 and #6 Park City Police Department found several that may apply to your request. Pursuant to Utah Code Ann. § 63G-2-203(2), Park City Police Department may charge a reasonable fee to cover the actual cost of providing these records. This includes identifying the specific records that are responsive to this request as well as redacting information that you as the requestor are not entitled to inspect.

Pursuant to Utah Code Ann. § 63G-2-203(8), given that the estimated fees are in excess of \$50.00 we are requesting a deposit of \$1,000.00 prior to processing your request. If you wish to proceed with your request, please send a deposit check in the amount of \$1,000.00 payable to Park City Municipal Corporation, c/o Park City Police Department, at P.O. Box 1480, 2060 Park Ave., Park City, Utah 84060. Park City Police Department will either contact you if additional funds are necessary to complete the request or will refund the amount from your deposit in excess of the actual cost. Records will be released after the entire payment necessary to cover the actual cost of providing the records is received. Once this payment is received, we will begin processing your request as indicated above.

Pursuant to Utah State Code Section 63G-2-401 and Park City Municipal Code Section 5-2-1 you have the right to appeal this determination within 30 days to the City Manager of Park City Municipal Corporation by filing a notice of appeal. The notice of appeal shall contain the following information:

- (a) the petitioner's name, mailing address, and daytime telephone number,
- (b) the relief sought, and
- (c) a short statement of acts, reasons, and legal authority in support of the appeal.

Sincerely,



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Kay Stenson  
Records Clerk  
Park City Police Department

## **ADDENDUM to BANJO MASTER SERVICES AGREEMENT**

This Addendum (this "Addendum") is entered into and made effective as of \_\_\_\_\_, 2019 by and between Banjo, Inc. ("Banjo") and the undersigned customer or Related Agency ("Customer," and together with Banjo, collectively, the "Parties"), and supplements and amends the Banjo Master Services Agreement entered into by Banjo and Utah Attorney General's Office ("UTAG"), dated November 30, 2018 (the "Agreement") attached and incorporated herein to this Addendum as Attachment A (see Attachment C therein for the Agreement). Unless otherwise defined in this Addendum, all capitalized terms shall have the meanings ascribed to them in the Agreement. If the terms and conditions of this Addendum conflict with the Agreement, this Addendum shall control.

1. **Definitions.** The following additional terms when used in the Agreement will have the following meanings:

- a. "Access Term" means the same duration that Customer will receive the Services as set forth in each applicable Sales Order.
- b. "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.
- c. "Customer Data Sources" means those data sources made available by Customer to Banjo from time to time, including those set forth in Attachment C attached and incorporated herein to this Addendum. Customer may add additional data sources by amendment signed by both parties.
- d. "Recipients" means local, state, federal government and other public agencies (including law enforcement agencies and emergency first responder agencies), Related Agencies, schools and hospitals.

2. **Customer Data.**

(a) During the Access Term, Customer shall permit Banjo access to Customer Data Sources and Customer Data subject to a signed Vendor/Contractor Information Technology Usage Agreement attached and incorporated herein to this Addendum as Attachment B. Customer Data may be made available to one or more of the Recipients by Banjo. As such, Customer hereby grants Banjo a worldwide, non-exclusive, transferable, sub-licensable, perpetual, irrevocable, fully paid-up and royalty-free license to, and right to access and use, copy, prepare derivative works of, distribute, publicly perform (including by means of a digital and audio transmission, if applicable), and publicly display Customer Data as reasonably necessary for Banjo to provide, and ensure proper operation of, the Services in accordance with the Agreement and to make such data available to the Recipients. The license granted in this section shall survive termination of the Agreement. Without Customer's prior written consent, Banjo may permit Banjo's third-party contractors, subject to confidentiality and use obligations at least as restrictive as those set forth in the Agreement, to access and use Customer Data Sources and Customer Data for the foregoing purpose.

(b) Customer shall be responsible for the accuracy, quality and legality of Customer Data, the means by which Customer acquires Customer Data, Customer's use of Customer Data, and access to such data by Banjo and third parties as contemplated in the Agreement, including this Addendum. Without limiting the foregoing, Customer shall not provide Banjo any personal data (including personal health information). Customer hereby represents and warrants that it either (i) has received all necessary consents from individual

persons whom any Customer Data relates (including personal data) and for the use of such Customer Data as contemplated herein or (ii) otherwise has the legal right to use such Customer Data as contemplated herein.

IN WITNESS WHEREOF, the duly authorized representatives of each of the Parties have executed this Addendum.

Park City Municipal Corporation

Banjo, Inc.

By: [Signature]  
Name: Diane Foster  
Title: City Manager  
Date: 2/8/2019

By: [Signature]  
Name: Jessie Councilman  
Title: Chief of Staff  
Date: 2/21/2019

Reviewed by:

PARK CITY Information Technology Services

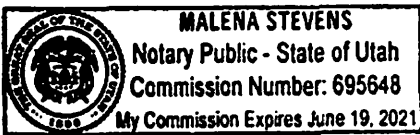
By: [Signature]  
Name: Scott W. Robertson  
Title: DIRECTOR I.T.  
Date: FEB 7, 2019

State of Utah  
County of Summit

On this 8<sup>th</sup> day of February, in the year 2019, before me, Malena Stevens, a notary public, personally appeared Diane Foster, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, & acknowledge she executed the same.

Witness my hand & official seal

[Signature]  
Notary Public

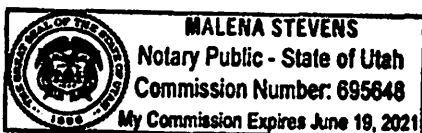


State of Utah  
County of Summit

On this 21<sup>st</sup> day of February, in the year 2019, before me, Malena Stevens, a notary public, personally appeared Jessie Councilman, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, & acknowledge she executed the same.

Witness my hand & official seal

[Signature]  
Notary Public



**Attachment C**

**List of  
Customer Data Sources**

**Computer Aided Dispatch (CAD)  
Bus Location—Automatic Vehicle Location (AVL)  
Video Feed Sources from Mobile and Fixed Locations**

ATTACHMENT A



Contract # 196162

### STATE OF UTAH CONTRACT

- 1. **CONTRACTING PARTIES:** This contract is between the following agency of the State of Utah:  
 Department Name: Office of the Attorney General Agency Code: 080 Division Name: Highways & Utilities, referred to as the State Entity, and the following Contractor:

Banjo, Inc.  
 Name  
 1526 W. Ute Boulevard, Suite 214  
 Address  
 Park City Utah 84098  
 City State Zip  
 Contact Person: Jessie Councilman Phone # 505-610-0722 Email: jessie@teambanjo.com  
 Vendor # VC224852 Commodity Code # 85353

**LEGAL STATUS OF CONTRACTOR**

- Sole Proprietor
- Non-Profit Corporation
- For-Profit Corporation
- Partnership
- Government Agency

- 2. **GENERAL PURPOSE OF CONTRACT:** The general purpose of this contract is to provide: Banjo Live-Time Intelligence Software.
- 3. **PROCUREMENT:** This contract is entered into as a result of the procurement process on RQM# 080 19\*4, FY2019, Solicitation# BP19040SS.
- 4. **CONTRACT PERIOD:** Effective Date: 11/29/2018 Termination Date: 11/28/2023 unless terminated early or extended in accordance with the terms and conditions of this contract. Renewal options (if any): None.
- 5. **CONTRACT COSTS:** CONTRACTOR will be paid a maximum of \$750,000.00 for costs authorized by this contract. Prompt Payment Discount (if any): N/A. Additional information regarding costs: N/A
- 6. **ATTACHMENT A:** State of Utah Standard Terms and Conditions for  Goods and  Services  
**ATTACHMENT B:** State of Utah Standard Information Technology Terms and Conditions  
**ATTACHMENT C:** Master Services Agreement, dated November   , 2018, by and between Banjo, Inc. and State of Utah, and the Scope of Work attached thereto  
**ATTACHMENT D:** N/A  
 Any conflicts between Attachment A and the other Attachments will be resolved in favor of Attachment A.
- 7. **DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:**
  - a. All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.
  - b. Utah State Procurement Code, Procurement Rules, and Contractor's response to Solicitation #BP19040SS.
- 8. Each signatory below represents that he or she has the requisite authority to enter into this contract. The parties sign and cause this contract to be executed. This contract is not fully executed until the State of Utah Approving Authorities have signed this contract.

**CONTRACTOR**

Authorized by: Damien Patton 11/28/2018 5:41:07 PM PST  
 Contractor's Signature Date  
Damien Patton CEO  
 Type or Print Name and Title

**STATE**

[Signature] 11/30/2018  
 Agency's Signature Date

**STATE OF UTAH APPROVING AUTHORITIES**

[Signature] 12/4/18  
 Director, Division of Purchasing Date

<u>Kimberley Brown Schmeling</u>	<u>801.366.0555</u>	<u>801.366.0221</u>	<u>kbschmeling@agutah.gov</u>
Agency Contact Person	Telephone Number	Fax Number	Email



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

1. **DEFINITIONS:** The following terms shall have the meanings set forth below:
  - a) "**Confidential Information**" means information that is deemed as confidential under applicable state and federal laws, including personal information. The State Entity reserves the right to identify, during and after this Contract, additional reasonable types of categories of information that must be kept confidential under federal and state laws.
  - b) "**Contract**" means the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference. The term "Contract" shall include any purchase orders that result from this Contract.
  - c) "**Contract Signature Page(s)**" means the State of Utah cover page(s) that the State Entity and Contractor signed.
  - d) "**Contractor**" means the individual or entity delivering the Procurement Item identified in this Contract. The term "Contractor" shall include Contractor's agents, officers, employees, and partners.
  - e) [Reserved].
  - f) "**MSA**" means that certain Master Service Agreement, dated November \_\_, 2018, by and between the State of Utah and Banjo, Inc. and includes all related Sales Orders, addenda, attachments and schedules thereto.
  - g) "**Procurement Item**" means a supply, a service, construction, or technology that Contractor is required to deliver to the State Entity under this Contract.
  - h) "**Response**" means the Contractor's bid, proposals, quote, or any other document used by the Contractor to respond to the State Entity's Solicitation.
  - i) "**Solicitation**" means an invitation for bids, request for proposals, notice of a sole source procurement, request for statement of qualifications, request for information, or any document used to obtain bids, proposals, pricing, qualifications, or information for the purpose of entering into this Contract.
  - j) "**State Entity**" means the department, division, office, bureau, agency, or other organization identified on the Contract Signature Page(s).
  - k) "**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.
  - l) "**Subcontractors**" means a person under contract with a contractor or another subcontractor to provide services or labor for design or construction, including a trade contractor or specialty contractor.
2. **GOVERNING LAW AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** At all times during this Contract, Contractor and all Procurement Items delivered and/or performed under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. If this Contract is funded by federal funds, either in whole or in part, then State of Utah shall inform Contractor of such information prior to the parties' entering into this Contract. If Contractor enters into this Contract thereafter, then any federal regulation related to the federal funding, including CFR Appendix II to Part 200, will supersede this Attachment A.
4. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by the State Entity to Contractor under this Contract. These records shall be retained by Contractor for at least one (1) year after final payment, or until all audits initiated within the one (1) year have been completed, whichever is later. Contractor agrees to allow, at no additional cost, the State of Utah, federal auditors, State Entity staff, or their designees, access to all such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records, provided, that State of Utah shall provide Contractor at least twenty (20) days' prior written notice requesting access to such information and Contractor personnel and any such review of Contractor materials and interviews of Contractor personnel shall not be disruptive to Contractor's normal business operations. Further, Contractor agrees to use commercially reasonable efforts to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Contract.
5. **PERMITS:** If necessary Contractor shall procure and pay for all permits, licenses, and approvals necessary for the execution of this Contract.
6. [Reserved.]
7. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State Entity or the State of Utah, unless disclosure has been made to the State Entity.
8. **INDEPENDENT CONTRACTOR:** Contractor and Subcontractors, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State Entity or the State of Utah.
9. **CONTRACTOR RESPONSIBILITY:** Contractor is solely responsible for fulfilling the contract, with responsibility for all Procurement Items delivered and/or performed as stated in this Contract. Contractor shall be the sole point of contact regarding all contractual matters. Contractor must incorporate Contractor's responsibilities under this Contract into every subcontract with its Subcontractors that will provide the Procurement Item(s) to the State Entity under this Contract. Moreover, Contractor is responsible for its Subcontractors compliance under this Contract.
10. **INDEMNITY:** Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors, and shall fully indemnify, defend, and save harmless the State Entity and the State of Utah from all claims, losses, suits, actions, damages, and costs of every name and description arising out of Contractor's performance of this Contract caused by any intentional act or negligence of Contractor, its agents, employees, officers, partners, or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the sole fault of the State Entity. The parties agree that if there are any limitations of the Contractor's liability,

including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property.

11. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees.
12. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, which amendment will be attached to this Contract. Automatic renewals will not apply to this Contract, even if identified elsewhere in this Contract.
13. **DEBARMENT:** Contractor certifies that, to its knowledge, it is not presently nor has ever been debarred, suspended, proposed for debarment, or declared ineligible by any governmental department or agency, whether international, national, state, or local. Contractor must notify the State Entity within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by any governmental entity during this Contract.
14. [Reserved.]
15. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Contractor, this Contract may be terminated in whole or in part at the sole discretion of the State Entity, if the State Entity reasonably determines that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (ii) that a change in available funds affects the State Entity's ability to pay under this Contract. A change of available funds as used in this paragraph includes, but is not limited to a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.  
  
If a written notice is delivered under this section, the State Entity will reimburse Contractor for the Procurement Item(s) properly ordered and/or Services properly performed until the effective date of said notice. The State Entity will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.
16. **SALES TAX EXEMPTION:** The Procurement Item(s) under this Contract will be paid for from the State Entity's funds and used in the exercise of the State Entity's essential functions as a State of Utah entity. Upon request, the State Entity will provide Contractor with its sales tax exemption number. It is Contractor's responsibility to request the State Entity's sales tax exemption number. It also is Contractor's sole responsibility to ascertain whether any tax deduction or benefits apply to any aspect of this Contract.
17. [Reserved.]
18. **CONTRACTOR'S INSURANCE RESPONSIBILITY.**

The Contractor shall maintain the following insurance coverage:

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

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

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

19. **RESERVED.**
20. **PUBLIC INFORMATION:** Contractor agrees that this Contract, related purchase orders, related pricing documents, and invoices will be public documents and may be available for public and private distribution in accordance with the State of Utah's Government Records Access and Management Act (GRAMA). Contractor gives the State Entity and the State of Utah express permission to make copies of this Contract, related sales orders, related pricing documents, and invoices in accordance with GRAMA. Except for sections identified in writing by Contractor and expressly approved by the State of Utah Division of Purchasing and General Services, Contractor also agrees that the Contractor's Response will be a public document, and copies may be given to the public as permitted under GRAMA. The State Entity and the State of Utah are not obligated to inform Contractor of any GRAMA requests for disclosure of this Contract, related purchase orders, related pricing documents, or invoices.
21. **DELIVERY:** All deliveries under this Contract will be F.O.B. destination with all transportation and handling charges paid for by Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State Entity, except as to latent defects or fraud. Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract.
22. [Reserved.]

23. **INVOICING:** Contractor will submit invoices within thirty (30) days of the delivery date of the Procurement Item(s) to the State Entity. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to this Contract. The prices paid by the State Entity will be those prices listed in this Contract, unless Contractor offers a prompt payment discount within its Response or on its invoice. The State Entity has the right to adjust or return any invoice reflecting incorrect pricing.
24. **PAYMENT:** Payments are to be made within thirty (30) days after a correct invoice is received. All payments to Contractor will be remitted by mail, or electronic funds transfer. If payment has not been made after sixty (60) days from the date a correct invoice is received by the State Entity, then interest may be added by Contractor as prescribed in the Utah Prompt Payment Act. The acceptance by Contractor of final payment, without a written protest filed with the State Entity within ten (10) business days of receipt of final payment, shall release the State Entity and the State of Utah from all claims and all liability to the Contractor with respect to such Invoiced payment obligation. The State Entity's payment for the Procurement Item(s) and/or Services shall not be deemed an acceptance of the Procurement Item(s) and is without prejudice to any and all claims that the State Entity or the State of Utah may have against Contractor. The State of Utah and the State Entity will not allow the Contractor to charge end users electronic payment fees of any kind.
25. **INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY:** Contractor will indemnify and hold the State Entity and the State of Utah harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities, and costs in any action or claim brought against the State Entity or the State of Utah for infringement of a third party's copyright, trademark, trade secret, or other proprietary right.
26. **OWNERSHIP IN INTELLECTUAL PROPERTY:** The State Entity and Contractor each recognizes that each has no right, title, or interest, proprietary or otherwise, in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing.
27. [Reserved.]
28. **ASSIGNMENT:** Contractor may not assign, sell, transfer, subcontract or sublet rights, or delegate any right or obligation under this Contract, in whole or in part, without the prior written approval of the State Entity subject to any exceptions under the MSA.
29. **REMEDIES:** Any of the following events will constitute cause for the State Entity to declare Contractor in default of this Contract: (i) Contractor's non-performance of its contractual requirements and obligations under this Contract; or (ii) Contractor's material breach of any term or condition of this Contract. The State Entity shall issue a written notice of default providing a thirty (30) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains after Contractor has been provided the opportunity to cure, the State Entity may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) terminate this Contract; (iii) debar/suspend Contractor from receiving future contracts from the State Entity or the State of Utah; or (iv) demand a pro rata refund of any payment that the State Entity has made to Contractor under this Contract for Procurement Item(s) that do not conform to this Contract.
30. **FORCE MAJEURE:** Neither party to this Contract will be held responsible for delay or default caused by fire, riot, act of God, and/or war which is beyond that party's reasonable control. The State Entity may terminate this Contract after determining such delay will prevent successful performance of this Contract.
31. **CONFIDENTIALITY:** If Confidential Information is disclosed to Contractor, Contractor shall: (i) advise its agents, officers, employees, partners, and Subcontractors of the obligations set forth in this Contract; (ii) keep all Confidential Information strictly confidential; and (iii) not disclose any Confidential Information received by it to any third parties except as otherwise permitted in the MSA. Contractor will promptly notify the State Entity of any potential or actual misuse or misappropriation of Confidential Information.

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

Upon termination or expiration of this Contract, Contractor will return all copies of Confidential Information to the State Entity or certify, in writing, that the Confidential Information has been destroyed. This duty of confidentiality shall be ongoing and survive the termination or expiration of this Contract.
32. **PUBLICITY:** Contractor shall consult with the State Entity regarding all advertising and publicity matters relating to this Contract.
33. **WORK ON STATE OF UTAH OR ELIGIBLE USER PREMISES:** Contractor shall ensure that personnel working on State of Utah premises shall: (i) abide by all of the rules, regulations, and policies of the premises; (ii) remain in authorized areas; (iii) follow all instructions; and (iv) be subject to a background check, prior to entering the premises. The State of Utah or Eligible User may remove any individual for a violation hereunder.
34. **CONTRACT INFORMATION:** During the duration of this Contract the State of Utah Division of Purchasing is required to make available contact information of Contractor to the State of Utah Department of Workforce Services. The State of Utah Department of Workforce Services may contact Contractor during the duration of this Contract to inquire about Contractor's job vacancies within the State of Utah.
35. **WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.
36. **SUSPENSION OF WORK:** Should circumstances arise which would cause the State Entity to suspend Contractor's responsibilities under this Contract, but not terminate this Contract, this will be done by formal written notice pursuant to the terms of this Contract. Contractor's responsibilities may be reinstated upon advance formal written notice from the State Entity.

37. **CHANGES IN SCOPE:** Any changes in the scope of the services to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of services.
38. **PROCUREMENT ETHICS:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or to any person in any official capacity who participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.
39. **ATTORNEY'S FEES:** In the event of any judicial action to enforce rights under this Contract, the prevailing party shall be entitled its costs and expenses, including reasonable attorney's fees incurred in connection with such action.
40. **TRAVEL COSTS:** If travel expenses are permitted by the Solicitation, then all travel costs associated with the delivery of Services under this Contract will be paid according to the rules and per diem rates found in the Utah Administrative Code R25-7. Invoices containing travel costs outside of these rates will be returned to Contractor for correction.
41. **DISPUTE RESOLUTION:** Prior to either party filing a judicial proceeding, the parties agree to participate in the mediation of any dispute. The State Entity, after consultation with Contractor, may appoint an expert or panel of experts to assist in the resolution of a dispute. If the State Entity appoints such an expert or panel, State Entity and Contractor agree to cooperate in good faith in providing information and documents to the expert or panel in an effort to resolve the dispute.
42. **ORDER OF PRECEDENCE:** In the event of any conflict in the terms and conditions in this Contract, the order of precedence shall be:
  - (i) this Attachment A;
  - (ii) Contract Signature Page(s);
  - (iii) the State of Utah's additional terms and conditions, if any;
  - (iv) any other attachment listed on the Contract Signature Page(s); and
  - (v) the MSA (as signed by the parties and attached to this Contract).Any provision attempting to limit the liability of Contractor or limit the rights of the State Entity or the State of Utah must be in writing and attached to this Contract or it is rendered null and void.
43. **SURVIVAL OF TERMS:** Termination or expiration of this Contract shall not extinguish or prejudice the State Entity's right to enforce this Contract with respect to any default of this Contract or defect in the Procurement Item(s) that has not been cured, or of any of the following clauses, including: Governing Law and Venue, Laws and Regulations, Records Administration, Remedies, Dispute Resolution, Indemnity, Newly Manufactured, Indemnification Relating to Intellectual Property, Warranty of Procurement Item(s), Insurance.
44. **SEVERABILITY:** The invalidity or unenforceability of any provision, term, or condition of this Contract shall not affect the validity or enforceability of any other provision, term, or condition of this Contract, which shall remain in full force and effect.
45. **ERRORS AND OMISSIONS:** Contractor shall not take advantage of any errors and/or omissions in this Contract. The Contractor must promptly notify the State of any errors and/or omissions that are discovered.
46. **ENTIRE AGREEMENT:** This Contract and the MSA 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.

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

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

**1. DEFINITIONS:**

- a. [Reserved.]
  - b. "Authorized Persons" means the Contractor's employees, officers, partners, Subcontractors or other agents of Contractor who need to access State Data, if applicable, to enable the Contractor to perform its responsibilities under this Contract.
  - c. [Reserved.]
  - d. "Data Breach" means the unauthorized access by a non-authorized person(s) which results in unauthorized acquisition of State Data and compromises the security, confidentiality, or integrity of State Data. It is within State Entity's sole discretion to determine whether the unauthorized access is a Security Incident or a Data Breach.
  - e. [Reserved.]
  - f. "Non-Public Data" means data, other than personal data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by the State of Utah and the federal government because it contains information that is exempt by state, federal and local statutes, ordinances, or administrative rules from access by the general public as public information.
  - g. "Personal Data" means data that includes information relating to a person that identifies the person by a person's first name or first initial and last name and has any of the following personally identifiable information (PII): government-issued identification numbers (e.g., Social Security, driver's license, passport); financial account information; including account number, credit or debit card numbers; or protected health information (PHI) relating to a person.
  - h. "Protected Health Information" (PHI) means individually identifiable health information transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. PHI excludes education records covered by the Family Educational Rights and Privacy Act (FERPA), as amended, 20 U.S.C. 1232g, records described at 20 U.S.C. 1232g(a)(4)(B)(iv) and employment records held by a covered entity in its role as employer.
  - i. "Security Incident" means the potentially unauthorized access by non-authorized persons to State Data that Contractor believes could reasonably result in the use, disclosure or theft by such non-authorized persons of State Data within the possession or control of the Contractor. A Security Incident may or may not turn into a Data Breach.
  - j. "State Data" means all Confidential Information, Non-Public Data, Personal Data, and Protected Health Information that is created or in any way originating with the State of Utah whether such data or output is stored on the State of Utah's hardware, Contractor's hardware, or exists in any system owned, maintained or otherwise controlled by the State of Utah or by the Contractor. State Data also includes any federal data that the State of Utah controls or maintains that is protected under federal laws, statutes, and regulations.
  - k. [Reserved.]
- 2. [Reserved.]**
- 3. DRUG-FREE WORKPLACE:** Contractor agrees to abide by the State Entity's drug-free workplace policies while on the State Entity's premises. The State Entity will provide Contractor with a copy of these written drug-free workplace policies upon request.
- 4. CODE OF CONDUCT:** If Contractor is working at facilities controlled or owned by the State of Utah, Contractor agrees to follow and enforce the State Entity's applicable code of conduct.
- 5. [Reserved.]**
- 6. [Reserved.]**
- 7. [Reserved.]**
- 8. TECHNICAL SUPPORT AND MAINTENANCE:** If technical support and maintenance is a part of the Procurement Item that Contractor provides under this Contract, Contractor will use commercially reasonable efforts to respond to the State Entity in a reasonable time.
- 9. SECURE PROTECTION AND HANDLING OF STATE DATA:** If Contractor is given State Data as part of this Contract, the protection of State Data shall be an integral part of the business activities of Contractor to ensure that there is no inappropriate or unauthorized use of State Data. To the extent that Contractor is given State Data, Contractor shall safeguard the confidentiality, integrity, and availability of the State Data and comply with the conditions outlined below. The State Entity reserves the right to verify Contractor's adherence to the following conditions to ensure they are met during the life of the Contract:

1. **Network Security:** Contractor agrees at all times to maintain network security.
2. **State Data Security:** Contractor agrees to protect and maintain the security of State Data. The State Entity reserves the right to determine if Contractor's level of protection adequately meets the State Entity's security requirements.
3. **State Data Transmission:** Contractor agrees that any and all transmission or exchange of system application data with the State Entity shall take place via secure means (ex. HTTPS or FTPS).
4. **State Data Storage:** Contractor agrees that all State Data will be stored and maintained in data centers in the United States. Contractor agrees that no State Data at any time will be processed on or transferred to any portable or laptop computing device or any portable storage medium, except for devices that are used and kept only at Contractor's United States data centers, unless such medium is part of the Contractor's designated backup and recovery process. Contractor shall permit its employees and Subcontractors to access non-State Data remotely only as required to provide technical support.
5. **State Data Encryption:** Contractor agrees to store all data provided to Contractor, including State, as well as any backups made of that data, in encrypted form
6. **Password Protection:** Contractor agrees that any portable or laptop computer that has access to the State Entity or State of Utah network, or stores any State Data is equipped with strong and secure password protection.
7. **State Data Re-Use:** Contractor agrees that any and all data exchanged shall be used expressly and solely for the purpose enumerated in this Contract. Contractor further agrees that no State Data of any kind shall be transmitted, exchanged, or otherwise passed to other Contractors or interested parties except on a case-by-case basis as specifically agreed to in writing by the State Entity.
8. **State Data Destruction:** The Contractor agrees that upon expiration or termination of this Contract it shall erase, destroy, and render unreadable all State Data from all non-state computer systems and backups, and certify in writing that these actions have been completed within thirty (30) days of the expiration or termination of this Contract or within seven (7) days of the request of the State Entity, whichever shall come first, unless the State Entity provides Contractor with a written directive. It is understood by the parties that the State Entity's written directive may request that certain data be preserved in accordance with applicable law.
9. **Services Shall Be Performed Within United States:** Contractor agrees that all of the services related to State Data will be performed by Contractor and Subcontractor(s) within the borders and jurisdiction of the United States.
10. **SECURITY INCIDENT NOTIFICATION:** Contractor shall immediately inform the State Entity of any Security Incident. Contractor may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement and seeking external expertise, including attorneys and advisors as reasonably necessary. Discussing Security Incidents with the State Entity should be handled on an urgent, as-needed basis as part of Contractor's communication and mitigation processes, defined by law or contained in this Contract.
11. **DATA BREACH RESPONSIBILITIES:** Contractor agrees to comply with all applicable laws that require the notification of individuals in the event of a Data Breach. Contractor shall immediately inform the State Entity of any Data Breach. In the event of a Data Breach or other event requiring notification under applicable law (Utah Code § 13-44-101 thru 301 et al), Contractor shall: (a) cooperate with the State Entity by sharing information relevant to the Data Breach; (b) promptly implement necessary remedial measures, if necessary; (c) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in relation to the Data Breach; and (d) in accordance with applicable laws indemnify, hold harmless, and defend the State Entity and the State of Utah against any claims, damages, or other harm related to such Data Breach to the extent directly caused by Contractor subject to the MSA terms. If the Data Breach requires public notification, all communication shall be coordinated with the State Entity. Contractor shall be responsible for all notification and remedial costs and damages.
12. [Reserved]
13. **ELECTRONIC DELIVERY:** Contractor may electronically deliver any Procurement Item to the State Entity or provide any Procurement Item for download from the Internet, if approved in writing by the State Entity. Contractor must take all reasonable and necessary steps to ensure that the confidentiality of those electronic deliveries is preserved in the electronic delivery process, and is reminded that failure to do so may constitute a breach of obligations owed to the State Entity under this Contract. Contractor warrants that all electronic deliveries will be free of known, within reasonable industry standards, malware, bugs, Trojan horses, etc. Any electronic delivery that includes State Data that Contractor processes or stores must be delivered within the specifications of this Contract.
14. [Reserved.]
15. **PROTECTION AND USE OF STATE DATA:** The State Entity shall own exclusive title to all State Data if ever provided to Contractor in performance of this Contract. Contractor may not use, except in meeting its obligations under this Contract, as otherwise permitted in the MSA the State Data if ever provided.
16. **RETURN OF STATE DATA:** All State Data if ever provided to Contractor under this Contract will be the property of the State Entity and must be delivered to State Entity within thirty (30) working days after termination or expiration of this Contract, regardless of the reason for contract termination, and without restriction or limitation to their future use. Any State

Data that may be returned under provisions of this Section must either be in the format as originally provided, or in a format that is readily usable by the State Entity or that can be formatted in a way that it can be used. The costs for returning documents and data to the State Entity are included in this Contract.

17. **SURVIVORSHIP:** Any terms that by their nature would survive the expiration of, completion, or termination of this contract shall survive.

18. [Reserved.]

19. [Reserved.]

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

20. [Reserved.]

21. [Reserved.]

(Revision Date: 6/15/2016)

ATTACHMENT C

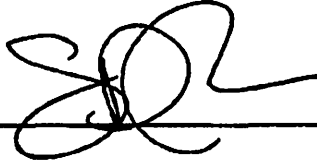
BANJO  
MASTER SERVICES AGREEMENT

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"). The terms herein are subject to and, in the event of a conflict, shall be superceded by the attached documents: (a) State of Utah Standard Terms and Conditions for Goods and Services and (b) the State of Utah Standard Information Technology Terms and Conditions (Additional Terms and Conditions for IT Related Contracts).

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

Customer:

UTAH ATTORNEY GENERAL'S OFFICE

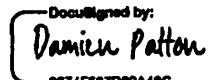
By: 

Name: Sean D. Reyes

Title: Utah Attorney General

Date: 11/30/2018

BANJO, INC.

By:   
0874F667D80A46C

Name: Damien Patton

Title: CEO

Date: 11/28/2018 5:41:07 PM PST

Customer Address for Notifications:

If by regular mail:

UTAH ATTORNEY GENERAL  
P.O. Box 140811  
Salt Lake City, UT 84114-0811

If by overnight:

UTAH ATTORNEY GENERAL  
160 East 300 South, 6th floor  
Salt Lake City, UT 84114-0811



## 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.

**"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 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 shall include any services performed pursuant to the Scope of Work as reflected in the Sales Order and described in Annex B hereto as well any associated or additional schedule of deliverables deemed necessary or appropriate by the parties.

**"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 or Related Agencies.

### 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 and Related Agencies a personal, limited, non-exclusive, non-transferable right to access and use the Services for Customer's and Related Agencies' 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, profiling, tracking, investigating, spying or aggregating data on any individual or groups of individuals, including the monitoring of images, videos, information, data or any other content about an individual or a group of individuals, to unlawfully determine, track or otherwise monitor their respective political views, religious views, social views, racial background, locations, associations, activities or other lawful exercise of civil liberties;
- 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 published by a Third-Party 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.

### 3. Fees

3.1 **Fees.** Customer will pay Banjo the fees set forth in the Service Orders within 30 days from the date of invoice. 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"). To the extent applicable, Customer shall be responsible for payment of all non-exempt 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 or authorized 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. Banjo may disclose the terms of this Agreement 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 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 solely in an aggregated and anonymized 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.

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. This Agreement may also be terminated without cause (for convenience), in advance of the specified expiration date, by the Customer or Related Agencies, upon thirty (30) days prior written termination notice being given to Banjo; provided, that Banjo will not be required to provide Customer with a pro rata refund of any prepaid fees for unearned Services for the remainder of the Term. Customer and Banjo may terminate this Contract, in whole or in part, at any time, by mutual agreement in writing.

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" 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 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 misuse of the Services by Customer, the Related Agencies or their respective third party contractors, Banjo's lawful access to the Customer Data Sources and Banjo's legal 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 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.

### 7.3 LIMITATION OF LIABILITY

UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY (WHETHER IN TORT, CONTRACT, OR OTHERWISE) WILL BANJO BE LIABLE TO CUSTOMER 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.

### 8. General

**8.1 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.

**8.2 Publicity.** Customer agrees that Banjo may refer to Customer's name in Banjo's marketing materials and website; however, Banjo will not use Customer's name or trademarks in any other publicity (e.g., press releases, customer references and case studies) without Customer's prior written consent (which may be by email).

**8.3 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 forgoing, 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.

**8.4 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.

8.5 Relationship. Nothing contained herein will in any way constitute any association, partnership, agency, employment or joint venture between the parties hereto, or be construed to evidence the intention of the parties to establish any such 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.

8.6 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.

8.7 Governing Law. This Agreement will be governed by the laws of the State of Utah, exclusive of its rules governing choice of law and conflict of laws. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods. All disputes arising out of the Agreement will be subject to the exclusive jurisdiction and venue of the state and federal courts of Salt Lake City, Utah, and the parties hereby consent to the personal jurisdiction of these courts.

8.8 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.

8.9 Entire Agreement; Counterparts. This Agreement, including Annexes, Attachments and Addenda hereto, comprises the entire agreement between Customer and Banjo with respect to its subject matter, and supersedes all prior 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.

8.10 Force Majeure. Neither Party will be deemed in breach hereunder for any cessation, interruption or delay in the performance of its obligations due to earthquake, flood, or other natural disaster, act of God, civil disturbance, terrorism, war (whether or not officially declared), internet service interruptions, cyber attacks (including denial of service attacks and data security breaches by third-parties), or any change in or the adoption of any law, regulation, judgment or decree.

8.11 Interpretation. For purposes hereof, "including" means "including without limitation".

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**Annex A**  
**Related Agencies**  
**[TO BE LISTED BY DEAL]**

**Annex B**

**Scope of Work**

**1. BANJO SITUATIONAL AWARENESS**

Pursuant to the terms of the Agreement, Banjo will supply the Customer and Related Agencies, as applicable, with access and use of Banjo's current Live Time™ situational awareness platform:

- At the State and Local Level, notifications of event detections would be provided;
  - Customizable based on geographic location, points of interest, or specific boundary shapes across Utah;
- and
- Banjo would work with the Customer and Related Agencies, as applicable, to add map overlays and geographic information regarding specific areas of interest.

**2. COMMUNICATIONS**

Banjo would work with the Customer to establish communications channels for response during an event:

- Banjo would work with the Customer to develop notifications and communications channels to improve emergency response.

ATTACHMENT B



## Vendor/Contractor Information Technology Usage Agreement

All employees and agents of vendors and contractors who will access Park City Municipal (PCMC) information technology in the course of their work for PCMC ("vendor personnel") are required to sign this document before accessing any PCMC computer system. "Information technology" includes any computer, network, Internet access, electronic mail, voice message systems, facsimile devices, or other electronic systems used by PCMC. Vendor personnel have no expectation of privacy in any electronic communications, use of PCMC property, or Internet access. PCMC reserves the right to review, audit, or monitor any information technology used by vendor personnel. All work shall be performed by the contractor submitting the proposal. Subcontractors will not be allowed unless approved in advance by an agent of PCMC.

1. Vendor personnel have no expectation of privacy in any electronic communications, use of PCMC property, or Internet access. PCMC reserves the right to review, audit, or monitor any information technology used by vendor personnel.
2. All vendor personnel shall use only accounts authorized by PCMC's Security Staff.
3. Vendor personnel may access only those resources for which they are specifically authorized.
4. Vendor personnel are personally responsible for safeguarding their account and log-on information. Passwords shall adhere to the following electronically enforced requirements:
  - a. Passwords shall remain confidential.
  - b. Passwords shall be changed every 90 days.
  - c. Passwords shall be at least eight (8) characters long.
  - d. Passwords shall contain characters from at least three of the following four classes: (i) English upper case letters, *A, B, C*; (ii) English lower case letters, *a, b*; (iii) Westernized Arabic numerals, *0, 1, 2*; and (iv) Non-alphanumeric ("special characters") such as punctuation symbols.
  - e. Passwords may not contain your user name or any part of your full name.
  - f. Passwords shall never be displayed, printed, or otherwise recorded in an unsecured manner.
5. Vendor personnel are not permitted to script their user IDs and passwords for log-on access.
6. Vendor personnel are not permitted to allow another person to log-on to any computer utilizing their personal account, nor are they permitted to utilize someone else's account to log-on to a computer. Each employee requiring access will require their own account.
7. Vendor personnel may not leave their workstation logged onto the network while away from their area. Vendor personnel may elect to lock the workstation rather than logging off when leaving for very short time periods.
8. Vendor personnel shall maintain a log, left with the computer, of all software loaded onto any PCMC computer. The software must have been approved in writing by PCMC.
9. Vendor personnel shall execute only applications that pertain to their specific contract work.
10. Vendor personnel shall promptly report log-on problems or any other computer errors to the PCMC helpdesk support at 435-615-5123.
11. Vendor personnel shall promptly notify PCMC if they have any reason to suspect a breach of security or potential breach of security.
12. Vendor personnel shall promptly report anything that they deem to be a security loophole or weakness in the computer network to PCMC.
13. Vendor personnel shall not install or use any type of encryption device or software on any PCMC hardware, which has not been approved in writing by PCMC.
14. Vendor personnel shall not attach any device to the PCMC network without written approval from PCMC.
15. Vendor personnel may not remove any equipment from a PCMC building for any reason, without prior written approval from PCMC.
16. Vendor personnel shall not delete, disable, or bypass any authorized encryption device, or anti-virus or other software program, installed on PCMC hardware.
17. Vendor personnel shall not attach any network or phone cables to any PCMC device without written approval from PCMC.
18. Vendor personnel may not copy any data and/or software from any PCMC resource for personal use.
19. PCMC data and/or software shall not be removed from a PCMC Building without prior written approval from PCMC.
20. Vendor personnel may not utilize PCMC computer systems or networks for any of the following reasons:
  - a. Game playing;
  - b. Internet surfing not required for their work activity;
  - c. Non-related work activity; or
  - d. Any illegal activity;
  - e. Downloading of files from the Internet. If files are needed for your work, contact PCMC IT personnel.
21. Vendor personnel are prohibited from intercepting or monitoring network traffic by any means, including the use of network sniffers, unless authorized in writing by PCMC.
22. Vendor personnel may not give out any PCMC computer information to anyone. Exception: other vendor personnel needing the information to complete tasks and who have signed this agreement. Information includes but is not limited to: IP addresses, security configurations, etc.
23. All data storage media shall be erased or destroyed prior to disposal.
24. Vendor personnel may not remove or delete any computer software without the written approval of PCMC.
25. Vendor personnel shall not attempt to obtain or distribute PCMC system or user passwords.
26. Vendor personnel shall not attempt to obtain or distribute door pass codes/passkeys to secured rooms at any PCMC facility for which they are not authorized.
27. All equipment issued to vendor personnel will be returned in good condition to PCMC upon termination of the PCMC/Vendor Personnel relationship.

28. Vendor personnel may not use *PCMC* information technology to send or receive threatening, obscene, abusive, sexually explicit language or pictures.

29. Vendor personnel are prohibited from causing *PCMC* to break copyright laws.

30. Use by vendor personnel of any *PCMC* information technology will acknowledge acceptance of the above-referenced policies. Any vendor employee who violates any of these policies shall be subject to disciplinary action, including total removal from the *PCMC* project as well as being subject to (state) civil and criminal liability. Disciplinary action may include *PCMC* requesting the vendor consider demotion, suspension and termination.

31. Vendor personnel may not disclose of any private or confidential client information regardless of physical form or storage media (paper, computer, voice mail, microfiche, imaged). Vendor personnel will not attempt to access nonpublic data for personal purposes.

Attachment 1 "Responsibilities of Persons Who Have Access to Nonpublic Data" has been read and its' conditions will be complied with by all vendor personnel.

32. This agreement must be renewed annually by mutual written consent of the parties for vendor access to continue. If the agreement isn't renewed the vendor account will be deleted. In order to comply with our audit and security policies, vendors must contact *PCMC* helpdesk support at 435-615-5123 or 5123@parkcity.org to have their account enabled for the duration of the support request.

33. All changes made to *PCMC* systems by the Vendor/Contractor will utilize *PCMC*'s change management process.

34. *PCMC* does enforce time of day access for our Vendor/Contractors. Should an emergency occur outside of Vendor/Contractor assigned hours, *PCMC* staff will be responsible for getting vendor access established.

35. Based on the data you will access while supporting *PCMC* systems, you may be required to use two-factor authentication to connect to VPN. Use of a smartphone will be required to use the two-factor authentication system. If a smartphone is not an option for your situation, you may be issued a hardware token if deemed necessary. The first hardware token will be provided to you at no cost to you as a vendor however if the hardware token is lost a fee of \$50 per token will be assessed to replace the token at the vendors expense.

**RESPONSIBILITIES OF PERSONS WHO HAVE ACCESS TO NONPUBLIC DATA**

**VENDORS**

As a vendor working with PCMC, you may have access to records containing information which is protected from unauthorized use. For example, you may have access to special work areas, computers or other files. This information is protected by law, policy, contracts, agreements, or licenses regarding the disclosure both at work and outside the office.

Unauthorized use of data includes making copies of data or computer software and related materials without the permission of the originator or data subject. Unauthorized disclosure of data means releasing information over the phone, in verbal conversations, and in written form. Unauthorized disclosure also includes using the information obtained in connection with your vendor work duties in any manner different from the scope of your specified duties.

Protection of this data from unauthorized use or disclosure depends on the cooperation of all staff and vendors. The information in this handout explains some of these restrictions on information within PCMC so that you will understand what information is protected and your responsibilities in regard to that information.

**NONPUBLIC DATA**

The following describes the Personnel and Infrastructure types of information, the restrictions on the use of it, and some examples of each type of information. Attached to the handout is a form which describes your responsibilities and states the type of private/confidential data to be collected and the purpose for which the summary data is being prepared (if applicable). Your signature on the form provides verification that you have read and understand these responsibilities.

Nonpublic data means any data which the law declares is not available to the public. It is a broad term which includes private, nonpublic, confidential, or protected nonpublic data, either singly or in any combination.

Generally, if the data you work with identifies a person it is private or confidential data. Use and access within the agency is restricted to those employees or vendors who need the information to do their jobs.

- A. **Personnel Data** is PCMC data maintained on individuals who are identified or can be identified in the data. Only the following persons are permitted access to private data:
1. the individual who is the subject of the data or a designated representative;
  2. anyone to whom the individual gives signed consent to view the data;
  3. employees of any system whose work assignments reasonably require access to the data;
  4. anyone the law says can view the data.

Examples of private data include individual clients, medical data, personnel files, pre-commitment screening, and investigations.

- B. **Infrastructure Data** is data that identifies infrastructure or system details that cannot be disclosed to unauthorized individuals. The subject of the data CANNOT authorize anyone else to see or receive copies of the data by signing a consent for release of information.

Examples of infrastructure data types are control systems, security systems, server and network, and SCADA.

Attachment 2

*PCMC Vendor/Contractor Information Technology Scope of Work Document*

**Descriptor of work to be done:**

**IP address(es) of server(s) or device(s) you will be supporting:**

**Application used for support access after connected to VPN: (RDP, SSH, Web Browser, etc)**

**\*\*NOTE\*\* Please note protocol(s) and port number(s) if known.**

**Timeline: (One-Time Access or Ongoing Support)**

**Special Conditions: (if Any)**

**Time of Day Access Needed: (During Business Hours or After Hours)**

**During Project:**

**For Maintenance if applicable:**

\_\_\_\_\_  
Vendor applicant's signature Date

\_\_\_\_\_  
Vendor's company name, printed

\_\_\_\_\_  
Vendor applicant's name, printed

\_\_\_\_\_  
Vendor applicant's email address

\_\_\_\_\_  
Applicant manager's signature Date

\_\_\_\_\_  
Vendor's company name, printed

\_\_\_\_\_  
Applicant manager's name, printed

\_\_\_\_\_  
Park City security reviewer's name (Internal Use)

\* The named manager above is responsible for notifying PCMC of any staffing changes to facilitate prompt disabling of un-needed accounts.