

Master Contract Between VidaNyx Inc. and  
The Utah Children's Justice Center of The Utah Attorney General's Office

Effective Date: May 31, 2022

This Master Contract and all Subordinate Agreements identified below (collectively, the "Agreement") govern the provision of a "Solution" (as defined below) by VidaNyx Inc. ("Contractor" or "VidaNyx") to the Utah Children's Justice Center Program ("Program"), a Division of the Utah Attorney General's Office ("UAGO"), and to Utah Counties that choose to participate in the Solution.

Participation

1. The UAGO and Contractor are parties to this Agreement. Any County in the State of Utah ("Participating County") may enter into this Agreement with the consent of both the Program and Contractor by both (A) executing the form included as Attachment D and (B) executing a Vidanyx Order Form. For clarity, the later execution of the form in Attachment D will not impact the effective date of this Agreement as to any Participating County. Except as distinguished herein, the UAGO, Program, and all Participating Counties collectively constitute the "State Entity" as defined in Attachment A, paragraph 1(i), and the "Client" as defined in the Online Terms (current version attached as Attachment C). The UAGO acting through the Program will be responsible for paying for all of the standard subscription fees payable under this Agreement for the Solution, including for each Participating County's access to the Solution as shown on that County's Vidanyx Order Form, and the Participating County remains jointly and severally liable for such payment to Vidanyx. Each Participating County will be solely responsible for any additional fees incurred in connection with any supplemental Services, Custom Deliverables or otherwise ordered by such Participating Party through a VidaNyx Order Form. A Participating County and Contractor may agree to modifications of this Agreement or to additional services, such as a purchase order for Custom Deliverables, but such an agreement will not amend or modify this Agreement with respect to the UAGO, the Program, or any other Participating County.

Priorities of the Agreement Documents

2. The Agreement consists of the following documents, which shall have priority of interpretation in this order:
  - 2.1. Any written amendment to this Master Contract signed by both Contractor and UAGO, after the Effective Date of this Master Contract ("Amendment");
  - 2.2. This Master Contract;
  - 2.3. The current version of the Vidanyx Subscription Order Form;
  - 2.4. The current Vidanyx Subscription Terms And Conditions attached as Attachment C ("Online Terms");
  - 2.5. Attachment A: State of Utah Standard Terms and Conditions for Services;
  - 2.6. Attachment B: State of Utah Standard Information Technology Terms and Conditions; and
  - 2.7. Attachment D: Individual Participating County Joinder in Agreement.
3. Attachment A, Attachment B, Attachment C, Attachment D and The Vidanyx Subscription Form collectively constitute the "Subordinate Agreements." In the event of conflicting terms or ambiguity regarding any issue, the terms of the higher priority Agreement take precedence over those of the lower priority Agreement.

Term of Contract and Termination

4. This Agreement is for consecutive one-year terms beginning on July 1<sup>st</sup> of each year and ending on June 30<sup>th</sup> of the following year, except that the initial subscription term begins on the Effective Date shown above and runs to June 30<sup>th</sup> of the following year. Payment terms shall be as set forth in paragraph 4.1 of Attachment C “Online Terms” and a single invoice shall be sent to the UAGO for each subscription term, except that for the initial subscription term VidaNyx shall submit one invoice in the amount of \$3,311 for the period from the Effective Date through June 30, 2022, and a second invoice in the amount of \$53,328 for the period from July 1, 2022 through June 30, 2023. Price for subsequent renewal periods is subject to change provided that VidaNyx provides the State Entities with notice of such change at least 30 days prior to renewal. The Agreement automatically renews unless the UAGO or any Participating County gives notice of termination 30 days before the beginning of the next one-year term, or, subject to Section 5 of this Master Contract, at such earlier time as may be permissible under the Subordinate Agreements. Such notice, when given by a Participating County, only affects that Participating County. Such notice, when given by the UAGO, terminates this contract for the State Entity and also constitutes notice on behalf of all Participating Counties to terminate their Vidanyx Subscription Forms with Vendor. If any Participating County subsequently wishes to continue using the Solution, that Participating County must enter into a new Vidanyx Order Form with an effective date no earlier than the termination date given by the UAGO.
5. Any termination pursuant to any provision of a Subordinate Agreement shall require 30 days notice (and time to cure a deficiency, if applicable) if the termination is “for cause,” and otherwise 60 days notice, regardless of the time periods provided for in the Subordinate Agreement.
6. This Agreement constitutes independent annual small purchase procurements of litigation support software and services by the UAGO on behalf of the State Entity pursuant to the Utah Procurement Code, Utah Code §§63G-6a-101, *et. seq.* and Utah Administrative Code Rule R105-1-6, so long as the aggregate annual cost of this contract to the State Entity does not exceed the threshold for small purchases in that Rule or any amendment or successor thereto. The UAGO may elect to qualify notice of termination as being subject to an option of re-procurement, thereby allowing the UAGO to use requests for proposals or other procurement methods authorized by the Utah Procurement Code. Such a qualified notice of termination is effective if given at least 30 days before the beginning of the next one-year term of this Agreement, regardless of when the new procurement is made, unless the UAGO and Contractor otherwise agree in writing.
7. VidaNyx may amend Attachment C by providing notice to the State Entities of the revised Attachment C and an opportunity to object. The State Entities will not unreasonably object to any such amendment and will provide a reason for any objection. If the State Entities do not object within 30 days of receipt of the notice, the parties agree that Attachment C will be deemed to be amended in accordance with the version provided by VidaNyx. If the State Entities object within this 30-day period, VidaNyx may either (a) continue providing the Solution pursuant to the latest version of Attachment C as agreed upon by the parties; or (b) terminate the Agreement and provide a pro-rata refund for any prepaid but unused subscription fees.

#### The Solution

8. Pursuant to the terms of this Agreement, Contractor is providing Participating Counties with access to its Solution, as defined in Attachment C, which consists of Contractor’s cloud-based digital and video evidence management software-as-a-service. For clarity, the parties acknowledge and agree that this Agreement governs the purchase of subscriptions allowing the Participating Counties to use the Solution. The Solution will not be deemed part of (and will not consist of) any Services, Software,

Goods or Custom Deliverables, as those terms are used in Attachment A or Attachment B. Any Services ordered by the UAGO or any Participating County must be separately identified in an Amendment to this Master Contract, such as a relevant purchase order. No Software, Good or Custom Deliverables are provided pursuant to this Agreement unless otherwise provided for in a written Amendment to this Master Contract.

#### Cloud Storage Requirements

9. The Contractor shall use Amazon Web Services (“AWS”) cloud solutions as the default storage for all data belonging to the UAGO and the Participating Counties. The Contractor may use AWS for Business until June 30, 2023, after which date it shall use AWS for Government. Contractor agrees to provide at the request of UAGO or any Participating County any technical certifications that AWS offers to make available to the Contractor.
10. The Contractor shall not use a different cloud solution without prior written notice to UAGO and an opportunity to object. If the Contractor changes cloud solutions, either UAGO on behalf of the State Entity, or any Participating County on its own behalf, may terminate this Agreement upon giving 30 days’ notice if provided within 30 days of the date of Contractor’s notice of such change. Any such termination by a Participating County will only terminate its participation in the Agreement and will not otherwise affect the Agreement with respect to any other Participating County or the UAGO.

#### Insurance and Indemnification

11. The Contractor shall maintain the insurance required by Attachment A, paragraph 16, except that the aggregate limit for the CGL policy shall be \$2 million, and Contractor shall not be required to maintain CAL insurance. In addition, Contractor shall maintain Tech E&O and Cyber Liability Insurance (“Cyber Insurance”) with a claim limit of \$2 million, and at the request of the UAGO shall name the State Entity (including any Participating Counties) as an additional insured on the Cyber Insurance policy. The UAGO shall be deemed to have requested such coverage for the initial term of this Agreement, and thereafter until the UAGO provides at least 30 days written notice that it no longer desires such coverage. The UAGO shall pay the incremental cost of adding the State Entity (including any Participating Counties) to the Cyber Insurance as additional insured.
12. The UAGO shall, upon request, receive a full copy of the Cyber Insurance policy (which may be redacted for commercial information unrelated to rights and responsibilities), and upon request the UAGO and any Participating County may receive a certificate of insurance for the Cyber Insurance policy. The full policy shall be presumptively designated as a protected record for purposes of the Utah Government Records Act (“GRAMA”) pursuant to Utah Code §63G-2-305(1) as a trade secret and §63G-2-305 (2) as commercial information. This is because the parties agree that the full policy likely contains information that derives economic value from not being generally known and that is subject to efforts to maintain its privacy. This information, if disclosed, could reasonably be expected to result in unfair competitive injury to the insurer and/or the Contractor. This information may include the insurer’s pricing structure, the Contractor’s security measures, and other information typically contained in a Cyber Insurance policy. This paragraph constitutes compliance with Utah Code §63G-2-309 and a presumptive determination by the UAGO that the confidentiality interests of the insurer and Contractor, and the benefits the State Entities derive from the UAGO’s access to the policy, outweigh the public’s interest in disclosure of the policy. However, any certificate of insurance and any invoice for insurance coverage provided to the UAGO or any Participating County under this Agreement shall be presumptively designated as public records under GRAMA.

13. Provided that Contractor maintains the Cyber Insurance referenced above, Contractor's liability for any and all claims arising out of its performance under this Agreement that relate to privacy, security or data protection, including any processing of personal information, data breach or data security incidents (collectively "Data Protection"), including but not limited to third-party claims, shall be limited to the actual proceeds provided (if any) by the Cyber Insurance for damages resulting from any such claim so long as non-payment by the Cyber Insurance is not caused by the Contractor's breach of a policy condition. If any such proceeds are not sufficient to cover all damages resulting from such claim together with any other damages resulting from the same event but independent of this Agreement, then such proceeds will be allocated on a pro rata basis in proportion to the relevant claims (i.e., based on the amount of actual damages suffered by each claimant). In no event, and under no circumstances, shall Contractor's aggregate liability for claims arising out of its performance under this Agreement that relate to Data Protection ever exceed the total amount of actual proceeds provided by the Cyber Insurance for damages resulting from those claims. There are no exclusions or exceptions to this limitation of Contractor's liability under the Agreement, and this limitation replaces all limitations of liability for Contractor (including any statements regarding exclusions thereto) contained in any Subordinate Agreement with respect to same. The State Entity agrees to tender defense of any such claim to the insurer pursuant to the terms of the Cyber Policy or other relevant insurance.
14. Provided that Contractor maintains the CGL insurance policy referenced above, Contractor's liability for any and all claims arising out of its performance under this Agreement that relate to risks covered by that policy (collectively "CGL Claims"), including but not limited to third-party claims, shall be limited to the actual proceeds provided (if any) by the CGL policy for damages resulting from any such claim so long as non-payment by the CGL policy is not caused by the Contractor's breach of a policy condition. If any such proceeds are not sufficient to cover all damages resulting from such claim together with any other damages resulting from the same event but independent of this Agreement, then such proceeds will be allocated on a pro rata basis in proportion to the relevant claims (i.e., based on the amount of actual damages suffered by each claimant). In no event, and under no circumstances, shall Contractor's aggregate liability for claims arising out of its performance under this Agreement that relate to CGL Claims ever exceed the total amount of actual proceeds provided by the CGL policy for damages resulting from those claims. There are no exclusions or exceptions to this limitation of Contractor's liability under the Agreement, and this limitation replaces all limitations of liability for Contractor (including any statements regarding exclusions thereto) contained in any Subordinate Agreement with respect to same. The State Entity agrees to tender defense of any such claim to the insurer pursuant to the terms of the Cyber Policy or other relevant insurance.
15. This paragraph 15 shall apply to any other liability of VidaNyx arising out of or related to this Agreement other than the liability covered by paragraph 13 or 14 above ("Residual Claims"). In connection with Residual Claims, (1) VidaNyx shall not be liable for indirect, special, incidental or consequential losses (whether or not foreseeable or contemplated by the parties at the effective date); and (2) VidaNyx's aggregate liability shall not exceed 2x the fees paid by the State Entities in the 12 months immediately preceding the subject claim.
16. For all indemnification obligations of Contractor under any Subordinate Agreement, the relevant State Entity indemnified party will promptly notify Contractor in writing of the claim and tender control of the defense and settlement of the claim to Contractor (subject to Contractor keeping the indemnified party informed of material developments and otherwise complying with Utah law as requested by the UAGO regarding its rights and obligations to monitor litigation against the State Entities) and provide reasonable cooperation requested by Contractor; provided, however, that any settlement requiring the indemnified party to admit liability, pay money, or take (or refrain from

taking) any action, will require the indemnified party's prior written consent (not to be unreasonably withheld, conditioned or delayed).

17. To the extent that any State Entity is obligated to defend or indemnify Contractor (e.g. pursuant to 9.2 of Attachment C "Online Terms" the aggregate liability of all State Entities shall not exceed 2x the fees paid by the State Entities in the 12 months immediately preceding the subject claim. This provision only limits liability where an otherwise valid claim exists against a State Entity, and does constitute a waiver of any claim of governmental immunity or other defense available to any State Entity.

#### Additional Modifications to Attachment A

18. Attachment A, paragraph 2, Governing Law and Venue is deleted in its entirety. The parties agree that any governing law or venue clause in Attachment C will also be deleted in its entirety, so that the Agreement remains silent as to governing law and venue.
19. Attachment A, paragraph 28, Assignment, is modified by this addition: Contractor may assign this Contract without prior written approval by the State Entity upon 30 days written notice to the UAGO and to each Participating County in the case of a merger, acquisition, or sale of all or substantially all of its assets. If the UAGO or any Participating County reasonably believes in good faith that such an assignment reduces the security of its data or otherwise creates risks to or conflicts of interests with the State Entity, or that such an assignment is likely to be contrary to law (including but not limited to situations in which the acquiring entity is not eligible to hold state contracts), the UAGO on behalf of the State Entity or any Participating County on behalf of itself may terminate the Agreement within 15 days of its receipt of Contractor's notice of assignment.
20. Attachment A, paragraph 29, Remedies, is deleted in its entirety.
21. Attachment A, paragraph 30, Force Majeure, is modified to add "or other event" after "war" in the first sentence.
22. Attachment A, paragraph 31, Confidentiality, is modified as follows: (A) add "use commercially reasonable measures designed to" at the beginning of clause (ii); (B) clause (iii) is modified to allow for disclosures when required by law; and (C) the last sentence is modified to require notice only if Contractor becomes aware of actual misuse or misappropriation of Confidential Information.
23. Attachment A, paragraph 33, Contract Information, is deleted unless Contractor hires or contracts for personnel specifically to provide services to the State Entities under this Agreement, in which case paragraph 33 shall only apply to such hires.
24. Attachment A, paragraph 34, Indemnification Relating to Intellectual Property, shall be limited to claims brought against the UAGO or any Participating County by a third party for use of the Solution by such Participating County in accordance with Attachment A, and shall not apply to the extent that any claim is a result of (A) any modifications to the Solution by any entity other than Contractor, (B) any combination of the Solution with any third-party solutions, services, or processes, (C) any user content uploaded to the Solution, (D) any claim to the extent that it is based upon the errors or omissions of AWS, provided however, that this provision does not constitute a waiver or limitation upon the State Entity's right to pursue whatever relief it may have against AWS for such errors or omissions, or (E) any breach of the Agreement by any State Entities.

25. Attachment A, paragraph 35, Ownership of Custom Deliverables, is modified by this addition: This paragraph, and all terms regarding Custom Deliverables, will apply only if and to the extent that a written Amendment to this Master Contract, signed by both Contractor and UAGO (or by a Participating County, on behalf of only that Participating County), specifies that Custom Deliverables are to be provided by Contractor.
26. Attachment A, paragraph 36, Ownership in Intellectual Property, is modified by this addition: For the sake of clarity, all right, title, and interest in and to the Solution shall remain with the Contractor. Unless a written Amendment to this Master Contract (e.g., for Custom Deliverables) expressly provides for the transfer of any specific intellectual property to the State Entity, no right, title, and interest shall be conveyed by Contractor under this Agreement.

#### Additional Modifications to Attachment B


27. Except as noted in paragraph 22, all references in Attachment B to notices or information to be given by Contractor to DTS, requirements that Contractor work with DTS, or requirements that approvals to be given by DTS shall refer instead to the Director of the Information Technology Division of the UAGO (currently Chris Earl) or the Director's designee. This provision does not, however, remove or alter any reference to DTS policies or standards in Attachment B.
28. The definition of Security Incident under paragraph 1(m) shall be deleted in its entirety and replaced as follows: "Security Incident" means the unauthorized access to State Data that results in the use, disclosure or theft of State Data. Any notice requirements under paragraph 13, Security Incident or Data Breach Notification, shall be modified to only require that Contractor notify of any Security Incident or Data Breach without undue delay after it becomes aware of any such incident or breach, and, at a minimum, as required to comply with applicable law. Paragraph 14, Data Breach Responsibilities, shall be modified to remove reference to required compliance with *DTS Policy 5000-0002 Enterprise Information Security Policy*.
29. To the extent that Contractor uses AWS for cloud storage of documents or data belonging to UAGO and the Participating Counties, that storage shall be deemed to comply with all provisions of Attachment B, paragraph 12 and Contractor shall not be liable for any breach of that paragraph 12. This will similarly apply if Contractor notifies of a change in cloud storage provider and the State Entities do not object by terminating the Agreement pursuant to Section 10 of this Master Contract.
30. Attachment B, paragraph 8, Updates and Upgrades, shall be modified to refer only to upgrades or updates to any Custom Deliverables or Goods provided under this Agreement (to the extent provided pursuant to an Amendment).
31. For clarity, the requirements specified in Attachment B, paragraph 15, State Information Technology Policies, shall only apply if Contractor is providing the State Entities with Goods or Custom Deliverables.
32. Attachment B, paragraph 20, Ownership, Protection, and Return of Documents and Data Upon Contract Termination or Completion is replaced in its entirety as follows: All documents and data pertaining to work required by this Agreement will be the property of the State Entities, and with respect to documents or data supplied by a Participating County of that Participating County. The UAGO and Program shall have the right to retrieve any and all such documents and data through the Solution within 30 days after termination or expiration of this Agreement, without restriction or limitation to their future use. Each Participating County shall have the same right with respect to documents and data provided by that Participating County. Contractor shall provide the ability to

retrieve any documents or data under this paragraph in either the format as originally provided, in a format readily useable by the State Entity, or otherwise formatted in a way that allows it to be readily accessed and used. The cost of allowing access to the Solution for purposes of retrieving such documents and data during the 30 days after termination or expiration of this Agreement are included in the price of this Agreement.


- 33. Attachment B, paragraph 22, Compliance with Accessibility Standards, only applies to Custom Deliverables, if any are provided for by a written Amendment to this Master Contract.
- 34. Attachment B, paragraph 23, Right to Monitor Performance and Audit is limited to one assessment, audit, examination, and/or review of Contractor’s sites and environments per contract year, with at least 30 days prior notice to Contractor, provided that this limitation does not apply if the State Entity reasonably believes that it has suffered or is at risk of suffering a security incident or data breach. Any such examination may be done by the UAGO (or by DTS at the request of the UAGO) and shall be done in a commercially reasonable manner that avoids unreasonable disruption of Contractor’s business operations under the circumstances of the examination, after consultation with Contractor. The time and date of such audit will be mutually agreed upon. All data or information accessed or received during the audit and the results of the audit itself (“Audit Materials”) will be the Contractor’s confidential information and may only be used internally to evaluate compliance with the Agreement and may not be disclosed to any unrelated third party. The Audit Materials shall be presumptively designated as a protected record for purposes of the Utah Government Records Act (“GRAMA”) pursuant to Utah Code §63G-2-305(1) as a trade secret and §63G-2-305 (2) as commercial information. This is because the parties agree that the Audit Materials would likely contains information that derives economic value from not being generally known and that is subject to efforts to maintain its privacy. The Audit Materials, if disclosed, could reasonably be expected to result in unfair competitive injury to the insurer and/or the Contractor, and could result in additional cybersecurity risks to the Contractor, State Entities, and others. This paragraph constitutes compliance with Utah Code §63G-2-309 and a presumptive determination by the UAGO that the confidentiality interests of the Contractor, and the benefits the State Entities derive from the UAGO’s access to the Audit Materials, outweigh the public’s interest in disclosure of the Audit Materials. However, the foregoing notwithstanding, this information may be shared with appropriate personnel from DTS or a state auditor that is subject to appropriate confidentiality obligations.

Each party has caused this Agreement to be signed and delivered by its duly authorized representative indicated below.

The Utah Children's Justice Center Program of  
The Utah Attorney General's Office

By:   
DocuSigned by: Ric Cantrell  
 Name: Ric Cantrell  
 Title: Chief of Staff  
 Date: 6/10/2022

VidaNyx Inc.

By:   
DocuSigned by: Sara Boyd  
 Name: Sara Boyd  
 Title: CEO  
 Date: 6/9/2022

## Attachment A - State of Utah Standard Terms and Conditions for Services

This is for a contract for services (including professional services) meaning the furnishing of labor, time, or effort by a contractor.

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” may 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 sign.
  - d) “**Contractor**” means the individual or entity delivering the Services identified in this Contract. The term “Contractor” shall include Contractor’s agents, officers, employees, and partners.
  - e) “**Custom Deliverable**” means the Work Product that Contractor is required to deliver to the State Entity under this Contract.
  - f) “**Services**” means the furnishing of labor, time, or effort by Contractor pursuant to this Contract. Services include, but are not limited to, all of the deliverable(s) (including Custom Deliverable, supplies, equipment, or commodities) that result from Contractor performing the Services pursuant to this Contract. Services include those professional services identified in Section 63G-6a-103 of the Utah Procurement Code.
  - g) “**Proposal**” means Contractor’s response to the State Entity’s Solicitation.
  - h) “**Solicitation**” means the documents used by the State Entity to obtain Contractor’s Proposal.
  - i) “**State Entity**” means the department, division, office, bureau, agency, or other organization identified on the Contract Signature Page(s).
  - j) “**State of Utah**” means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
  - k) “**Subcontractors**” means subcontractors or subconsultants at any tier that are under the direct or indirect control or responsibility of the Contractor, and includes all independent contractors, agents, employees, authorized resellers, 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.
  - l) “**Work Product**” means every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor or Contractor’s Subcontractors (either alone or with others) pursuant to this Contract. Work Product shall be considered a work made for hire under federal, state, and local laws; and all interest and title shall be transferred to and owned by the State Entity. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any State Entity intellectual property, Contractor’s intellectual property (that it owned or licensed prior to this Contract) or Third Party intellectual property.



2. **GOVERNING LAW AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.

3. **LAWS AND REGULATIONS:** At all times during this Contract, Contractor and all Procurement Items delivered and/or performed under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. If this Contract is funded by federal funds, either in whole or in part, then any federal regulation related to the federal funding, including CFR Appendix II to Part 200, will supersede this Attachment A.

4. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by the State Entity to Contractor under this Contract. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, the State of Utah, federal auditors, and State Entity staff, access to all such records.

5. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** The Status Verification System, also referred to as "E-verify", only applies to contracts issued through a Request for Proposal process 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.

2. Contractor shall require that each of its Subcontractors certify by affidavit, as to their own entity, under penalty of perjury, that each Subcontractor has registered and is participating in the Status Verification System to verify the work eligibility status of Subcontractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.

3. Contractor's failure to comply with this section will be considered a material breach of this Contract.

6. **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.

7. **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.

8. **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 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 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.

9. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by federal and state employment laws, including: (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 2019-1, dated February 5, 2019, which prohibits unlawful harassment in the workplace. Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees.

10. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, provided that the amendment is within the Scope of Work of this Contract and is within the scope/purpose of the original solicitation for which this Contract was derived. The amendment will be attached and made part of this Contract. Automatic renewals will not apply to this Contract, even if listed elsewhere in this Contract.

11. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, or proposed for debarment 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.

12. **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 is subject to the remedies listed below. This Contract may also be terminated without cause (for convenience), in advance of the specified expiration date, by the State Entity, upon thirty (30) days written termination notice being given to the Contractor. The State Entity and the Contractor may terminate this Contract, in whole or in part, at any time, by mutual agreement in writing. On termination of this Contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved Services ordered prior to date of termination.

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 State Entity or the State of Utah is limited to full payment for all Services 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. In no event shall the State Entity be liable to the Contractor for compensation for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State Entity's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State Entity for any damages or claims arising under this Contract.

13. **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 Services properly ordered 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.

14. **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 written notice. Contractor's responsibilities may be reinstated upon advance formal written notice from the State Entity.

15. **SALES TAX EXEMPTION:** The Services 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.

16. **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.

17. **RESERVED.**

18. **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 Proposal to the

Solicitation 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.

19. **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.

20. **ACCEPTANCE AND REJECTION:** The State Entity shall have thirty (30) days after the performance of the Services to perform an inspection of the Services to determine whether the Services conform to the standards specified in the Solicitation and this Contract prior to acceptance of the Services by the State Entity.

If Contractor delivers nonconforming Services, the State Entity may, at its option and at Contractor's expense: (i) return the Services for a full refund; (ii) require Contractor to promptly correct or reperform the nonconforming Services subject to the terms of this Contract; or (iii) obtain replacement Services from another source, subject to Contractor being responsible for any cover costs.

21. **INVOICING:** Contractor will submit invoices within thirty (30) days of Contractor's performance of the Services 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 Proposal or on its invoice. The State Entity has the right to adjust or return any invoice reflecting incorrect pricing.

22. **PAYMENT:** Payments are to be made within thirty (30) days after a correct invoice is received. All payments to Contractor will be remitted by mail, electronic funds transfer, or the State of Utah's Purchasing Card (major credit card). If payment has not been made after sixty (60) days from the date a correct invoice is received by the State Entity, then interest may be added by Contractor as prescribed in the Utah Prompt Payment Act. The acceptance by Contractor of final payment, without a written protest filed with the State Entity within ten (10) business days of receipt of final payment, shall release the State Entity and the State of Utah from all claims and all liability to the Contractor. The State Entity's payment for the Services shall not be deemed an acceptance of the Services 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.

23. **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. Contractor shall be liable for all reasonable damages to the State Entity, the State of Utah, and anyone for whom the State of Utah may be liable as a result of Contractor's failure to timely perform the Services required under this Contract.

24. **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.

25. **PERFORMANCE EVALUATION:** The State Entity may conduct a performance evaluation of Contractor's Services, including Contractor's Subcontractors. Results of any evaluation may be made available to Contractor upon request.

26. **STANDARD OF CARE:** The Services of Contractor and its Subcontractors shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the Services that are the subject of this Contract. Contractor shall be liable to the State Entity and the State of Utah for claims, liabilities, additional burdens, penalties, damages, or third party

claims (e.g., another Contractor's claim against the State of Utah), to the extent caused by wrongful acts, errors, or omissions that do not meet this standard of care.

27. **REVIEWS:** The State Entity reserves the right to perform plan checks, plan reviews, other reviews, and/or comment upon the Services of Contractor. Such reviews do not waive the requirement of Contractor to meet all of the terms and conditions of this Contract.

28. **ASSIGNMENT:** Contractor may not assign, sell, transfer, subcontract or sublet rights, or delegate any right or obligation under this Contract, in whole or in part, without the prior written approval of the State Entity.

29. **REMEDIES:** Any of the following events will constitute cause for the State Entity to declare Contractor in default of this Contract: (i) Contractor's non-performance of its contractual requirements and obligations under this Contract; or (ii) Contractor's material breach of any term or condition of this Contract. The State Entity may issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains after Contractor has been provided the opportunity to cure, the State Entity may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) terminate this Contract; (iii) impose liquidated damages, if liquidated damages are listed in this Contract; (iv) debar/suspend Contractor from receiving future contracts from the State Entity or the State of Utah; or (v) demand a full refund of any payment that the State Entity has made to Contractor under this Contract for Services that do not conform to this Contract.

30. **FORCE MAJEURE:** Neither party to this Contract will be held responsible for delay or default caused by fire, riot, act of God, and/or war which is beyond that party's reasonable control. The State Entity may terminate this Contract after determining such delay will prevent successful performance of this Contract.

31. **CONFIDENTIALITY:** If Confidential Information is disclosed to Contractor, Contractor shall: (i) advise its agents, officers, employees, partners, and Subcontractors of the obligations set forth in this Contract; (ii) keep all Confidential Information strictly confidential; and (iii) not disclose any Confidential Information received by it to any third parties. Contractor will promptly notify the State Entity of any potential or actual misuse or misappropriation of Confidential Information. Contractor shall be responsible for any breach of this duty of confidentiality, including any required remedies and/or notifications under applicable law. Contractor shall indemnify, hold harmless, and defend the State Entity and the State of Utah, including anyone for whom the State Entity or the State of Utah is liable, from claims related to a breach of this duty of confidentiality, including any notification requirements, by Contractor or anyone for whom the Contractor is liable.

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

32. **PUBLICITY:** Contractor shall submit to the State Entity for written approval all advertising and publicity matters relating to this Contract. It is within the State Entity's sole discretion whether to provide approval, which must be done in writing.

33. **CONTRACT INFORMATION:** Contractor shall provide information regarding job vacancies to the State of Utah Department of Workforce Services, which may be posted on the Department of Workforce Services website. Posted information shall include the name and contact information for job vacancies. This information shall be provided to the State of Utah Department of Workforce Services for the duration of this Contract. This requirement does not preclude Contractor from advertising job openings in other forums throughout the State of Utah.

34. **INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY:** Contractor will indemnify and hold the State Entity and the State of Utah harmless from and against any and all damages,

expenses (including reasonable attorneys' fees), claims, judgments, liabilities, and costs in any action or claim brought against the State Entity or the State of Utah for infringement of a third party's copyright, trademark, trade secret, or other proprietary right. The parties agree that if there are any limitations of Contractor's liability, such limitations of liability will not apply to this section.

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

1. Contractor has received payment for the Custom Deliverables,
2. Each party will retain all rights to patents, utility models, mask works, copyrights, trademarks, trade secrets, and any other form of protection afforded by law to inventions, models, designs, technical information, and applications ("Intellectual Property Rights") that it owned or controlled prior to the effective date of this contract or that it develops or acquires from activities independent of the services performed under this contract ("Background IP"), and
3. Contractor will retain all right, title, and interest in and to all Intellectual Property Rights in or related to the services, or tangible components thereof, including but not limited to (a) all know-how, intellectual property, methodologies, processes, technologies, algorithms, software, or development tools used in performing the Services (collectively, the "Utilities"), and (b) such ideas, concepts, know-how, processes and reusable reports, designs, charts, plans, specifications, documentation, forms, templates, or output which are supplied or otherwise used by or on behalf of Contractor in the course of performing the Services or creating the Custom Deliverables, other than portions that specifically incorporate proprietary or Confidential Information or Custom Deliverables of the State Entity (collectively, the "Residual IP"), even if embedded in the Custom Deliverables.
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 State Entity. Contractor agrees to grant to the State Entity a perpetual, irrevocable, royalty-free license to use Contractor's Background IP, Utilities, and Residual IP, as defined above, solely for the State Entity and the State of Utah to use the Custom Deliverables. The State Entity reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for the State Entity's and the State of Utah's internal purposes, such Custom Deliverables. 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 State Entity a non-exclusive, non-transferable, irrevocable, perpetual right to use, copy, and create derivative works from such, without the right to sublicense, for the State Entity's and the State of Utah's internal business operation under this Contract. The State Entity and the State of Utah may not participate in the transfer or sale of, create derivative works from, or in any way exploit Contractor's Intellectual Property Rights, in whole or in part.

36. **OWNERSHIP IN INTELLECTUAL PROPERTY:** The State Entity and Contractor agree that each has no right, title, interest, proprietary or otherwise in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing. All deliverables, documents, records, programs, data, articles, memoranda, and other materials not developed or licensed by Contractor prior to the execution of this Contract, but specifically created or manufactured under this Contract shall be considered work made for hire, and Contractor shall transfer any ownership claim to the State Entity.

37. **WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.
38. **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.
39. **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 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.
40. **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 the 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.
41. **ORDER OF PRECEDENCE:** In the event of any conflict in the terms and conditions in this Contract, the order of precedence shall be: (i) this Attachment A; (ii) Contract Signature Page(s); (iii) the State of Utah's additional terms and conditions, if any; (iv) any other attachment listed on the Contract Signature Page(s); and (v) Contractor's terms and conditions that are attached to this Contract, if any. Any provision attempting to limit the liability of Contractor or limit the rights of the State Entity or the State of Utah must be in writing and attached to this Contract or it is rendered null and void.
42. **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 or defect in the Services that has not been cured.
43. **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.
44. **ENTIRE AGREEMENT:** This Contract constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.
45. **ANTI-BOYCOTT ISRAEL:** In accordance with Utah Statute 63G-27-101, Contractor certifies that it is not currently engaged in a boycott of the State of Israel and agrees not to engage in a boycott of the State of Israel for the duration of the contract.

(Revision Date: 15 April 2021)

## 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. With the exception of the definitions in this Attachment B, the definitions in Attachment A apply to this attachment. All policies referenced by number in this Attachment are available at <https://dts.utah.gov/policies>. Other policies are available upon request.

### 1. DEFINITIONS:

- a. "Access to Secure State Facilities, Data, or Technology" means Contractor will (a) enter upon secure premises controlled, held, leased, or occupied by State of Utah; (b) maintain, develop, or have access to any deployed hardware, software, firmware, or any other technology, that is in use by State of Utah; or (c) have access to or receive any State Data or confidential information.
- b. "Background IP" means intellectual property (IP) owned or controlled prior to the effective date of this Contract or that IP developed or acquired from activities independent of the services performed under this Contract, including but not limited to (a) methodologies, processes, technologies, algorithms, software, or development tools used in performing the Services, and (b) processes and reusable reports, designs, charts, plans, specifications, documentation, forms, templates, or output which are supplied or otherwise used by or on behalf of Contractor in the course of performing the Services or creating the Custom Deliverables, other than portions that specifically incorporate proprietary or confidential information or Custom Deliverables of DTS.
- c. "Contract Period" means the term of this Contract, as set forth in the Contract Signature Page(s).
- d. "Custom Deliverables" means the product that Contractor is required to design, develop, or customize and deliver to DTS as specifically described under this Contract or an associated statement of work for which all interest and title shall be transferred to and owned by DTS. This includes every invention, design, development, customization, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, 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 pursuant to this Contract.
- e. "Data Breach" means the unauthorized access or acquisition of State Data that compromises the security, confidentiality, or integrity of State Data.
- f. "DTS" means the Utah Department of Government Operations Division of Technology Services.
- g. "Federal Criminal Background Check" means a fingerprint-based, nationwide background check conducted and processed by the FBI.



- h. “Good” means any deliverable not classified as a Custom Deliverable or Service.
  - i. “Intellectual Property Rights” means all rights to patents, utility models, mask works, copyrights, trademarks, trade secrets, and other protection afforded by law to inventions, models, designs, technical information, and applications.
  - j. “Non-Public Data” means records or data that are not subject to distribution to the public. Access is restricted because it includes information that is protected by state or federal law. Non-Public Data includes, but is not limited to, a person’s name; government-issued identification numbers (e.g., Social Security, driver’s license, passport); financial account information; or Protected Health Information.
  - k. “Protected Health Information” (PHI) is as defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and its implementing regulations.
  - l. “Response” means the Contractor’s bid, proposals, quote, or any other document used by the Contractor to respond to the State Entity’s Solicitation.
  - m. “Security Incident” means the attempted unauthorized access to State Data that may result in the use, disclosure, or theft of State Data.
  - n. “Services” means the furnishing of labor, time, or effort by Contractor, and may include installation, configuration, implementation, technical support, warranty maintenance, and other support services.
  - o. “State Data” means all confidential information and Non-Public Data that is created, controlled, maintained, owned, or in any way originating with the State of Utah regardless of where such data or output is stored or maintained.
  - p. “Subcontractors” includes contractors, manufacturers, distributors, suppliers, or consultants, at any tier, that are under the direct or indirect control or responsibility of Contractor, including a person or entity that is, or will be, providing goods or performing services pursuant to this Contract.
2. **CRIMINAL BACKGROUND SCREENING:** Each employee of Contractor and Subcontractor must successfully complete a Federal Criminal Background Check, in accordance with DTS Policy 2000-0014 Background Investigations, prior to being granted Access to Secure State Facilities, State Data, or Technology. Contractor or the applicable employee shall provide DTS with sufficient personal information (at Contractor’s expense) so that a Federal Criminal Background Check may be completed by DTS, at DTS’s expense. DTS will provide Contractor with forms which must be filled out by Contractor and returned to DTS. Each employee of Contractor or a Subcontractor who will have Access to Secure State Facilities, State Data, or Technology must be fingerprinted by DTS or local law enforcement a minimum of one week prior to needing access. At the time of fingerprinting, said employee shall disclose all felony or misdemeanor convictions. DTS will conduct a Federal Criminal Background Check based upon the fingerprints and personal information provided and use this same information to complete a Name Check in the Utah Criminal Justice Information System (UCJIS) at least every two years.

DTS may revoke Access to Secure State Facilities, Data, and Technology granted in the event of any negative results. Contractor and the employee or subcontractor shall immediately notify DTS if an arrest or conviction for a felony or misdemeanor of any person that has Access to Secure State Facilities, State Data or Technology occurs during the Contract Period. DTS will determine in its discretion if such person's Access to Secure State Facilities, State Data, or Technology shall remain in effect. Felony and misdemeanor are defined by the laws of the State of Utah, regardless of where the conviction occurred.

3. **CODE OF CONDUCT:** If Contractor is working at facilities controlled or owned by DTS or the State of Utah, Contractor shall follow and enforce DTS Policy 2000-0001 Code of Conduct, DTS Policy 1000-0003 Acceptable Use of Information Technology Resources and the agency applicable code of conduct. Contractor will ensure that each employee receives a copy of the policies and applicable codes of conduct.
4. **INTELLECTUAL PROPERTY INDEMNIFICATION:** Contractor warrants and represents it has full ownership and clear title free of all liens and encumbrances to any Good delivered under this contract. Contractor also warrants that any Good, Custom Deliverable, or Service furnished by Contractor under this Contract, including its use by DTS or the State of Utah in unaltered form, will not infringe any copyrights, patents, trade secrets, or other proprietary rights.

Contractor will release, indemnify, and hold DTS 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, Contractor shall indemnify and hold harmless DTS and the State of Utah for any judgments, settlements, 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, DTS shall have the right, at its option, to participate in the defense of any such action at its own expense without relieving Contractor of any obligation hereunder. If there are any limitations of liability in this Contract, such limitations will not apply to this section.

5. **HARDWARE WARRANTY: THE STATE OF UTAH DOES NOT ACCEPT ANY PROCUREMENT ITEM "AS-IS". CONTRACTOR WARRANTS ALL HARDWARE PORTIONS OF ANY GOOD OR CUSTOM DELIVERABLE THAT IT DIRECTLY OR INDIRECTLY PROVIDES FOR A PERIOD OF ONE YEAR. ALL WARRANTIES GRANTED TO DTS BY THE UNIFORM COMMERCIAL CODE OF THE STATE OF UTAH APPLY TO THIS CONTRACT. PRODUCT LIABILITY DISCLAIMERS AND/OR WARRANTY DISCLAIMERS FROM CONTRACTOR OR ITS SUPPLIERS ARE REJECTED. CONTRACTOR WARRANTS THAT THE HARDWARE: (A) WILL PERFORM AS SPECIFIED IN THE RESPONSE; (B) WILL LIVE UP TO ALL SPECIFIC CLAIMS LISTED IN THE RESPONSE; (C) WILL BE SUITABLE FOR THE ORDINARY PURPOSES FOR WHICH THE HARDWARE IS USED; (D) WILL BE SUITABLE FOR ANY SPECIAL PURPOSES THAT DTS HAS RELIED ON CONTRACTOR'S SKILL OR JUDGMENT TO**

CONSIDER WHEN IT ADVISED DTS ABOUT THE HARDWARE IN THE RESPONSE; (E) THE HARDWARE HAS BEEN PROPERLY DESIGNED AND MANUFACTURED; AND (F) IS FREE OF SIGNIFICANT DEFECTS.

- 6. SOFTWARE WARRANTY: THE STATE OF UTAH DOES NOT ACCEPT ANY PROCUREMENT ITEM “AS-IS”.** CONTRACTOR WARRANTS FOR A PERIOD OF **NINETY DAYS** FROM THE DATE OF ACCEPTANCE THAT THE SOFTWARE PORTIONS OF THE GOODS AND CUSTOM DELIVERABLES THAT CONTRACTOR DIRECTLY OR INDIRECTLY PROVIDES WILL: (A) PERFORM IN ACCORDANCE WITH THE SPECIFIC CLAIMS PROVIDED IN THE RESPONSE AND ALL SPECIFICATIONS AGREED TO IN WRITING BETWEEN DTS AND CONTRACTOR; (B) BE SUITABLE FOR THE ORDINARY PURPOSES FOR WHICH SUCH GOODS AND CUSTOM DELIVERABLES ARE USED; (C) BE SUITABLE FOR ANY SPECIAL PURPOSES THAT DTS HAS RELIED ON CONTRACTOR’S SKILL OR JUDGMENT TO CONSIDER WHEN IT ADVISED THE STATE ABOUT THE GOODS OR CUSTOM DELIVERABLES; (D) HAVE BEEN PROPERLY DESIGNED AND MANUFACTURED; AND (E) BE FREE OF SIGNIFICANT DEFECTS. CONTRACTOR SHALL PROVIDE DTS WITH BUG FIXES, INCLUDING INFORMING DTS OF ANY KNOWN SOFTWARE BUGS OR SOFTWARE DEFECTS THAT MAY AFFECT THE STATE’S USE OF THE SOFTWARE.
- 7. WARRANTY REMEDIES:** Upon breach of warranty, Contractor will repair or replace (at no charge to DTS) the nonconforming Goods or Custom Deliverables. If the repaired and/or replaced products are inadequate, Contractor will refund the full amount of any payments that have been made for the failed products. These remedies are in addition to any other remedies provided by law or equity.
- 8. UPDATES AND UPGRADES:** Contractor grants to DTS a non-exclusive, non-transferable license to use upgrades and updates provided by Contractor during the Contract Period. Upgrades and updates are subject to the terms of this Contract. DTS reserves the right to accept updates and upgrades at its discretion and to determine if such updates comply with the requirements in the Contract scope of work.
- 9. BUG FIXING AND REMOTE DIAGNOSTICS:** Contractor shall use commercially reasonable efforts to provide work-around solutions or patches to reported software problems. With DTS’s prior written authorization, Contractor may perform remote diagnostics to work on reported problems. If DTS declines remote diagnostics, Contractor and DTS may agree to on-site technical support, subject to the terms of the Contract.
- 10. TECHNICAL SUPPORT AND MAINTENANCE:** If technical support and maintenance is required by the Contract, Contractor will use commercially reasonable efforts to respond to DTS in a reasonable time, and in all events, in accordance with the specific timeframes detailed in the Contract, when DTS makes technical support or maintenance requests.
- 11. ELECTRONIC DELIVERY:** Contractor may electronically deliver any Good or Custom Deliverable to DTS or provide any Good and Custom Deliverable for download from the Internet, if pre-approved in writing by DTS. Contractor shall ensure the confidentiality of electronic

deliveries in transit. Contractor warrants that all electronic deliveries will be free of known malware, bugs, Trojan horses, etc.

**12. SECURE PROTECTION AND HANDLING OF STATE DATA:** If Contractor is given access to State Data, the protection of State Data shall be an integral part of the business activities of Contractor, and Contractor shall ensure that there is no inappropriate or unauthorized use of State Data. Contractor shall safeguard the confidentiality, integrity, and availability of the State Data and comply with the conditions outlined below. DTS reserves the right to verify Contractor's adherence to the following conditions to ensure they are met:

- a. **Network Security:** Contractor shall maintain network security that, at a minimum, includes: network firewall provisioning, intrusion detection, and regular third-party penetration testing. Contractor shall maintain network security and ensure that Contractor network security policies conform 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*;
  - 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 pre-approved by DTS in writing.
- b. **State Data Security:** Contractor shall protect and maintain the security of State Data with protection that is at least as good as or better than that maintained by the State of Utah as identified in *DTS Policy 5000-0002*. These security measures 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). DTS reserves the right to determine if Contractor's level of protection meets the State's security requirements.
- c. **State Data Transmission:** Contractor shall ensure all transmission or exchange of system application data with DTS 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).
- d. **State Data Storage:** All State Data will be stored and maintained in data centers in the United States. No State Data will be processed on or transferred to any portable or laptop computing device or 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.
- e. **Access:** Contractor shall permit its employees and Subcontractors to remotely access non-State Data only as required to provide technical support.

- f. **State Data Encryption:** Contractor shall store all data provided to Contractor, including State, as well as any backups made of that data, in encrypted form using no less than 128 bit key and include all data as part of a designated backup and recovery process.
- g. **Password Protection:** Any portable or laptop computer that has access to DTS or State of Utah network, or stores any non-public State of Utah data shall be equipped with strong and secure password protection.
- h. **Confidential Information Certification:** Contractor shall sign a Confidential Information Certification form prior to being given access to confidential computerized records.
- i. **State Data Re-Use:** All data exchanged shall be used expressly and solely for the purpose enumerated in this Contract. No State Data of any kind may be transmitted, exchanged, or provided to other contractors or third parties except on a case-by-case basis as specifically agreed to in writing by DTS.
- j. **State Data Destruction:** Upon expiration or termination of this Contract, Contractor 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 DTS, whichever shall come first, unless DTS provides Contractor with a written directive. DTS's written directive may require that certain data be preserved in accordance with applicable law.
- k. **Services Shall Be Performed Within United States:** ALL OF THE SERVICES RELATED TO STATE DATA SHALL BE PERFORMED WITHIN THE BORDERS AND JURISDICTION OF THE UNITED STATES.
- l. **User Support:** Contractor may provide technical user support on a 24/7 basis using a Follow the Sun model, unless otherwise prohibited by this contract.

**13. SECURITY INCIDENT OR DATA BREACH NOTIFICATION:** Contractor shall immediately inform DTS of any Security Incident or Data Breach. It is within DTS's discretion to determine whether any attempted unauthorized access is a Security Incident or a Data Breach.

- a. **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 DTS 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.
- b. **Security Incident Reporting Requirements:** Contractor shall promptly report a Security Incident to DTS.

- c. **Breach Reporting Requirements:** As required by Utah Code 13-44-202 or any other law, Contractor shall immediately notify DTS of a Data Breach that affects the security of State Data.

**14. DATA BREACH RESPONSIBILITIES:** Contractor shall 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*. 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 DTS by sharing information relevant to the Data Breach; (b) promptly implement necessary remedial measures, if necessary; and (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. If the Data Breach requires public notification, all communication shall be coordinated with DTS. Contractor is responsible for all notification and remedial costs and damages.

**15. STATE INFORMATION TECHNOLOGY POLICIES:** If Contractor is providing the State with Goods or Custom Deliverables, Contractor shall comply with policies and procedures that meet or exceed those DTS follows for internally developed goods and deliverables to minimize security risk, ensure applicable Utah 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 shall comply with the following DTS Policies:

- a. **DTS Policy 4000-0001, Enterprise Application and Database Deployment Policy:** A 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 Utah and federal regulations; to enforce contractual obligations; and to protect the State's electronic information and information technology assets.
- b. **DTS policy 4000-0002, Enterprise User Authentication Standards Policy:** A Contractor developing software for the State must ensure it complies with the password requirements of the Enterprise Password Standards Policy.
- c. **DTS Policy 4000-0003, Software Development Life Cycle Policy:** A Contractor developing software for the State shall work with DTS in implementing a Software Development Lifecycle (SDLC) that addresses key issues of security, accessibility, mobile device access, and standards compliance.
- d. **DTS Policy 4000-0004, Change Management Policy:** 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. Any outages or Data Breaches which are a result of Contractor's failure to comply with DTS instructions and policies will result in Contractor's liability for all damages resulting from or associated with the outage or Data Breach.

**16. OWNERSHIP IN CUSTOM DELIVERABLES:** Contractor warrants, represents and conveys full ownership, clear title free of all liens and encumbrances to any Custom Deliverable. Contractor conveys the ownership in Custom Deliverables as defined in this Attachment A to DTS. All intellectual property rights, title and interest in the Custom Deliverables shall transfer to DTS, subject to the following:

- a. Contractor has received payment for the Custom Deliverables,
- b. Each party will retain all rights to Background IP, even if embedded in the Custom Deliverables.
- c. Custom Deliverables, excluding Contractor's Background IP may not be marketed or distributed without written approval by DTS.

Contractor shall grant to DTS a perpetual, irrevocable, royalty-free license to use Contractor's Background IP as defined above, solely for DTS and the State of Utah to use the Custom Deliverables.

**17. OWNERSHIP, PROTECTION, AND USE OF RECORDS:** DTS and the State of Utah shall own exclusive title to all information and data gathered, reports developed, and conclusions reached by DTS in performance of this Contract. Contractor may not use, except in meeting its obligations under this Contract, information gathered, reports developed, or conclusions reached by DTS in performance of this Contract without the express written consent of DTS.

**18. OWNERSHIP, PROTECTION, AND USE OF DATA:** DTS and the State of Utah 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 Non-Public Data without prior written permission from DTS and appropriate officials of the State of Utah.

**19. OWNERSHIP, PROTECTION, AND USE OF CONFIDENTIAL FEDERAL, UTAH, OR LOCAL GOVERNMENT INTERNAL BUSINESS PROCESSES AND PROCEDURES:** In the event that DTS provides Contractor with confidential federal or state business processes, policies, procedures, or practices, pursuant to this Contract, Contractor shall 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 DTS.

**20. OWNERSHIP, 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 DTS and the State of Utah, and must be delivered to DTS within thirty (30) working days after termination or expiration of this Contract,

and without restriction or limitation to their future use. Any State Data returned under this section must either be in the format as originally provided, in a format that is readily usable by DTS, or formatted in a way that it can be used. The costs for returning documents and data to DTS are included in this Contract.

**21. SURVIVORSHIP:** The contractual provisions that will remain in effect after expiration or termination of this Contract are: (a) Secure Protection and Handling of State Data; (b) Data Breach Responsibilities; (c) Ownership in Custom Deliverables; (d) Ownership, Protection, and Use of Records, including Residuals of such records; and (e) Ownership, Protection, and Use of Confidential Federal, Utah, or Local Government Internal Business Processes, including residuals of such confidential business processes; (f) Ownership, Protection, and Return of Documents and Data Upon Contract Termination or Completion; and (g) any other terms that by their nature would survive the expiration, completion, or termination of this contract.

**22. COMPLIANCE WITH ACCESSIBILITY STANDARDS:** Contractor shall comply with the Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973. Contractor shall comply with Utah Administrative Code R895-14-3(3), which states that contractors developing websites, hardware, or software for State agencies are required to comply with applicable accessibility guidelines.

**23. RIGHT TO MONITOR PERFORMANCE AND AUDIT**

a. **Audit:** Contractor shall, upon written notification permit DTS, or a third party designated by DTS, 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 DTS or its designee in completing such assessment. Upon request, Contractor shall provide the results of any audit performed by or on behalf of Contractor that would assist DTS or its designee in confirming Contractor's compliance with this Contract; associated scopes of work; and applicable laws, regulations, and industry standards.

b. **Monitor Performance:** DTS reserves the right to monitor Contractor's performance, perform plan checks, plan reviews, other reviews, and/or comment upon the Services of Contractor. This includes Contractor's Subcontractors, if any. Results of any evaluation may be made available to the Contractor upon Contractor's request.

**24. TIME IS OF THE ESSENCE:** The Services shall be completed and Goods and Custom Deliverables delivered by any applicable deadline stated in this Contract. Time is of the essence.

**25. STANDARD OF CARE:** For Services of Contractor which require licenses and certifications, such Services 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.

(Revision Date: 22 June 2021)

## Attachment C - Vidanyx Subscription Terms And Conditions

### **Last Updated: December 1, 2021**

These VMS Subscription Terms and Conditions (“T&C”) are part of the VMS solution subscription service agreement between VidaNyx Inc., a Delaware Corporation (“VidaNyx”) and the client (“Client”) who entered into a Subscription Order Form (“Order Form”) with VidaNyx for a subscription to use VidaNyx’s VMS cloud-based digital and video evidence management software-as-a-service solution (“Solution”) or who otherwise signed up to use the Solution through a VidaNyx provided online sign-up form. The term “Agreement” as used herein and therein means (i) the Order Form, (ii) this T&C, (iii) the VidaNyx Terms of Use available at <http://www.vidanyx.com/terms-of-use> (“Terms of Use”), and (iv) any supplemental terms that apply to specific features or services of the Solution, each incorporated into the Agreement by this reference and each shall apply to the provision, accessing and usage of the Solution. If Client purchases a subscription to the Solution through VidaNyx’s website, then references to “Order Form” below will refer to the VidaNyx webpage that describes the applicable fees, billing period and subscription term for such subscription.

If you purchase a subscription to the Solution for use on your own behalf, references to “Client” in these T&Cs shall refer to you. If you purchase a subscription to the Solution on behalf of a legal entity, then: (i)

you represent and warrant that you have the authority to bind that legal entity to this Agreement; and

(ii) references to “Client” shall refer both to you and that legal entity.

From time to time, VidaNyx may modify the terms and conditions set forth in this T&C, and the Terms of Use, and any supplemental terms. Unless otherwise specified by VidaNyx, changes become effective for Client upon renewal of the then-current Subscription Term (defined below). VidaNyx will use reasonable efforts to notify Client of the changes by communicating through the Solution, email, or other means.

Client may be required to click to accept the modified T&C, Terms of Use, or supplemental terms before using the Solution in a renewal Subscription Term, and in any event continued use of the Solution during the renewal Subscription Term will constitute Client’s acceptance of the version of the T&C, Terms of Use, or supplemental terms in effect at the time the renewal Subscription Term begins.

VidaNyx and Client each expressly agree that the Agreement is legally binding upon it.

### **1 – VIDANYX SOLUTION**

**1.1 SaaS Subscription.** The Solution is a hosted software-as-a-service permitting Client to access and use the Solution. The Solution is provided on a subscription basis for a specified term as described in the applicable Order Form and below and as such term may be renewed as provided below (each, a “Subscription Term”). Client acknowledges that to provide improved customer experience, correct Errors (defined below) and for other reasons VidaNyx may make changes to the Solution from time to time.

**1.2 Access to Solution.** Subject to the terms and conditions of the Agreement, commencing on the Effective Date, VidaNyx hereby grants to Client a non-exclusive, non-transferable right during the applicable Subscription Term to access and use, and authorize Permitted Users (defined below) to access and use, the Solution solely for Client’s internal use and pursuant to the restrictions set forth in the Agreement. The “Effective Date” is the date upon which VidaNyx receives the upfront fees payable by Client as provided in the initial Order Form, or if purchased online, the date of initial purchase.

**1.3 Permitted Users.** As part of the registration process, Client will identify an administrative user for Client’s Solution account. Client may authorize additional permitted end users via the Solution (each, with the administrative user, the “Permitted Users”) to access and use the Solution up to the maximum number, if any, designated in the Order Form. Permitted Users must be (a) employees of Client or of Client’s Affiliates, (b) independent contractors and consultants of Client or Client’s Affiliates who are not competitors of VidaNyx, or (c) law enforcement, social workers and other governmental personnel that

requires access to User Content (defined below), to support Client's use of the Solution, or (d) other individuals Client authorizes for the sole purpose of receiving peer-review feedback to improve a forensic interviewer's practice (including as may be required to fulfill third-party accreditation standards). Without limiting the foregoing, Client will be responsible for the acts and omissions of each Permitted User and will require that each Permitted User is obligated to comply with appropriate confidentiality obligations. Each user ID credential may be issued by Client only to a single named individual and may not be shared. Client will ensure that all Permitted Users keep their credentials confidential and comply with the terms of the Agreement. Client is responsible for the acts and omissions of its Permitted Users, including compliance by each Permitted Users with the terms and conditions of the Agreement and for the actions taken by Permitted Users or by anyone using Client's accounts and passwords in connection with their access and use of the Solution and User Content. "Affiliate" means each legal entity that is directly or indirectly controlled by Client on or after the Effective Date, for so long as such entity remains directly or indirectly controlled by Client (where "controlled" means the ownership of, or the power to vote, directly or indirectly, a majority of any class of voting securities of a corporation or limited liability company, or the ownership of any general partnership interest in any general or limited partnership).

**1.4 General Restrictions.** Client shall not and shall ensure that its Permitted Users do not: (a) rent, lease, copy, sell, provide access to or sublicense the Solution to a third party, (b) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code or APIs to the Solution software, except to the extent expressly permitted by applicable law (and then only upon advance notice to VidaNyx), (c) modify the Solution or the Solution software, or create any derivative product from any of the foregoing, (d) remove or obscure any product identification, proprietary, copyright or other notices contained in the Solution, (e) incorporate the Solution into any other offering (whether a software-as-a-service or otherwise), (f) use the Solution to develop a product which is competitive with the Solution or any other VidaNyx product or service offering or (g) publicly disseminate information or analysis regarding the performance of the Solution. Notwithstanding anything to the contrary in the Agreement, the Solution, including all processing of User Content (defined below) by or on behalf of Client shall be provided solely from within, and on computers, systems, networks and other infrastructure located in, the United States, and the Solution is only intended for use by Permitted Users, and for User Content with regard to individuals, residing within the United States.

**1.5 Transfer of Client Solution Account.** Subject to the terms of this section, Client may transfer its Solution account in its entirety, including the related User Content (defined below), and its rights under the Agreement to a third party, provided that (a) Client is then current on its Solution account fees payable to VidaNyx, (b) the third party transferee is not a competitor of VidaNyx and is capable of fully performing Client's obligations under the Agreement, (c) the third party transferee executes and delivers to VidaNyx an Order Form with the third party transferee's contact and billing information and agreeing to be bound by the terms and conditions of the Agreement and (d) the third party transferee's administrative user provides the user's email address and cellular telephone number to VidaNyx as provided in Section 1.3. Following any permitted transfer, the new third party will be deemed the "Client" for purposes of the Agreement, but the original Client will remain liable for any activities undertaken prior to the transfer.

## **2 – USER CONTENT**

**2.1 User Content.** "User Content" means any videos, photographs, data, information, materials or other content which Client or any of its Permitted Users inputs or uploads into the Solution and related data storage.

**2.2 Client Obligations.** Client shall ensure that the use of the Solution by Client and its Permitted Users and all User Content is at all times compliant with all applicable laws and regulations, including those related to data privacy, data security, international communications and the exportation of technical or

personal data. Client is solely responsible for the accuracy, content and legality of all User Content and for compliance with the User Content and other requirements set forth in the Terms of Use. Client represents and warrants to VidaNyx that Client has sufficient rights in the User Content to authorize VidaNyx to process, store and display the User Content for Client as contemplated by the Agreement, and that the User Content and its use hereunder will not violate or infringe the rights of any third party or cause VidaNyx to be in violation of any applicable law.

**2.3 Rights in User Content.** As between Client and VidaNyx, Client retains all right, title and interest in and to the User Content. Subject to the terms of the Agreement, Client hereby grants to VidaNyx a non-exclusive, worldwide, royalty-free right to use, copy, store, transmit, distribute, perform and display the User Content solely to the extent necessary to provide the Solution functionality to Client and its Permitted Users. The User Content will be encrypted by the Solution when uploaded unless otherwise indicated via the Solution (for example, when uploaded in a format different from the format supported by the Solution for encrypted processing). For encrypted User Content, neither VidaNyx nor its personnel will have access to or the ability to view that User Content in an unencrypted state or have access to the Client credentials necessary to unlock or remove the encryption, except as provided in Section 2.5.

**2.4 User Content Downloading and Removal.** Client has the right during the Subscription Term and for a period of sixty (60) days after the end of the Subscription Term to (a) download, copy, export and remove any and all User Content, related transcriptions, translations and metadata obtained or generated through the Solution and (b) delete any and all such User Content and metadata (other than the Permitted User profiles) stored in the Solution data storage ((a) and (b) collectively, the “User Download Rights”). Additionally, in the event VidaNyx ceases operation for any reason or seeks protection under any bankruptcy, receivership, trust deed, creditor’s arrangement, composition, or comparable proceeding, or if any such proceeding is instituted against VidaNyx, and Client is unable to exercise the User Download Rights itself, then VidaNyx shall use best efforts to help the Client exercise the User Download Rights.

**2.5 Usage Statistics; Aggregated Anonymous Data.** VidaNyx has the right to (a) monitor, collect, use and store usage statistics regarding Client’s and the Permitted Users’ access and use of the Solution and User Content and (b) use the Solution to generate translations and transcriptions of any audio content included in any User Content. VidaNyx may conduct analytical analysis of the User Content translations and transcriptions and such Solution usage statistics metadata; provided that VidaNyx and its personnel shall have no access to and shall not use any unencrypted personally identifiable information that may be included therein and provided further that the analysis results shall not include any personally identifiable information or be identifiable with respect to Client or the Permitted Users being the source of the underlying User Content (“Aggregated Anonymous Data”). VidaNyx may use Aggregated Anonymous Data (i) for its own internal, statistical analysis, (ii) to develop and improve the Solution, (iii) to create and distribute reports and other materials regarding use of the Solution and (iv) to provide trends and other analytical data and reports derived from usage of the Solution by Client and other VidaNyx clients and their respective uploaded data and content. For clarity, nothing in this Section 2.5 gives VidaNyx the right to publicly identify Client or the Permitted Users as the source of any Aggregated Anonymous Data without Client’s prior written consent.

**2.6 VidaNyx Restricted Access.** VidaNyx will not permit or enable its personnel to access, listen to or view User Content or personally identifiable information uploaded by Client or Permitted Users as User Content. VidaNyx’s access to such User Content will be limited to access through machine learning tools that do not permit VidaNyx or its personnel to copy, listen to or view such User Content.

**2.7 Service Provider Commitment.** VidaNyx will not: (a) collect, retain, use, disclose or otherwise process any personal information contained within User Content for any purpose other than as necessary for the specific purpose of performing Services on behalf of Client; (b) collect, retain, use or disclose such

personal information for a commercial purpose other than providing the Services on behalf of Client; or (c) sell such personal information. This Section shall not limit VidaNyx's rights with respect to Aggregated Anonymous Data.

### **3 – OWNERSHIP**

**3.1 VidaNyx IP.** The Agreement is a subscription agreement for use of the Solution as an online, hosted software-as-a-service and not an agreement for sale. Client acknowledges that it is obtaining only a limited right to use the Solution on a hosted basis and that no ownership rights are being conveyed to Client. Client agrees that VidaNyx or its suppliers retain all right, title and interest (including all patent, copyright, trade secret and other intellectual property rights) in and to the Solution, any other VidaNyx deliverables and any and all related and underlying software (including interfaces), databases (including data models, structures and any other non-Client specific data and statistical data), technology, reports and documentation, the Aggregated Anonymous Data, and all copies, modifications and derivative works of the foregoing (including any changes which incorporate any Feedback (defined below)). Further, Client acknowledges that Client has no right to obtain a copy of the Solution or underlying software code. Nothing in this Section 3.1 shall be deemed as granting VidaNyx ownership of User Content or in any way impacting Client's ownership of User Content.

**3.2 Feedback.** Client and its Permitted Users, from time to time, may submit comments, information, questions, data, ideas, descriptions of processes, or other information to VidaNyx (excluding User Content, the "Feedback"). VidaNyx may in connection with the Solution or any of its other products or services freely use, copy, disclose, license, distribute and exploit any Feedback in any manner without any obligation, royalty or restriction based on intellectual property rights or otherwise.

### **4 – SUBSCRIPTION TERM, FEES & PAYMENT**

**4.1 Fees and Payment.** The fees payable by Client for use of the Solution are set forth in the Order Form. Fees shall be paid by Client within thirty (30) days of Client's receipt of VidaNyx's invoice, unless otherwise specified in such Order Form. Except as expressly set forth in Section 6 (Limited Warranty) and Section 9.1 (VidaNyx Indemnification for Intellectual Property Infringement), all fees due under the Order Form are non-cancelable and the sums paid are non-refundable. Unless timely provided with a valid certificate of exemption or other evidence that items are not taxable, VidaNyx will invoice Client for applicable sales, use, service and other similar taxes. Client will make all payments free and clear of, and without reduction for, any withholding or other taxes; any such taxes imposed on payments by Client hereunder will be Client's sole responsibility. Any late payments may be subject to a service charge equal to 1% per month of the amount due or the maximum amount allowed by law, whichever is less.

**4.2 Assumptions; Additional Usage.** The fees set forth in the Order Form are based on the Solution usage assumptions and usage limits, such as storage volume, downloads of User Content and any retrieval from long-term storage, set forth therein. If Client uses the Solution in a manner not in substantial conformity to such assumptions or in excess of such usage limitations, VidaNyx may periodically invoice Client for additional fees associated with such different or additional usage.

**4.3 Disputed Fees.** If Client believes that VidaNyx has billed Client incorrectly, Client must contact VidaNyx no later than sixty (60) days after the closing date on the first billing statement in which the alleged error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to VidaNyx's customer support department.

**4.4 Suspension of Services.** If payment on Client's account is thirty (30) days or more overdue, in addition to any of its other rights or remedies, VidaNyx reserves the right to suspend Client's and the Permitted Users' access to the Solution without liability until such amounts are paid in full.

### **5 – TERM AND TERMINATION**

**5.1 Term.** Unless otherwise specified in the applicable Order Form, the term of Client's Solution subscription shall begin on the Effective Date and, subject to earlier termination as provided in this Section 5, expire twelve (12) months thereafter ("Initial Term"). After the end of the Initial Term, the term of the Solution subscription will automatically be renewed for successive one-year renewal terms (each, a "Renewal Term") unless Client or VidaNyx provides written notice to the other of its intent not to renew no later than thirty (30) days prior to the end of the current term. The Initial Term and any Renewal Term are collectively referred to as the "Subscription Term."

**5.2 Termination for Convenience.** Client may terminate the Subscription Term for its convenience by giving at least sixty (60) days' prior written notice to VidaNyx. Client's termination under this Section 5.2 shall not relieve Client of its obligation to pay fees through the scheduled remaining period of the Subscription Term being terminated or entitle Client to a refund of any prepaid fees.

**5.3 Termination for Cause.** Either party may terminate the Subscription Term by written notice to the other party if the other party (a) fails to cure any material breach of the Agreement (including a failure to pay fees when due) within thirty (30) days after written notice; (b) ceases operation without a successor; or (c) seeks protection under any bankruptcy, receivership, trust deed, creditors' arrangement, composition, or comparable proceeding, or if any such proceeding is instituted against that party (and not dismissed within sixty (60) days thereafter).

**5.4 Effect of Termination.** Upon the expiration or termination of the Subscription Term, Client shall immediately cease any and all use of and access to the Solution and delete any Solution passwords and access codes and Permitted User credentials and delete (or, at VidaNyx's request, return) any and all copies of any Confidential Information (defined below) of VidaNyx in Client's possession or control; provided, however, that Client's or its permitted transferee's administrative user shall have the right for a period of sixty (60) days after such expiration or termination to exercise the User Download Rights as provided in Section 2.4

**5.5 Survival.** The following sections of this T&C shall survive any expiration or termination of the Subscription Term: Sections 1.4 (General Restrictions), 2.5 (Aggregated Anonymous Data), 3 (Ownership), 4.1 (Fees and Payment), 5.4 (Effect of Termination), 5.5 (Survival), 6.2 (Warranty Disclaimer), 8 (Limitation of Remedies and Damages), 9.2 (Indemnification by Client), 10 (Confidential Information) and 12 (General Terms).

## **6 – LIMITED WARRANTY**

**6.1 Limited Warranty.** VidaNyx warrants, for Client's benefit only, that the Solution will operate in substantial conformity with any material specifications published by VidaNyx and made available in writing by VidaNyx to Client. VidaNyx does not warrant that Client's use of the Solution will be uninterrupted or error-free, nor does VidaNyx warrant that it will preserve or maintain the User Content without loss. VidaNyx's sole liability (and Client's sole and exclusive remedy) for any breach of this warranty shall be, in VidaNyx's sole discretion and at no charge to Client, to use commercially reasonable efforts to correct the reported non-conformity, or if VidaNyx determines such remedy to be impracticable, to allow Client to terminate the applicable Subscription Term and receive as its sole remedy a refund of: (a) the portion of the subscription fees specified in the applicable Order Form allocable to the thirty (30) day period prior to the date the warranty claim was made and (b) any fees Client has pre-paid for use of the Solution or related services it has not received as of the date of the warranty claim. The limited warranty set forth in this Section 6.1 shall not apply: (i) unless Client makes a claim within thirty (30) days of the date on which the condition giving rise to the claim first appeared or (ii) if the nonconformity was caused by misuse, unauthorized modifications or third-party hardware, software or services.

**6.2 Warranty Disclaimer.** EXCEPT FOR THE EXPRESS LIMITED WARRANTY IN SECTION 6.1, THE SOLUTION AND ANY OTHER SERVICES ARE PROVIDED "AS IS", CLIENT'S USE OF THE SOLUTION AND SUCH SERVICES SHALL BE AT ITS SOLE RISK AND, TO THE FULLEST

EXTENT PERMITTED BY LAW, NEITHER VIDANYX NOR ANY OF ITS SUPPLIERS MAKE ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT, IN CONNECTION WITH THE SOLUTION AND SUCH SERVICES AND CLIENT'S USE THEREOF. EXCEPT AS EXPRESSLY PROVIDED HEREIN, VIDANYX MAKES NO WARRANTIES OR REPRESENTATIONS ABOUT THE ACCURACY OR COMPLETENESS OF THE SOLUTION OR SUCH SERVICES AND ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY (I) ERRORS, MISTAKES, OR INACCURACIES, (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM CLIENT'S ACCESS TO AND USE OF THE SOLUTION AND SUCH SERVICES, (III) ANY UNAUTHORIZED ACCESS TO OR USE OF VIDANYX'S SECURE SERVERS OR ANY AND ALL USER CONTENT, PERSONAL INFORMATION OR FINANCIAL INFORMATION STORED THEREIN, (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SOLUTION OR SUCH SERVICES, OR (V) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE WHICH MAY BE TRANSMITTED TO OR THROUGH THE SOLUTION OR SUCH SERVICES BY ANY THIRD PARTY. VIDANYX DOES NOT GUARANTEE ANY RESULTS FROM USING THE SOLUTION OR SUCH SERVICES. VIDANYX DOES NOT WARRANT THAT THE SOLUTION OR SUCH SERVICES WILL BE UNINTERRUPTED OR ERROR FREE OR MEET CLIENT'S REQUIREMENTS; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SOLUTION OR SUCH SERVICES. VIDANYX SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES AND OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF VIDANYX. ALTHOUGH VIDANYX WILL TAKE REASONABLE TECHNICAL AND ORGANIZATIONAL MEASURES DESIGNED TO KEEP THE USER CONTENT STORED THROUGH THE SOLUTION SECURE AND PROTECT IT AGAINST UNAUTHORIZED ACCESS, ALTERATION, DESTRUCTION, DISCLOSURE OR LOSS, DUE TO PROBLEMS INHERENT IN CLOUD-BASED ACCESS AND STORAGE OR OTHER CAUSES, VIDANYX SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF ANY UNAUTHORIZED ACCESS, ALTERATION, DESTRUCTION, DISCLOSURE OR LOSS OF USER CONTENT.

#### **7 – SUPPORT AND MAINTENANCE.**

During the Subscription Term, VidaNyx will make technical support available to Client by email at support@vidanyx.com or through the support link within the Solution during the following business hours: Monday to Friday, 9am – 6pm Central Time, excluding national holidays. VidaNyx's support personnel will provide Client with remote assistance for help in using and operating the Solution and will accept reports of any bugs, defects, errors, or vulnerabilities in the Solution (collectively, "Errors"). VidaNyx's support personnel will reasonably endeavor to repair or replace, without any additional charge, any Errors that materially limit the operability and use of the Solution.

#### **8 – LIMITATION OF REMEDIES AND DAMAGES**

##### **8.1 Limitations.** SUBJECT TO SECTION 8.3 (EXCEPTIONS TO LIMITATIONS):

(a) NEITHER VIDANYX NOR CLIENT WILL HAVE ANY LIABILITY TO THE OTHER PARTY ARISING OUT OF OR RELATING TO THE AGREEMENT OR THE SOLUTION FOR: (1) THE OTHER PARTY'S LOST REVENUES OR PROFITS; (2) FOR ERRORS OR INTERRUPTION OF USE OF THE SOLUTION OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA, INCLUDING USER CONTENT, OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY; (3) INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL

LOSSES (WHETHER OR NOT FORESEEABLE OR CONTEMPLATED BY THE PARTIES AT THE EFFECTIVE DATE); OR (4) EXEMPLARY OR PUNITIVE DAMAGES; EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF ANY OF THE FOREGOING TYPES OF LOSSES OR DAMAGES;

(b) VIDANYX'S AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THE AGREEMENT OR THE SOLUTION WILL NOT EXCEED THE GREATER OF (1) THE AMOUNT CLIENT PAID TO VIDANYX UNDER THE AGREEMENT FOR THE 12 MONTHS PRECEDING THE SUBJECT CLAIM OR (2) THE AMOUNT PAYABLE BY CLIENT TO VIDANYX DURING THE INITIAL SUBSCRIPTION TERM; AND

(c) For purposes of this Section 8, "LIABILITY" means any liability, whether arising under contract, tort or otherwise.

**8.2 Exceptions to Limitations.** NOTHING IN THE AGREEMENT EXCLUDES OR LIMITS EITHER PARTY'S LIABILITY FOR: (A) DEATH OR BODILY INJURY RESULTING FROM ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OR THAT OF ITS PERSONNEL; (B) FRAUD OR FRAUDULENT MISREPRESENTATION; (C) BREACH OF SECTION 10 (CONFIDENTIAL INFORMATION); (D) OBLIGATIONS UNDER SECTION 4.1 (FEES AND PAYMENT) AND SECTION 9 (INDEMNIFICATION); OR (E) MATTERS FOR WHICH LIABILITY CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

**8.3 Failure of Essential Purpose.** The parties agree that the limitations specified in this Section 8 will survive and apply even if any limited remedy specified in the Agreement is found to have failed of its essential purpose.

## **9 – INDEMNIFICATION**

**9.1 VidaNyx Indemnification for Intellectual Property Infringement.** Subject to Section 9.3 (Procedures) and the remainder of this Section 9.1, VidaNyx shall (a) defend Client from and against any claim by a third party alleging that the Solution, when used as authorized under the Agreement, directly infringes such third party's U.S. patent, U.S. copyright, or U.S. trademark and (b) in relation to such claim, indemnify and hold harmless Client from any damages and costs finally awarded to such third party or agreed to in settlement by VidaNyx (including reasonable attorneys' fees). If Client's use of the Solution is, or in VidaNyx's opinion is likely to be, enjoined due to the type of infringement specified above, if required by settlement, or if VidaNyx determines such actions are reasonably necessary to avoid material liability, VidaNyx may, in its sole discretion: (i) substitute a substantially functionally similar solution; (ii) procure for Client the right to continue using the Solution; or (iii) if (i) and (ii) are not commercially reasonable, terminate the Agreement and refund to Client the fees paid by Client for the portion of the Subscription Term paid by Client but not rendered by VidaNyx. The foregoing indemnification obligation of VidaNyx shall not apply: (1) if the Solution is modified by any party other than VidaNyx to the extent the alleged infringement is caused by such modification; (2) the Solution is combined with other non-VidaNyx solution, services or processes not authorized by VidaNyx to the extent the alleged infringement is caused by such combination; (3) to any unauthorized use of the Solution; (4) to any action arising as a result of User Content; or (5) if Client settles or makes any admissions with respect to a claim without VidaNyx's prior written consent. THIS SECTION 9.1 SETS FORTH VIDANYX'S SOLE LIABILITY AND CLIENT'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.

**9.2 Indemnification by Client.** Subject to Section 9.3 (Procedures), Client shall defend, indemnify and hold harmless VidaNyx and its employees, agents, successors and assigns from and against any and all losses, damages, liabilities, costs and expenses arising from any claim based on or arising from: (a) the User Content, including any claim based on Client's breach or alleged breach of Section 2.2 (Client Obligations) or the Terms of Use or alleging that the User Content infringes upon any third party's patent,



copyright, trademark, trade secret, or other proprietary right of, or otherwise harms a third party; or (b) Client's or a Permitted User's use of the Solution in violation of the Agreement.

**9.3 Procedures.** Each party seeking indemnification shall provide the indemnifying Party: (a) prompt written notice of the claim (but in any event notice in sufficient time for the indemnifying party to respond without prejudice); (b) the exclusive right to control and direct the investigation, defense and settlement (if applicable) of such claim; and (c) all reasonable necessary cooperation requested by the indemnifying party.

#### **10 – CONFIDENTIAL INFORMATION.**

Client and VidaNyx (as "Recipient") agree that all code, inventions, know-how, business, technical and financial information it obtains or learns from the disclosing other party ("Discloser") constitute the confidential property of Discloser ("Confidential Information"), provided that it is identified as confidential at the time of disclosure or should be reasonably known by Recipient to be Confidential Information due to the nature of the information disclosed and the circumstances surrounding the disclosure. Performance information relating to the Solution and the terms and conditions of the Agreement shall be deemed Confidential Information of VidaNyx without any marking or further designation. User Content shall be deemed Client's Confidential Information without any marking or further designation. Except as expressly authorized herein, Recipient will hold in confidence and not use or disclose any Confidential Information that Recipient receives or otherwise learns. Recipient's nondisclosure obligation shall not apply to information which: (i) was rightfully in Recipient's possession or known to it prior to receipt of the Confidential Information; (ii) is or has become public knowledge through no fault of Recipient; (iii) is rightfully obtained by Recipient from a third party without breach of any confidentiality obligation; or (iv) is independently developed by employees of Recipient who had no access to such information. Recipient may also disclose Confidential Information if so required pursuant to a regulation, law or court order, but only to the minimum extent required to comply with such regulation or order and with advance notice to Discloser (unless such notice is prohibited by such regulation, law or order). Recipient acknowledges that disclosure of Confidential Information could cause substantial harm to Discloser for which damages alone would not be a sufficient remedy, and therefore upon any such disclosure by Recipient, Discloser shall be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.

#### **11 – GENERAL TERMS**

**11.1 Assignment.** The Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Neither party may assign the Agreement except upon the advance written consent of the other party, except that (a) Client may assign the Agreement to a permitted third party transferee as provided in Section 1.5 (Transfer of Client Solution Account) and (b) VidaNyx may assign the Agreement to any Affiliate or in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of its assets or voting securities. Any attempt to transfer or assign the Agreement except as expressly authorized under this Section 11.1 or Section 1.5 (Transfer of Client Solution Account) will be null and void.

**11.2 Severability.** If any provision of the Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, then such provision will be interpreted, construed or reformed to the extent reasonably required to render the same valid, enforceable and consistent with the original intent underlying such provision.

**11.3 Governing Law; Jurisdiction and Venue.** Excluding conflict of laws rules, the Agreement shall be governed by and construed under the laws of the State of Delaware, U.S.A. All disputes arising out of or in relation to the Agreement or the Solution shall be submitted to the exclusive jurisdiction of the federal and state courts located in Kent County, Delaware. Nothing in this section shall restrict VidaNyx's right to bring an action (including for example a motion for injunctive relief) against Client in the jurisdiction

where Client's place of business is located. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act, as currently enacted by any jurisdiction or as may be codified or amended from time to time by any jurisdiction, do not apply to the Agreement.

**11.4 Attorneys' Fees and Costs.** The prevailing party in any action to enforce the Agreement will be entitled to recover its attorneys' fees and costs in connection with such action.

**11.5 VidaNyx's Client List.** Client agrees that VidaNyx may disclose Client as a Solution customer of VidaNyx and use Client's name and logo on VidaNyx's website and in VidaNyx's promotional materials.

**11.6 Notice.** Any notice or communication required or permitted under the Agreement shall be in writing to the parties at the addresses set forth on the Order Form or at such other address as may be given in writing by either party to the other in accordance with this Section and shall be deemed to have been received by the addressee: (a) if served personally, at the time of service if such service is made during normal business hours (and, if not, on the next business day); (b) if delivered by email or fax, on the first business day following successful transmission and confirmation of receipt, provided that the subject line of any such notice clearly states that it is being delivered as an official notice under this section; (c) if delivered by United States certified mail with postage prepaid and return receipt requested, on certified receipt; (d) if delivered by a recognized overnight courier with delivery charges prepaid and delivery receipt requested, upon receipt or (e) if provided by another method of delivery or notice specified in the Agreement.

**11.7 Amendments; Waivers.** No amendment to the Order Form shall be binding, unless executed in writing by a duly authorized representative of Client and VidaNyx. No waiver will be implied from conduct or failure to enforce or exercise rights under the Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived. No provision of any purchase order or other business form employed by Client, including any electronic invoicing portals and vendor registration processes, will supersede the terms and conditions of the Agreement, and any such document relating to the Agreement shall be for administrative purposes only and shall have no legal effect.

**11.8 Entire Agreement.** The Agreement and any other mutually agreed exhibits or attachments) is the complete and exclusive statement of the mutual understanding of Client and VidaNyx, and supersedes and cancels all previous written and oral agreements and communications, relating to the subject matter of the Agreement.

**11.9 Force Majeure.** Neither party shall be liable to the other for any delay or failure to perform any obligation under the Agreement (except for a failure to pay fees) if the delay or failure is due to events which occur after the signing of the Order Form and which are beyond the reasonable control of such party, such as a strike, blockade, war, act of terrorism, riot, natural disaster, epidemic, act of government, failure or diminishment of power or telecommunications or data networks or services, or refusal of a license by a government agency.

**11.10 Subcontractors.** VidaNyx may use the services of subcontractors for performance of services under the Agreement, provided that VidaNyx remains responsible for compliance of any such subcontractor with the terms of the Agreement.

**11.11 Third Party Beneficiaries.** No Permitted User or third party is intended to be a third party beneficiary of the Agreement.

**11.12 Independent Contractors.** Client and VidaNyx are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.

**11.13 Government End-Users.** The Solution is based upon commercial computer software. If the Client or Permitted User is an agency, department or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure or transfer of the Solution or any underlying software, or any related documentation of any kind, including technical data and manuals, is restricted by a license agreement or by the Agreement in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. The Solution was developed fully at private expense. All other use is prohibited.

**11.14 Export Control.** In its use of the Solution, Client and the Permitted Users shall comply with all export and import laws and regulations of the United States and other applicable jurisdictions. Without limiting the foregoing, (i) Client represents and warrants that it is not listed on any U.S. government list of prohibited or restricted parties or located in (or a national of) a country that is subject to a U.S. government embargo or that has been designated by the U.S. government as a “terrorist supporting” country and (ii) Client shall not (and shall not permit any of its Permitted Users or others to) access or use the Solution in violation of any U.S. export embargo, prohibition or restriction.

Attachment D: Participating County Agreement

The undersigned, \_\_\_\_\_ County of the State of Utah (“Participating County”), hereby agrees to participate in and be bound by the Master Contract Between Guardify, Inc. (F/K/A VidaNyx Inc.) and the Utah Children's Justice Center of The Utah Attorney General’s Office, including all Subordinate Agreements thereto, and modifications thereof (the “Agreement”). Capitalized terms used in this Participating County Agreement not otherwise defined herein shall have the meaning provided to them in the Master Contract.

The Participating County understands that while the Program may receive grants or have other funds which it makes available to help defray all or a portion of the Participating County’s costs associated with the Solution, including those costs identified in the Guardify Subscription Form; and the current version of Attachment C, the Participating County remains ultimately responsible for all amount owed to Guardify.

The Participating County understands and acknowledges that there are risks associated with participating in this Agreement and in using the Solution, which may include loss of data such as witness interviews, data breaches, and other disclosures of highly sensitive information. The Participating County’s remedies against Contractor are limited to this Agreement, and the Participating County hereby waives any claim against The UAGO and the Program except for a claim based upon intentional wrongful acts or gross negligence by the UAGO or the Program. This specifically includes a waiver of any claim against the UAGO or the Program based upon a failure to warn of any costs or risks associated with this Agreement or the use of the Solution, or of any change in the availability or allocation of funding to help defray the Participating County’s financial responsibilities under this Agreement.

The Participating County understands and acknowledges that it may negotiate with Guardify for Custom Deliverables or other Goods or Services, and that the UAGO and the Program are not parties to, or responsible for payment under, any such agreement.

The Participating County hereby agrees to provide all notices it is required or permitted to make under the Agreement in a timely manner, and when the Participating County provides any notice to Guardify it will also provide that notice to the Program. The Participating County will also inform the Program by no later than May 31<sup>st</sup> of each year if it does not want to participate in the Agreement for the following one-year term.

Each party has caused this Participating County Agreement to be signed and delivered by its duly authorized representative indicated below.

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_