

LEGAL SERVICES CONTRACT

THIS LEGAL SERVICES CONTRACT (“Contract”) is made effective as of January 7, 2019 by and between the Attorney General of the State of Utah (“OAG”), 230 State Capitol, Salt Lake City, Utah 84114 and the law firm(s) of Motley Rice, LLC; Fears Nachawati; Ferrer, Poirot & Wansbrough; and Prince, Yeates & Geldzahler (“Lawyers”).

RECITALS

WHEREAS, the OAG is authorized to enforce certain laws directly, and other laws on behalf of agencies of the State of Utah; and

WHEREAS, the OAG is authorized by Utah Code section 67-5-5 to hire outside counsel on behalf of agencies of the State of Utah; and

WHEREAS, the OAG has cause to believe that pharmaceutical manufacturers, distributors, and others, may have engaged in behavior associated with the manufacturing, marketing, distribution, and sales of prescription opioids which may violate various laws; and

WHEREAS, the OAG’s designated Procurement Officer has made a separate written determination pursuant to Utah Code section 63G-6a-702 that the request for proposal procurement process will provide the best value for the OAG and the State of Utah; and

WHEREAS, the OAG’s designated Procurement Officer has made a separate written determination pursuant to Utah Code section 67-5-22(3) setting forth specific findings that use of a contingent fee contract is cost-effective and in the public interest; and

WHEREAS, the OAG conducted a competitive request for proposal procurement process and issued a Request for Proposals bearing Solicitation # BP18025 (“RFP”) pursuant to Title 63G, Chapter 6a, Part 7 of the Utah Procurement Code, resulting in the selection of the Lawyers; and

WHEREAS, it is in the best interests of the State of Utah to hire the Lawyers on the terms set forth herein to provide professional services, including evaluating and potentially pursuing litigation with respect to the manufacturing, marketing, distribution, and sales of prescription opioids (“Opioid Cases”); and

WHEREAS, the Lawyers desire to furnish said professional services on the terms set forth herein and employ attorneys who are duly authorized to practice law and who are capable of rendering such services,

NOW THEREFORE, in consideration of the foregoing and the promises set forth herein, the Parties agree as follows:

1. General Terms and Contract Integration

- 1.1. The full Contract between the OAG and the Lawyers consists of all of the following materials, which shall be given precedence in the following order in the event of a conflict:
- A. The Utah Code (statutes), including but not limited to §67-5-5 Hiring of Legal Counsel for Agencies – Costs, §67-5-17 Attorney-client Relationship, and §67-5-33 Contingent fee contracts;
 - B. The Utah Administrative Code (administrative rules), including but not limited to R105-1 Attorney General’s Selection of Outside Counsel, Expert Witnesses and Other Litigation Support Services;
 - C. Change Orders and Memoranda of Understanding, but only with respect to their explicit terms and scope;
 - D. This Contract document;
 - E. *Attachment 1: State of Utah Standard Terms and Conditions for Services;*
 - F. *Attachment 2: Designation of Litigation Team Members and State Contacts;*
 - G. The RFP; and
 - H. The Lawyers’ Proposal in response to the RFP, including any Reference Materials or other documents submitted as part of the RFP process.
- 1.2. The Contract shall be treated as an integrated contract. This Contract, together with its Attachments, constitutes the entire agreement between the Parties, and supersedes all prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter hereof. This Contract may not be amended except by a Change Order; it may only be terminated pursuant to the provisions of Section 11, below.
- 1.3. Terms that are defined in the RFP shall have the same meaning as in the RFP.
- 1.4. Additional defined terms are:
- A. “Change Order” means any mutually agreed upon amendment or alteration to the terms of this Contract after it is executed that materially alters the rights or responsibilities of any party which is reduced to writing (including emails) and approved by the Lead Counsel on behalf of the Lawyers and the Government Attorney on behalf of the OAG. Any changes in the formula for compensation to the Lawyers shall be made using Change Orders. A Memorandum of Understanding is not a Change Order.
 - B. “Client Agencies” means any specific State Agencies that may have exclusive enforcement authority for any potential Opioid Cases causes of action, or that may have a claim for damages or compensation as a result of the unlawful behavior alleged in any Opioid Case. “Client Agencies” specifically includes the Utah Department of Commerce and its constituent Divisions, unless an affirmative decision is made that no causes of action within the exclusive jurisdiction of Department of Commerce or its constituent Divisions will be pursued in any Opioid Case. Other state agencies and state

governmental entities shall be deemed to be Client Agencies only if they are so designated in a Memorandum of Understanding or a Change Order.

C. “Cost Allocation Formula” means a formula agreed upon by the Parties and memorialized with a Memorandum of Understanding, which applies to the allocation of certain costs, expenses, and legal fees between the Opioid Cases and any Other Clients’ Cases, if the Lawyers represent other clients with respect to claims related to alleged Unlawful Conduct.

D. “Government Attorney” means the individual so identified on *Attachment 2: Designation of Litigation Team Members and State Contacts*, who shall have primary responsibility for overseeing the Lawyers and interacting with the Lawyers’ Lead Counsel and the Litigation Team.

E. “Memorandum of Understanding” means a document reduced to writing (including emails) and approved by the Lead Counsel on behalf of the Lawyers and by the Government Attorney on behalf of the OAG that provides additional detail as to how any party will meet its obligations under this Contract, or that has as its purpose improving communication and streamlining procedures between the Lawyers, the OAG, and any Client Agencies.

F. “Multistate Settlement” means any settlement that the State of Utah joins which is negotiated by a Multistate Working Group with any manufacturer, marketer, distributor, wholesaler, or retailer of Opioids with respect to any alleged Unlawful Conduct.

G. “Multistate Working Group” means any association under a common interest agreement or similar protocol of state attorneys general or other law enforcers from two or more states for the purpose of investigating and potentially settling any alleged Unlawful Conduct.

H. “Other Clients’ Cases” means investigations or litigation in which the Lawyers represent any other clients (governmental or private) with respect to any alleged Unlawful Conduct.

I. “Other Opioid Cases” means investigations or litigation by other states, local entities, or private parties, related to alleged Unlawful Conduct, where none of the Lawyers are counsel in those other cases.

J. The “Parties” means the OAG, for itself and on behalf of any Client Agencies on the one hand, and the Lawyers on the other hand. Approval by the Parties means written approval (including email) by the Lead Counsel on behalf of the Lawyers and by the Government Attorney on behalf of the OAG.

K. “Unlawful Conduct” means any violations of law related to the manufacture, marketing, distribution, and sale of Opioids. Unlawful Conduct includes violations of statutes and common law causes of action, including but not limited to tortious acts.

L. “USAO Matrix” means the United States Attorney’s Fees Matrix, as revised from time to time by the United States Department of Justice. The current USAO Matrix can

be found at <https://www.justice.gov/usao-dc/file/796471/download>

M. The “Utah Team” means the Government Attorney, any OAG attorneys designated by the Government Attorney, designated officials from the Office of the Governor, and designated officials from each Client Agency, as identified on *Attachment 2: Designation of Litigation Team Members and State Contacts*.

2. Client Relationships and Control of the Opioid Cases

2.1. The Lawyers’ clients shall be:

- A. The OAG with respect to potential Opioid Cases causes of action within the scope of the OAG’s enforcement authority;
- B. Any Client Agencies to the extent that they have exclusive enforcement authority for any potential Opioid Cases causes of action; and
- C. Any Client Agencies to the extent that the Lawyers are pursuing claims for damages or other relief on behalf of those Client Agencies pursuant to a Change Order authorized by the Government Attorney.

2.2. All Client Agencies are also clients of the OAG, and are represented by OAG attorneys. Client Agencies as of the effective date of this Contract, and the OAG attorneys assigned to represent them, are set forth in *Attachment 2: Designation of Litigation Team Members and State Contacts*.

2.3. To the extent that the Lawyers act as counsel for any Client Agency, pursuant to Utah Code section 67-5-5, “the attorney general alone shall have the sole right to hire legal counsel for each such agency.” Client Agencies are not Parties to this Contract, but are intended third party beneficiaries of this Contract. Lawyers owe the same duties of care and professionalism to all Client Agencies that they would owe to those agencies if they were to contract directly with them.

2.4. The Lawyers acknowledge that pursuant to Utah Code section 67-5-33(6):

- A. The Government Attorney retains complete control over the course and conduct of the Opioid Cases, subject to any obligation that the OAG may have to consult with and obtain approval from the Governor or any State Agency pursuant to Utah Code section 67-5-17.
- B. The Government Attorney shall oversee all Opioid Case litigation under this Contract, and the Government Attorney may designate any OAG Attorney to be listed as counsel of record in any Opioid Case.
- C. The Government Attorney retains final authority over any pleading or other document that the Lawyers submit to any court in any Opioid Case under this Contract.
- D. Any opposing party in any Opioid Case may contact the Government Attorney directly, without having to confer with the Lawyers.

E. The Government Attorney may designate any OAG attorney to attend any settlement conference in any Opioid Case.

F. Final approval to settle any Opioid Case is reserved exclusively to the discretion of the Attorney General and must be approved in writing by the Government Attorney, subject to any obligation that the OAG may have to consult with and obtain approval from the Governor or any State Agency pursuant to Utah Code section 67-5-17.

G. Nothing in the foregoing shall be construed as limiting the authority of any Client Agency, as set forth in Utah Code section 67-5-17 or any other statute, regarding the right to control or be informed of the course, conduct, or settlement of any Opioid Case.

3. Employment of the Lawyers – Scope of Work.

3.1. The OAG hereby retains the Lawyers to help evaluate and potentially litigate the Opioid Cases.

3.2. The Lawyers designate Joe Rice as the Lead Counsel, who will oversee the work of the Litigation Team consisting of other attorneys, paralegals and support staff employed by the Lawyers. The Litigation Team consists of those people identified in *Attachment 2: Designation of Litigation Team Members and State Contacts*

3.3. The Lawyers agree to work in close consultation with the Utah Team. The Lawyers agree to copy the Government Attorney and other members of the Utah Team on all pleadings, motions, correspondence, and other documents, and to submit for review all documents drafted by the Lawyers' Litigation Team in advance of filing, transmittal, or execution. The details as to who on the Utah Team should receive, review, and authorize specific types of documents may be the subject of a Memorandum of Understanding between the OAG and the Lawyers.

3.4. The Lawyers agree to perform all of their duties to represent the OAG and the Client Agencies, which may include, without limitation: Regular consultation; preparing and serving subpoenas, interrogatories, information requests and other discovery; conducting interviews and depositions; reviewing documents; preparing court papers, motions, memoranda, briefs and other documents; legal research; developing legal theories, investigation, and litigation plans; mediation and negotiation; identification and selection of expert witnesses and other consultants; appearing at all court proceedings; preparing for and conducting trials; and performing post-trial and appellate work as determined by the OAG.

3.5. Upon request, the Lawyers agree to meet with and submit interim reports to the Utah Team regarding the nature, progress, and extent of legal services, as well as any forecast that may be reasonably made regarding the extent and nature of work yet to be undertaken.

3.6. The Lawyers accept the foregoing employment and agree to discharge the duties involved in such employment under the terms and conditions of this Contract and in accordance with applicable law and the rules of professional responsibility.

3.7. Changes to *Attachment 2: Designation of Litigation Team Members and State Contacts*

may be requested by the Lawyers with respect to their Litigation Team, and by the OAG with respect to the Utah Team, at any time. Changes to the Utah Team are discretionary with the OAG and do not require approval by the Lawyers. Changes to the Litigation Team must be approved in writing by the OAG before they become effective. With the exception of requests to change Lead Counsel or a Senior Attorney, such approval will not be withheld by the OAG without a specific and reasonable basis, provided that any requirements of any court with respect to the withdrawal or substitution of counsel are met. Any substitute Lead Counsel or Senior Attorney must be an individual who meets the appropriate criteria in section 2.1 of the RFP at the time of the substitution. The OAG, in consultation with any Client Agencies, may refuse to allow substitution of Lead Counsel or Senior Attorneys without the need to state any specific cause. Any changes to the scope of services under this Contract shall be in the form of a written Change Order, mutually agreed to and signed by duly authorized representatives of both Parties, clearly specifying any such changes, any adjustments in time of performance, or other significant factors that may arise in scope of services.

4. Legal Relationship.

4.1. This Contract is for the performance of services and not the sale of goods. It is to be construed according the laws of the State of Utah. The Lawyers' relationship to the State of Utah is that of an independent contractor. No partner, associate, or employee of the Lawyers shall, by reason of this Contract, become an employee of the State of Utah

4.2. The Lawyers shall have no authorization, express or implied, to bind the State of Utah, its Governor, any state agency, or the OAG to any agreement, settlement, liability or understanding whatsoever, nor to perform any acts as agent for the same, except as specifically set out in this Contract.

5. Compensation – Costs and Expenses – Hourly Fee

5.1. The Lawyers are eligible for compensation with respect to authorized costs and expenses as set forth in this Section, in addition to receiving a Contingent Fee. Such costs and expenses shall be reimbursed by the OAG at no more than 100% of the amount actually incurred by the Offeror (i.e. with no “administrative overhead” or other surcharge).

5.2. Authorized costs and expense, including for travel, must be agreed upon in a Memorandum of Understanding between the Parties, and to the extent feasible such a memorandum shall be executed before the expenses are incurred. Such a Memorandum of Understanding may detail the process by which certain services are procured, may include limitations on the cost of such services, and may exempt some specific litigation costs and expenses from the need for preapproval.

5.3. Reimbursements for travel expenses shall not exceed those established for employees of the State of Utah, as governed by the laws and rules of the State of Utah, including Utah Admin. Code R25-7-1, *et seq.*

5.4. If preapproved in a Memorandum of Understanding, the additional cost to the Lawyers of leasing or using discovery document review software for the needs of the Opioid Cases will be a reimbursable expense (e.g. document review software platforms that charge based upon the amount of data uploaded).

5.5. Unless otherwise specified with respect to specific experts in a Memorandum of Understanding, all consulting and trial experts shall be retained directly by the OAG (in consultation with the UDC, where UDC claims are affected). The OAG shall give appropriate consideration to the recommendations of the Lawyers with respect to retaining specific experts. The process for obtaining experts may be set forth in a Memorandum of Understanding.

5.6. The Lawyers are not eligible for compensation for hourly fees for any person unless a Change Order specifically authorizes such fees for designated services. Hourly fees that are permitted by a Change Order shall be calculated at no more than the lesser of (A) the hourly rate typically charged by the provider of the services or (B) the applicable USAO Matrix rate in effect at the time that services are rendered. In-house experts who have doctorate level degrees that are relevant to the expert work they perform under the Contract shall compare their typical billing rates to the appropriate (based upon years of professional experience in their field) USAO Matrix lawyer pay scale; other in-house experts and specialists (e.g. IT personnel) shall compare their typical billing rates to the USAO Matrix paralegal / law clerk pay scale.

6. Compensation – Contingent Fee

6.1. The Opioid Cases may be resolved in multiple settlements or trials, which may involve different defendants and Opioids. Each such settlement or trial of an Opioid Case shall be deemed a “Successful Resolution” of a part of the Legal Services once the settlement or trial becomes final. A settlement shall be considered final once it has been fully executed and approved by a court (if necessary), and when all appeals have been exhausted or the time for all appeals has lapsed. A trial shall be considered final once a judgment has issued (including a dismissal with prejudice) and all appeals have been exhausted or the time for all appeals has lapsed.

6.2. The Lawyers shall be entitled to a contingent fee in an amount equal to 80% of the following amounts, based upon the aggregate total dollar value of all Successful Resolutions (the “Contingent Fee”):

- A. 25% of the amount recovered, if the amount recovered is no more than \$10,000,000;
- B. 25% of the first \$10,000,000 recovered, plus 20% of the amount recovered that exceeds \$10,000,000, if the amount recovered is over \$10,000,000 but no more than \$15,000,000;
- C. 25% of the first \$10,000,000 recovered, plus 20% of the next \$5,000,000 recovered, plus 15% of the amount recovered that exceeds \$15,000,000, if the amount recovered is over \$15,000,000 but no more than \$20,000,000; and

D. 25% of the first \$10,000,000 recovered, plus 20% of the next \$5,000,000 recovered, plus 15% of the next \$5,000,000 recovered, plus 10% of the amount recovered that exceeds \$20,000,000, if the amount recovered is over \$20,000,000; or

E. \$50,000,000

6.3. The foregoing Contingent Fee shall be calculated based upon any money that is paid to the State of Utah (including Client Agencies), the Attorney General's Office, or the Lawyers in the Opioid Cases for restitution, disgorgement, or actual damages, but excluding any multiples of damages in excess of 100% of actual damages, any fines, or any civil penalties. See, Utah Code § 67-5-33(5)(c). It shall not include any money awarded to persons or entities other than the State of Utah (including any Client Agencies), the Attorney General's Office, or the Lawyers, for example, damages awarded to purchasers under a *parens patriae* theory or pursuant to a class action initiated by private class counsel. It also shall not include any money awarded to any state agency or political subdivision that has not been defined as a Client Agency.

6.4. In the event of an award of attorneys' fees, the amount of the award that is based upon legal work done by the Lawyers shall be aggregated with the foregoing, and the Contingent Fee shall be owed on the basis of the full amount. This may result in a Contingent Fee that is greater or lesser than the amount of attorneys' fees awarded. At the discretion of the Government Attorney, the Lawyers may be required to use USAO Matrix rates as shown on Exhibit "2," or other standardized rates for any billable hours submitted for purposes of any attorneys' fee award. The amount of any attorneys' fee award that is based upon legal work done by the OAG, or by outside counsel hired directly by the OAG to perform specific tasks. (e.g. enforce an out-of-state subpoena), shall be owed to the OAG and shall not be aggregated into the Contingent Fee calculation.

6.5. Various laws and legal theories allow for the recovery of certain costs and expenses, and unless prohibited by law, an application for recovery of costs and expenses will be made in each of the Opioid Cases that goes to trial. Costs and expenses may also be sought as part of any settlement, at the discretion of the Government Attorney. To the extent that a court makes an award of costs or expenses, or a settlement provides for payment of costs or expenses, based upon any expenditures incurred or reimbursed by the Attorney General's Office, that award shall be remitted to the Attorney General's Office. In no case shall recovered costs or expenses be aggregated into the Contingent Fee calculation.

6.6. The Lawyers shall be responsible for collecting all amounts from any defendants that may be due to the State, the OAG, any Client Agencies, and the Lawyers. The Lawyers shall deposit all monies collected in an appropriate client trust account, shall provide periodic accountings to the Government Attorney, and shall disburse the money solely at the written direction of the Government Attorney. The Lawyers shall only have recourse against the liable defendants in the Opioid Cases (and any insurers or indemnifiers of those defendants), and not against the State, the OAG, or any Client Agency for any uncollected amounts.

6.7. In the event that this Contract is terminated by the Attorney General pursuant to Section 11.2, or by the Lawyers pursuant to Section 11.3, whether for cause or without cause, the

Lawyers shall be entitled to the following:

- A. A full Contingent Fee based upon all money collected for Successful Resolutions achieved before the effective date of the termination of this Contract (regardless of when the money is actually received); plus
- B. A proportionate Contingent Fee for all money collected for any Successful Resolutions achieved in any Opioid Cases after the effective date of the termination of this Contract, calculated as the following percentage of the Contingent Fee that would apply if the case had been resolved under the Contract, based upon the current Phase of the Opioid Case at the time that Legal Services ceased:
 - i. Phase 1: Case Evaluation: 0%;
 - ii. Phase 2: Preparing and Defending the Complaint: 10%;¹
 - iii. Phase 3: Fact Discovery: 25%;
 - iv. Phase 4: Expert Discovery and Dispositive Motions: 50%;
 - v. Phase 5: Pre-trial: 60%;
 - vi. Phase 6: Trial: 85%
 - vii. Phase 7: Post-Trial: 100%

7. Other Opioid Unlawful Conduct Litigation

7.1. The OAG and UDC may participate in one or more Multistate Working Groups at the same time that the Lawyers are providing Legal Services. If the OAG desires to have the Lawyers provide Legal Services to or as part of a Multistate Working Group, the Parties shall execute a Change Order to that effect. The Change Order may permit a Contingent Fee with respect to the specifically defined Multistate Working Group related Legal Services, or may provide for payment of hourly rates, calculated in accordance with 8.2 below, or may provide for other forms of compensation (e.g. flat rate). Examples of Multistate Working Group related Legal Services that could be authorized by a Change Order include routinely participating in regular Multistate Working Group conference calls, or participating in a mediation organized by a Multistate Working Group, at the request of the OAG. However, to the extent that the Lawyers do any such work without a Change Order, the Lawyers shall be entitled to no additional compensation for such work regardless of the benefit that it has to the State, the OAG, or any Client Agency.

7.2. Work the Lawyers do as part of an Opioid Case in coordination with a Multistate Working Group, a Multistate Settlement, or Other Opioid Cases, and which is of the type counsel would typically do to further their clients' lawsuits when those lawsuits are part of a multi-

¹ With respect to the lawsuit titled *State of Utah v. Purdue Pharma*, attached as Exhibit "E" to the RFP, the Complaint was drafted and filed by the OAG prior to the issuance of the RFP. Lawyers will not be entitled to any compensation for a Successful Resolution in that Opioid Case unless Lawyers have either (A) filed a memorandum with respect to a dispositive motion under Utah Rules of Civil Procedure 12(b) or 56, or (B) issued or responded to a formal discovery process set forth in Rules 30 through 36, or (C) participated in preparing and submitting the State of Utah's Rule 26(a) initial disclosure.

district litigation or mass action, will be treated as Legal Services for the Opioid Cases, and will be compensated the same as any other Legal Services under the Contract. Examples could include conferences with other Multistate Working Group counsel to coordinate depositions, or working together with counsel in Other Opioid Cases to draft common discovery requests. The Lawyers shall receive no additional compensation for such work.

7.3. Legal Services that the Lawyers perform in furtherance of Opioid Cases that also may benefit Other Client's Cases, and work that the Lawyers perform in furtherance of Other Clients' Case that may benefit the Opioid Cases shall be treated as follows:

A. If at any time while this Contract is in force the Lawyers are engaged as counsel in Other Clients' Cases, the Lawyers and the OAG shall execute a Cost Allocation Formula that fairly divides costs, expenses (including expert expenses), and if applicable legal fees, between the Opioid Cases and the Lawyers' Other Clients' Cases. Such a Cost Allocation Formula shall not make the State liable for any legal fees unless it expressly provides for such fees, and shall not unduly or materially disproportionately burden the State with respect to costs and expenses.

B. Unless otherwise specified in a Cost Allocation Formula or Memorandum of Understanding, any work done, and costs and expenses incurred, in any Opioid Case or in any Other Client's Case that is specific to a proceeding in that case shall be allocated solely to that case, even if the work later or indirectly benefits another case. An example could be research done for a motion in one case, which will be charged solely to that case, even if the research subsequently benefits similar motions in other cases. Provided, that if the work specifically benefits proceedings in two or more cases essentially simultaneously (e.g. the same motion is being filed in both cases in close time proximity) the hours, costs, and expenses will be charged to each case in accordance with the Cost Allocation Formula.

C. Work done, and costs and expenses incurred, in any Opioid Case or in any Other Client's Case that is mutually beneficial and of a shared nature shall be charged to the Opioid Cases in accordance with the Cost Allocation Formula. An example could be discovery and document review work done for the benefit of both cases; another example could be a shared expert. Any such sharing of work, costs, and expenses shall be approved in advance by the OAG and memorialized in a Memorandum of Understanding.

7.4. The Lawyers shall not receive any Contingent Fee with regard to any recovery that the Lawyer may obtain in any Other Clients' Cases, nor shall any recovery that the Lawyers may obtain in any Other Clients' Cases be considered a Successful Resolution for purposes of determining tiers of contingent fees pursuant to section 6.

7.5. The Lawyers shall not receive any Contingent Fee with regard to any recovery in any Multistate Settlement to the extent the settlement does not involve a defendant in any Opioid Case, nor shall any recovery in any such Multistate Case be considered a Successful Resolution for purposes of determining Contingent Fee tiers pursuant to section 6.

7.6. The Lawyers shall receive a proportionate share of a Contingent Fee with regard to any

Multistate Settlement that involves a defendant in any Opioid Case, but only to the extent of any Recovery from or relating to that defendant. The proportionate share shall be the same with respect to that Opioid Case as if the Contract had been terminated prior to the conclusion of that Opioid Case pursuant to section 6.7(B).

8. **Monthly Billings – Source of Funds.**

- 8.1. The Lawyers shall submit monthly billings of allowable costs and expenses no later than 15 days after the last day of the month for which the billing is submitted.
- 8.2. In the event that a Change Order authorizes the Lawyers to bill hourly fees for any person (e.g. lawyer, paralegal, etc.) the Lawyers shall submit monthly billing of such fees no later than 15 days after the last day of the month for which the billing is submitted.
- 8.3. The Lawyers shall submit monthly accountings of all Contingent Fees to which they believe that they are entitled. These accountings are for informational purposes only, and are not binding upon the OAG or the State. The Lawyers shall not transfer any funds from any client trust account to the Lawyers until approved by the Government Attorney in writing.
- 8.4. The Lawyers understand and agree that although they are retained by the OAG, and all other provisions of law notwithstanding, the Lawyers shall be paid only from designated funds or accounts identified by the State of Utah, and the OAG shall not be liable for payment from its budget unless expressly provided in writing.
- 8.5. Billings shall be submitted to the person, and at the address, indicated in *Attachment 2: Designation of Litigation Team Members and State Contacts*. Barring any disputes, and assuming the availability of funds, in general the OAG will make good faith efforts to pay each bill within 60 days of submission. Billings submitted more than 15 days following the end of the month in which the services were rendered or costs and expenses were incurred may be subject to further delay in payment.

9. **Records and Files.**

- 9.1. The Lawyers agree to maintain, from the effective date of this Contract until the expiration of any applicable document retention schedules as established by the Utah Division of Archives and Records Services, all case files relating to the Legal Services, including: Pleadings, correspondence (including electronic correspondence), and evidentiary files or databases (regardless of the format in which evidence and other data is stored) in connection with this matter and agree to maintain such case files in accordance with legal industry standards and generally accepted accounting procedures. While all such case files shall be confidential and constitute the work product and proprietary materials of the Lawyers, any materials within the case files shall be made available for inspection by the OAG upon reasonable request.
- 9.2. The Lawyers shall, from the effective date of this Contract until three years after this Contract terminates:

- A. Maintain detailed records relating to the all expenses, disbursements, charges, credits, underlying receipts and invoices, and other financial transactions that pertain to the Legal Services provided by the Litigation Team under the Contract;
- B. Maintain detailed contemporaneous time records for the attorneys, paralegals and others whose time is potentially recoverable as a remedy in any Opioid Case, or for which the Lawyers may request payment, in accordance with standards generally used to report billable time for purposes of fee awards in federal lawsuits (i.e. "Loadstar" time); and
- C. Promptly provide any of the foregoing records to the OAG upon request.

10. **Liability Insurance.**

10.1. The Lawyers agree that upon request, its professional liability carrier will provide a letter confirming current, effective coverage for professional liability insurance. During the course of providing Legal Services, the Lawyers may be asked by the Government Attorney to provide subsequent verification from time to time, and the Lawyers will promptly comply with such requests.

10.2. As long as the Lawyers are providing Legal Services under this Contract, the amount of professional liability insurance shall not decrease below the limits that the Lawyers identified in their Technical Proposal.

11. **Termination.**

11.1. This Contract shall continue until all of the Opioid Cases are either the subject of a Successful Resolution, litigated to finality (including any appeals), terminated, or are dismissed. With respect to any particular potential defendant a settlement, a decision to not pursue litigation, or a dismissal with prejudice of pending litigation shall constitute termination. The Lawyers shall not voluntarily dismiss or otherwise terminate pending litigation without the express written approval of the Government Attorney.

11.2. In the event that any money is still owed to the State or to the Lawyers upon the occurrence of the last event listed in Section 11.1, this Contract shall terminate, except that the provisions of sections 5 through 7 shall survive and continue until all such monies have been collected and paid, or until the Attorney General decides that further pursuit of collection efforts is not cost effective.

11.3. The Attorney General may terminate this Contract with or without cause before all of the Opioid Cases are either the subject of a Successful Resolution, litigated to finality (including any appeals), terminated, or are dismissed, by providing written notice to Lead Counsel. The notice shall specify whether new counsel will be taking over the Opioid Cases. If so, this Contract shall remain in force until an orderly transition of counsel can be effectuated. If not, this Contract shall terminate at the time specified in the written notice. If the Attorney General

terminates this Contract pursuant to this section 11.3, the Lawyers is entitled to compensation in accordance with sections 5 through 7.

11.4. The Lawyers may terminate this Contract with or without cause only when doing so does not adversely prejudice the State of Utah or the Attorney General, is permissible under the Utah Rules of Professional Conduct, and has been approved by all courts in which Opioid Cases are pending. The Lawyers shall provide not less than 30 days advance written notice to the Government Attorney of an intent to terminate. Thereafter, this Contract shall remain in force until the date stated in the notice or until an orderly transition of counsel can be effectuated, whichever occurs later. If the Lawyers terminate this Contract pursuant to this section 11.4, the Lawyers are entitled to compensation in accordance with Sections 5 through 7, provided, however, that if the termination is without cause the compensation shall be reduced by the amount of any additional out-of-pocket costs directly incurred by the Attorney General in the process of obtaining new counsel.

11.5. Any termination under sections 11.3 or 11.4 shall be deemed to be without cause unless the notice of termination specifies a legally cognizable cause (such as a material breach of this Contract, commission of a tort, or violation of ethical duties). Other than as provided in section 11.4, the only difference between a termination for cause and a termination without cause is that a terminating party reserves its right to bring a legal action for damages or other remedies arising out of any asserted cause of the termination, but waives that right if the termination is without cause. If a court determines that the alleged cause of the termination is not established or is not factually or legally sufficient to justify damages or other remedies, the termination itself shall nonetheless remain valid and shall be treated as a termination without cause. A non-terminating party's right to bring an action against a terminating party for any alleged breach of this Contract is not affected by whether the termination is purported to be for cause or without cause.

12. **Conflicts of Interest.**

12.1. In the event that the Lawyers learn of a potential legal conflict of interest, or a situation that may give rise to the appearance of a conflict of interest, the Lawyers shall promptly notify the OAG and will follow the direction of the OAG, including recusing themselves or imposing a conflict screen procedure, if requested by the OAG. This includes potential conflicts of interest between the Lawyers and either the OAG or any Client Agency based upon other past or current clients of the Lawyers, and conflicts between the OAG and any Client Agency, or between two Client Agencies. The Lawyers may recuse themselves without approval by the OAG if the Lawyers believe in good faith that they are required to do so by any law, or pursuant to any professional ethical obligation. Such a recusal without the approval of the OAG shall follow the "Termination With Cause" provision of Section 11.5.

12.2. At the time of the execution of this Contract, the Lawyers know of no potential conflicts of interest. [In the event that the Lawyers disclose any actually or perceived potential conflict of interest in their Proposal or during the RFP process, or become aware of any such conflict before the execution of this Contract, this section will be rewritten in consultation with the Lawyers.]

13. **Miscellaneous Provisions.**

13.1. This Contract shall be governed in all respects, including validity, interpretation, and effect, by the laws of the State of Utah.

13.2. Any dispute between the Lawyers and the OAG arising out of this Contract, including with respect to the Legal Services rendered and any Contingent Fee or cost or expense claimed by the Lawyers, shall be resolved at the lowest level possible, in this order:

A. The Lead Attorney and the Government Attorney shall advise each other of their respective positions either orally or in writing, and either may propose a compromise or solution to the dispute.

B. The Lead Attorney and the Government Attorney, along with any others invited by them, shall hold a “meet and confer” in a good faith effort to resolve the dispute.

C. The Lawyers and the OAG shall participate in good faith in mediation, in accordance with Attachment 1, paragraph 39. If the Parties cannot otherwise agree upon a mediator and mediation procedure, they shall submit the dispute to mediation administered by the American Arbitration Association under its Commercial Mediation Procedures.

D. The OAG may (but is not required to) appoint a panel of experts to help resolve the dispute in accordance with Attachment 1, paragraph 39.

E. The Parties shall submit the dispute to binding arbitration. If the Parties cannot agree upon an arbitration procedure, they shall submit the dispute to arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules.

13.3. Photocopies and electronic (e.g. PDF) copies of this Contract shall have the same force and effect as the original.

13.4. This Contract may be executed in counterparts, each of which shall be deemed an original for all purposes and all of which constitute, collectively one agreement.

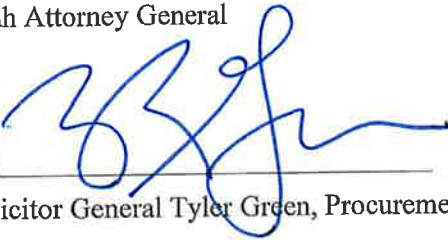
IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be duly executed as of the day and year first written.

UTAH ATTORNEY GENERAL'S OFFICE



Sean D. Reyes

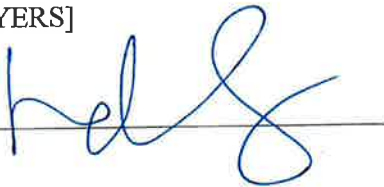
Utah Attorney General

By 

Solicitor General Tyler Green, Procurement Officer

Dated 1/9/19

[LAWYERS]

By 

Dated 1/07/19

ATTACHMENT 1: 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 DTS 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 DTS. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any DTS 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 1.
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 caused by any intentional act or negligence of Contractor, its agents, employees, officers, partners, or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the sole fault of the State Entity. The parties agree that if there are any limitations of the Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property.
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, dated December 13, 2006, 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, which amendment will be attached to 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 DTS, pursuant to this Contract, Contractor grants the ownership in Custom Deliverables, which have been developed and delivered by Contractor exclusively for DTS 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 DTS, to the extent that the Custom Deliverables are not recognized as work made for hire, Contractor hereby assigns to DTS 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 DTS (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 DTS.

Contractor agrees to grant to DTS a perpetual, irrevocable, royalty-free license to use Contractor's Background IP, Utilities, and Residual IP, as defined above, solely for DTS and the State of Utah to use the Custom Deliverables. DTS reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for DTS'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 DTS a non-exclusive, non-transferable, irrevocable, perpetual right to use, copy, and create derivative works from such, without the right to sublicense, for DTS's and the State of Utah's internal business operation under this Contract. DTS 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. **DELETED FOR RFP BP18025.**
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.

(Revised April 16, 2018)

ATTACHMENT 2
Litigation Team Members and State Contacts

The following individual are identified as referenced in the contract The Utah Team:

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| <p>Sean Reyes, Attorney General, State of Utah Office of the Utah Attorney General 350 N State Street, Suite #230 Salt Lake City, Utah Phone: (801) 538-1191 Email: Seanreyes@agutah.gov</p> <p>Spencer Austin, Chief Criminal Deputy Office of the Utah Attorney General 5772 South College Drive #200 Murray, Utah 84123 Phone: (801)-281-1267 Email: spenceraustin@agutah.gov</p> <p>Robert Wing, Assistant Attorney General Government Attorney Office of the Utah Attorney General 160 East 300 West, 5th Floor Salt Lake City, Utah 84114 Phone: (801) 599-6891 Email: rwing@agutah.gov</p> <p>Kevin McLean, Assistant Attorney General Office of the Utah Attorney General 160 East 300 South, 5th Floor Salt Lake City, Utah 84114 Phone: (801) 366-0254 kmclean@agutah.gov</p> <p>David Sonnenreich, Assistant Attorney General Office of the Utah Attorney General 160 East 300 South, 6th Floor Salt Lake City, Utah 84114 Phone: (801) 366-0132 Email: dsonnenreich@agutah.gov</p> | <p>Lori Edwards, Paralegal, Office of the Attorney General Office of the Utah Attorney General 160 East 300 South, 5th Floor Salt Lake City, Utah 84114 Phone: 801-366-0503 Email: loriedwards@agutah.gov</p> <p>Daniel O'Bannon Director, Utah Division of Consumer Protection 160 East 300 South, 2nd Floor Salt Lake City, Utah 84114 Phone: 801-530-6601 Email: dobannon@utah.gov</p> <p>Mark Steinagel, Director, Utah Division of Occupational and Professional Licensing 160 East 300 South, 4th Floor Salt Lake City, Utah 84114 Phone: 801-530-6292 Email: msteinagel@utah.gov</p> <p>Ron Gordon, General Counsel Office of the Governor, Utah Utah Governor Office 350 North State Street, Suite Salt Lake City, Utah 84114 Phone: 801-538-1000 Email: rbgordan@utah.gov</p> |
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The following individuals are identified as referenced in the contract: The Litigation Team:

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| <p>Joe Rice, Attorney Motley Rice, LLC 28 Bridgeside Blvd. Mount Pleasant, SC Phone: (843) 216-9159 Email: jrice@motleyrice.com</p> <p>Don Migliori, Attorney Motley Rice, LLC 28 Bridgeside Blvd. Mount Pleasant, SC Phone: (843) 216-9241 Email: dmigliori@MRLLC.mail.onmicrosoft.com</p> <p>Linda Singer, Attorney Motley Rice, LLC 401 9th St. NW, Suite 1001 Washington, DC 20004 Phone: (202) 386-9626 x5626 Email: lsinger@motleyrice.com</p> <p>Elizabeth Smith, Attorney Motley Rice, LLC 401 9th St. NW, Suite 1001 Washington, DC 20004 Phone: (202) 386-9627 x5627 Email: esmith@motleyrice.com</p> <p>Fears Nachawati Attorneys: Bryan Fears Majed Nachawati Matthew McCarley Misty Farris Jonathan Novak Arati Furness Charlotte Gulewicz Sam Richard Josh Moser Tarek Abassi</p> <p>Fears Nachawati 5473 Blair Road Dallas, TX 75231</p> | <p>Elizabeth Camputaro, Associate Motley Rice, LLC 28 Bridgeside Blvd. Mount Pleasant, SC Phone: (843) 216-9677 Email: ecamputaro@motleyrice.com</p> <p>Lisa Saltzburg, Attorney Motley Rice, LLC 28 Bridgeside Blvd. Mount Pleasant, SC Phone: (843) 216-9630 Email: lsaltzburg@motleyrice.com</p> <p>Abigail Fu, Senior Litigation Project Manager Motley Rice, LLC 401 9th St. NW, Suite 1001 Washington, DC 20004 Phone: (202) 386-9632 x5632 Email: afu@motleyrice.com</p> <p>Isabelle Ninh, Paralegal Motley Rice, LLC 401 9th St. NW, Suite 1001 Washington, DC 20004 Phone: (202) 849-4959 x5959 Email: inin@motleyrice.com</p> <p>Fears Nachawati Paralegals: Veronica McNeme Nicholas Smith Basil Jackson Jonathan Darby Trent Moore Katyana Armani Craig Nakagi Jaylon Wesley Catherine Ong Gloria Daniel Jacob Quinn Juan Flores Tea Threatt</p> |
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| <p>Ferrer, Poirot & Wansbrough Attorneys: Matt Daniel Matthew Vinson Latoya Chambers</p> <p>Paralegal: Lauren Langston</p> <p>Ferrer, Poirot & Wansbrough 2603 Oak Lawn Ave., Ste. 300 Dallas, TX 752129</p> | <p>Prince, Yeates & Geldzahler Attorney: Glenn Bronson Paralegal: Andalin Bachman 15 W. South Temple, #1700 Salt Lake City, UT 84101</p> |
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