

## PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT made effective as of June 19, 2025, by and between the Attorney General of the State of Utah (“Attorney General”), 236 State Capitol, Salt Lake City, Utah 84114 and Consovoy McCarthy PLLC (“Consovoy”), 222 S. Main Street, 5<sup>th</sup> Floor, Salt Lake City, UT 84101.

### RECITALS

WHEREAS, the Attorney General has the responsibility of providing legal services for the Utah Attorney General’s Office (“OAG”) in connection with the matters referred to herein; and

WHEREAS, it is in the best interests of the Utah Attorney General’s Office to hire Consovoy to provide such services on the terms set forth herein; and

WHEREAS, Consovoy desires to furnish services and employs attorneys who are authorized to practice law and who are capable of rendering the required services;

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

1. **Employment of Law Firm.** The Attorney General retains Consovoy to represent the Department of Natural Resources (DNR) and certain DNR Divisions listed in paragraph 4 of Addendum 1 hereto in the legal action filed in *Utah Physicians for a Healthy Environment et al. v. Utah Department of Natural Resources et al.*, Case number 230906637, pending in the Third Judicial District Court for Salt Lake County. Consovoy shall provide all legal services that are reasonably necessary for such representation, including without limitation the preparation and filing of all discovery, pleadings, motions, memoranda, briefs, and other documents. Consovoy also shall conduct negotiations and provide representation at all hearings, trials and other appearances required in said legal action. Consovoy will meet with and submit interim reports to the Attorney General upon request, regarding the nature, progress, and extent of the legal services, as well as any forecast that may be reasonably made regarding the extent and nature of the work yet remaining. Consovoy will also coordinate all work with the Attorney General or his representatives to ensure the services provided are consistent with direction received from the client agencies and the Attorney General or his representatives. Consovoy accepts the foregoing employment and agrees to discharge the duties involved in such employment under the terms and conditions of this agreement.

2. **Compensation.** Subject to the following section 3, the Attorney General agrees to pay Consovoy for its reasonable services rendered at the hourly rates for the respective attorneys and other personnel shown on Addendum 1, attached hereto and incorporated by reference. In addition to the foregoing amounts, the Attorney General agrees to reimburse Consovoy for necessary travel and other necessary costs including consultants and experts. All travel and the hiring of consultants and experts shall be done after notice and concurrence of the Attorney General or his representative. All requests for reimbursement of costs must be supported by receipts or similar supporting documentation, which shall be supplied to the Attorney General upon request. No expenditures for food or beverages will be reimbursed except reasonable meal allowance supported by receipts or State per diem when traveling.

The total compensation paid under this Agreement shall not exceed \$250,000, unless Consovoy provides prior notice to the Attorney General and the Attorney General agrees in writing.

3. **Monthly Billings.** Consovoy shall submit monthly billings for its fees and allowable costs hereunder by the 15<sup>th</sup> of the following month, or as otherwise directed by the OAG. Consovoy shall e-mail its billing statements to Cecilia Lesmes at: clesmes@agutah.gov, or as otherwise directed. Monthly billings submitted more than 15 days following the end of the month in which the services were rendered, or costs were incurred may be subject to substantial delay in payment. Consovoy understands and agrees that although it is retained by the Attorney General, Consovoy shall be paid from funds or accounts identified by the State of Utah and the Attorney General shall not be liable for payment from its budget unless expressly provided in writing.

4. **Limitation on Services Provided.** Consovoy agrees that decisions regarding the scope, extent, and breadth of the representation shall remain with the Attorney General.

5. **Records and Files.** Consovoy agrees to maintain pleading, correspondence, and evidentiary files in connection with said lawsuit and agrees to maintain records in accordance with generally accepted accounting procedures which properly reflect all expenditures of any nature that are necessary for the performance of this contract. While all such files, records, books, and other documents shall be and are confidential and constitute the work product and proprietary materials of Consovoy, each and all of said files, records, books and documents shall be made available for inspection by the Attorney General upon reasonable request.

6. **Indemnification**. Consovoy agrees to protect, indemnify and save harmless the Attorney General, State of Utah, its agents and employees, from and against all claims, demands, damages, and causes of action of every kind or character on account of bodily injuries, death, or damage to property arising out of or in any way connected with the performance of this agreement, and arising, in whole or in part, out of the negligence or fault of Consovoy. Consovoy's duty to pay a judgment under this indemnification provision shall be limited to Consovoy's proportionate share of comparative fault. Consovoy shall defend the Attorney General, the State of Utah and its employees from all claims covered by this indemnification provision and shall pay its proportionate share of all costs and expenses incidental thereto, but the Attorney General shall have the right, at its option, to participate in the defense of any such suit without relieving Consovoy of any obligation hereunder.

7. **Termination**. The Attorney General may at any time terminate this Agreement immediately upon written notice. In the event of termination of this Agreement, Consovoy shall be compensated only for fees and costs earned and incurred up to and including the date of termination. Consovoy thereafter expends additional time and incurs costs relative to the transfer of the case and its materials as directed by the Attorney General, Consovoy will be compensated for such reasonable time and costs incurred.

8. **Independent Contractor Status**. Compensation paid to Consovoy as specified hereunder shall be total compensation for its services. Consovoy is retained as an independent contractor and is responsible for withholding taxes, FICA, and payments to associates, paralegals, clerical assistants, and others from the compensation paid hereunder.

9. **Conflicts of Interest**. Consovoy shall immediately notify the Attorney General in writing of any conflict of interest which may exist or hereafter arise as a result of the representation and services furnished by Consovoy hereunder. Consovoy shall not proceed until a written resolution of such conflict, signed by the Attorney General, is accomplished.

10. **Entire Agreement**. This Agreement 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. Except for termination under paragraph 7, this Agreement may not be amended except by an instrument in writing signed on behalf of all parties hereto. This Agreement shall be governed in all respects, including validity, interpretation, and effect, by the laws of the State of Utah.

11. **Photocopies.** Photocopies of this Agreement shall have the same force and effect as the original.

DATED this 19 day of June, 2025.

UTAH ATTORNEY GENERAL'S OFFICE

*Mark E. Burns* Digitally signed by Mark E. Burns  
Date: 2025.06.19 14:53:59  
-06'00'

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By: Mark E. Burns

Title: Civil Deputy Attorney General

CONSOVOY MCCARTHY PLLC

*Tyler Green* Digitally signed by Tyler Green  
Date: 2025.06.19 14:46:10  
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By: Tyler Green

Title: Partner

## ADDENDUM 1

1. The Law Firm hereby represents to the State that the following qualifications and circumstances accurately state the Law Firm's qualifications for the work: that the Law Firm has expertise in the subject matter pertaining to the lawsuit; has the capacity to readily provide representation in the lawsuit; that the Law Firm lacks conflicts other than the one(s) described in the Agreement; and that the Law Firm has the general capacity to handle imminent legal actions, including complex matters that may arise in the above-referenced actions.
2. The Law Firm shall perform the scope of employment stated in paragraph 1 of the Agreement by observing the following:
  - a. The Law Firm shall obtain prior written approval for significant work tasks from the Attorney General.
  - b. The Law Firm shall provide clear communication between the Law Firm, the Attorney General, and the represented clients concerning the Law Firm's work.
  - c. From time to time the Law Firm shall provide the Attorney General an estimate of potential fees, costs, and work tasks for the coming months; a listing of work tasks and the fees and costs and any follow up information that may be requested.
  - d. The Law Firm shall manage its resources to provide the most suitable expertise for the task at hand and shall help the Attorney General obtain effective services at a reasonable price for those services.
  - e. The Law Firm shall maintain insurance adequate to provide for the obligations stated in this Agreement.
  - f. In case of conflicts between the client agencies and the Attorney General, the Law Firm shall take final direction from the Attorney General.
3. The Law Firm's monthly invoices shall include the following:
  - a. The Law Firm's monthly invoices shall state descriptions of hours worked and fees billed in the Law Firm's standard billing format using the rates, and limited to the people, set forth below.
  - b. In each monthly invoice, the Law Firm shall provide totals for individual tasks (if billing for more than one task) and for the statement as a whole, and shall show the sum of all amounts that the State has been paid to Law Firm to the invoice date since the Agreement began.
  - c. The Law Firm shall obtain the Attorney General's prior written approval for travel other than from Law Firm's offices to or from the

presiding courthouse (except in cases of emergency to protect the client agencies' best interests), and the Law Firm shall not pay luxury or other excessively expensive fares for airlines, hotels, or other incidents of travel.

- d. No expenditures for food or beverages will be reimbursed except for working lunches in a reasonable amount as may be necessary.
- e. If the Law Firm desires to include in an invoice the cost of any services or products in connection with this Agreement, the Law Firm shall first obtain the Attorney General's prior written approval to include them. The Law Firm shall obtain approval for separately billing any of the firm's services at the commencement of this Agreement.
- f. The following persons are authorized to provide labor for this Agreement at the following billing rates, and the Law Firm has noted below who will be lead counsel for this Agreement. The Law Firm shall not change lead counsel or other key attorneys without prior consultation with the Attorney General:

**Names of Attorneys:**

Tyler Green, Partner \$735 per hour  
Rachel Wyrick, Partner \$735 per hour  
Steven Begakis, Counsel \$675 per hour  
James Hasson, Associate \$650 per hour  
Matt Pociask, Associate \$650 per hour  
Nick Venable, Associate \$650 per hour

- 4. The following individuals are contact persons for the organizations named below for the purposes described under this Agreement, and they may be contacted using the information provided below. Notices given hereunder are effective upon receipt when delivered by overnight carrier or by email with confirmation of receipt, or three days after deposit in the U.S. mail.

Office of the Utah Attorney General:

Mark E. Burns, [markburns@agutah.gov](mailto:markburns@agutah.gov), (801) 673-3310

Consovoy McCarthy:

Tyler Green, [tyler@consovoymccarthy.com](mailto:tyler@consovoymccarthy.com), (703) 243-9423

Client Agencies:

Department of Natural Resources (Defendant) -  
Utah Division of Water Rights (Defendant) -  
Utah Division of Forestry, Fire and State Lands (Defendant) -  
Utah Division of State Parks (Intervenor) -  
Utah Division of Wildlife Resources (Intervenor) -  
Utah Board of Water Resources (Intervenor) -

# Addendum 2

## 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 Addendum 2.
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 Addendum 2; (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)