



This Order Form (the "Order Form") is entered into by and between the customer named above and below ("Customer") and VidaNyx LLC ("VidaNyx"). Customer and VidaNyx are collectively referred to herein as "Parties" or individually, a "Party."

CUSTOMER INFO		BILL TO INFO	
Organization Name:	El Dorado County District Attorney	Organization Name:	Children's Advocacy Centers of California
Organization Type:	Local Government	Organization Type:	501c3
EIN:	94-6000511	EIN:	94-3256781
Address:	778 CA-49, Placerville, CA 95667	Address:	524 Estudillo Avenue San Leandro, CA 94577
Name of the individual Authorized to sign on behalf of the organization:	Vern Pierson	Name of the individual Authorized to sign on behalf of the organization:	Erin Harper
email address of Authorized Person:	vern.pierson@edcgov.us	email address of Authorized Person:	executive.director@calicocenter.org
Title:	District Attorney	Title:	Executive Director
Member of NCA?	NO	Payment Term	Funds to be applied with grant money previously received. Payment Due for service to begin.
PROVISIONING INFORMATION		Currency USD	
Name of the administrator of the VidaNyx-CAC edition for this organization	Rhiannon Grotke	Service Start Date	date of signature by Vern Pierson, see below
email address of this administrator	rhiannon.grotke@edcgov.us	Term	12 months
mobile phone number of this administrator	530-277-4531	Renewal Term	12 months
		Auto Renew?	YES

Description	QTY	UNIT PRICE	TOTAL (USD) PER YEAR
Baseline subscription	1	\$1,990	\$1,990
Number of Active Videos in Subscription	110	\$10.95	\$1,205
Number of Videos in Long term archival	110	\$0.59	\$65
SUBTOTAL			\$3,259
GRAND TOTAL (*)			\$3,259

equivalent to just \$272 per month (*)

(*) plus applicable local sales tax

VidaNyx and Customer each hereby confirm their mutual agreement to terms of this Order Form as of the last date below. By signing below, Customer certifies that it has read and agrees to be bound by the terms and conditions set forth in this Order Form and the VidaNyx VMS CAC Edition Subscription Terms and Conditions available at: <https://vidanyx.com/terms-and-conditions/>

VIDANYX LLC

El Dorado County District Attorney

Signature: _____
 Printed Name: Luis Salazar
 Title: CEO
 Date Signed: _____

Signature: _____
 Printed Name: Vern Pierson
 Title: District Attorney
 Date Signed: _____



VidaNyx CAC Edition

Subscription Terms - Terms and Conditions



VIDANYX LLC

**VMS CAC EDITION SUBSCRIPTION SERVICE
AGREEMENT TERMS AND CONDITIONS**

HELP

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These VMS CAC Edition Subscription Terms and Conditions (“T&C”) are part of the VMS CAC Edition solution subscription service agreement between VidaNyx LLC, a Delaware limited liability company (“VidaNyx”) and the client (“Client”) who entered into a Subscription Order Form (“Order Form”) with VidaNyx for a subscription to use VidaNyx’s VMS CAC Edition cloud-based child advocacy center video management software-as-a-service solution (“Solution”). The term “Agreement” as used herein and therein means (i) the Order Form, (ii) this T&C and (iii) the VidaNyx Terms of Use available at www.vidanyx.com/terms-of-use (“Terms of Use”), each incorporated into the Agreement by this reference and each shall apply to the provision, accessing and usage of the Solution.

From time to time, VidaNyx may modify the terms and conditions set forth in this T&C and the Terms of Use. Unless otherwise specified by VidaNyx, changes become effective for Client upon renewal of the then-current Subscription Term (defined below). VidaNyx will use reasonable efforts to notify Client of the changes through communications through the Solution, email, or other means. Client may be required to click to accept the modified T&C and the Terms of Use before using the Solution in a renewal Subscription Term, and in any event continued use of the Solution during the renewal Subscription Term will constitute Client’s acceptance of the version of the T&C and Terms of Use in effect at the time the renewal Subscription Term begins.

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

1 – VIDANYX SOLUTION

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

1.2 Access to Solution. Subject to the terms and conditions of the Agreement, commencing on the Effective Date VidaNyx hereby grants to Client a non-exclusive, non-transferable right during the applicable Subscription Term to access and use, and authorize Permitted Users (defined below) to access and use, the Solution solely for Client’s internal business purposes and pursuant to the restrictions set forth in the Agreement. The “Effective Date” is the date

upon which VidaNyx receives the upfront fees payable by Client as provided in the initial Order Form.

1.3 Permitted Users. As part of the registration process, Client will identify an administrative user email address and cellular phone number for Client's Solution account. Client may use the administrative user email address with the password chosen by the administrative user and a multifactor authentication using the administrative user's cellular mobile phone number to use the Solution to authorize permitted end users (each, with the administrative user, the "Permitted Users") to access and use the Solution up to the maximum number, if any, designated in the Order Form. Permitted end users must be (a) employees of Client and of Client's Affiliates, (b) independent contractors and consultants of Client who are not competitors of VidaNyx or (c) law enforcement, social workers and other governmental personnel involved with the individual or matter that is the subject of any uploaded User Content (defined below). Each user id credential may be issued by Client only to a single named individual and may not be shared. Client will ensure that all Permitted Users keep their credentials confidential. Client is responsible for compliance by each Permitted Users with the terms and conditions of the Agreement and for the actions taken by Permitted Users or by anyone using Client's accounts and passwords in connection with their access and use of the Solution and User Content. "Affiliate" means each legal entity that is directly or indirectly controlled by Client on or after the Effective Date, for so long as such entity remains directly or indirectly controlled by Client (where "controlled" means the ownership of, or the power to vote, directly or indirectly, a majority of any class of voting securities of a corporation or limited liability company, or the ownership of any general partnership interest in any general or limited partnership).

1.4 General Restrictions. Client shall not and ensure that its Permitted Users do not: (a) rent, lease, copy, sell, provide access to or sublicense the Solution to a third party, (b) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code or APIs to the Solution software, except to the extent expressly permitted by applicable law (and then only upon advance notice to VidaNyx), (c) modify the Solution or the Solution software, or create any derivative product from any of the foregoing, (d) remove or obscure any product identification, proprietary, copyright or other notices contained in the Solution, (e) incorporate the Solution into any other offering (whether a software-as-a-service or otherwise), (f) use the Solution to develop a product which is competitive with the Solution or any other VidaNyx product or service offering or (g) publicly disseminate information or analysis regarding the

performance of the Solution. Notwithstanding anything to the contrary in the Agreement, the Solution, including all processing of User Content (defined below) by or on behalf of Client shall be provided solely from within, and on computers, systems, networks and other infrastructure located in, the United States, and the Solution is only intended for use by Permitted Users, and for User Content regard to individuals, residing within the United States.

1.5 Transfer of Client Solution Account. Client may transfer its Solution account in its entirety, including the related User Content (defined below), and its rights under the Agreement to a third party, provided that (a) Client is then current on its Solution account fees payable to VidaNyx, (b) the third party transferee is not a competitor of VidaNyx and is capable of fully performing Client's obligations under the Agreement, (c) the third party transferee executes and delivers to VidaNyx an Order Form with the third party transferee's contact and billing information and agreeing to be bound by the terms and conditions of the Agreement and (d) the third party transferee's administrative user provides the user's email address and cellular telephone number to VidaNyx as provided in Section 1.3.

2 – USER CONTENT

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

2.2 Client Obligations. Client shall ensure that the use of the Solution by Client and its Permitted Users and all User Content is at all times compliant with all applicable laws and regulations, including those related to data privacy, data security, international communications and the exportation of technical or personal data. Client is solely responsible for the accuracy, content and legality of all User Content and for compliance with the User Content and other requirements set forth in the Terms of Use. Client represents and warrants to VidaNyx that Client has sufficient rights in the User Content to authorize VidaNyx to process, store and display the User Content for Client as contemplated by the Agreement, and that the User Content and its use hereunder will not violate or infringe the rights of any third party.

2.3 Rights in User Content. As between Client and VidaNyx, Client retains all right, title and interest in and to the User Content. Subject to the terms of the Agreement, Client hereby grants to VidaNyx a non-exclusive, worldwide, royalty-free right to use, copy, store, transmit, distribute, perform and display the User Content solely to the extent necessary to provide the Solution

functionality to Client and its Permitted Users. The User Content will be encrypted by the Solution when uploaded and neither VidaNyx nor its personnel will have access to or the ability to view the unencrypted video interviews or, except as provided in Section 2.5, other User Content or access to the Client credentials necessary to unlock or remove the encryption.

2.4 User Content Downloading and Removal. Client or its permitted third party transferee as provided in Section 1.5 has the right during the Subscription Term and for a period of sixty (60) days after the end of the Subscription Term to (a) download, copy, export and remove any and all User Content and related transcriptions, translations and metadata obtained or generated through the Solution and (b) delete any and all such User Content and metadata (other the Permitted User profiles) stored in the Solution data storage.

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

2.6 VidaNyx Restricted Access. VidaNyx will not permit or enable its personnel to access, listen to or view audio recordings, photographs, videos or personally identifiable information uploaded by Client or Permitted Users as User Content. VidaNyx's access to such audio recordings, photographs, videos and information will be limited to access through machine learning tools that

do not permit VidaNyx or its personnel to copy, listen to or view such audio recordings, photographs, videos and information.

3 – OWNERSHIP

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

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

4 – SUBSCRIPTION TERM, FEES & PAYMENT

4.1 Fees and Payment. The fees payable by Client for use of the Solution are set forth in the Order Form. Fees shall be paid by Client within thirty (30) days of Client's receipt of VidaNyx's invoice, unless otherwise specified in such Order Form. Except as expressly set forth in Section 6 (Limited Warranty) and Section 9.1 (VidaNyx Indemnification for Intellectual Property Infringement), all fees due under the Order Form are non-cancelable and the sums paid are non-refundable. Unless timely provided with a valid certificate of exemption or other evidence that items are not taxable, VidaNyx will invoice Client for applicable sales, use, service and other similar taxes. Client will make all payments free and clear of, and without reduction for, any withholding or

other taxes; any such taxes imposed on payments by Client hereunder will be Client's sole responsibility. Any late payments may be subject to a service charge equal to 1% per month of the amount due or the maximum amount allowed by law, whichever is less.

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

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

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

5 – TERM AND TERMINATION

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

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

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

5.4 Effect of Termination. Upon the expiration or termination of the Subscription Term, Client shall immediately cease any and all use of and access to the Solution and delete any Solution passwords and access codes and Permitted User credentials and delete (or, at VidaNyx's request, return) any and all copies of any Confidential Information (defined below) of VidaNyx in Client's possession or control; provided, however, that Client's or its permitted transferee's administrative user shall have the right for a period of sixty (60) days after such expiration or termination to access and use the Solution for the sole purpose of copying, downloading, exporting, removing or deleting any User Content and related transcriptions, translations and metadata.

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

6 – LIMITED WARRANTY

6.1 Limited Warranty. VidaNyx warrants, for Client's benefit only, that the Solution will operate in substantial conformity with any material specifications published by VidaNyx and made available in writing by VidaNyx to Client. VidaNyx does not warrant that Client's use of the Solution will be uninterrupted or error-free, nor does VidaNyx warrant that it will preserve or maintain the User Content without loss. VidaNyx's sole liability (and Client's sole and exclusive remedy) for any breach of this warranty shall be, in VidaNyx's sole discretion and at no charge to Client, to use commercially reasonable efforts to correct the reported non-conformity, or if VidaNyx determines such remedy to be impracticable, to allow Client to terminate the applicable Subscription Term and receive as its sole remedy a refund of: (a) the portion of the subscription fees specified in the applicable Order Form allocable to the

thirty (30) day period prior to the date the warranty claim was made and (b) any fees Client has pre-paid for use of the Solution or related services it has not received as of the date of the warranty claim. The limited warranty set forth in this Section 6.1 shall not apply: (i) unless Client makes a claim within thirty (30) days of the date on which the condition giving rise to the claim first appeared or (ii) if the nonconformity was caused by misuse, unauthorized modifications or third-party hardware, software or services.

6.2 Warranty Disclaimer. EXCEPT FOR THE EXPRESS WARRANTY IN SECTION 6.1, THE SOLUTION AND ANY OTHER SERVICES ARE PROVIDED “AS IS”, CLIENT’S USE OF THE SOLUTION AND SUCH SERVICES SHALL BE AT ITS SOLE RISK AND, TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER VIDANYX NOR ANY OF ITS SUPPLIERS MAKE ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT, IN CONNECTION WITH THE SOLUTION AND SUCH SERVICES AND CLIENT’S USE THEREOF. EXCEPT AS EXPRESSLY PROVIDED HEREIN, VIDANYX MAKES NO WARRANTIES OR REPRESENTATIONS ABOUT THE ACCURACY OR COMPLETENESS OF THE SOLUTION OR SUCH SERVICES AND ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY (I) ERRORS, MISTAKES, OR INACCURACIES, (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM CLIENT’S ACCESS TO AND USE OF THE SOLUTION AND SUCH SERVICES, (III) ANY UNAUTHORIZED ACCESS TO OR USE OF VIDANYX’S SECURE SERVERS OR ANY AND ALL USER CONTENT, PERSONAL INFORMATION AND/OR FINANCIAL INFORMATION STORED THEREIN, (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SOLUTION OR SUCH SERVICES, OR (IV) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE WHICH MAY BE TRANSMITTED TO OR THROUGH THE SOLUTION OR SUCH SERVICES BY ANY THIRD PARTY. VIDANYX DOES NOT GUARANTEE ANY RESULTS FROM USING THE SOLUTION OR SUCH SERVICES. VIDANYX DOES NOT WARRANT THAT THE SOLUTION OR SUCH SERVICES WILL BE UNINTERRUPTED OR ERROR FREE OR MEET CLIENT’S REQUIREMENTS; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SOLUTION OR SUCH SERVICES. VIDANYX SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES AND OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF VIDANYX. ALTHOUGH VIDANYX WILL TAKE REASONABLE TECHNICAL AND ORGANIZATIONAL MEASURES DESIGNED TO KEEP THE USER CONTENT STORED THROUGH THE SOLUTION SECURE AND PROTECT IT AGAINST UNAUTHORIZED ACCESS, ALTERATION,

DESTRUCTION, DISCLOSURE OR LOSS, DUE TO PROBLEMS IN INHERENT IN CLOUD-BASED ACCESS AND STORAGE OR OTHER CAUSES, VIDANYX SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF ANY UNAUTHORIZED ACCESS, ALTERATION, DESTRUCTION, DISCLOSURE OR LOSS OF USER CONTENT.

7 – SUPPORT AND MAINTENANCE.

During the Subscription Term, VidaNyx will make technical support available to Client by email at support@vidanyx.com or through the support link within the Solution during the following business hours: Monday to Friday, 8am – 5pm Pacific Time, excluding national holidays. VidaNyx’s support personnel will provide Client with remote assistance for help in using and operating the Solution and will accept reports of any bugs, defects, errors, or vulnerabilities in the Solution (collectively, “Errors”). VidaNyx’s support personnel will reasonably endeavor to repair or replace, without any additional charge, any Errors that materially limit the operability and use of the Solution.

8 – LIMITATION OF REMEDIES AND DAMAGES

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

1. NEITHER VIDANYX NOR CLIENT WILL HAVE ANY LIABILITY TO THE OTHER PARTY ARISING OUT OF OR RELATING TO THE AGREEMENT OR THE SOLUTION FOR: (1) THE OTHER PARTY’S LOST REVENUES OR PROFITS; (2) FOR ERRORS OR INTERRUPTION OF USE OF THE SOLUTION OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA, INCLUDING USER CONTENT, OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY; (3) INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSSES (WHETHER OR NOT FORESEEABLE OR CONTEMPLATED BY THE PARTIES AT THE EFFECTIVE DATE); OR (4) EXEMPLARY OR PUNITIVE DAMAGES; EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF ANY OF THE FOREGOING TYPES OF LOSSES OR DAMAGES;
2. VIDANYX’S AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THE AGREEMENT OR THE SOLUTION WILL NOT EXCEED THE GREATER OF (1) THE AMOUNT CLIENT PAID TO VIDANYX UNDER THE AGREEMENT FOR THE 12 MONTHS PRECEDING THE SUBJECT CLAIM OR (2) THE AMOUNT PAYABLE BY CLIENT TO VIDANYX DURING THE INITIAL SUBSCRIPTION TERM; AND
3. For purposes of this Section 8, “**LIABILITY**” means any liability, whether arising under contract, tort or otherwise.

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

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

9 – INDEMNIFICATION

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

9.2 Indemnification by Client. Subject to Section 9.3 (Procedures), Client shall defend, indemnify and hold harmless VidaNyx and its employees, agents, successors and assigns from and against any and all losses, damages, liabilities, costs and expenses arising from any claim based on or arising from: (a) the User Content, including any claim based on Client's breach or alleged breach of Section 2.2 (Client Obligations) or the Terms of Use or alleging that the User Content infringes upon any third party's patent, copyright, trademark, trade secret, or other proprietary right of, or otherwise harms a third party; or (b) Client's or a Permitted User's use of the Solution in violation of the Agreement.

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

10 – CONFIDENTIAL INFORMATION.

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

extent required to comply with such regulation or order and with advance notice to Discloser. Recipient acknowledges that disclosure of Confidential Information could cause substantial harm to Discloser for which damages alone would not be a sufficient remedy, and therefore upon any such disclosure by Recipient, Discloser shall be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.

11 – GENERAL TERMS

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

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

11.3 Governing Law; Jurisdiction and Venue. Excluding conflict of laws rules, the Agreement shall be governed by and construed under the laws of the State of Washington U.S.A. All disputes arising out of or in relation to the Agreement or the Solution shall be submitted to the exclusive jurisdiction of the federal and state courts located in King County, Washington. Nothing in this section shall restrict VidaNyx's right to bring an action (including for example a motion for injunctive relief) against Client in the jurisdiction where Client's place of business is located. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act, as currently enacted by any jurisdiction or as may be codified or amended from time to time by any jurisdiction, do not apply to the Agreement.

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

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

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

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

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

11.9 Force Majeure. Neither party shall be liable to the other for any delay or failure to perform any obligation under the Agreement (except for a failure to pay fees) if the delay or failure is due to unforeseen events which occur after the signing of the Order Form and which are beyond the reasonable control of such party, such as a strike, blockade, war, act of terrorism, riot, natural disaster,

failure or diminishment of power or telecommunications or data networks or services, or refusal of a license by a government agency.

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

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

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

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

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



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