

## STANDARD CONTRACT FOR TECHNOLOGY SERVICES

1. **Parties.** This is a contract for services between the State of Vermont, [REDACTED] (hereinafter called "State"), and [REDACTED], with a principal place of business in [REDACTED], (hereinafter called "Contractor"). Contractor's form of business organization is [REDACTED]. It is Contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, Contractor is required to have a Vermont Department of Taxes Business Account Number.

2. **Subject Matter.** The subject matter of this contract is services generally on the subject of [REDACTED]. Detailed services to be provided by Contractor are described in Attachment A.

3. **Maximum Amount.** In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$ [REDACTED].00.

4. **Contract Term.** The period of Contractor's performance shall begin on [REDACTED], 20 [REDACTED] and end on [REDACTED], 20 [REDACTED].

5. **Prior Approvals.** This Contract shall not be binding unless and until all requisite prior approvals have been obtained in accordance with current State law, bulletins, and interpretations.

6. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.

7. **Termination for Convenience.** This contract may be terminated by the State at any time by giving written notice at least thirty (30) days in advance. In such event, Contractor shall be paid under the terms of this contract for all services provided to and accepted by the State prior to the effective date of termination.

8. **Attachments.** This contract consists of [REDACTED] pages including the following attachments which are incorporated herein:

Attachment A – Statement of Work

- Exhibit 1 – State Technical and Functional Requirements
- Exhibit 2 – Preliminary Implementation Master Schedule
- Exhibit 3 – State Third Party Software
- Exhibit 4 – Contractor Software

Attachment B – Payment Provisions

Attachment C – "Standard State Provisions for Contracts and Grants" a preprinted form (revision date 12/15/2017)

Attachment G - State of Vermont – Federal Terms Supplement (non-construction)

Attachment D – Other Terms and Conditions for Information Technology Contracts

Attachment E – Business Associate Agreement

Attachment F – Agency of Human Services Customary Contract/Grants Provisions

9. ***Order of Precedence.*** Any ambiguity, conflict or inconsistency between the documents comprising this contract shall be resolved according to the following order of precedence:

- 1) Standard Contract
- 2) Attachment D Other Terms and Conditions for Information Technology Contracts
- 3) Attachment C Standard State Provisions for Contracts and Grants
- 4) Attachment G State of Vermont – Federal Terms Supplement (non-construction)
- 5) Attachment E – Business Associate Agreement
- 6) Attachment F – Agency of Human Services Customary Contract/Grants Provisions
- 7) Attachment A with Exhibits
- 8) Attachment B

**WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT**

By the State of Vermont:

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By the Contractor:

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## ATTACHMENT A SPECIFICATIONS OF WORK TO BE PERFORMED

### 1. PURPOSE

This Contract sets forth the terms and conditions under which Contractor agrees to provide to the State with a [web-based,] Contractor-supported \_\_\_\_\_ (the “Solution”).  
The Solution shall \_\_\_\_\_.

The Contractor shall provide development and design services, project and operations management, support and maintenance, consulting, training, engineering and application development, monitoring, support, backup and recovery, change management, technology updates and upgrades and other professional services as described herein (individually and collectively referred to herein as the “Services”), as necessary for the State’s productive use of the Solution as further set forth in this Contract. This Contract specifies the obligations of each party with additional provisions detailed in the attached Attachments and Exhibits.

### 2. EXISTING SYSTEMS.

### 3. OBJECTIVE

This Contract identifies the tasks required by each party to implement and support the Solution through the following major activities: development of project management planning documentation; requirements collection and validation, Solution design, data migration, configuration, integration and testing; deployment and training; operations, support, and maintenance services, all as detailed herein.

The project will be executed in phases as described herein.

The successful outcome of the project is defined by the following:

- completed in accordance with this Contract and applicable project management planning documentation;
- Resolution of all material functional and operational deficiencies prior to deployment in the production environment;
- completed within budget;
- configured to meet all specified requirements and needs of the State;
- the Solution meets and adheres to all requirements and timeframes set forth in service level terms set forth herein;
- the Solution is fully documented, including but not limited to requirements specifications, architecture, design, configuration, operational environment and user manuals; and
- trained State staff and stakeholders.

### 4. PERIOD OF INSTALLATION AND IMPLEMENTATION AND TRAINING

The period of installation and implementation and training shall not exceed \_\_\_\_\_ months from the date of this Contract. Support and maintenance

shall begin [upon Solution deployment] and shall continue through the Contract Term as the same may be extended by the parties.

5. DEFINITIONS. Capitalized terms used in this Contract not specifically defined in the text shall have the following meanings:

- (a) **“Certificate of Acceptance”** means written certification, delivered to Contractor and signed by an authorized representative of the State, stating that any Defects in a particular Phase or the Solution discovered after implementation and testing have been corrected as required under this Contract, and that the Phase complies in all material respects with all of the applicable Requirements.
- (b) **“Certificate of Completion”** means written certification, delivered to the State and signed by an authorized representative of Contractor, stating that any Defects in a particular Phase or the Solution discovered after implementation, testing and Acceptance have been corrected as required under this Contract, and that the Phase or Solution complies in all material respects with all of the applicable Solution Requirements. The State must provide written acceptance to Contractor of any and all Certificates of Completion for them to become effective.
- (c) **“Contractor Personnel”** means and refers to Contractor’s employees and employees of Contractor’s permitted subcontractors or permitted agents assigned by Contractor to perform Services under this Contract.
- (d) **“Defect”** means any failure by the Solution or any Phase or component thereof to conform in any material respect with applicable Requirements.
- (e) **“Defect Correction”** means either a modification or addition that, when made or added to the Solution, establishes material conformity of the Solution to the applicable Requirements, or a procedure or routine that, when observed in the regular operation of the Solution, eliminates the practical adverse effect on the State of such nonconformity.
- (f) **“Documentation”** means any and all descriptions and specifications of the Requirements included herein or created or developed hereunder, operational, functional and supervisory reference guides, manuals and instructive materials, in whatever form and regardless of the media on which it may be contained, stored or transmitted, which is developed, prepared, used or otherwise available from Contractor and/or Contractor’s suppliers, in connection with and applicable to the provision, use, operation and support of the Services hereunder. Documentation shall be sufficient to enable State personnel to understand, operate, use, access, support, maintain, update and modify Services, notwithstanding that Contractor is or may be responsible for any or all of the foregoing obligations. Documentation shall also include all standards applicable to the Services, including those applicable to: (i) Contractor for its own comparable items or services; (ii) the State for its own comparable items or services; and (iii) such standards and guidelines as the parties mutually agree apply to the Services involved.
- (g) **“Final Acceptance”** means the issuance of Certificate of Acceptance executed by the

State which specifies the mutually agreed upon Go Live Date for the Solution.

- (h) **“Facilities”** means the physical premises, locations and operations owned or leased by the State (a “State Facility”) or the Contractor (a “Contractor Facility”), and from or through which the Contractor and/or its permitted contractors will provide any Services.
- (i) **“Go Live Date.”** The date that the all or any part of the entire Solution is first available for use by the State in an operational, non-test environment, utilizing actual production data.
- (j) **“Phases.”** A particular portion of the Solution, as set forth in the Implementation Master Schedule or as may be modified in accordance with this Contract. Unless modified by written agreement of the parties, the five project Phases are Solution Definition and Design, Requirements Gathering, Customization, Deployment, Training and Maintenance and Support.
- (k) **“Requirements”** means the State’s baseline Functional and Technical Requirements attached as Exhibit 1 to Attachment A of this Contract.
- (l) **“Service Level”** means the specific level of performance Contractor is required to comply with and adhere to in providing the Services in conformity with the Requirements, consistent with the criteria and parameters specified in this Contract. Service Level Terms are set forth in Attachment   to this Contract.

## 6. PROJECT MANAGEMENT

The scope of work as detailed below describes the services, deliverables and key assumptions. Contractor will develop an overall project schedule that details the tasks, timelines, and deliverables for the fully integrated solution.

### 6.1. CONTRACTOR PROJECT MANAGEMENT AND SUPPORT

#### 6.1.1 CONTRACTOR’S PROJECT MANAGER

Contractor will designate an individual to serve as the **“Contractor Project Manager”** who will: (i) be a senior employee within Contractor’s organization, with the information, authority and resources available to properly discharge the responsibilities required hereunder; (ii) serve as primary point of contact and the single-point of accountability and responsibility for all Contract-related questions and issues and the provision of Services by Contractor; (iii) have day-to-day responsibility for, and authority to manage, State customer satisfaction; (iv) devote full time and dedicated efforts to managing and coordinating the Services; and (v) be located at State Facilities or such other appropriate location as Contractor and the State may mutually agree.

Contractor’s Project Manager shall be responsible for all tasks necessary to manage, oversee, and ensure success of the project. These tasks include documenting requirements, developing and updating project plans, assigning staff, scheduling meetings, developing and publishing status reports, addressing project issues, risks, and change orders, and preparing presentations for the State.

Contractor's project manager shall be responsible for the successful delivery of all Contractor tasks and subtasks defined in the Project Management Plan (as defined herein). Progress will be monitored and plans adjusted, as necessary, in project status meetings. The Project Management Plan deliverables (for both State and Contractor tasks) shall be updated by the Contractor, subject to review and approval of the State, and reports printed for each status meeting.

Contractor's project manager shall be responsible for developing and implementing the following project management documentation:

<b>Deliverable</b>	<b>Description</b>	<b>Update Frequency</b>
Project Charter	The Project Charter provides basic information about the project. It includes a: Scope Statement (what's in and out of scope); list of Project Deliverables; high level Project Timeline; Key Roles & Responsibilities; known Risks, Assumptions and/or Constraints. It should be signed off on by the State.	Once unless there are changes
Project Management Plan	<p>The Project Management Plan will dictate specifics on how the Contractor Project Manager will administer the project and will include the following documentation:</p> <ol style="list-style-type: none"> <li>1. Change Management Plan (will dictate how changes will be handled including any Service level terms on over/under estimates)</li> <li>2. Communication Management Plan (will dictate what will be communicated, to who, and how often)</li> <li>3. Requirements Management Plan (will dictate the approach that the requirements will be gathered, approved, and maintained)</li> <li>4. Human Resources Management Plan (will dictate what resources will be assigned to the project, for how long, under what allocation, who they report to, and how to handle changes to the resource plan)</li> <li>5. Procurement Management Plan (will dictate how the vendor(s) will interact with the project and expectations regarding vendor relations with State resources)</li> <li>6. Quality Management Plan (will dictate the quality controls over the work being done on the project as well as determine Key Performance Indicators – this document is not limited to deliverables)</li> <li>7. Risk and Issues Management Plan (will</li> </ol>	

	dictate how risks and issues will be managed over the course of the project) 8. Scope Management Plan (will dictate how the scope will be maintained to prevent “scope creep”)	
Formal Acceptance Criteria	Criteria that establishes what the acceptance and rejection criteria of each document on this list.	
Formal Acceptance Sign Off	Obtain sign-off at the completion of each project deliverable as defined by the formal acceptance criteria.	
Change Requests	Formal document which outlines any changes to the Contract scope, schedule, budget, and resources.	
Change Requests Log	Tracks the specific change requests approved and their impact to the project scope, budget and schedule.	
Budget Log	Outlines original Contract costs by deliverable with billed and paid-to-date information.	
Risk Log	A log of all risks (opened or closed) that could impact the project. Risks should be outlined by their impact and their potential to occur. All risks should have an owner.	
Issue/Action Items/Decision Log	A Log of open and resolved/completed Issues. Issues should be outlined by their impact, owner, date of occurrence, and remediation strategy.	
Decision Log	A log of all decisions made over the course of the project. Decisions should have a date and name of decider.	
Requirements Documents	<p>Finalized list of the project requirements to be approved by the State. The approach is dictated by the Requirements Management Plan (see Project Management Plan), and can include:</p> <ul style="list-style-type: none"> <li>• Stated requirements document (SRD): The SRD contains current state process flows, user stories, and business rules and states the business need at a high level.</li> <li>• Business requirements document (BRD): The BRD contains a medium level of requirements as well as required metrics of project success.</li> <li>• Functional requirements document (FRD): The FRD contains detailed requirements that can be handed off to the Contractor for execution.</li> </ul>	

Test Plans	A description of the testing approach, participants, sequence of testing and testing preparations	Once
Test Cases & Results	The specific test cases to be tested and the testing results. Test Cases tie back to the project requirements (to ensure each one has been met).	Create once then update with Results
Implementation Master Schedule	The IMS outlines how the project will go-live and will include a mini-project plan for the exact events that need to occur assigned to the resources that need to do them and the timeframe for when they need to get done. (See Section 4.4 for more detail.)	Once per implementation
Project Status Reports	Provides an update on the project health, accomplishments, upcoming tasks, risks and significant issues. The Status Report and the project color being report shall be developed in consultation with the State business lead and State project manager, as set forth in greater detail in Section 4.2.2.	Weekly
Project Phase Audit/Gate Check	At the end of each Phase, the Contractor Project Manager shall submit an audit of all deliverables and milestones achieved during the Phase to the State Project manager for review.	Once per phase.
Meeting Agenda/ Minutes	All scheduled meetings will have an agenda and minutes. The minutes shall contain risk issues, action items, and decision logs. Minutes shall be transcribed over to the main logs.	Per occurrence
End of Project Metrics	These are metrics that reflect how well the project was performed. Metrics will be outlined in the Quality Management Plan	
Lessons Learned	A compilation of the lessons learned having 20/20 hindsight. Lessons learned shall be delivered in an Excel template and collected from each of the State and Contractor project team members to get a full 360 degree view of the project in retrospect.	Once
Closeout Report	This report will include all the lessons learned, project metrics, and a summary of the project's implementation and outcome in operation.	Once

Contractor shall use State templates for the foregoing, unless otherwise approved by the State. The State Project Manager shall be responsible for the review and acceptance of project management documentation.

Contractor's project manager shall assist the State's project manager (upon request) in creating materials for periodic presentations to State project sponsors and key stakeholders. Contractor's project manager may be required to present information to, and answer questions from, State stakeholders at these presentations.



### 6.1.2 PROJECT MANAGEMENT AND SUPPORT

The Contractor will apply PMI (Project Management Institute's PMBOK) principles to ensure on-time and within-budget delivery of the Solution, while meeting all of the Requirements in this Contract. The State will approve all project management methods and tools used during the project. These project management methods and tools are considered project deliverables.

### 6.1.3 KEY PROJECT STAFF

Contractor will perform and support the Services consistent with this Contract and the Solution Requirements. Contractor Personnel will be properly educated, trained and qualified for the Services they are to perform and Contractor will put appropriate training in place to meet initial and ongoing training requirements of Contractor Personnel assigned to perform Services.

- (a) Contractor shall be responsible, at its own cost and expense, for any and all recruitment, hiring, Contractor-specific training, education and orientation for all Contractor Personnel assigned or to be assigned to perform Services or support the Requirements.
- (b) All Contractor Personnel, in addition to any Contractor security policies and procedures, shall be required to comply with the security requirements in this Contract
- (c) Contractor shall conduct its hiring process in compliance with all applicable Federal and State laws to include, but not be limited to, anti-discrimination laws.
  - (i) **Eligibility for Employment:** Contractor shall verify that all prospective employees are eligible for employment in the United States.
  - (ii) **Criminal Records:** Contractor or an agent of Contractor shall perform criminal background checks on all prospective employees utilizing a national criminal database acceptable to the State. Before any Contractor Personnel begin work on the Services x) such background check shall have returned a "no record" result or, y) to the extent that the result revealed that a felony record or records exist for a given individual, the associated conviction(s) shall be unrelated to the work to be performed as specified under the Equal Employment Opportunities Commission's EEOC Enforcement Guidance regarding the employment of convicted felons issued April 25, 2012. Contractor shall provide the State with notice of proposed Contractor Personnel with felony or misdemeanor convictions that involve a crime against a person; a crime involving the use or misuse of computer network; a crime involving weapons, explosives or arson; a crime involving trade secret/proprietary information; a crime involving theft, dishonesty, embezzlement, breach of fiduciary duty, identity theft, or other financial-related crimes; a felony conviction for drug possession; or a crime involving the distribution or trafficking of illegal drugs and/or controlled substances.
- (d) All Contractor Personnel providing or assigned to provide Services or otherwise in a position to obtain or have access to State Information, shall execute a non-disclosure agreement in a form acceptable to the State.
- (e) The timing for transfer, reassignment or replacement of Contractor Personnel will be coordinated with requirements for timing and other elements of the Services so as to maintain continuity in the performance of the Services and avoid interruption or disruption to the Services or any failures to maintain Service Levels.

Contractor shall assign the following Contractor staff ("Key Project Staff"), to meet the Requirements of this Contract:

[INSERT]

Contractor will cause the Contractor Personnel filling the Key Project Staff positions to devote full time and dedicated effort to the provision of the Services and the achievement of Service Levels required for the Services, unless a lesser allocation during certain Project Phases may be agreed in writing.

#### 6.1.4 KEY PROJECT STAFF CHANGES

Contractor shall not change the project assignment of [REDACTED], [REDACTED], and [REDACTED] for the period of project implementation. Contractor shall not change other members of Key Project Staff without providing the State written justification, a comprehensive transition plan and obtaining prior written approval of the State. State approvals for replacement of Key Project Staff will not be unreasonably withheld.

The replacement of Key Project Staff shall have comparable or greater skills and applied experience than being replaced and be subject to reference and background checks described above. If Contractor removes Key Project Staff for any reason without the State's approval, Contractor agrees to replace the new Key Project Staff member if performance is unacceptable to State and provide the first thirty (30) days of a replacement resource with equivalent skill at no charge.

Notwithstanding the foregoing, the State acknowledges that Key Project Staff may become unavailable due to termination of employment for any reason, through disability or death, illness, or through leave of absence such as FMLA or National Guard duty for example. In such circumstances, Contractor shall promptly notify the State in writing of the impending or actual departure of any Key Personnel and of the qualifications and identity of proposed replacement Key Project Staff. The State has the right to reasonably disapprove of any replacement Key Project Staff.

6.1.5 CONTROL OF CONTRACTOR PERSONNEL. Contractor shall be fully responsible for the management, compensation, and performance of all Contractor Personnel, and the filing of any and all returns and reports and the withholding and/or payment of all applicable federal, State, and local wage tax, or employment-related taxes, including, but not limited to, income taxes, gross receipt taxes, taxes measured by income, social security taxes, and unemployment taxes for Contractor and Contractor's employees. Notwithstanding the foregoing, Contractor's employees shall adhere to the State's policies and procedures, of which Contractor is made aware while on State Premises, and shall behave and perform in a professional manner. The State, may, in its reasonable discretion, require Contractor to replace any Contractor Personnel, including but not limited to Key Project Staff, working hereunder who does not adhere to, behave, and perform consistent with the State's policies and procedures, or otherwise engages in unprofessional or unethical conduct, or abuses any illegal substance or alcohol, or engages in illegal activities or consistently underperforms. The State shall provide written notice to Contractor of the requirement of replacement, or with whom there are irresolvable personality

conflicts. Contractor shall use reasonable efforts to promptly and expeditiously replace Key Project Staff and replace all other personnel within fifteen (15) business days of receipt of the written notice unless otherwise mutually agreed. The State's right to request replacement of Contractor personnel hereunder relates solely to the removal of individuals from work on this Contract with the State and does not create an employment relationship. Nothing in this Contract authorizes the State to direct the Contractor's termination of the employment of any individual.

6.1.6 CONTRACTOR THIRD PARTY CONTRACTS. The State acknowledges and understands that Contractor will enter into third party contracts with the following Contractor subcontractors: (i) \_\_\_\_\_ for \_\_\_\_\_; (ii) \_\_\_\_\_ for \_\_\_\_\_; and (iii) \_\_\_\_\_ for the performance of Services hereunder. Contractor shall deliver a copy of all such third party contracts to the State for review upon request. The State hereby consents to the use by Contractor of these subcontractors, provided however that any such consent is not deemed acceptance of the terms of any subcontracts by the State.

## 6.2. PROJECT PLANNING

The State and Contractor Project Managers will arrange for kick-off dates and procedures for managing the project – such as reporting status and resolving issues. This will provide an opportunity to introduce all key members of the project teams and walk through the project management plan and key milestones.

### 6.2.1. MEETING PROTOCOLS

For regular weekly project status meetings, Contractor's Project Manager shall provide a meeting agenda and any handouts at least one business day in advance of the scheduled meeting.

### 6.2.2. PROJECT DOCUMENT STORAGE

The Contractor will establish a SharePoint site, or some other collaboration mechanism, that is accessible to the Contractor and the State. This will provide a common area for Contractor's project documents, artifacts, and deliverables. Access to all SharePoint sites (or other medium of collaboration) and all project material contained therein shall be delivered to the State upon completion of the project.

### 6.2.3. STATUS REPORTS

Contractor's Project Manager shall provide project documentation and collaboration to meet the State's vendor reporting requirements. If requested, the Contractor shall use the State's Status Report template. If no template is provided to the Contractor, the status information shall include, at a minimum: all planned tasks accomplished for the reporting period planned tasks that are incomplete, or behind schedule in the previous week (with reasons given for those behind schedule); all tasks planned for the upcoming two weeks; an updated status of tasks (entered into the Master Project Work Plan and attached to the status report – e.g., percent completed, resources assigned to tasks, etc.); and the status of any corrective actions undertaken. The report will also contain items such as the current status of the project's technical progress and contractual obligations; achievements to date; risk management activities; unresolved issues; requirements to resolve unresolved issues; action items; problems; installation and maintenance

results; and significant changes to Contractor's organization or method of operation, to the project management team, or to the deliverable schedule, where applicable. For all project services performed on a time and materials basis, as provided herein, the Contractor shall also provide details on staff hours, cost per activity, all expenditures and a summary of services performed for the reporting period.

The State Project Manager and Contractor's Project Manager will come to agreement on the exact format of the project documentation and collaboration reports, at or before the project kick-off meeting.

Each report shall include a project dashboard at the top outlining the overall status of the project in terms of the standard triple constraint: cost, time, resources (using a legend or icon of green, yellow, and red based upon the following definitions):

- Green – on track to deliver committed scope by committed deadline with committed resources/funding.
- Yellow – not on track to deliver committed scope by committed deadline with committed resources/funding, but have a plan to get back to green.
- Red – not on track and currently do not have a plan to get back to green. Need project management intervention or assistance.

In the event of yellow or red overall project status, there should be a specific task(s) and/or issue(s) identified as yellow or red which are the root cause of the overall project status being yellow or red. These items shall be presented in sufficient detail to determine the root-cause. The Status Report shall provide a link to the Risks and Issues Log for more detail.

The report shall include a budget section outlining original contract costs by deliverable with billed and paid-to-date information by deliverable and in total.

### 6.3 IMPLEMENTATION MASTER SCHEDULE

The Contractor has compiled a preliminary "baseline" implementation master schedule ("IMS") using the best available knowledge at the time of Contract signing which is attached to this Attachment A as Exhibit 2. The Contractor shall update the IMS after execution of this Contract during the Project Development as required pursuant to the terms herein (e.g., updated tasks and task descriptions, updated meeting dates, updated resource assignments, updated milestone dates). Any such changes shall be communicated in writing by the Contractor to the State Contract Manager by executing a new or revised IMS or other documentation acceptable to the State. Such changes are subject to State review and approval. The parties shall work together to implement the IMS changes in accordance with the terms of this Contract; provided, however, in no event shall revisions to the IMS be deemed to amend this Contract. Changes to project scope, term or maximum amount shall require a Contract amendment.

The IMS is an ongoing tool for anticipating and tracking changes to expectations for all project tasks, deliverables and milestones. The complete IMS is an integrated plan – that is, it includes actions and deliverables from all project areas – both Contractor and State. The complete IMS,

which includes the detailed tasks and milestones, shall reside in Microsoft Project (.mpp) format (Version 2007 or higher)] and will be shared in the ongoing communication meetings to discuss changes. State shall sign off on all deliverables from each Phase of the IMS before subsequent phase work is initiated. Once sign off is complete, Contractor and State will assess readiness to proceed with next phase.

## 7. SCOPE OF SERVICES.

7.1 DESCRIPTION OF SERVICES. Contractor agrees to provide and shall perform the Services described herein in accordance with and subject to the terms and conditions set forth in this Contract.

### 7.2 Project Major Phases, Warranty and Options.

The Contractor shall, at a minimum, provide State access to a [web-based] Solution that meets the tools and functionality requirements of the State set forth in Exhibit 1 to this Attachment A. Contractor shall use system development and configuration control methodologies and the desirable sequence of project major Phases as described herein. Estimated dates in the following table shall be finalized in the IMS as described in Section 6.3, "Implementation Master Schedule."

PHASE	ESTIMATED DATES	PHASE DESCRIPTION
[Initiation]		Kick-off meeting, Planning and preparation of project management planning documentation.
[Requirements Gathering]		Contractor performs necessary requirements gathering to finalize functional and technical requirements and identify gaps between State requirements and Solution capabilities.
[Implementation]		Contractor installs and configures the Solution in a Test environment.
[Testing]		State subject matter experts perform Solution testing in in a test (not live) environment accordance with Contractor-developed Test plans.
[Training]		Contractor performs training of State personnel (train the trainer or train the user).
[Legacy Data Migration]		Contractor shall perform all necessary legacy data migrations using State-approved migration plan and data mapping templates.

PHASE	ESTIMATED DATES	PHASE DESCRIPTION
[Deployment]		Contractor implements the tested and State-approved Solution in the production environment for additional State testing and Go-Live.
[Post-Implementation Support/Warranty]		Contractor shall be responsible for fixing all Defects found during the Warranty Period. All Defects found within the Warranty Period, shall be corrected by Contractor at no additional cost to the State.

7.3. **State-Caused Delays.** Contractor acknowledges that the State may not be able to meet the time frames specified in an IMS or that the State may determine that it is necessary to delay and/or modify the timing and sequencing of the implementation as provided in the IMS. While the State is committed to the project and shall use reasonable efforts to provide staff and resources necessary to satisfy all such time frames, the State shall not be held responsible or deemed in default for any delays in Solution implementation provided the State uses its reasonable efforts to accomplish its designated responsibilities and obligations as set forth in the IMS. In addition, the State may, at its option, delay implementation and installation of the Solution, or any part thereof. Notwithstanding any provision to the contrary, if the State Significantly Delays implementation of the Solution, either party may make a Change Request in accordance with Section 10, "Change Order Process," and, if required, an amendment to this Contract. Contractor agrees to adjust the IMS and Payment Milestones deadlines to take into account any State-caused delays; provided, however, that Contractor shall continue to perform any and all activities not affected by such State-caused delay. In the event the State's adjustment to the IMS causes Contractor scheduling conflicts or personnel unavailability, the State and Contractor shall prepare a revised mutually agreeable IMS which may delay the commencement and completion dates of the project and shall take into consideration the readjusted time frames and any necessary resequencing of the activities. Such readjustment, rescheduling or modification of the Project shall be at no additional cost to the State if the delays are less than or equal to thirty (30) days.

For purposes of this Section, a "Significant Delay" shall mean any delay that in itself will cause a slippage of thirty (30) calendar days or more in a Go Live date.

7.4 **Third Party Resources.** From time to time State may request that Contractor obtain and provide to the State, at the State's expense, third party Resources related to the Services but outside the scope of what Contractor is then obligated to provide hereunder, including the benefit of any volume purchasing discounts, pricing or terms available to the State or its supplier. Contractor shall notify the State at the time of any such request of any relationships Contractor may have with such suppliers that may be of benefit to the State in this respect. To the extent that State may have a more favorable relationship with any third party supplier, upon notice from State, Contractor agrees to consider such Resources from State's designated supplier. Contractor will not add an administrative fee or other markup to any third party Resources it procures on behalf of or for the benefit of State and the Services provided hereunder.

7.5 **State Third Party Software.** A list of all Third Party Software licensed by the State for purposes of Contractor's performance of the Services is attached to this Attachment A as Exhibit 3. Contractor will assume operational and financial responsibility for such Third Party Software and any related maintenance obligations to the same extent as if Contractor were the licensee of such Third Party Software. Contractor will cease use of such Third Party Software upon expiration or termination of this Contract.

## 8. ACCEPTANCE

8.1. **Acceptance Testing by the State Following Implementation.** After Contractor provides written notice to the State that it has completed a Phase of the Solution, the State shall, in accordance with the Formal Acceptance Criteria agreed by the parties, and with full cooperation and assistance from Contractor, conduct all such inspections and tests of the Phase as the State may deem necessary or appropriate to determine whether any Defects exist in the Phase as implemented and whether the Phase as installed materially complies with all of the Installation Test Specifications and Phase specifications as set forth in the Requirements and detailed IMS. Such inspections and tests shall be over a duration mutually agreed upon by the State and Contractor, per Phase, from the date a notice of completion is issued (the "Acceptance Period"). Contractor shall correct all Defects during the Acceptance Period, demonstrate to the State that correction of such Defects has been made, and after so demonstrating correction, shall issue to the State a written Certificate of Completion indicating that no Defects are known to exist in the Phase and/or Solution. The State shall be deemed to have accepted and approved the particular Phase or Solution only upon the State's delivery to Contractor of a signed, written Certificate of Acceptance indicating that the Phase or the Solution, as the case may be, as completed, materially performs in accordance with the Requirements.

If at the end of the Acceptance Period, the State has not issued a signed Certificate of Acceptance to Contractor for that Phase or the Solution, the State may, in its sole discretion, extend the Acceptance Period; provided, however, that the State shall respond within five (5) business days of a written request by Contractor issued after the end of the original Acceptance Period to provide Contractor with the State's status of approval or disapproval for that Phase or the Solution. Any rejection must be in writing and specify the reason for the rejection and must be based upon the continued existence of a Defect in the Phase or Solution or failure of the Phase or Solution to materially perform in accordance with the Requirements. The Certificate of Acceptance shall not be unreasonably withheld by the State. If a Certificate of Acceptance for a Phase or the Solution is signed and delivered by the State, Contractor shall sign said Certificate, with both parties receiving a copy thereof.

## 9. THIRD PARTY COOPERATION

The State may hire other independent contractors as it may require to assist with the project. Contractor will cooperate with the State and the third party, including provision of: (i) written Documentation requested by the State; (ii) commercially reasonable assistance and support services to such third party; and (iii) reasonable access to Contractor as necessary for such third parties to perform their work. The State shall use reasonable efforts to require such third parties to comply with Contractor's reasonable requirements regarding confidentiality, operations, standards, and security. Contractor shall support and maintain such third party work product,

provided the service provider complies with any Documentation applicable to Contractor in respect of the Services involved.

## 10. CONTRACT/PROJECT CHANGE ORDER PROCESS

For projects involving IT Implementation services, where frequent and/or multiple minor changes to the project schedule or deliverables are anticipated, the following process may be utilized to effectuate such minor changes without undue project delays (“Change Orders”).

Changes to a Contract during its term may incur additional costs and possible delays relative to the project schedule, or may result in less cost to the State (for example, the State decides it no longer needs a deliverable in whole or part) or less effort on the part of a selected vendor. A Change Order shall define the effort involved in implementing the change, the total cost or associated savings to the State, of implementing the change, and the effect, if any, of implementing the change on the project schedule.

Any change that alters the essential terms of the original contract, including any change that expands or decreases the statement of work, the contract duration, the payment terms and/or the contract maximum amount, shall require a Contract Amendment in accordance with State contracting policies and procedures. Under no circumstances may a Change Order be used where a Contract Amendment is otherwise required pursuant to the Contract Amendments, Approval and Execution process set forth in State Administrative Bulletin 3.5.

Change Orders will be developed jointly and every effort will be made to adhere to the approved Project Plan. The Project Manager for the State and the Project Manager for a Contractor will decide whether a Change Order is necessary. If a Change Order is necessary, the Project Manager for requesting party will prepare a Change Order Request detailing the impacts on scope, schedule, deliverables, resources, and cost. The Change Order Request must be submitted to the non-requesting party for review. The non-requesting party will make its best efforts to either approve or deny the Change Order in writing within (10) business days. In no event shall any delay in the approval or denial of a Change Request constitute a deemed approval by the State.

The State will not pay for the effort involved in developing a Change Order. The Contractor shall bear the cost of estimating the cost or savings, time, and Contractor resources required to implement all Change Order Requests forthcoming from the State during the course of the Project.

All Change Orders that are mutually agreed upon must:

- a. be in writing and describe, with specific reference to the applicable section(s) of the contract, what is being added, deleted or otherwise modified;
- b. be signed by both the State and the Contractor;
- c. include the original contract number and a sequential Change Order number;
- d. include Contractor certifications regarding Taxes, Debarment, and Child Support, as detailed in State Administrative Bulletin 3.5, Section XIII(A)(c); and



- e. be consolidated into a formal Contract Amendment whenever an amendment would otherwise be required by State Administrative Bulletin 3.5.

## ATTACHMENT B PAYMENT PROVISIONS

The maximum dollar amount payable under this contract is not intended as any form of a guaranteed amount. The Contractor will be paid for products or services actually delivered or performed, as specified in Attachment A, up to the maximum allowable amount specified on page 1 of this contract.

1. Prior to commencement of work and release of any payments, Contractor shall submit to the State:
  - a. a certificate of insurance consistent with the requirements set forth in Attachment C, Section 8 (Insurance), and with any additional requirements for insurance as may be set forth elsewhere in this contract; and
  - b. a current IRS Form W-9 (signed within the last six months).
2. Payment terms are **Net 30** days from the date the State receives an error-free invoice with all necessary and complete supporting documentation.
3. Contractor shall submit detailed invoices itemizing all work performed during the invoice period, including the dates of service, rates of pay, hours of work performed, and any other information and/or documentation appropriate and sufficient to substantiate the amount invoiced for payment by the State. All invoices must include the Contract # for this contract.
4. Invoices shall be submitted to the State at the following address: [REDACTED]
5. Contractor shall submit invoices to the State upon State Acceptance of a deliverable in accordance with the schedule for delivered products, or rates for services performed set forth below:
  - Specify Milestone Deliverable Payment Schedule, retainage (if any) and release point(s).
  - Hardware/Software
  - Monthly Services
  - Other Included Services
  - Optional Services
  - Withheld Amount
5. **EXPENSES:** The fee for services shall be inclusive of Contractor expenses.
6. **RETAINAGE:** In the discretion of the State, a contract resulting from this RFP may provide that the State withhold a percentage of the total amount payable for some or all deliverables, such retainage to be payable upon satisfactory completion and State acceptance in accordance with the terms and conditions of the contract.

**ATTACHMENT C: STANDARD STATE PROVISIONS FOR CONTRACTS AND GRANTS****REVISED DECEMBER 4, 2023**

**1. Definitions:** For purposes of this Attachment, “Party” shall mean the Contractor, Grantee, or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. “Agreement” shall mean the specific contract or grant to which this form is attached.

**2. Entire Agreement:** This Agreement, whether in the form of a contract, State-funded grant, or Federally-funded grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect. Where an authorized individual is either required to click-through or otherwise accept, or made subject to, any electronic terms and conditions to use or access any product or service provided hereunder, such terms and conditions are not binding and shall have no force or effect. Further, any terms and conditions of Party’s invoice, acknowledgment, confirmation, or similar document, shall not apply, and any such terms and conditions on any such document are objected to without need of further notice or objection.

**3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial:** This Agreement will be governed by the laws of the State of Vermont without resort to conflict of laws principles. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State regarding its performance under this Agreement. Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

**4. Sovereign Immunity:** The State reserves all immunities, defenses, rights, or actions arising out of the State’s sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State’s immunities, defenses, rights, or actions shall be implied or otherwise deemed to exist by reason of the State’s entry into this Agreement.

**5. No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the State withhold any state or Federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.

**6. Independence:** The Party will act in an independent capacity and not as officers or employees of the State.

**7. Defense and Indemnity:**

- A.** The Party shall defend the State and its officers and employees against all third-party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits.
- B.** After a final judgment or settlement, the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.
- C.** The Party shall indemnify the State and its officers and employees if the State, its officers, or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.
- D.** Notwithstanding any contrary language anywhere, in no event shall the terms of this Agreement or any document furnished by the Party in connection with its performance under this Agreement obligate the State to (1) defend or indemnify the Party or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys’ fees, collection

costs or other costs of the Party or any third party.

**8. Insurance:** During the term of this Agreement, Party, at its expense, shall maintain in full force and effect the insurance coverages set forth in the Vermont State Insurance Specification in effect at the time of incorporation of this Attachment C into this Agreement. The terms of the Vermont State Insurance Specification are hereby incorporated by reference into this Attachment C as if fully set forth herein. A copy of the Vermont State Insurance Specification is available at: <https://aoa.vermont.gov/Risk-Claims-COI>.

**9. Reliance by the State on Representations:** All payments by the State under this Agreement will be made in reliance upon the accuracy of all representations made by the Party in accordance with this Agreement, including but not limited to bills, invoices, progress reports, and other proofs of work.

**10. False Claims Act:** Any liability to the State under the Vermont False Claims Act (32 V.S.A. § 630 et seq.) shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

**11. Whistleblower Protections:** The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority, or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

**12. Use and Protection of State Information:**

- A. As between the State and Party, "State Data" includes all data received, obtained, or generated by the Party in connection with performance under this Agreement. Party acknowledges that certain State Data to which the Party may have access may contain information that is deemed confidential by the State, or which is otherwise confidential by law, rule, or practice, or otherwise exempt from disclosure under the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq. ("Confidential State Data").
- B. With respect to State Data, Party shall:
  - i. take reasonable precautions for its protection;
  - ii. not rent, sell, publish, share, or otherwise appropriate it; and
  - iii. upon termination of this Agreement for any reason, Party shall dispose of or retain State Data if and to the extent required by this Agreement, law, or regulation, or otherwise requested in writing by the State.
- C. With respect to Confidential State Data, Party shall:
  - i. strictly maintain its confidentiality;
  - ii. not collect, access, use, or disclose it except as necessary to provide services to the State under this Agreement;
  - iii. provide at a minimum the same care to avoid disclosure or unauthorized use as it provides to protect its own similar confidential and proprietary information;
  - iv. implement and maintain administrative, technical, and physical safeguards and controls to protect against any anticipated threats or hazards or unauthorized access or use;
  - v. promptly notify the State of any request or demand by any court, governmental agency or other person asserting a demand or request for Confidential State Data so that the State may seek an appropriate protective order; and
  - vi. upon termination of this Agreement for any reason, and except as necessary to comply with subsection B.3 above in this section, return or destroy all Confidential State Data remaining in its possession or control.
- D. If Party is provided or accesses, creates, collects, processes, receives, stores, or transmits Confidential State Data in any electronic form or media, Party shall utilize:
  - i. industry-standard firewall protection;
  - ii. multi-factor authentication controls;
  - iii. encryption of electronic Confidential State Data while in transit and at rest;
  - iv. measures to ensure that the State Data shall not be altered without the prior written consent of the State;
  - v. measures to protect against destruction, loss, or damage of State Data due to potential environmental hazards, such as fire and water damage;

- vi. training to implement the information security measures; and
  - vii. monitoring of the security of any portions of the Party's systems that are used in the provision of the services against intrusion.
- E. No Confidential State Data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside the United States, except with the express written permission of the State.
- F. Party shall notify the State within twenty-four hours after becoming aware of any unauthorized destruction, loss, alteration, disclosure of, or access to, any State Data.
- G. State of Vermont Cybersecurity Standard Update: Party confirms that all products and services provided to or for the use of the State under this Agreement shall be in compliance with State of Vermont Cybersecurity Standard Update in effect at the time of incorporation of this Attachment C into this Agreement. The State of Vermont Cybersecurity Standard Update prohibits the use of certain branded products in State information systems or any vendor system, and a copy is available at: <https://digitalservices.vermont.gov/cybersecurity/cybersecurity-standards-and-directives>
- H. In addition to the requirements of this Section 12, Party shall comply with any additional requirements regarding the protection of data that may be included in this Agreement or required by law or regulation.

**13. Records Available for Audit:** The Party shall maintain all records pertaining to performance under this Agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this Agreement. Records produced or acquired in a machine-readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of this Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

**14. Fair Employment Practices and Americans with Disabilities Act:** Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable, and shall include this provision in all subcontracts for work performed in Vermont. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.

**15. Offset:** The State may offset any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any offset of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided in 32 V.S.A. § 3113.

**16. Taxes Due to the State:** Party certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.

**17. Taxation of Purchases:** All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

**18. Child Support:** (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date this Agreement is signed, Party is not under an obligation to pay child support or is in good standing with respect to or in full compliance with a plan to pay any and all child support payable under a support order. Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

**19. Sub-Agreements:** Party shall not assign, subcontract, or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54), as amended by Section 17 of Act No. 142 (2010) and by

Section 6 of Act No. 50 (2011).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 (“False Claims Act”); Section 11 (“Whistleblower Protections”); Section 12 (“Confidentiality and Protection of State Information”); Section 14 (“Fair Employment Practices and Americans with Disabilities Act”); Section 16 (“Taxes Due the State”); Section 18 (“Child Support”); Section 20 (“No Gifts or Gratuities”); Section 22 (“Certification Regarding Debarment”); Section 30 (“State Facilities”); and Section 32.A (“Certification Regarding Use of State Funds”).

**20. No Gifts or Gratuities:** Party shall not give title or possession of anything of substantial value (including property, currency, travel, and/or education programs) to any officer or employee of the State during the term of this Agreement.

**21. Regulation of Hydrofluorocarbons:** Party confirms that all products provided to or for the use of the State under this Agreement shall not contain hydrofluorocarbons, as prohibited under 10 V.S.A. § 586.

**22. Certification Regarding Debarment:** Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party’s principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible, or excluded from participation in Federal programs, or programs supported in whole or in part by Federal funds. Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State’s debarment list at: <https://bgs.vermont.gov/purchasing-contracting/debarment>.

**23. Conflict of Interest:** Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.

**24. Vermont Public Records Act:** Party acknowledges and agrees that this Agreement, any and all information obtained by the State from the Party in connection with this Agreement, and any obligations of the State to maintain the confidentiality of information are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 *et seq.*

**25. Force Majeure:** Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lockouts) (“Force Majeure”). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

**26. Marketing:** Party shall not use the State’s logo or otherwise refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.

**27. Termination:**

- A. Non-Appropriation:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel this Agreement at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is funded in whole or in part by Federal funds, and in the event Federal funds become unavailable or reduced, the State may suspend or cancel this Agreement immediately, and the State shall have no obligation to pay Party from State revenues.
- B. Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party’s notice or such longer time as the non-breaching party may specify in the notice.
- C. Termination Assistance:** Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

**28. Continuity of Performance:** In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.

**29. No Implied Waiver of Remedies:** Either party's delay or failure to exercise any right, power, or remedy under this Agreement shall not impair any such right, power, or remedy, or be construed as a waiver of any such right, power, or remedy. All waivers must be in writing.

**30. State Facilities:** If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party's performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to, and use of, State facilities, which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

**31. Requirements Pertaining Only to Federal Grants and Subrecipient Agreements:** If this Agreement is a grant that is funded in whole or in part by Federal funds:

- A. Requirement to Have a Single Audit:** The Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the Federal Audit Clearinghouse within nine months. If a single audit is not required, only the Subrecipient Annual Report is required. A Single Audit is required if the subrecipient expends \$750,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.
- B. Internal Controls:** In accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework" issued by the Committee of Sponsoring Organizations of the Treadway Commission.
- C. Mandatory Disclosures:** In accordance with 2 CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

**32. Requirements Pertaining Only to State-Funded Grants:**

- A. Certification Regarding Use of State Funds:** If Party is an employer and this Agreement is a State-funded grant in excess of \$1,000, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.
- B. Good Standing Certification (Act 154 of 2016):** If this Agreement is a State-funded grant, Party hereby represents: (i) that it has signed and provided to the State the form prescribed by the Secretary of Administration for purposes of certifying that it is in good standing (as provided in Section 13(a)(2) of Act 154) with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets, or otherwise explaining the circumstances surrounding the inability to so certify; and (ii) that it will comply with the requirements stated therein.

(End of Standard Provisions)

ATTACHMENT D  
INFORMATION TECHNOLOGY SYSTEM IMPLEMENTATION  
TERMS AND CONDITIONS (For CMS 90/10 and FNS Funded Procurements rev. 4/2/2024)

**1. MODIFICATIONS TO CONTRACTOR DOCUMENTS**

The parties specifically agree that the Contractor Documents are hereby modified and superseded by Attachment C and this Attachment D.

“Contractor Documents” shall mean one or more document, agreement or other instrument required by Contractor in connection with the performance of the products and services being purchased by the State, regardless of format, including the license agreement, end user license agreement or similar document, any hyperlinks to documents contained in the Contractor Documents, agreement or other instrument and any other paper or “shrinkwrap,” “clickwrap,” “browsewrap” or other electronic version thereof.

**2. NO SUBSEQUENT, UNILATERAL MODIFICATION OF TERMS BY CONTRACTOR**

Notwithstanding any other provision or other unilateral license terms which may be issued by Contractor during the Term of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of an order for the products and services being purchased by the State, as applicable, the components of which are licensed under the Contractor Documents, or the fact that such other agreement may be affixed to or accompany the products and services being purchased by the State, as applicable, upon delivery, the terms and conditions set forth herein shall supersede and govern licensing and delivery of all products and services hereunder.

**3. TERM OF CONTRACTOR’S DOCUMENTS; PAYMENT TERMS**

Contractor acknowledges and agrees that, to the extent a Contractor Document provides for alternate term or termination provisions, including automatic renewals, such sections shall be waived and shall have no force and effect. All Contractor Documents shall run concurrently with the term of this Contract; provided, however, to the extent the State has purchased a perpetual license to use the Contractor’s software, hardware or other services, such license shall remain in place unless expressly terminated in accordance with the terms of this Contract. Contractor acknowledges and agrees that, to the extent a Contractor Document provides for payment terms which differ from the payment terms set forth in Attachment B, such sections shall be waived and shall have no force and effect and the terms in Attachment B shall govern.

**4. OWNERSHIP AND LICENSE IN DELIVERABLES**

**4.1 Contractor Intellectual Property.** Except as required to comply with Paragraph 4.4, below, (i) Contractor shall retain all right, title and interest in and to any work, ideas, inventions, discoveries, tools, methodology, computer programs, processes and improvements and any other intellectual property, tangible or intangible, that has been created by Contractor prior to entering into this Contract (“Contractor Intellectual Property”), and (ii) Contractor Intellectual Property shall include any solution delivered on a subscription/fee-based access (vendor maintenance included) model, excluding any modifications, enhancements, reconfigurations, and/or



derivative works based on such modifications, enhancements, reconfigurations, completed as part of this Contract utilizing Federal Financial Participation.

**4.2 State Intellectual Property.** The State shall retain all right, title and interest in and to State Intellectual Property, meaning (i) all content and all property, data and information furnished by or on behalf of the State or any agency, commission or board thereof, (ii) all information that is created under this Contract, including, but not limited to, all data, reports, or records generated through the use by Contractor, the State, or any third party of any technology systems or knowledge bases that are developed or otherwise made available for the benefit of the State under this Contract, and (iii) all State trademarks, trade names, logos and other State identifiers, Internet uniform resource locators, State user name or names, Internet addresses and e-mail addresses obtained or developed pursuant to this Contract (collectively, “State Intellectual Property”).

Contractor may not collect, access, or use State Intellectual Property for any purpose other than as specified in this Contract. Upon expiration or termination of this Contract, Contractor shall return or destroy all State Intellectual Property and all copies thereof, and Contractor shall have no further right or license to such State Intellectual Property.

Contractor acquires no rights or licenses, including, without limitation, intellectual property rights or licenses, to use State Intellectual Property for its own purposes. In no event shall the Contractor claim any security interest in State Intellectual Property.

**4.3 Ownership and Rights to Work Product and Deliverables.** “Work Product” means any tangible or intangible ideas, inventions, improvements, modifications, discoveries, development, customization, configuration, methodologies or processes, designs, models, drawings, photographs, reports, formulas, algorithms, patterns, devices, compilations, databases, computer programs, work of authorship, specifications, operating instructions, procedures manuals or other documentation, 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, either solely or jointly with others, pursuant to this Contract.

All Work Product shall belong exclusively to the State, with the State having the sole and exclusive right to apply for, obtain, register, hold and renew, in its own name and/or for its own benefit, all patents and copyrights, and all applications and registrations, renewals and continuations thereof and/or any and all other appropriate protection. To the extent exclusive title and/or complete and exclusive ownership rights in and to any Work Product may not originally vest in the State by operation of law or otherwise as contemplated hereunder, Contractor shall immediately upon request, unconditionally and irrevocably assign, transfer and convey to the State all right, title and interest therein.

To the extent delivered under this Contract, upon full payment to Contractor in accordance with Attachment B, and subject to the terms and conditions contained herein, Contractor hereby (i) assigns to State all rights in and to all items that Contractor is required to deliver to the State under this Contract, including Work Product (“Deliverables,”) except to the extent they include any Contractor Intellectual Property; and (ii) grants to State a perpetual, non-exclusive, irrevocable, royalty-free license to use for State’s internal business purposes, any

Contractor Intellectual Property included in the Deliverables in connection with its use of the Deliverables and authorize others to do the same on the State's behalf. Except for the foregoing license grant, and as required to comply with Paragraph 4.4, below, Contractor or its licensors retain all rights in and to all Contractor Intellectual Property.

Should the State require a license for the use of Contractor Intellectual Property or third-party intellectual property in connection with the development or use of Deliverables, the Contractor shall grant or obtain for the State a royalty-free license for such development and use.

The Contractor shall not sell or copyright a Deliverable without written permission from the State or if prohibited under Federal regulation. The State may freely share and reuse any Deliverable with other states, subject to the licensing of associated Contractor Intellectual Property.

If the Contractor is operating a system or application on behalf of the State of Vermont, then the Contractor shall not make information entered into the system or application available for uses by any other party than the State of Vermont, without prior authorization by the State. Nothing herein shall entitle the State to pre-existing Contractor Intellectual Property or Contractor Intellectual Property developed outside of this Contract with no assistance from State.

#### **4.4 Compliance with Federal Requirements for Public Licensing and Ownership of Intellectually Property Created with Federal Funds.**

The terms in this Section 4 shall be interpreted to ensure compliance with Federal procurement regulations relating to intellectual property. Irrespective of any designation as Contractor Intellectual Property, Contractor shall grant the State ownership rights and reserve to the Department of Health and Human Services (HHS), 45 C.F.R. § 95.617(a)-(b), and US Department of Agriculture Food and Nutrition Service (FNS), 7 C.F.R. § 277.18(l)(i)-(ii), a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and authorize others to use for Federal government purposes, in any software, modifications to software, and associated documentation that is designed, developed, or installed under this Contract including any copyright therein, 2 C.F.R. § 200.315(d), subject only to the limitations for Proprietary Software contained in Federal regulation. 45 C.F.R. § 95.617(c), 7 C.F.R. § 277.18(l)(1)(iii).

### **5. CONFIDENTIALITY AND NON-DISCLOSURE; SECURITY BREACH REPORTING**

**5.1** For purposes of this Contract, confidential information will not include information or material which (a) enters the public domain (other than as a result of a breach of this Contract); (b) was in the receiving party's possession prior to its receipt from the disclosing party; (c) is independently developed by the receiving party without the use of confidential information; (d) is obtained by the receiving party from a third party under no obligation of confidentiality to the disclosing party; or (e) is not exempt from disclosure under applicable State law.

**5.2 Confidentiality of Contractor Information.** The Contractor acknowledges and agrees that this Contract and any and all Contractor information obtained by the State in connection with this Contract are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq. Contractor may, as provided below, seek to prevent the disclosure of information for which a reasonable claim of exemption can be made pursuant to 1 V.S.A. § 317(c), including, but not limited to, trade secrets, proprietary information or financial information, including any

formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to the Contractor, and which gives the Contractor an opportunity to obtain business advantage over competitors who do not know it or use it.

Contractor must provide notice to the State, which may include an appropriate legend to reflect the Contractor's determination that Contractor information that is provided under this Contract is exempt from disclosure under the Public Records Act and indicating that it is a trade secret, proprietary information, financial information, or otherwise subject to an exemption at time of delivery or disclosure.

The State shall promptly notify Contractor of any request made under the Access to Public Records Act for items competently identified by Contractor as exempt information before the request was received by the State. Contractor may, in its discretion, seek an appropriate protective order, or otherwise defend any right it may have to maintain the confidentiality of such information under applicable State law within three business days of the State's receipt of any such request. Contractor agrees that it will not make any claim against the State if the State makes available to the public any information in accordance with the Access to Public Records Act. Contractor shall indemnify the State for any costs or expenses incurred by the State, including, but not limited to, attorneys' fees awarded in accordance with 1 V.S.A. § 320, in connection with any action brought in connection with Contractor's attempts to prevent or unreasonably delay public disclosure of Contractor's information if a final decision of a court of competent jurisdiction determines that the State improperly withheld such information and that the improper withholding was based on Contractor's attempts to prevent public disclosure of Contractor's information.

**5.3 Confidentiality of State Information.** In addition to the provisions of Section 12 of Attachment C, the Contractor agrees that (a) it will not publish, reproduce, or otherwise divulge any Confidential State Data (as defined in Attachment C) in whole or in part, in any manner or form orally or in writing to any third party unless it has received written approval from the State and that third party is subject to a written confidentiality agreement that contains restrictions and safeguards at least as restrictive as those contained in this Contract; (b) it will take reasonable measures as are necessary to restrict access to Confidential State Data in the Contractor's possession to only those employees on its staff who must have the information on a "need to know" basis; (c) it shall not access State user accounts or Confidential State Data, except in the course of data center operations, response to service or technical issues, as required by the express terms of this Contract, or at State's written request; and (d) it may not share Confidential State Data with its parent company or other affiliate without State's express written consent.

## **6. SECURITY OF STATE INFORMATION**

**6.1 Security Standards.** To the extent the Contractor or its subcontractors, affiliates or agents handles, collects, stores, disseminates or otherwise deals with Confidential State Data, the Contractor represents and warrants that it has implemented and it shall maintain during the term of this Contract the highest industry standard administrative, technical, and physical safeguards and controls consistent with NIST *Special Publication 800-53* (version 4 or higher)

and *Federal Information Processing Standards Publication 200* and designed to satisfy the provisions of Section 12 of Attachment C and to implement additional measures to protect against unauthorized access to or use of Confidential State Data that shall include at a minimum: (1) access controls that permit access to State Data only to authorized individuals and controls to prevent the Contractor employees from providing State Data to unauthorized individuals who may seek to obtain this information (whether through fraudulent means or otherwise); (2) dual control procedures, segregation of duties, and pre-employment criminal background checks for employees with responsibilities for or access to Confidential State Data; (3) monitoring of the security of any portions of the Contractor systems that are used in the provision of the services against intrusion on a twenty-four (24) hour a day basis.

**6.2 Security Breach Notice and Reporting.** The Contractor shall have policies and procedures in place for the effective management of Security Breaches, as defined below, which shall be made available to the State upon request.

In addition to the requirements set forth in any applicable Business Associate Agreement as may be attached to this Contract, in the event of any actual security breach or reasonable belief of an actual security breach the Contractor either suffers or learns of that either compromises or could compromise State Data (a “Security Breach”), the Contractor shall notify the State within 24 hours of its discovery. Contractor shall immediately determine the nature and extent of the Security Breach, contain the incident by stopping the unauthorized practice, recover records, shut down the system that was breached, revoke access and/or correct weaknesses in physical security. Contractor shall report to the State: (i) the nature of the Security Breach; (ii) the State Data used or disclosed; (iii) who made the unauthorized use or received the unauthorized disclosure; (iv) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and (v) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. The Contractor shall provide such other information, including a written report, as reasonably requested by the State. Contractor shall analyze and document the incident and provide all notices required by applicable law.

In accordance with Section 9 V.S.A. §2435(b)(3), the Contractor shall notify the Office of the Attorney General, or, if applicable, Vermont Department of Financial Regulation (“DFR”), within fourteen (14) business days of the Contractor’s discovery of the Security Breach. The notice shall provide a preliminary description of the breach. The foregoing notice requirement shall be included in the subcontracts of any of Contractor’s subcontractors, affiliates or agents which may be “data collectors” hereunder.

The Contractor agrees to fully cooperate with the State and assume responsibility at its own expense for the following, to be determined in the sole discretion of the State: (i) notice to affected consumers if the State determines it to be appropriate under the circumstances of any particular Security Breach, in a form recommended by the AGO; and (ii) investigation and remediation associated with a Security Breach, including but not limited to, outside investigation, forensics, counsel, crisis management and credit monitoring, in the sole determination of the State.

The Contractor agrees to comply with all applicable laws, as such laws may be amended from time to time (including, but not limited to, Chapter 62 of Title 9 of the Vermont Statutes and all applicable State and federal laws, rules or regulations) that require notification in the event

of unauthorized release of personally-identifiable information or other event requiring notification.

In addition to any other indemnification obligations in this Contract, the Contractor shall fully indemnify and save harmless the State from any costs, loss or damage to the State resulting from a Security Breach or the unauthorized disclosure of State Data by the Contractor, its officers, agents, employees, and subcontractors.

**6.3 Security Policies.** To the extent the Contractor or its subcontractors, affiliates or agents handles, collects, stores, disseminates or otherwise deals with State Data, the Contractor will have an information security policy that protects its systems and processes and media that may contain State Data from internal and external security threats and State Data from unauthorized disclosure, and will have provided a copy of such policy to the State. The Contractor shall provide the State with not less than thirty (30) days advance written notice of any material amendment or modification of such policies.

**6.4 Operations Security.** To the extent the Contractor or its subcontractors, affiliates or agents handles, collects, stores, disseminates or otherwise deals with State Data, the Contractor shall cause an SSAE 18 SOC 2 Type 2 audit report to be conducted annually. The audit results and the Contractor's plan for addressing or resolution of the audit results shall be shared with the State within sixty (60) days of the Contractor's receipt of the audit results. Further, on an annual basis, within 90 days of the end of the Contractor's fiscal year, the Contractor shall transmit its annual audited financial statements to the State.

**6.5 Redundant Back-Up.** The Contractor shall maintain a fully redundant backup data center geographically separated from its main data center that maintains near realtime replication of data from the main data center. The Contractor's back-up policies shall be made available to the State upon request. The Contractor shall provide the State with not less than thirty (30) days advance written notice of any material amendment or modification of such policies.

**6.6 Vulnerability Testing.** The Contractor shall run vulnerability assessments every 72 hours and report results to the State monthly. Contractor shall remediate all critical issues within 15 days, all high issues within 30 days, all moderate issues within 90 days and low issues within 365 days. Contractor shall obtain written State approval for any exceptions. Once remediation is complete, Contractor shall re-perform the test.

## **7. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES**

**7.1 General Representations and Warranties.** The Contractor represents, warrants and covenants that:

- (i) The Contractor has all requisite power and authority to execute, deliver and perform its obligations under this Contract and the execution, delivery and performance of this Contract by the Contractor has been duly authorized by the Contractor.
- (ii) There is no outstanding litigation, arbitrated matter or other dispute to which the Contractor is a party which, if decided unfavorably to the Contractor, would reasonably be expected to have a material adverse effect on the Contractor's ability to fulfill its obligations under this Contract.

- (iii) The Contractor will comply with all laws applicable to its performance of the services and otherwise to the Contractor in connection with its obligations under this Contract.
- (iv) The Contractor (a) owns, or has the right to use under valid and enforceable agreements, all intellectual property rights reasonably necessary for and related to delivery of the services and provision of the Deliverables as set forth in this Contract; (b) shall be responsible for and have full authority to license all proprietary and/or third party software modules, including algorithms and protocols, that Contractor incorporates into its product; and (c) none of the Deliverables or other materials or technology provided by the Contractor to the State will infringe upon or misappropriate the intellectual property rights of any third party.
- (v) The Contractor has adequate resources to fulfill its obligations under this Contract.
- (vi) Neither Contractor nor Contractor's subcontractors has past state or federal violations, convictions or suspensions relating to miscoding of employees in NCCI job codes for purposes of differentiating between independent contractors and employees.

**7.2 Contractor's Performance Warranties.** Contractor represents and warrants to the State that:

- (i) All Deliverables will be free from material errors and shall perform in accordance with the specifications therefor for a period of at least one year.
- (ii) Contractor will provide to the State commercially reasonable continuous and uninterrupted access to the Service, and will not interfere with the State's access to and use of the Service during the term of this Contract;
- (iii) The Service is compatible with and will operate successfully with any environment (including web browser and operating system) specified by the Contractor in its documentation;
- (iv) Each and all of the services shall be performed in a timely, diligent, professional and skillful manner, in accordance with the highest professional or technical standards applicable to such services, by qualified persons with the technical skills, training and experience to perform such services in the planned environment.
- (v) All Deliverables supplied by the Contractor to the State shall be transferred free and clear of any and all restrictions on the conditions of transfer, modification, licensing, sublicensing and free and clear of any and all liens, claims, mortgages, security interests, liabilities and encumbrances or any kind.
- (vi) Any time software is delivered to the State, whether delivered via electronic media or the internet, no portion of such software or the media upon which it is stored or delivered will have any type of software routine or other element which is designed to facilitate unauthorized access to or intrusion upon; or unrequested disabling or erasure of; or unauthorized interference with the operation of any hardware, software, data or peripheral equipment of or utilized by the State. Without limiting the generality of the foregoing, if the State believes that harmful code may be present in any software delivered hereunder, Contractor will, upon State's request,

provide a new or clean install of the software. Notwithstanding the foregoing, Contractor assumes no responsibility for the State's negligence or failure to protect data from viruses, or any unintended modification, destruction or disclosure.

- (vii) To the extent Contractor resells commercial hardware or software it purchased from a third party, Contractor will, to the extent it is legally able to do so, pass through any such third party warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will not relieve the Contractor from Contractor's warranty obligations set forth herein.

**7.3 Limitation on Disclaimer.** The express warranties set forth in this Contract shall be in lieu of all other warranties, express or implied.

**7.4 Effect of Breach of Warranty.** If, at any time during the term of this Contract, software or the results of Contractor's work fail to perform according to any warranty of Contractor under this Contract, the State shall promptly notify Contractor in writing of such alleged nonconformance, and Contractor shall, at its own expense and without limiting any other rights or remedies of the State hereunder, re-perform or replace any services that the State has determined to be unsatisfactory in its reasonable discretion. Alternatively, with State consent, the Contractor may refund of all amounts paid by State for the nonconforming deliverable or service

## **8. PROFESSIONAL LIABILITY AND CYBER LIABILITY INSURANCE COVERAGE**

In addition to the insurance required in Attachment C to this Contract, before commencing work on this Contract and throughout the term of this Contract, Contractor agrees to procure and maintain (a) Technology Professional Liability insurance for any and all services performed under this Contract, with minimum third party coverage of \$5,000,000 per claim, \$5,000,000 aggregate. To the extent Contractor has access to, processes, handles, collects, transmits, stores or otherwise deals with State Data, Contractor shall maintain first party Breach Notification Coverage of not less than \$5,000,000.

Before commencing work on this Contract the Contractor must provide certificates of insurance to show that the foregoing minimum coverages are in effect.

## **9. TRADE SECRET, PATENT AND COPYRIGHT INFRINGEMENT**

The State shall not be deemed to waive any of its rights or remedies at law or in equity in the event of Contractor's trade secret, patent and/or copyright infringement.

## **10. REMEDIES FOR DEFAULT; NO WAIVER OF REMEDIES**

In the event either party is in default under this Contract, the non-defaulting party may, at its option, pursue any or all of the remedies available to it under this Contract, including termination for cause, and at law or in equity.

No delay or failure to exercise any right, power or remedy accruing to either party upon breach or default by the other under this Contract shall impair any such right, power or remedy, or shall be construed as a waiver of any such right, power or remedy, nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing.

## **11. NO ASSUMPTION OF COSTS**

Any requirement that the State defend or indemnify Contractor or otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or license verification costs of Contractor, is hereby deleted from the Contractor Documents.

## **12. TERMINATION**

Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to the State all State information, State Intellectual Property or State Data (including without limitation any Deliverables for which State has made payment in whole or in part) ("State Materials"), that are in the possession or under the control of Contractor in whatever stage of development and form of recordation such State property is expressed or embodied at that time, as well as any and all information, as referenced in 42 C.F.R. § 434.6(a)(6), necessary for the reimbursement of outstanding Medicaid claims.

In the event the Contractor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, the Contractor shall immediately return all State Materials to State control; including, but not limited to, making all necessary access to applicable remote systems available to the State for purposes of downloading all State Materials.

Contractor shall reasonably cooperate with other parties in connection with all services to be delivered under this Contract, including without limitation any successor provider to whom State Materials are to be transferred in connection with termination. Contractor shall assist the State in exporting and extracting the State Materials, in a format usable without the use of the Services and as agreed to by State, at no additional cost.

Any transition services requested by State involving additional knowledge transfer and support may be subject to a contract amendment for a fixed fee or at rates to be mutually agreed upon by the parties.

If the State determines in its sole discretion that a documented transition plan is necessary, then no later than sixty (60) days prior to termination, Contractor and the State shall mutually prepare a Transition Plan identifying transition services to be provided.

## **13. ACCESS TO STATE DATA:**

The State may import or export State Materials in part or in whole at its sole discretion at any time (24 hours a day, seven (7) days a week, 365 days a year), during the term of this Contract or for up to three (3) years after the Term (so long as the State Materials remain in the Contractor's possession) or as necessary for materials identified as relevant to ongoing legal proceedings without interference from the Contractor in a format usable without the Service and in an agreed-upon file format and medium at no additional cost to the State.

The Contractor must allow the State access to information such as system logs and latency statistics that affect its State Materials and or processes. Contractor must also allow access to systems and data sufficient to comply with Federal access requirements described in FNS Quality Control Policy number 16-02 and 7 C.F.R. § 275.21.



In the event that Contractor's policies regarding the retrieval of data upon the termination of services are uniform for all users of Contractor's system, such policies shall have been made available to the State upon execution of this Contract under separate cover. The Contractor shall provide the State with not less than thirty (30) days' advance written notice of any material amendment or modification of such policies.

#### **14. AUDIT RIGHTS**

Contractor will maintain and cause its permitted contractors to maintain a complete audit trail of all transactions and activities, financial and non-financial, in connection with this Contract. Contractor will provide to the State, its internal or external auditors, clients, inspectors, regulators and other designated representatives, at reasonable times (and in the case of State or federal regulators, at any time required by such regulators) access to Contractor personnel and to any and all Contractor facilities or where the required information, data and records are maintained, for the purpose of performing audits and inspections (including unannounced and random audits) of Contractor and/or Contractor personnel and/or any or all of the records, data and information applicable to this Contract.

At a minimum, such audits, inspections and access shall be conducted to the extent permitted or required by any laws applicable to the State or Contractor, including FNS audit requirements under 7 C.F.R. § 277.17, (or such higher or more rigorous standards, if any, as State or Contractor applies to its own similar businesses, operations or activities), to (i) verify the accuracy of charges and invoices; (ii) verify the integrity of State Data and examine the systems that process, store, maintain, support and transmit that data; (iii) examine and verify Contractor's and/or its permitted contractors' operations and security procedures and controls; (iv) examine and verify Contractor's and/or its permitted contractors' disaster recovery planning and testing, business resumption and continuity planning and testing, contingency arrangements and insurance coverage; and (v) examine Contractor's and/or its permitted contractors' performance of the Services including audits of: (1) practices and procedures; (2) systems, communications and information technology; (3) general controls and physical and data/information security practices and procedures; (4) quality initiatives and quality assurance, (5) contingency and continuity planning, disaster recovery and back-up procedures for processes, resources and data; (6) Contractor's and/or its permitted contractors' efficiency and costs in performing Services; (7) compliance with the terms of this Contract, funding requirements of Federal partners, including FNS and the Centers for Medicare and Medicaid Services and applicable laws, and (9) any other matters reasonably requested by the State. Contractor shall provide and cause its permitted contractors to provide full cooperation to such auditors, inspectors, regulators and representatives in connection with audit functions and with regard to examinations by regulatory authorities, including the installation and operation of audit software.

For Automated Data Processing Equipment and Services provided under this Contract and subject to the requirements of 45 C.F.R. § 95.615, audit and access rights will include the right to access the system in all of its aspects, including design developments, operation, and cost records of Contractors and subcontractors at such intervals as are deemed necessary by the HHS to determine whether conditions for funding approval are being met and to determine the efficiency, economy, and effectiveness of the system.

## **15. DESTRUCTION OF STATE DATA**

At any time during the term of this Contract within (i) thirty days of the State's written request or (ii) [three (3) months] of termination or expiration of this Contract for any reason, and in any event after the State has had an opportunity to export and recover the State Materials, Contractor shall at its own expense securely destroy and erase from all systems it directly or indirectly uses or controls all tangible or intangible forms of the State Materials, in whole or in part, and all copies thereof except such records as are required by law. The destruction of State Data and State Intellectual Property shall be performed according to National Institute of Standards and Technology (NIST) approved methods. Contractor shall certify in writing to the State that such State Data has been disposed of securely. To the extent that any applicable law prevents Contractor from destroying or erasing State Materials as set forth herein, Contractor shall retain, in its then current state, all such State Materials then within its right of control or possession in accordance with the confidentiality, security and other requirements of this Contract, and perform its obligations under this section as soon as such law no longer prevents it from doing so.

Further, upon the relocation of State Data, Contractor shall securely dispose of such copies from the former data location and certify in writing to the State that such State Data has been disposed of securely. Contractor shall comply with all reasonable directions provided by the State with respect to the disposal of State Data.

## **16. CONTRACTOR BANKRUPTCY.**

Contractor acknowledges that if Contractor, as a debtor in possession, or a trustee in bankruptcy in a case under Section 365(n) of Title 11, United States Code (the "Bankruptcy Code"), rejects this Contract, the State may elect to retain its rights under this Contract as provided in Section 365(n) of the Bankruptcy Code. Upon written request of the State to Contractor or the Bankruptcy Trustee, Contractor or such Bankruptcy Trustee shall not interfere with the rights of the State as provided in this Contract, including the right to obtain the State Intellectual Property.

## **17 SOV Cybersecurity Standard Update 2023-01:** Contractor confirms that all products and services provided to or for the use of the State under this Agreement shall be in compliance with *State of Vermont Cybersecurity Standard 23-01*, which prohibits the use of certain branded products in State information systems or any vendor system that is supporting State information systems, and is available on-line at:

<https://digitalservices.vermont.gov/cybersecurity/cybersecurity-standards-and-directives>

**ATTACHMENT E****BUSINESS ASSOCIATE AGREEMENT (VT ADS/AHS)**

Revised MAY 23, 2019

**SOV Contractor or Vendor (Contractor Business Associate):****SOV Contract Number:****Date of Contract:**

This Business Associate Agreement ("Agreement") is entered into by and between the State of Vermont Agency of Digital Services as a Business Associate ("ADS") of the State of Vermont Agency of Human Services ("Covered Entity") (together "the State") and the party identified in this Agreement above as Contractor or Vendor ("Contractor Business Associate"). This Agreement supplements and is made a part of the contract identified above ("Contract").

ADS and Contractor Business Associate enter into this Agreement to comply with the Business Associate Agreement between Covered Entity and ADS, and with standards promulgated under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), including the Standards for the Privacy of Individually Identifiable Health Information, at 45 CFR Parts 160 and 164 ("Privacy Rule"), and the Security Standards, at 45 CFR Parts 160 and 164 ("Security Rule"), as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (HITECH), and any associated federal rules and regulations.

**The parties agree as follows:**

1. **Definitions.** All capitalized terms used but not otherwise defined in this Agreement have the meanings set forth in 45 CFR Parts 160 and 164 as amended by HITECH and associated federal rules and regulations. Terms defined in this Agreement are italicized. Unless otherwise specified, when used in this Agreement, defined terms used in the singular shall be understood if appropriate in their context to include the plural when applicable.

"*ADS Vendor Manager*" means that person designated in the Contract as the *ADS Vendor Manager*, or such person who is subsequently designated in writing by ADS to the *Contractor Business Associate*. The *ADS Vendor Manager* is not authorized to enter into Contract amendments on behalf of ADS or the State."

"*Agent*" means an *Individual* acting within the scope of the agency of the *Contractor Business Associate*, in accordance with the Federal common law of agency, as referenced in 45 CFR § 160.402(c) and includes Workforce members and *Subcontractors*.

"*Breach*" means the acquisition, Access, Use or Disclosure of *Protected Health Information (PHI)* which compromises the Security or privacy of the *PHI*, except as excluded in the definition of *Breach* in 45 CFR § 164.402.

"*Business Associate*" shall have the meaning given for "Business Associate" in 45 CFR § 160.103.

"*Contractor Business Associate*" shall have the meaning given for "Business Associate" in 45 CFR § 160.103 and means Vendor and includes its Workforce, *Agents* and *Subcontractors*.

"*Electronic PHI*" shall mean *PHI* created, received, maintained or transmitted electronically in accordance with 45 CFR § 160.103.

"*Individual*" includes a Person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

*“Protected Health Information” (“PHI”) shall have the meaning given in 45 CFR § 160.103, limited to the PHI created or received by Contractor Business Associate from or on behalf of ADS or Covered Entity.*

*“Required by Law” means a mandate contained in law that compels an entity to make a use or disclosure of PHI and that is enforceable in a court of law and shall have the meaning given in 45 CFR § 164.103.*

*“Report” means submissions required by this Agreement as provided in section 2.3.*

*“Security Incident” means the attempted or successful unauthorized Access, Use, Disclosure, modification, or destruction of information or interference with system operations in an Information System relating to PHI in accordance with 45 CFR § 164.304.*

*“Services” includes all work performed by the Contractor Business Associate for or on behalf of the State that requires the Use and/or Disclosure of PHI to perform a Business Associate function described in 45 CFR § 160.103.*

*“Subcontractor” means a Person to whom Contractor Business Associate delegates a function, activity, or service, other than in the capacity of a member of the Workforce of such Contractor Business Associate.*

*“Successful Security Incident” shall mean a Security Incident that results in the unauthorized Access, Use, Disclosure, modification, or destruction of information or interference with system operations in an Information System.*

*“Unsuccessful Security Incident” shall mean a Security Incident such as routine occurrences that do not result in unauthorized Access, Use, Disclosure, modification, or destruction of information or interference with system operations in an Information System, such as: (i) unsuccessful attempts to penetrate computer networks or services maintained by Contractor Business Associate; and (ii) immaterial incidents such as pings and other broadcast attacks on Contractor Business Associate’s firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above with respect to Contractor Business Associate’s Information System.*

*“Targeted Unsuccessful Security Incident” means an Unsuccessful Security Incident that appears to be an attempt to obtain unauthorized Access, Use, disclosure, modification or destruction of the Covered Entity’s Electronic PHI.*

## **2. Contact Information for Privacy and Security Officers and Reports.**

2.1 Contractor Business Associate shall provide, within ten (10) days of the execution of this Agreement, written notice to the ADS Vendor Manager the names and contact information of both the HIPAA Privacy Officer and HIPAA Security Officer of the Contractor Business Associate. This information must be updated by Contractor Business Associate any time these contacts change.

2.2 Covered Entity’s HIPAA Privacy Officer and HIPAA Security Officer contact information is posted at: <http://humanservices.vermont.gov/policy-legislation/hipaa/hipaa-info-beneficiaries/ahs-hipaa-contacts/>

2.3 Contractor Business Associate shall submit all Reports required by this Agreement to the following email address:  
[AHS.PrivacyAndSecurity@vermont.gov](mailto:AHS.PrivacyAndSecurity@vermont.gov)

## **3. Permitted and Required Uses/Disclosures of PHI.**

3.1 Subject to the terms in this Agreement, Contractor Business Associate may Use or Disclose PHI to perform Services, as specified in the Contract. Such Uses and Disclosures are limited to the minimum necessary to provide the Services. Contractor Business Associate shall

not Use or Disclose *PHI* in any manner that would constitute a violation of the Privacy Rule if Used or Disclosed by Covered Entity in that manner. *Contractor Business Associate* may not Use or Disclose *PHI* other than as permitted or required by this Agreement or as *Required by Law* and only in compliance with applicable laws and regulations.

3.2 *Contractor Business Associate* may make *PHI* available to its Workforce, *Agent* and *Subcontractor* who need Access to perform *Services* as permitted by this Agreement, provided that *Contractor Business Associate* makes them aware of the Use and Disclosure restrictions in this Agreement and binds them to comply with such restrictions.

3.3 *Contractor Business Associate* shall be directly liable under HIPAA for impermissible Uses and Disclosures of *PHI*.

4. **Business Activities.** *Contractor Business Associate* may Use *PHI* if necessary for *Contractor Business Associate's* proper management and administration or to carry out its legal responsibilities. *Contractor Business Associate* may Disclose *PHI* for *Contractor Business Associate's* proper management and administration or to carry out its legal responsibilities if a Disclosure is *Required by Law* or if *Contractor Business Associate* obtains reasonable written assurances via a written agreement from the Person to whom the information is to be Disclosed that such *PHI* shall remain confidential and be Used or further Disclosed only as *Required by Law* or for the purpose for which it was Disclosed to the Person, and the Agreement requires the Person to notify *Contractor Business Associate*, within five (5) business days, in writing of any *Breach* of Unsecured *PHI* of which it is aware. Such Uses and Disclosures of *PHI* must be of the minimum amount necessary to accomplish such purposes.

5. **Electronic PHI Security Rule Obligations.**

5.1 With respect to *Electronic PHI*, *Contractor Business Associate* shall:

a) Implement and use Administrative, Physical, and Technical Safeguards in compliance with 45 CFR sections 164.308, 164.310, and 164.312;

b) Identify in writing upon request from the State all the safeguards that it uses to protect such Electronic PHI;

c) Prior to any Use or Disclosure of *Electronic PHI* by an *Agent* or *Subcontractor*, ensure that any *Agent* or *Subcontractor* to whom it provides *Electronic PHI* agrees in writing to implement and use Administrative, Physical, and Technical Safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of Electronic PHI. The written agreement must identify the State as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the Use or Disclosure of *Electronic PHI*, and be provided to the State upon request;

d) Report in writing to Covered Entity any *Successful Security Incident* or *Targeted Security Incident* as soon as it becomes aware of such incident and in no event later than five (5) business days after such awareness. Such report shall be timely made notwithstanding the fact that little information may be known at the time of the report and need only include such information then available;

e) Following such report, provide Covered Entity with the information necessary for Covered Entity to investigate any such incident; and

f) Continue to provide to Covered Entity information concerning the incident as it becomes available to it.

5.2 **Reporting Unsuccessful Security Incidents.** *Contractor Business Associate* shall provide Covered Entity upon written request a *Report* that: (a) identifies the categories of Unsuccessful Security Incidents; (b) indicates whether *Business Associate* believes its current defensive

security measures are adequate to address all Unsuccessful Security Incidents, given the scope and nature of such attempts; and (c) if the security measures are not adequate, the measures *Business Associate* will implement to address the security inadequacies.

5.3 *Contractor Business Associate* shall comply with any reasonable policies and procedures Covered Entity implements to obtain compliance under the Security Rule.

## **6. Reporting and Documenting Breaches.**

6.1 *Contractor Business Associate* shall *Report* to Covered Entity any *Breach* of Unsecured *PHI* as soon as it, or any Person to whom *PHI* is disclosed under this Agreement, becomes aware of any such *Breach*, and in no event later than five (5) business days after such awareness, except when a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. Such *Report* shall be timely made notwithstanding the fact that little information may be known at the time of the *Report* and need only include such information then available.

6.2 Following the *Report* described in 6.1, *Contractor Business Associate* shall conduct a risk assessment and provide it to Covered Entity with a summary of the event. *Contractor Business Associate* shall provide Covered Entity with the names of any *Individual* whose Unsecured *PHI* has been, or is reasonably believed to have been, the subject of the *Breach* and any other available information that is required to be given to the affected *Individual*, as set forth in 45 CFR § 164.404(c). Upon request by Covered Entity, *Contractor Business Associate* shall provide information necessary for Covered Entity to investigate the impermissible Use or Disclosure. *Contractor Business Associate* shall continue to provide to Covered Entity information concerning the *Breach* as it becomes available.

6.3 When *Contractor Business Associate* determines that an impermissible acquisition, Access, Use or Disclosure of *PHI* for which it is responsible is not a *Breach*, and therefore does not necessitate notice to the impacted *Individual*, it shall document its assessment of risk, conducted as set forth in 45 CFR § 402(2). *Contractor Business Associate* shall make its risk assessment available to Covered Entity upon request. It shall include 1) the name of the person making the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons supporting the determination of low probability that the *PHI* had been compromised.

7. **Mitigation and Corrective Action.** *Contractor Business Associate* shall mitigate, to the extent practicable, any harmful effect that is known to it of an impermissible Use or Disclosure of *PHI*, even if the impermissible Use or Disclosure does not constitute a *Breach*. *Contractor Business Associate* shall draft and carry out a plan of corrective action to address any incident of impermissible Use or Disclosure of *PHI*. *Contractor Business Associate* shall make its mitigation and corrective action plans available to the State upon request.

## **8. Providing Notice of Breaches.**

8.1 If Covered Entity determines that a *Breach* of *PHI* for which *Contractor Business Associate* was responsible, and if requested by Covered Entity, *Contractor Business Associate* shall provide notice to the *Individual* whose *PHI* has been the subject of the *Breach*. When so requested, *Contractor Business Associate* shall consult with Covered Entity about the timeliness, content and method of notice, and shall receive Covered Entity's approval concerning these elements. *Contractor Business Associate* shall be responsible for the cost of notice and related remedies.

8.2 The notice to affected *Individuals* shall be provided as soon as reasonably possible and in no case later than 60 calendar days after *Contractor Business Associate* reported the *Breach* to Covered Entity.

8.3 The notice to affected *Individuals* shall be written in plain language and shall include, to the extent possible, 1) a brief description of what happened, 2) a description of the types of Unsecured *PHI* that were involved in the *Breach*, 3) any steps *Individuals* can take to protect themselves from potential harm resulting from the *Breach*, 4) a brief description of what the *Contractor Business Associate* is doing to investigate the *Breach* to mitigate harm to *Individuals* and to protect against further *Breaches*, and 5) contact procedures for *Individuals* to ask questions or obtain additional information, as set forth in 45 CFR § 164.404(c).

8.4 *Contractor Business Associate* shall notify *Individuals* of *Breaches* as specified in 45 CFR § 164.404(d) (methods of *Individual* notice). In addition, when a *Breach* involves more than 500 residents of Vermont, *Contractor Business Associate* shall, if requested by Covered Entity, notify prominent media outlets serving Vermont, following the requirements set forth in 45 CFR § 164.406.

9. **Agreements with Subcontractors.** *Contractor Business Associate* shall enter into a Business Associate Agreement with any *Subcontractor* to whom it provides *PHI* to require compliance with HIPAA and to ensure *Contractor Business Associate* and *Subcontractor* comply with the terms and conditions of this Agreement. *Contractor Business Associate* must enter into such written agreement before any Use or Disclosure of *PHI* to such *Subcontractor*. The written agreement must identify the State as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the Use or Disclosure of *PHI*. *Contractor Business Associate* shall provide a copy of the written agreement it enters into with a *Subcontractor* to the State upon request. *Contractor Business Associate* may not make any Disclosure of *PHI* to any *Subcontractor* without prior written consent of the State.

10. **Access to PHI.** *Contractor Business Associate* shall provide access to *PHI* in a Designated Record Set to Covered Entity or as directed by Covered Entity to an *Individual* to meet the requirements under 45 CFR § 164.524. *Contractor Business Associate* shall provide such access in the time and manner reasonably designated by Covered Entity. Within five (5) business days, *Contractor Business Associate* shall forward to Covered Entity for handling any request for Access to *PHI* that *Contractor Business Associate* directly receives from an *Individual*.

11. **Amendment of PHI.** *Contractor Business Associate* shall make any amendments to *PHI* in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR § 164.526, whether at the request of Covered Entity or an *Individual*. *Contractor Business Associate* shall make such amendments in the time and manner reasonably designated by Covered Entity. Within five (5) business days, *Contractor Business Associate* shall forward to Covered Entity for handling any request for amendment to *PHI* that *Contractor Business Associate* directly receives from an *Individual*.

12. **Accounting of Disclosures.** *Contractor Business Associate* shall document Disclosures of *PHI* and all information related to such Disclosures as would be required for Covered Entity to respond to a request by an *Individual* for an accounting of disclosures of *PHI* in accordance with 45 CFR § 164.528. *Contractor Business Associate* shall provide such information to Covered Entity or as directed by Covered Entity to an *Individual*, to permit Covered Entity to respond to an accounting request. *Contractor Business Associate* shall provide such information in the time and manner reasonably designated by Covered Entity. Within five (5) business days, *Contractor Business Associate* shall forward to Covered Entity for handling any accounting request that *Contractor Business Associate* directly receives from an *Individual*.

13. **Books and Records.** Subject to the attorney-client and other applicable legal privileges, *Contractor Business Associate* shall make its internal practices, books, and records (including policies and procedures and *PHI*) relating to the Use and Disclosure of *PHI* available to the Secretary of Health and Human Services ("HHS") in the time and manner designated by the Secretary. *Contractor Business Associate* shall make the same information available to Covered Entity, upon Covered Entity's request, in the time and manner reasonably designated by Covered Entity so that Covered Entity may determine whether *Contractor Business Associate* is in compliance with this Agreement.

14. **Termination.**

14.1 This Agreement commences on the Effective Date and shall remain in effect until terminated by the State or until all the *PHI* is destroyed or returned to Covered Entity subject to Section 18.8.

14.2 If *Contractor Business Associate* fails to comply with any material term of this Agreement, the State may provide an opportunity for *Contractor Business Associate* to cure. If *Contractor Business Associate* does not cure within the time specified by the State or if the State believes that cure is not reasonably possible, the State may immediately terminate the Contract without incurring liability or penalty for such termination. If neither termination nor cure are feasible, Covered Entity shall report the breach to the Secretary of HHS. The State has the right to seek to cure such failure by *Contractor Business Associate*. Regardless of whether the State cures, it retains any right or remedy available at law, in equity, or under the Contract and *Contractor Business Associate* retains its responsibility for such failure.

**15. Return/Destruction of PHI.**

15.1 *Contractor Business Associate* in connection with the expiration or termination of the Contract shall return or destroy, at the discretion of the Covered Entity, *PHI* that *Contractor Business Associate* still maintains in any form or medium (including electronic) within thirty (30) days after such expiration or termination. *Contractor Business Associate* shall not retain any copies of *PHI*. *Contractor Business Associate* shall certify in writing and report to Covered Entity (1) when all *PHI* has been returned or destroyed and (2) that *Contractor Business Associate* does not continue to maintain any *PHI*. *Contractor Business Associate* is to provide this certification during this thirty (30) day period.

15.2 *Contractor Business Associate* shall report to Covered Entity any conditions that *Contractor Business Associate* believes make the return or destruction of *PHI* infeasible. *Contractor Business Associate* shall extend the protections of this Agreement to such *PHI* and limit further Uses and Disclosures to those purposes that make the return or destruction infeasible for so long as *Contractor Business Associate* maintains such *PHI*.

**16. Penalties.** *Contractor Business Associate* understands that: (a) there may be civil or criminal penalties for misuse or misappropriation of *PHI* and (b) violations of this Agreement may result in notification by Covered Entity to law enforcement officials and regulatory, accreditation, and licensure organizations.

**17. Training.** *Contractor Business Associate* understands its obligation to comply with the law and shall provide appropriate training and education to ensure compliance with this Agreement. If requested by the State, *Contractor Business Associate* shall participate in Covered Entity's training regarding the Use, Confidentiality, and Security of *PHI*; however, participation in such training shall not supplant nor relieve *Contractor Business Associate* of its obligations under this Agreement to independently assure compliance with the law and this Agreement.

**18. Miscellaneous.**

18.1 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Contract, the terms of this Agreement shall govern with respect to its subject matter. Otherwise, the terms of the Contract continue in effect.

18.2 Each party shall cooperate with the other party to amend this Agreement from time to time as is necessary for such party to comply with the Privacy Rule, the Security Rule, or any other standards promulgated under HIPAA. This Agreement may not be amended, except by a writing signed by all parties hereto.

18.3 Any ambiguity in this Agreement shall be resolved to permit the parties to comply with the Privacy Rule, Security Rule, or any other standards promulgated under HIPAA.



18.4 In addition to applicable Vermont law, the parties shall rely on applicable federal law (e.g., HIPAA, the Privacy Rule, Security Rule, and HITECH) in construing the meaning and effect of this Agreement.

18.5 *Contractor Business Associate* shall not have or claim any ownership of *PHI*.

18.6 *Contractor Business Associate* shall abide by the terms and conditions of this Agreement with respect to all *PHI* even if some of that information relates to specific services for which *Contractor Business Associate* may not be a “*Contractor Business Associate*” of Covered Entity under the Privacy Rule.

18.7 *Contractor Business Associate* is prohibited from directly or indirectly receiving any remuneration in exchange for an *Individual's PHI*. *Contractor Business Associate* will refrain from marketing activities that would violate HIPAA, including specifically Section 13406 of the HITECH Act. Reports or data containing *PHI* may not be sold without Covered Entity's or the affected Individual's written consent.

18.8 The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the expiration or termination of this Agreement. For example: (a) the provisions of this Agreement shall continue to apply if Covered Entity determines that it would be infeasible for *Contractor Business Associate* to return or destroy *PHI* as provided in Section 14.2 and (b) the obligation of *Contractor Business Associate* to provide an accounting of disclosures as set forth in Section 12 survives the expiration or termination of this Agreement with respect to accounting requests, if any, made after such expiration or termination.

**For ADS:**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**For Contractor Business Associate:**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**(End of Attachment E)**

**ATTACHMENT F**  
**AGENCY OF HUMAN SERVICES' CUSTOMARY CONTRACT/GRANT PROVISIONS**

1. **Definitions:** For purposes of this Attachment F, the term "Agreement" shall mean the form of the contract or grant, with all of its parts, into which this Attachment F is incorporated. The meaning of the term "Party" when used in this Attachment F shall mean any named party to this Agreement *other than* the State of Vermont, the Agency of Human Services (AHS) and any of the departments, boards, offices and business units named in this Agreement. As such, the term "Party" shall mean, when used in this Attachment F, the Contractor or Grantee with whom the State of Vermont is executing this Agreement. If Party, when permitted to do so under this Agreement, seeks by way of any subcontract, sub-grant or other form of provider agreement to employ any other person or entity to perform any of the obligations of Party under this Agreement, Party shall be obligated to ensure that all terms of this Attachment F are followed. As such, the term "Party" as used herein shall also be construed as applicable to, and describing the obligations of, any subcontractor, sub-recipient or sub-grantee of this Agreement. Any such use or construction of the term "Party" shall not, however, give any subcontractor, sub-recipient or sub-grantee any substantive right in this Agreement without an express written agreement to that effect by the State of Vermont.
2. **Agency of Human Services:** The Agency of Human Services is responsible for overseeing all contracts and grants entered by any of its departments, boards, offices and business units, however denominated. The Agency of Human Services, through the business office of the Office of the Secretary, and through its Field Services Directors, will share with any named AHS-associated party to this Agreement oversight, monitoring and enforcement responsibilities. Party agrees to cooperate with both the named AHS-associated party to this contract and with the Agency of Human Services itself with respect to the resolution of any issues relating to the performance and interpretation of this Agreement, payment matters and legal compliance.
3. **Medicaid Program Parties** (*applicable to any Party providing services and supports paid for under Vermont's Medicaid program and Vermont's Global Commitment to Health Waiver*):

**Inspection and Retention of Records:** In addition to any other requirement under this Agreement or at law, Party must fulfill all state and federal legal requirements, and will comply with all requests appropriate to enable the Agency of Human Services, the U.S. Department of Health and Human Services (along with its Inspector General and the Centers for Medicare and Medicaid Services), the Comptroller General, the Government Accounting Office, or any of their designees: (i) to evaluate through inspection or other means the quality, appropriateness, and timeliness of services performed under this Agreement; and (ii) to inspect and audit any records, financial data, contracts, computer or other electronic systems of Party relating to the performance of services under Vermont's Medicaid program and Vermont's Global Commitment to Health Waiver. Party will retain for ten years all documents required to be retained pursuant to 42 CFR 438.3(u).

**Subcontracting for Medicaid Services:** Notwithstanding any permitted subcontracting of services to be performed under this Agreement, Party shall remain responsible for ensuring that this Agreement is fully performed according to its terms, that subcontractor remains in compliance with the terms hereof, and that subcontractor complies with all state and federal laws and regulations relating to the Medicaid program in Vermont. Subcontracts, and any service provider agreements entered into by Party in connection with the performance of this Agreement, must clearly specify in writing the responsibilities of the subcontractor or other service provider and Party must retain the authority to revoke its subcontract or service provider agreement or to impose other sanctions if the performance of the subcontractor or service provider is inadequate or if its performance deviates from any requirement of this Agreement. Party shall make available on request all contracts, subcontracts and service provider agreements between the Party, subcontractors and other service providers to the Agency of Human Services and any of its departments as well as to the Center for Medicare and Medicaid Services.

**Medicaid Notification of Termination Requirements:** Party shall follow the Department of Vermont Health Access Managed-Care-Organization enrollee-notification requirements, to include the requirement that Party provide timely notice of any termination of its practice.

**Encounter Data:** Party shall provide encounter data to the Agency of Human Services and/or its departments and ensure further that the data and services provided can be linked to and supported by enrollee eligibility files maintained by the State.

**Federal Medicaid System Security Requirements Compliance:** Party shall provide a security plan, risk assessment, and security controls review document within three months of the start date of this Agreement (and update it annually thereafter) in order to support audit compliance with 45 CFR 95.621 subpart F, *ADP System Security Requirements and Review Process*.

4. **Workplace Violence Prevention and Crisis Response** (*applicable to any Party and any subcontractors and sub-grantees whose employees or other service providers deliver social or mental health services directly to individual recipients of such services*):

Party shall establish a written workplace violence prevention and crisis response policy meeting the requirements of Act 109 (2016), 33 VSA §8201(b), for the benefit of employees delivering direct social or mental health services. Party shall, in preparing its policy, consult with the guidelines promulgated by the U.S. Occupational Safety and Health Administration for *Preventing Workplace Violence for Healthcare and Social Services Workers*, as those guidelines may from time to time be amended.

Party, through its violence protection and crisis response committee, shall evaluate the efficacy of its policy, and update the policy as appropriate, at least annually. The policy and any written evaluations thereof shall be provided to employees delivering direct social or mental health services.

Party will ensure that any subcontractor and sub-grantee who hires employees (or contracts with service providers) who deliver social or mental health services directly to individual recipients of such services, complies with all requirements of this Section.

5. **Non-Discrimination:**

Party shall not discriminate, and will prohibit its employees, agents, subcontractors, sub-grantees and other service providers from discrimination, on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under Title IX of the Education Amendments of 1972, and on the basis of race, color or national origin under Title VI of the Civil Rights Act of 1964. Party shall not refuse, withhold from or deny to any person the benefit of services, facilities, goods, privileges, advantages, or benefits of public accommodation on the basis of disability, race, creed, color, national origin, marital status, sex, sexual orientation or gender identity as provided by Title 9 V.S.A. Chapter 139.

No person shall on the grounds of religion or on the grounds of sex (including, on the grounds that a woman is pregnant), be excluded from participation in, be denied the benefits of, or be subjected to discrimination, to include sexual harassment, under any program or activity supported by State of Vermont and/or federal funds.

Party further shall comply with the non-discrimination requirements of Title VI of the Civil Rights Act of 1964, 42 USC Section 2000d, et seq., and with the federal guidelines promulgated pursuant to Executive Order 13166 of 2000, requiring that contractors and subcontractors receiving federal funds assure that persons with limited English proficiency can meaningfully access services. To the extent Party provides assistance to individuals with limited English proficiency through the use of oral or written translation or interpretive services, such individuals cannot be required to pay for such services.

6. **Employees and Independent Contractors:**

Party agrees that it shall comply with the laws of the State of Vermont with respect to the appropriate classification of its workers and service providers as “employees” and “independent contractors” for all

purposes, to include for purposes related to unemployment compensation insurance and workers compensation coverage, and proper payment and reporting of wages. Party agrees to ensure that all of its subcontractors or sub-grantees also remain in legal compliance as to the appropriate classification of “workers” and “independent contractors” relating to unemployment compensation insurance and workers compensation coverage, and proper payment and reporting of wages. Party will on request provide to the Agency of Human Services information pertaining to the classification of its employees to include the basis for the classification. Failure to comply with these obligations may result in termination of this Agreement.

7. **Data Protection and Privacy:**

**Protected Health Information:** Party shall maintain the privacy and security of all individually identifiable health information acquired by or provided to it as a part of the performance of this Agreement. Party shall follow federal and state law relating to privacy and security of individually identifiable health information as applicable, including the Health Insurance Portability and Accountability Act (HIPAA) and its federal regulations.

**Substance Abuse Treatment Information:** Substance abuse treatment information shall be maintained in compliance with 42 C.F.R. Part 2 if the Party or subcontractor(s) are Part 2 covered programs, or if substance abuse treatment information is received from a Part 2 covered program by the Party or subcontractor(s).

**Protection of Personal Information:** Party agrees to comply with all applicable state and federal statutes to assure protection and security of personal information, or of any personally identifiable information (PII), including the Security Breach Notice Act, 9 V.S.A. § 2435, the Social Security Number Protection Act, 9 V.S.A. § 2440, the Document Safe Destruction Act, 9 V.S.A. § 2445 and 45 CFR 155.260. As used here, PII shall include any information, in any medium, including electronic, which can be used to distinguish or trace an individual’s identity, such as his/her name, social security number, biometric records, etc., either alone or when combined with any other personal or identifiable information that is linked or linkable to a specific person, such as date and place or birth, mother’s maiden name, etc.

**Other Confidential Consumer Information:** Party agrees to comply with the requirements of AHS Rule No. 08-048 concerning access to and uses of personal information relating to any beneficiary or recipient of goods, services or other forms of support. Party further agrees to comply with any applicable Vermont State Statute and other regulations respecting the right to individual privacy. Party shall ensure that all of its employees, subcontractors and other service providers performing services under this agreement understand and preserve the sensitive, confidential and non-public nature of information to which they may have access.

**Data Breaches:** Party shall report to AHS, through its Chief Information Officer (CIO), any impermissible use or disclosure that compromises the security, confidentiality or privacy of any form of protected personal information identified above within 24 hours of the discovery of the breach. Party shall in addition comply with any other data breach notification requirements required under federal or state law.

8. **Abuse and Neglect of Children and Vulnerable Adults:**

**Abuse Registry.** Party agrees not to employ any individual, to use any volunteer or other service provider, or to otherwise provide reimbursement to any individual who in the performance of services connected with this agreement provides care, custody, treatment, transportation, or supervision to children or to vulnerable adults if there has been a substantiation of abuse or neglect or exploitation involving that individual. Party is responsible for confirming as to each individual having such contact with children or vulnerable adults the non-existence of a substantiated allegation of abuse, neglect or exploitation by verifying that fact through (a) as to vulnerable adults, the Adult Abuse Registry maintained by the Department of Disabilities, Aging and Independent Living and (b) as to children, the Central Child Protection Registry (unless the Party holds a valid child care license or registration from the Division of Child Development, Department for Children and Families). See 33 V.S.A. §4919(a)(3) and 33 V.S.A. §6911(c)(3).

**Reporting of Abuse, Neglect, or Exploitation.** Consistent with provisions of 33 V.S.A. §4913(a) and §6903, Party and any of its agents or employees who, in the performance of services connected with this agreement,

(a) is a caregiver or has any other contact with clients and (b) has reasonable cause to believe that a child or vulnerable adult has been abused or neglected as defined in Chapter 49 or abused, neglected, or exploited as defined in Chapter 69 of Title 33 V.S.A. shall: as to children, make a report containing the information required by 33 V.S.A. §4914 to the Commissioner of the Department for Children and Families within 24 hours; or, as to a vulnerable adult, make a report containing the information required by 33 V.S.A. §6904 to the Division of Licensing and Protection at the Department of Disabilities, Aging, and Independent Living within 48 hours. Party will ensure that its agents or employees receive training on the reporting of abuse or neglect to children and abuse, neglect or exploitation of vulnerable adults.

9. **Information Technology Systems:**

**Computing and Communication:** Party shall select, in consultation with the Agency of Human Services' Information Technology unit, one of the approved methods for secure access to the State's systems and data, if required. Approved methods are based on the type of work performed by the Party as part of this agreement. Options include, but are not limited to:

1. Party's provision of certified computing equipment, peripherals and mobile devices, on a separate Party's network with separate internet access. The Agency of Human Services' accounts may or may not be provided.
2. State supplied and managed equipment and accounts to access state applications and data, including State issued active directory accounts and application specific accounts, which follow the National Institutes of Standards and Technology (NIST) security and the Health Insurance Portability & Accountability Act (HIPAA) standards.

**Intellectual Property/Work Product Ownership:** All data, technical information, materials first gathered, originated, developed, prepared, or obtained as a condition of this agreement and used in the performance of this agreement -- including, but not limited to all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and printouts, notes and memoranda, written procedures and documents, which are prepared for or obtained specifically for this agreement, or are a result of the services required under this grant -- shall be considered "work for hire" and remain the property of the State of Vermont, regardless of the state of completion unless otherwise specified in this agreement. Such items shall be delivered to the State of Vermont upon 30-days notice by the State. With respect to software computer programs and / or source codes first developed for the State, all the work shall be considered "work for hire," i.e., the State, not the Party (or subcontractor or sub-grantee), shall have full and complete ownership of all software computer programs, documentation and/or source codes developed.

Party shall not sell or copyright a work product or item produced under this agreement without explicit permission from the State of Vermont.

If Party is operating a system or application on behalf of the State of Vermont, Party shall not make information entered into the system or application available for uses by any other party than the State of Vermont, without prior authorization by the State. Nothing herein shall entitle the State to pre-existing Party's materials.

Party acknowledges and agrees that should this agreement be in support of the State's implementation of the Patient Protection and Affordable Care Act of 2010, Party is subject to the certain property rights provisions of the Code of Federal Regulations and a Grant from the Department of Health and Human Services, Centers for Medicare & Medicaid Services. Such agreement will be subject to, and incorporates here by reference, 45 CFR 74.36, 45 CFR 92.34 and 45 CFR 95.617 governing rights to intangible property.

**Security and Data Transfers:** Party shall comply with all applicable State and Agency of Human Services' policies and standards, especially those related to privacy and security. The State will advise the Party of any

new policies, procedures, or protocols developed during the term of this agreement as they are issued and will work with the Party to implement any required.

Party will ensure the physical and data security associated with computer equipment, including desktops, notebooks, and other portable devices, used in connection with this Agreement. Party will also assure that any media or mechanism used to store or transfer data to or from the State includes industry standard security mechanisms such as continually up-to-date malware protection and encryption. Party will make every reasonable effort to ensure media or data files transferred to the State are virus and spyware free. At the conclusion of this agreement and after successful delivery of the data to the State, Party shall securely delete data (including archival backups) from Party's equipment that contains individually identifiable records, in accordance with standards adopted by the Agency of Human Services.

Party, in the event of a data breach, shall comply with the terms of Section 7 above.

10. **Other Provisions:**

**Environmental Tobacco Smoke.** Public Law 103-227 (also known as the Pro-Children Act of 1994) and Vermont's Act 135 (2014) (An act relating to smoking in lodging establishments, hospitals, and child care facilities, and on State lands) restrict the use of tobacco products in certain settings. Party shall ensure that no person is permitted: (i) to use tobacco products or tobacco substitutes as defined in 7 V.S.A. § 1001 on the premises, both indoor and outdoor, of any licensed child care center or afterschool program at any time; (ii) to use tobacco products or tobacco substitutes on the premises, both indoor and in any outdoor area designated for child care, health or day care services, kindergarten, pre-kindergarten, elementary, or secondary education or library services; and (iii) to use tobacco products or tobacco substitutes on the premises of a licensed or registered family child care home while children are present and in care. Party will refrain from promoting the use of tobacco products for all clients and from making tobacco products available to minors.

Failure to comply with the provisions of the federal law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity. The federal Pro-Children Act of 1994, however, does not apply to portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where Women, Infants, & Children (WIC) coupons are redeemed.

**2-1-1 Database:** If Party provides health or human services within Vermont, or if Party provides such services near the Vermont border readily accessible to residents of Vermont, Party shall adhere to the "Inclusion/Exclusion" policy of Vermont's United Way/Vermont 211 (Vermont 211), and will provide to Vermont 211 relevant descriptive information regarding its agency, programs and/or contact information as well as accurate and up to date information to its database as requested. The "Inclusion/Exclusion" policy can be found at [www.vermont211.org](http://www.vermont211.org).

**Voter Registration:** When designated by the Secretary of State, Party agrees to become a voter registration agency as defined by 17 V.S.A. §2103 (41), and to comply with the requirements of state and federal law pertaining to such agencies.

**Drug Free Workplace Act:** Party will assure a drug-free workplace in accordance with 45 CFR Part 76.

**Lobbying:** No federal funds under this agreement may be used to influence or attempt to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendments other than federal appropriated funds.

**Attachment G****STATE OF VERMONT- FEDERAL TERMS SUPPLEMENT (Non-Construction)**(Revision date: *July 19, 2023*)**PROCUREMENT OF RECOVERED MATERIALS**

In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated Items unless the products cannot be acquired-

1. Competitively within a time frame providing for compliance with the contract performance schedule;
2. Meeting contract performance requirements; or
3. At a reasonable price

Information about this requirement, along with the list of EPA-designated items, is available at the EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

The Contractor also agrees to comply with all other applicable requirements of section 6002 of the Solid Waste Disposal Act.

**CLEAN AIR ACT**

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The contractor agrees to report each violation to the State of Vermont and understands and agrees that the State of Vermont will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

**FEDERAL WATER POLLUTION CONTROL ACT**

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The contractor agrees to report each violation to the State of Vermont and understands and agrees that the State of Vermont will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA. **a.** Standard. Non-Federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).

**CONTRACTOR BREACH, ERRORS AND OMISSIONS**

1. Any breach of the terms of this contract, or material errors and omissions in the work product of the contractor must be corrected by the contractor at no cost to the State, and a contractor may be liable for the State's costs and other damages resulting from errors or deficiencies in its performance.
2. Neither the States' review, approval or acceptance of nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract.
3. The rights and remedies of the State provided for under this contract are in addition to any other rights and remedies provided by law or elsewhere in the contract.

**TERMINATION FOR CONVENIENCE**

1. General

- a. Any termination for convenience shall be effected by delivery to the Contractor an Order of Termination specifying the termination is for the convenience of the Agency, the extent to which performance of work under the Contract is terminated, and the effective date of the termination.
- b. In the event such termination occurs, without fault and for reasons beyond the control of the Contractor, all completed or partially completed items of work as of the date of termination will be paid for in accordance with the contract payment terms.
- c. No compensation will be allowed for items eliminated from the Contract.
- d. Termination of the Contract, or portion thereof, shall not relieve the Contractor of its contractual responsibilities for work completed and shall not relieve the Contractor's Surety of its obligation for and concerning any just claim arising out of the work performed.

## 2. Contractor Obligations

After receipt of the Notice of Termination and except as otherwise directed by the State, the Contractor shall immediately proceed to:

- a. To the extent specified in the Notice of Termination, stop work under the Contract on the date specified.
- b. Place no further orders or subcontracts for materials, services, and/or facilities except as may be necessary for completion of such portion(s) of the work under the Contract as is (are) not terminated.
- c. Terminate and cancel any orders or subcontracts for related to the services, except as may be necessary for completion of such portion(s) of the work under the Contract as is (are) not terminated.
- d. Transfer to the State all completed or partially completed plans, drawings, information, and other property which, if the Contract had been completed, would be required to be furnished to the State.
- e. Take other action as may be necessary or as directed by the State for the protection and preservation of the property related to the contract which is in the possession of the contractor and in which the State has or may acquire any interest.
- f. Make available to the State all cost and other records relevant to a determination of an equitable settlement.

## 3. Claim by Contractor

After receipt of the Notice of Termination from the state, the Contractor shall submit any claim for additional costs not covered herein or elsewhere in the Contract within 60 days of the effective termination date, and not thereafter. Should the Contractor fail to submit a claim within the 60-day period, the State may, at its sole discretion, based on information available to it, determine what, if any, compensation is due the Contractor and pay the Contractor the determined amount.

## 4. Negotiation

Negotiation to settle a timely claim shall be for the sole purpose of reaching a settlement equitable to both the Contractor and the State. To the extent settlement is properly based on Contractor costs, settlement shall be based on actual costs incurred by the Contractor, as reflected by the contract rates. Consequential damages, loss of overhead, loss of overhead contribution of any kind, and/or loss of anticipated profits on work not performed shall not be included in the Contractor's claim and will not be considered, allowed, or included as part of any settlement.