



Department of Buildings and General Services
Office of Purchasing & Contracting
133 State Street, 5th Floor | Montpelier VT 05633-8000
802-828-2211 phone | 802-828-2222 fax
<http://bgs.vermont.gov/purchasing>

Agency of Administration

SEALED BID

REQUEST FOR PROPOSAL

Network Modernization

ISSUE DATE	February 1, 2024
QUESTIONS DUE	February 13, 2024 – 4:30PM (EST)
RFP RESPONSES DUE BY	February 27, 2024 – 4:30PM (EST)

PLEASE BE ADVISED THAT ALL NOTIFICATIONS, RELEASES, AND ADDENDUMS ASSOCIATED WITH THIS RFP WILL BE POSTED AT:

<http://www.bgs.state.vt.us/pca/bids/bids.php>

THE STATE WILL MAKE NO ATTEMPT TO CONTACT INTERESTED PARTIES WITH UPDATED INFORMATION. IT IS THE RESPONSIBILITY OF EACH BIDDER TO PERIODICALLY CHECK THE ABOVE WEBPAGE FOR ANY AND ALL NOTIFICATIONS, RELEASES AND ADDENDUMS ASSOCIATED WITH THIS RFP.

STATE CONTACT: Roland Ortiz, Technology Procurement Administrator
E-MAIL: SOV.ThePathForward@vermont.gov

1. OVERVIEW:

- 1.1. **SCOPE AND BACKGROUND:** Through this Request for Proposal (RFP) the Agency of Digital Services (hereinafter the "State") is seeking to establish contracts with one or more companies that can provide implementation of a Statewide Network Upgrade/Modernization.
- 1.2. **CONTRACT PERIOD:** Any Contract(s) arising from this RFP will be for a period of implementation and up to 5 years. The State anticipates the start date for such contract(s) will be March 31, 2024.
- 1.3. **SINGLE POINT OF CONTACT:** All communications concerning this RFP are to be addressed in writing to the State Contact listed on the front page of this RFP. Actual or attempted contact with any other individual from the State concerning this RFP is strictly prohibited and may result in disqualification.
- 1.4. **QUESTION AND ANSWER PERIOD:** Any bidder requiring clarification of any section of this RFP or wishing to comment on any requirement of the RFP must submit specific questions in writing no later than the deadline for question indicated on the first page of this RFP. Questions may be e-mailed to the point of contact on the front page of this RFP. Questions or comments not raised in writing on or before the last day of the question period are thereafter waived. At the close of the question period a copy of all questions or comments and the State's responses will be posted on the State's web site <http://www.bgs.state.vt.us/pca/bids/bids.php>. Every effort will be made to post this information as soon as possible after the question period ends, contingent on the number and complexity of the questions.
- 1.5. **CHANGES TO THIS RFP:** Any modifications to this RFP will be made in writing by the State through the issuance of an Addendum to this RFP and posted online at <http://www.bgs.state.vt.us/pca/bids/bids.php>. Modifications from any other source are not to be considered.
- 1.6. **SOURCE OF FUNDS:**

This project is being funded in whole or in part using federal monies. If a bidder requires assistance in preparing their proposal, registering with SAM.gov or needs guidance on socioeconomic certifications, the bidder may contact the Agency of Commerce & Community Development (ACCD), Department of Economic Development (DED), APEX Accelerator. The Vermont APEX Accelerator (formerly the Procurement Technical Assistance Center (PTAC)) specializes in helping small businesses navigate the documentation associated with State and Federal procurement. There is no cost to the Contractor for assistance provided by APEX Accelerator. Their website is: <https://accd.vermont.gov/economic-development/programs/ptac>

2. DETAILED REQUIREMENTS/DESIRED OUTCOMES:

- 2.1. The State of Vermont is interested in obtaining bids to meet the following business need(s): The Agency of Digital Services, is initiating a Network Modernization project that involves upgrading network infrastructure across approximately 320 sites, with the primary goal of implementing a Software-Defined Wide Area Network (SD-WAN) solution.

2.1.1. Current Challenges:

- 2.1.1.1. Vermont's network infrastructure is facing multifaceted challenges, particularly highlighted by recent natural disasters and ongoing technical issues. Core issues include aging network hardware, many of which are out-of-support or nearing the end of their lifecycle. This has led to heightened security vulnerabilities and operational inefficiencies.
- 2.1.1.2. Existing network infrastructure lacks necessary scalability, security capabilities, and vendor support, limiting the state's ability to adapt to changing demands and expand services.
- 2.1.1.3. The design of the network has inadequate disaster recovery capabilities and lacks resiliency, necessitating an urgent need for a more robust network infrastructure.

2.1.2. Operational Inefficiencies:

- 2.1.2.1. The reliance on outdated technology and the labor-intensive management of legacy systems have resulted in increased downtime and added strain on limited staffing resources.
- 2.1.2.2. Specific technical issues include the underperformance of the internet edge firewall, revealing an inability to handle modern traffic loads and security threats effectively.

- 2.2. The State of Vermont seeks to achieve the following Business Value(s): This project aims not only to enhance network efficiency, security, and manageability but also to streamline financial management by moving towards an IaaS model for network hardware. This shift will enable more flexible, usage-based budgeting and

reduce upfront hardware costs. The project aims to enhance network efficiency, security, and manageability while ensuring scalability and cost-effectiveness.

2.3. Functional and Non-Functional Requirements

2.3.1. The State's Functional and Non-Functional Requirements are provided in the attached **State of Vermont Bidder Response Form (Exhibit C)**.

2.3.2. For this particular request, the following additional assurances required by federal or state law, shall be incorporated into the resulting contract:

- a. Assurance that all Named Vendor Staff Members shall comply with Personnel Screening Requirements for Individuals Requiring Unescorted Access to Unencrypted CJI (aka VCIC CJIS Security Fingerprint Background Check) commensurate with that required under Section 5.12 of the CJIS Security Policy. Vendor to provide the pass/fail results of that screening to the State within 8 business hours.
- b. Certification by each Vendor staff member named in the resulting contract that they are familiar with the contents of (1) the Security Addendum, including its legal authority and purpose; (2) the NCIC Operating Manual; (3) the CJIS Security Policy; and (4) Title 28, Code of Federal Regulations, Part 20, and agree to be bound by their provisions.
- c. Assurance that, in keeping with the expectation set in Section 5.2.1.1 of the CJIS Security Policy, each Named Vendor Staff Member assigned to the resulting contract will complete CJIS Awareness Training within 1 month after contract execution and will participate in annual training so long as the Staff Member remains a participant in the work assigned through the contract resulting from this RFP.

3. GENERAL REQUIREMENTS:

3.1. **PRICING:** Bidders must price the terms of this solicitation at their best pricing. Any and all costs that Bidder wishes the State to consider must be submitted for consideration. If applicable, all equipment pricing is to include F.O.B. delivery to the ordering facility. No request for extra delivery cost will be honored. All equipment shall be delivered assembled, serviced, and ready for immediate use, unless otherwise requested by the State.

3.1.1. Prices and/or rates shall remain firm for the initial term of the contract. The pricing policy submitted by Bidder must (i) be clearly structured, accountable, and auditable and (ii) cover the full spectrum of materials and/or services required.

3.1.2. **Cooperative Agreements.** Bidders that have been awarded similar contracts through a competitive bidding process with another state and/or cooperative are welcome to submit the pricing in response to this solicitation.

3.1.3. **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.

3.2. **STATEMENT OF RIGHTS:** The State shall have the authority to evaluate Responses and select the Bidder(s) as may be determined to be in the best interest of the State and consistent with the goals and performance requirements outlined in this RFP. The State of Vermont reserves the right to obtain clarification or additional information necessary to properly evaluate a proposal. Failure of bidder to respond to a request for additional information or clarification could result in rejection of that bidder's proposal. To secure a project that is deemed to be in the best interest of the State, the State reserves the right to accept or reject any and all bids, in whole or in part, with or without cause, and to waive technicalities in submissions. The State also reserves the right to make purchases outside of the awarded contracts where it is deemed in the best interest of the State.

3.2.1. **Best and Final Offer (BAFO).** At any time after submission of Responses and prior to the final selection of Bidder(s) for Contract negotiation or execution, the State may invite Bidder(s) to provide a BAFO. The state reserves the right to request BAFOs from only those Bidders that meet the minimum qualification requirements and/or have not been eliminated from consideration during the evaluation process.

3.2.2. **Presentation.** An in-person or webinar presentation by the Bidder may be required by the State if it will help the State's evaluation process. The State will factor information presented during presentations into the evaluation. Bidders will be responsible for all costs associated with providing the presentation.

3.3. **WORKER CLASSIFICATION COMPLIANCE REQUIREMENTS:** In accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54), Bidders must comply with the following provisions and requirements.

3.3.1. **Self Reporting:** For bid amounts exceeding \$250,000.00, Bidder shall complete the appropriate section in the attached Certificate of Compliance for purposes of self-reporting information relating to past violations, convictions, suspensions, and any other information related to past performance relative to coding and classification of workers. The State is requiring information on any violations that occurred in the previous 12 months.

3.3.2. **Subcontractor Reporting:** For bid amounts exceeding \$250,000.00, Bidders are hereby notified that upon award of contract, and prior to contract execution, the State shall be provided with 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). This requirement does not apply to subcontractors providing supplies only and no labor to the overall contract or project. This list MUST be updated and provided to the State as additional subcontractors are hired. A sample form is available online at <http://bgs.vermont.gov/purchasing-contracting/forms>. **The subcontractor reporting form is not required to be submitted with the bid response.**

3.4. **EXECUTIVE ORDER 05-16: CLIMATE CHANGE CONSIDERATIONS IN STATE PROCUREMENTS:**

For bid amounts exceeding \$25,000.00 Bidders are requested to complete the Climate Change Considerations in State Procurements Certification, which is included in the Certificate of Compliance for this RFP.

After consideration of all relevant factors, a bidder that demonstrates business practices that promote clean energy and address climate change as identified in the Certification, shall be given favorable consideration in the competitive bidding process. Such favorable consideration shall be consistent with and not supersede any preference given to resident bidders of the State and/or products raised or manufactured in the State, as explained in the Method of Award section. But, such favorable consideration shall not be employed if prohibited by law or other relevant authority or agreement.

3.5. **METHOD OF AWARD:** Awards will be made in the best interest of the State. The State may award one or more contracts and reserves the right to make additional awards to other compliant bidders at any time if such award is deemed to be in the best interest of the State. All other considerations being equal, preference will be given first to resident bidders of the state and/or to products raised or manufactured in the state, and then to bidders who have practices that promote clean energy and address climate change, as identified in the applicable Certificate of Compliance.

3.5.1. **Evaluation Criteria:** Consideration shall be given to the Bidder's project approach and methodology, qualifications and experience, ability to provide the services within the defined timeline, cost, and/or success in completing similar projects, as applicable, and to the extent specified below.

Evaluation Factors	Total Points for This Factor
Vendor Profile: Experience, Financial Strength, References (Bidder Response Form Part 1)	10%
Vendor Proposal/Solution and ability to meet the State's Functional and Non-Functional Requirements (Bidder Response Form Part 2-4)	30%
Professional Implementation Services: Project Management and Technical services (Bidder Response Form Part 5 and 6)	15%
Maintenance and Support Services (Bidder Response Form Part 7)	15%
Pricing , includes licensing, maintenance and warranty (Bidder Response Form Part 8)	25%
Vendor Demonstration	5%
Acceptance of State Terms and Conditions	Pass/Fail
Adherence to Mandatory Bidding Requirements	Pass/Fail

If the RFP requires a minimum amount of experience or qualifications, the State will award no points for meeting the minimum. The State will award points for experience and qualifications that exceed the stated minimums.

- 3.6. **CONTRACT NEGOTIATION:** Upon completion of the evaluation process, the State may select one or more bidders with which to negotiate a contract, based on the evaluation findings and other criteria deemed relevant for ensuring that the decision made is in the best interest of the State. In the event State is not successful in negotiating a contract with a selected bidder, the State reserves the option of negotiating with another bidder, or to end the proposal process entirely.
- 3.7. **COST OF PREPARATION:** Bidder shall be solely responsible for all expenses incurred in the preparation of a response to this RFP and shall be responsible for all expenses associated with any presentations or demonstrations associated with this request and/or any proposals made.
- 3.8. **CONTRACT TERMS:** The selected bidder(s) will be expected to sign a contract with the State, including the Standard Contract Form and Attachment C as attached to this RFP for reference. If IT Attachment D is included in this RFP, terms may be modified based upon the solution proposed by the Bidder, subject to approval by the Agency of Digital Services.
 - 3.8.1. **Business Registration.** To be awarded a contract by the State of Vermont a bidder (except an individual doing business in his/her own name) must be registered with the Vermont Secretary of State's office <https://sos.vermont.gov/corporations/registration/> and must obtain a Contractor's Business Account Number issued by the Vermont Department of Taxes <http://tax.vermont.gov/>.
 - 3.8.2. The contract will obligate the bidder to provide the services and/or products identified in its bid, at the prices listed.
 - 3.8.3. **Payment Terms.** Percentage discounts may be offered for prompt payments of invoices; however, such discounts must be in effect for a period of 30 days or more in order to be considered in making awards.
 - 3.8.4. **Quality.** If applicable, all products provided under a contract with the State will be new and unused, unless otherwise stated. Factory seconds or remanufactured products will not be accepted unless specifically requested by the purchasing agency. All products provided by the contractor must meet all federal, state, and local standards for quality and safety requirements. Products not meeting these standards will be deemed unacceptable and returned to the contractor for credit at no charge to the State.
- 3.9. **DEMONSTRATION:** An in-person or webinar demonstration by the Bidder may be required by the State if it will help the State's evaluation process. The State will factor information presented during demonstrations into the evaluation. Bidder will be responsible for all costs associated with the providing the demonstration.
- 3.10. **INDEPENDENT REVIEW:** Certain State information technology projects require independent expert review as described under 3 V.S.A. § 3303(d). Such review, if applicable, will inform the State's decision to award any contract(s) resulting from this RFP.
4. **CONTENT AND FORMAT OF RESPONSES:** The content and format requirements listed below are the minimum requirements for State evaluation. These requirements are not intended to limit the content of a Bidder's proposal. Bidders may include additional information or offer alternative solutions for the State's consideration. However, the State discourages overly lengthy and costly proposals, and Bidders are advised to include only such information in their response as may be relevant to the requirements of this RFP.
 - 4.1. **Unsolicited Bidder-Confidential Information Prohibited.** Bidders are hereby expressly directed not to include any confidential information in their proposal submissions, except as specifically permitted and indicated in the Bidder Response Form, and so marked. Additionally, Bidders must provide a redacted copy of the portions of their proposal that are permitted to contain confidential information. By submitting a proposal in response to this RFP, Bidders acknowledge and agree to abide by the terms and conditions outlined in this document, including the prohibition on submitting confidential information.
 - 4.2. **Disclosure of Proposals and Related Materials.** All information received by the State in response to this RFP will become part of the contract file and subject to disclosure as required by the Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq., other law, court order, or a federal funding partner. This includes materials permitted to be marked as confidential, and for which a redacted copy has been provided, although the State agrees to take reasonable steps to protect such information consistent with those authorities.

4.3. **State Not Responsible for Disclosure of Unsolicited, Unmarked, or Unredacted Bidder-Confidential Information.** It is the sole responsibility of the Bidder to ensure that information it considers confidential is not included in their proposal materials except where specifically permitted by this RFP. The State shall have no responsibility for Bidder's unsolicited or unmarked or unredacted disclosure of information that Bidder believes should not be publicly disclosed, including any 1) trade secrets or intellectual property, 2) proprietary financial or business information, 3) personal information, or 4) any other information that should not be disclosed to the public. For example, Bidders should avoid including in their proposal materials any details of their proprietary technologies or methodologies that they consider confidential. Further, any references to previous client engagements should be presented in a manner that does not disclose the client's confidential information.

4.4. The bid should include a Cover Letter and Technical Response and Price Schedule.

4.5. COVER LETTER:

4.5.1. **Exceptions to Contract Terms and Conditions.** If a Bidder wishes to propose an exception to any terms and conditions set forth in the Standard Contract Form and its attachments, such exceptions must be included in the cover letter to the RFP response. Failure to note exceptions when responding to the RFP will be deemed to be acceptance of the State contract terms and conditions. If exceptions are not noted in the response to this RFP but raised during contract negotiations, the State reserves the right to cancel the negotiation if deemed to be in the best interests of the State. Note that exceptions to contract terms may cause rejection of the proposal.

4.6. **TECHNICAL RESPONSE.** In response to this RFP, a Bidder shall:

4.6.1. Provide details concerning your form of business organization, company size and resources.

4.6.2. Describe your capabilities and particular experience relevant to the RFP requirements.

4.6.2.1. Identify all current or past State projects.

4.6.3. Identify the names of all subcontractors you intend to use, the portions of the work the subcontractors will perform, and address the background and experience of the subcontractor(s), as per RFP section 4.3.2 above.

4.7. **REFERENCES.** Provide the names, addresses, and phone numbers of at least three companies with whom you have transacted similar business in the last 12 months. You must include contact names who can talk knowledgeably about performance.

4.8. **REPORTING REQUIREMENTS:** Provide a sample of any reporting documentation that may be applicable to the Detailed Requirements of this RFP.

4.9. **PRICE SCHEDULE:** Bidders shall submit their pricing information in the Price Schedule attached to the RFP.

4.10. **CERTIFICATE OF COMPLIANCE:** This form must be completed and submitted as part of the response for the proposal to be considered valid.

4.11. **STATE OF VERMONT BIDDER RESPONSE FORM:** This form must be completed and submitted as part of the response for the proposal to be considered valid. The State of Vermont Bidder Response Form provides a standard format and content for bidder proposals. When required, this form will prompt Bidders to supply the information required in the above RFP sections 4.3 through 4.7. Note: In addition to completing the State of Vermont Bidder Response Form, Bidders are required to provide the specific attachments that are described within the Bidder Response Form.

5. SUBMISSION INSTRUCTIONS:

5.1. **CLOSING DATE:** Bids must be received by the State by the due date specified on the front page of this RFP. Late bids will not be considered.

5.1.1. The State may, for cause, issue an addendum to change the date and/or time when bids are due. If a change is made, the State will inform all bidders by posting at the webpage indicated on the front page of this RFP.

5.1.2. There will not be a public bid opening.

5.2. STATE SECURITY PROCEDURES: Please be advised extra time will be needed when visiting and/or delivering information to State of Vermont offices. All individuals visiting State offices must present a valid government issued photo ID when entering the facility.

5.2.1.State office buildings may be locked or otherwise closed to the public. If this RFP permits hand delivery of bids, delivery instructions will be posted at the entrance to the State facility. **Any delay caused by State Security Procedures will be at the bidder's own risk.**

5.3. BID DELIVERY INSTRUCTIONS:

5.3.1.ELECTRONIC: Electronic bids will be accepted.

5.3.1.1. E-MAIL BIDS. Emailed bids will be accepted. Bids will be accepted via email submission to SOV.ThePathForward@vermont.gov. Bids must consist of a single email with a single, digitally searchable PDF attachment containing all components of the bid. Multiple emails and/or multiple attachments will not be accepted. There is an attachment size limit of 40 MB. It is the Bidder's responsibility to compress the PDF file containing its bid if necessary in order to meet this size limitation.

5.3.1.2. FAX BIDS: Faxed bids will not be accepted.

6. BID SUBMISSION CHECKLIST:

- ✓ Required Number of Copies
- ✓ Cover Letter
- ✓ Redacted Technical Response, if applicable
- ✓ State of Vermont Bidder Response Form and Attachments
 - Technical Response (included in Bidder Response Form)
 - References (included in Bidder Response Form)
 - Price Schedule (included in Bidder Response Form)
 - Certificate of Compliance (included in Bidder Response Form)
 - Federal Bureau of Investigation Criminal Justice Information Services Security Addendum Certification

7. ATTACHMENTS:

7.1.State of Vermont Bidder Response Form

7.2.Standard State Contract with its associated attachments, including but not limited to, Attachment C: Standard State Provisions for Contracts and Grants (December 7, 2023)

7.3.Criminal Justice Information Services (CJIS) Security Policy & Exhibit (Certification form)

STANDARD CONTRACT FOR TECHNOLOGY SERVICES

1. **Parties.** This is a contract for services between the State of Vermont, _____ (hereinafter called "State"), and _____, with a principal place of business in _____, (hereinafter called "Contractor"). Contractor's form of business organization is _____. 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 _____. 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 \$_____.00.

4. **Contract Term.** The period of Contractor's performance shall begin on _____, 20__ and end on _____, 20__.

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.

5A. **Sole Source Contract for Services.** This Contract results from a "sole source" procurement under State of Vermont Administrative Bulletin 3.5 process and Contractor hereby certifies that it is and will remain in compliance with the campaign contribution restrictions under 17 V.S.A. § 2950.

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 ____ 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 12/7/2023)

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

Attachment D – Other Terms and Conditions for Information Technology Contracts

Attachment E – Criminal Justice Information Services (CJIS) Security Policy

- Exhibit 1 - Federal Bureau of Investigation Criminal Justice Information Services Security Addendum Certification

Attachment ____ – [OTHER DEPARTMENT ATTACHMENTS, AS APPLICABLE]
Attachment ____ – Contractor's [License] Agreement
Attachment ____ – [Maintenance and Support/Service Level Terms]

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) "State of Vermont – Federal Terms Supplement (non-construction)"
- 5) Attachment A with Exhibits
- 6) Attachment B
- 7) Attachment E with Exhibit
- 8) List other attachments as applicable

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.

[DESCRIBE]

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:

Deliverable	Description	Update Frequency
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	The Project Management Plan will dictate specifics on how the Contractor Project Manager will administer the project and will include the following documentation: <ol style="list-style-type: none">1. Change Management Plan (will dictate how changes will be handled including any Service level terms on over/under estimates)2. Communication Management Plan (will dictate what will be communicated, to who, and how often)3. Requirements Management Plan (will dictate the approach that the requirements will be gathered, approved, and maintained)4. Human Resources Management Plan (will dictate what resources will be assigned to the project, for how long, under what allocation, who	

	<p>they report to, and how to handle changes to the resource plan)</p> <ol style="list-style-type: none"> 5. Procurement Management Plan (will dictate how the vendor(s) will interact with the project and expectations regarding vendor relations with State resources) 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) 7. Risk and Issues Management Plan (will 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"> • 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. • Business requirements document (BRD): The BRD contains a medium level of requirements as well as required metrics of project success. • Functional requirements document (FRD): The FRD contains detailed requirements that can be handed off to the Contractor for execution. 	

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 _____, _____, and _____ 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. [DESCRIBE PROJECT PHASES AND DELIVERABLES FOR EACH PHASE; THIS SECTION SHOULD INCLUDE PAYMENT MILESTONES WHICH ARE THEN REITERATED IN ATTACHMENT B WITH PAYMENT AMOUNTS]**

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.
[Deployment]		Contractor implements the tested and State-approved Solution in the production environment for additional State testing and Go-Live.

PHASE	ESTIMATED DATES	PHASE DESCRIPTION
[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

[NOTE: AS EXPLAINED HEREIN, THIS SECTION IS NOT APPLICABLE FOR ANY AND EVERY RFP AND SHOULD BE DELETED AS APPROPRIATE]

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: _____
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
6. **EXPENSES:** The fee for services shall be inclusive of Contractor expenses.
7. **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. **IF AGENCY/DEPT KNOWS AT THE TIME OF RFP THAT IT WILL REQUIRE PARTICULAR RETAINAGE PROVISIONS, IT SHOULD SPECIFY THOSE DETAILS IN ATTACHMENT B OF THE STANDARD CONTRACT FORM THAT WILL BE ATTACHED TO THIS RFP.**

**ATTACHMENT C: STANDARD STATE PROVISIONS
FOR CONTRACTS AND GRANTS
REVISED DECEMBER 7, 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.iii 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) 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)

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.

ATTACHMENT D

INFORMATION TECHNOLOGY SYSTEM IMPLEMENTATION

TERMS AND CONDITIONS (rev. 01/12/2024)

1. 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.

2. 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.

3. OWNERSHIP AND LICENSE IN DELIVERABLES

3.1 Contractor Intellectual Property. 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"). Should the State require a license for the use of Contractor Intellectual Property in connection with the development or use of the items that Contractor is required to deliver to the State under this Contract, including Work Product ("Deliverables"), the Contractor shall grant the State a royalty-free license for such development and use. For the avoidance of doubt, Work Product shall not be deemed to include Contractor Intellectual Property, provided the State shall be granted an irrevocable, perpetual, non-exclusive royalty-free license to use any such Contractor Intellectual Property that is incorporated into Work Product.

3.2 State Intellectual Property. The State shall retain all right, title and interest in and to (i) all content and all property, data and information furnished by or on behalf of the State or any agency, commission or board thereof, and to all information that is created under this Contract, including, but not limited to, all data that is generated under this Contract as a result of the use by Contractor, the State or any third party of any technology systems or knowledge bases that are developed for the State and used by Contractor hereunder, and all other rights, tangible or intangible; and (ii) 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 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.

3.3 Work Product. 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.

“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. Work Product does not include Contractor Intellectual Property or third party intellectual property.

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 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, subject to the State’s obligations with respect to Confidential Information, authorize others to do the same on the State’s behalf. Except for the foregoing license grant, Contractor or its licensors retain all rights in and to all Contractor Intellectual Property.

The Contractor shall not sell or copyright a Deliverable without explicit permission from the State.

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. CONFIDENTIALITY AND NON-DISCLOSURE; SECURITY BREACH REPORTING

4.1 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.

4.2 **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 the performance of this Contract are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq. The State will not disclose 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.

The State shall immediately notify Contractor of any request made under the Access to Public Records Act, or any request or demand by any court, governmental agency or other person asserting a demand or request for Contractor information. 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 or in response to a binding order from a court or governmental body or agency compelling its production. 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.

The State agrees that (a) it will use the Contractor information only as may be necessary in the course of performing duties, receiving services or exercising rights under this Contract; (b) it will provide at a minimum the same care to avoid disclosure or unauthorized use of Contractor information as it provides to protect its own similar confidential and proprietary information; (c) except as required by the Access to Records Act, it will not disclose such information orally or in writing to any third party unless 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; (d) it will take all reasonable precautions to protect the Contractor's information; and (e) it will not otherwise appropriate such information to its own use or to the use of any other person or entity.

Contractor may affix an appropriate legend to Contractor information that is provided under this Contract to reflect the Contractor's determination that any such information is a trade secret, proprietary information or financial information at time of delivery or disclosure.

5. SECURITY OF STATE INFORMATION

5.1 Security Standards. To the extent the Contractor or its subcontractors, affiliates or agents handles, collects, stores, disseminates or otherwise deals with 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 (i) ensure the security and confidentiality of State Data; (ii) protect against any anticipated security threats or hazards to the security or integrity of the State Data; and (iii) protect against unauthorized access to or use of State Data. Such measures shall include at a minimum: (1) access controls on information systems, including controls to authenticate and 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) industry-standard firewall protection; (3) encryption of electronic State Data while in transit from the Contractor networks to external networks; (4) measures to store in a secure fashion all State Data which shall include, but not be limited to, encryption at rest and multiple levels of authentication; (5) dual control procedures, segregation of duties, and pre-employment

criminal background checks for employees with responsibilities for or access to State Data; (6) measures to ensure that the State Data shall not be altered or corrupted without the prior written consent of the State; (7) measures to protect against destruction, loss or damage of State Data due to potential environmental hazards, such as fire and water damage; (8) staff training to implement the information security measures; and (9) 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.

5.2 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.

5.3 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.

5.4 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.

5.5 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.

5.6 Vulnerability Testing. The Contractor shall run quarterly vulnerability assessments and promptly report results to the State. Contractor shall remediate all critical issues within 90 days, all medium issues within 120 days and low issues within 180 days. Contractor shall obtain written State approval for any exceptions. Once remediation is complete, Contractor shall re-perform the test.

6. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

6.1 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.

6.2 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.

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

6.4 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

7. 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.

8. 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.

9. 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.

10. 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.

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.

11. 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) months] after the Term (so long as the State Materials remain in the Contractor's possession) 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.

The Contractor's policies regarding the retrieval of data upon the termination of services 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.

12. 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 (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 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.

13. 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.

14. 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.

15. 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 2023-01*, 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
Criminal Justice Information Services (CJIS) Security Policy

The policy in whole can be found linked here:

https://le.fbi.gov/file-repository/requirement-companion-document_v5-9-3_20230914.pdf/view

Attachment E

09/14/2023
CJISD-ITS-DOC-08140-5.9.3
H-8

FEDERAL BUREAU OF INVESTIGATION CRIMINAL JUSTICE INFORMATION SERVICES SECURITY ADDENDUM

CERTIFICATION

I hereby certify that I am familiar with the contents of (1) the Security Addendum, including its legal authority and purpose; (2) the NCIC Operating Manual; (3) the CJIS Security Policy and (4) Title 28, Code of Federal Regulations, Part 20, and agree to be bound by their provisions.

I recognize that criminal history record information and related data, by its very nature, is sensitive and has potential for great harm if misused. I acknowledge that access to criminal history record information and related data is therefore limited to the purpose(s) for which a government agency has entered into the contract incorporating this Security Addendum. I understand that misuse of the system by, among other things: accessing it without authorization; accessing it by exceeding authorization; accessing it for an improper purpose; using, disseminating or re-disseminating information received as a result of this contract for a purpose other than that envisioned by the contract, may subject me to administrative and criminal penalties. I understand that accessing the system for an appropriate purpose and then using, disseminating or re-disseminating the information received for another purpose other than execution of the contract also constitutes misuse. I further understand that the occurrence of misuse does not depend upon whether or not I receive additional compensation for such authorized activity. Such exposure for misuse includes, but is not limited to, suspension or loss of employment and prosecution for state and federal crimes.

Printed Name/Signature of Contractor Employee

Date

Printed Name/Signature of Contractor Representative

Date

Organization and Title of Contractor Representative