SEALED BID
INFORMATION TECHNOLOGY REQUEST FOR PROPOSAL
FOR
TOBACCO QUITLINE AND ASSOCIATED SERVICES

Expected RFP Schedule Summary:

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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.

PURCHASING AGENT: Stephen Fazekas
TELEPHONE: (802) 828-2210
E-MAIL: stephen.fazekas@vermont.gov
FAX: (802) 828-2222
1 RFP OVERVIEW

1.1 Overview

The Office of Purchasing & Contracting on behalf of the Vermont Department of Health (the State) is soliciting competitive sealed, fixed price proposals (Proposals) for its telephone and web-based tobacco cessation services and Nicotine Replacement Therapy (NRT) fulfillment services (the Work) from qualified offerors. If a suitable offer is made in response to this Request for Proposal (RFP), the State may enter into a contract (the Contract) to have the selected offer (the Contractor) perform all or part of the Work. This RFP provides details on what is required to submit a Proposal in response to this RFP, how Proposals will be evaluated, and what will be required of the Contractor in performing the Work.

This is a Request for Competitive Sealed Proposals (RFP) to select the vendor who can perform the Scope of Work described in Section 2 of this RFP.

1.2 RFP Objective

The desired outcome of this RFP is to establish an agreement with a vendor to provide statewide telephone and web-based tobacco cessation services, as well as web-based Nicotine Replacement Therapy (NRT) ordering and fulfillment services, text messaging to assist Vermont tobacco users in quitting, and an online tobacco cessation training platform for healthcare professionals.

1.3 Department Background and Philosophy

The State is committed to cutting adult tobacco use rates to 12% and youth rate to 10% by 2020, as outlined by Healthy People 2020 objectives. A reduction in tobacco use and secondhand smoke exposure supports our larger mission to reduce the burden of premature death, disability and chronic disease in Vermont.

It is important to note that a priority for the State is reducing health disparities. In particular, the largest contributor to chronic disease, cause of hospitalizations and death risk factor: tobacco. The reduction of tobacco use among Vermonters of low socio-economic status, those with mental health and co-occurring substance abuse issues, Vermonters who identify as LGBTQ and Vermonters who are pregnant and who smoke is imperative in reducing the burden of chronic disease.

The State aims to promote cessation of tobacco use, reduce the social acceptability of tobacco use, prevent initiation of tobacco use, address disproportionately high rates of tobacco use by specific population groups, and eliminate exposure to secondhand smoke. The State uses a multi-pronged strategic approach to reduce tobacco use in the population and seeks to impact the population through:

**Statewide and community action** to change the community environment that supports the tobacco-free norm, change community attitudes about tobacco, and de-normalize tobacco use. A key outcome of the State’s tobacco control community mobilization strategy is the adoption and effective implementation of local and statewide policies that permanently change society’s acceptance of tobacco use.

**Cessation** interventions to establish and maintain community, governmental and health care delivery systems that promote cessation, increase access to and delivery of evidence-based cessation services, and motivate individual tobacco users to quit successfully. Key outcomes of the State’s cessation interventions are provision of guideline concordant tobacco dependence treatment by the health care sector and adoption of policies that motivate smokers and other tobacco users to quit.
Public health communication to increase awareness of the dangers of tobacco use (including Electronic Nicotine Delivery Systems (ENDS) and emerging products), secondhand smoke and motivate tobacco users to stop; and educate community members and decision makers about tobacco control. A key outcome of the State’s health communication strategy is better educated community members and decision makers who will support effective tobacco control policies and take personal action toward a tobacco-free Vermont.

Changing social norms at retail point-of-sale to reduce exposure to the tobacco industry’s aggressive product placement. The State’s counter-marketing initiative works to educate the public and decision makers on the tobacco industry’s aggressive point-of-sale marketing strategies employed in Vermont and counters the messaging, which is appealing and misleading to youth. A critical part of this initiative is measuring and reporting the extent of industry point-of-sale marketing through statewide store assessments.

The State, as part of its comprehensive tobacco program, has developed a network of cessation services to encourage the estimated 83,000 adults who smoke cigarettes as well as those that use tobacco products and tobacco substitutes in the state to quit. Branded as 802Quits, the State’s tobacco cessation program has three main programs to support Vermonters with their tobacco cessation efforts: telephone cessation counseling, hereafter referred to as Quitline; in-person group cessation counseling, hereafter referred to as Quit-in-Person; and web-based cessation support, hereafter referred to as Quit Online. Text messaging support is available through the Quitline and Quit Online programming. The web portal which encompasses our entire brand can be found at www.802Quits.org.

The State also provides, free of charge, NRT, in the form of patches and gum or lozenges, available to tobacco users enrolled in any of the 802Quits programs.

The comprehensive program in Vermont involves the Department of Health, the Department of Education, and the Department of Liquor & Lottery.

Additional information about the comprehensive Tobacco Control Program administered through the Department of Health can be located at: https://www.healthvermont.gov/wellness/tobacco

The State currently offers three methods for Vermont smokers who are interested to quit tobacco under the 802Quits program:

1. Quit-by-Phone (best practice)
2. Quit Online
3. Quit-in-Person

The primary target audience for the Quitline has been Vermont adults, age 18 and over, who use tobacco products and have shown a readiness to quit. According to 2016 BRFSS, approximately 83,000 (18%) of Vermonters are current cigarette smokers and (3%) use other forms of tobacco. Additionally, the State is seeing 7% of its Quitline registrants are using e-cigarettes; the BRFSS 2016 show that 3% of adult tobacco users are also reporting use of e-cigarettes. The current Quitline services include support for cessation of vaping devices. According to the State’s youth data (YRBS 2017), 15% of high school youth report smoking cigarettes, cigars, or smokeless tobacco at least once during the past 30 days, 19% said they used cigarettes, cigars, smokeless tobacco, or electronic vapor products during the past 30 days, and one third report having made a quit attempt in the past year. Starting in 2007, tobacco users aged 13 - 17 have been able to call and arrange counseling with Quitline contractors without receiving adult consent from parents or guardians. Though not considered a primary audience for Quitline services, this group of individuals must be considered part of the population receiving services.

802Quits registered over 3,000 Vermont tobacco users in 2017 to its Quitline and Quit Online programs. The Quitline program received and answered on average 300 calls for tobacco users and proxy callers per month and
saw a high of 471 callers. The Quit Online program saw an average of 425 unique tobacco users per month. The Vermont Quit Partners on average ordered 65 shipments of NRT per month.

1.4 Current Business Environment
The State currently uses a third-party contractor to provide integrated tobacco cessation and NRT fulfillment services on behalf of the State. The State primarily relies upon funding it receives through yearly appropriations from the Vermont Legislature, as well as grant funding from the Centers for Disease Control and Prevention (CDC).

2 Scope of Work
The State of Vermont is interested in obtaining bids to meet the following business need(s):

Telephone and web-based tobacco cessation services and Nicotine Replacement Therapy (NRT) fulfillment services

This scope of work includes procurement of the following:

Quit-by-Phone Service Delivery
The Contractor shall implement, at no-charge to the participant, a toll-free telephone-based tobacco use cessation Quitline to assist participants, including youth (minor of 13 years of age and above), with quitting smoking or using any other tobacco products or substitutes. The State’s tobacco cessation program will continue to be branded 802Quits. The Contractor shall be responsible for the transfer of the toll-free number and participant data information from the current Contractor by 12:00 AM of the contract Go-Live date. A transition plan must be submitted with the proposal that includes data transfer from the current Contractor in compliance with HIPAA. The Contractor shall have an organizational membership in the North American Quitline Consortium (NAQC) for the duration of the Contract and shall provide the following services:

Quit-by-Phone Protocols
Protocols used by the Contractor for all counseling via phone, web, and text must be based on research showing effectiveness in inducing behavior change and in line with the Center for Disease Control and Prevention’s “Telephone Quitlines: A Resource for Development, Implementation, and Evaluation, the Community Preventive Services Task Force recommendations,” (https://www.cdc.gov/tobacco/quit_smoking/cessation/quitlines/index.htm), North American Quitline Consortium (NAQC), and the U.S. Public Health Service’s Clinical Practice Guideline on Treating Tobacco Use and Dependence for the following populations: adults, youth.

The Contractor will develop, in coordination with the State, protocols to serve the following identified priority populations: adults, youth, pregnant people (with financial or other incentives), people with cognitive disabilities, Native Americans, tobacco users with behavioral health disorders, callers that are not interested in setting a quit date within 30 days, and tobacco users with substance use disorders. Consideration will be given to Contractors who have experience with providing financial or other incentives for priority populations including pregnant people, Medicaid insured, and others.

In coordination with the State, the Contractor will develop a protocol(s) to:

a) Coordinate on behalf of participants with healthcare providers and pharmacies to provide quit medications

b) Refer callers who want to participate in a specific arm of the 802Quits program, such as Quit-in-Person or alternative services offered by the State
c) Allow for Vermont Medicaid insured callers to educate them regarding their eligibility for the additional Medicaid name brand and unlimited generic brand pharmacotherapy benefit.

d) Provide for health care professional patient referral(s) via fax, online, or Electronic Health Record (EHR). The Contractor will provide feedback (such as reports on referred patients) to the referring health care professional or manager as approved in the service protocol.

e) Address Electronic Nicotine Delivery Systems (ENDS) use, either alone or in conjunction with other forms of tobacco. Assist ENDS users in quitting ENDS use along with any other forms of tobacco used and emphasize that ENDS are not an FDA-approved cessation aid. Stay abreast of updates on the research (via CDC and NAQC) and policy (via FDA) around ENDS use.

f) Address marijuana use, either alone or in conjunction with other forms of tobacco, as well as marijuana use via ENDS if currently offered by the Contractor.

g) Allow for use of incentives as part of a contingent management protocol for quitting and maintaining quit success.

All protocols require prior review and approval by the State. The State may request service changes. The Contractor may recommend to the State revisions to protocols to keep pace with research on effective tobacco cessation treatment interventions.

Cessation services will be provided via telephone, the Internet, and other technology/media, such as text-based services and mobile applications.

All services provided by the Contractor shall be culturally appropriate and tailored to populations as evidenced.

The Contractor will use the existing toll-free number for 802Quits of 1-800-QUIT-NOW and a text messaging self-referral system.

**Quit-by-Phone Intake and Orientation**

The Contractor will provide screening and registration of all participants within twelve (12) minutes on average to determine the services desired by the participant and the services for which the participant is eligible. Screening and registration of tobacco users must include, but not be limited to, obtaining the Minimum Data Set (MDS) questions as recommended by the NAQC ([http://www.naquitline.org/default.asp?page=mds](http://www.naquitline.org/default.asp?page=mds)). Intake activities will include:

a) The Contractor shall also obtain permission of the participant if they are willing to participate in follow up services and evaluation

b) The Contractor will provide information to proxy callers and general information to callers requesting it

c) All callers covered by a health plan shall be advised to call or visit their insurance plan website or human resource office for health plan or employer-based cessation services

**Quit-by-Phone Counseling Services**

The Contractor will provide comprehensive, reactive and proactive, evidence-based telephone cessation counseling to interested participants and assist the participant to develop a personalized quit plan during phone counseling sessions. Counselors (and/or peers) must be ATTUD (Association for the Treatment of Tobacco Use and
Dependence) certified Tobacco Treatment Specialist as well as trained on working with diverse populations. Counseling services shall include:

a) Reactive or Single-Contact Counseling Services: One session between a participant and a cessation counselor that includes cognitive-behavioral counseling interventions

b) Proactive or Multiple-Contact Counseling Services: One or more sessions between a participant and a designated cessation counselor that include cognitive-behavioral counseling interventions, and a minimum of four (4) further counselor-initiated follow-up contacts with the participant at relapse-sensitive times to assess the participant’s quit status and to support the continued quit attempt. The design of these multiple-contact counseling services shall be based on research showing effectiveness in inducing behavior change and in line with the Community Preventive Services Task Force recommendations (https://www.cdc.gov/tobacco/quit_smoking/cessation/quitlines/index.htm), North American Quitline Consortium (NAQC), and the U.S. Public Health Service’s Clinical Practice Guideline on Treating Tobacco Use and Dependence: 2008 Update. Ensure each participant is assigned the same counselor for the entire minimum of four (4) follow-up session. Counselors will work with callers to find days/times that best work for their schedule.

c) Outbound Services for those who are in the Precontemplation or Contemplation stages of change in the Transtheoretical Model (TTM) (See: https://www.ncbi.nlm.nih.gov/pubmed/10170434). The Contractor shall, at no additional cost, reach, or document up to four (4) attempts to reach, callers thirty (30) days after initial call in order to reassess participant’s readiness to quit and enroll the participant for sessions with a cessation counselor that include cognitive-behavioral counseling interventions.

d) Follow-up calls to all individuals requesting NRT by phone to address questions and concerns with respect to NRT

e) Interpretation services in multiple languages

f) A TTY line for the hearing impaired

**Quit Online Service Delivery**

The Contractor will offer a web-based, online platform to assist tobacco users in quitting, according to the protocols developed in coordination with the State.

**Quit Online Protocol**

The online service must include at the minimum:

a) Capacity for the client to enroll in the telephone-based counseling and provide a streamlined (e.g., one-stop) registration process for any and all 802Quits programs for which users are interested followed by streamlined reporting to the state

b) Online tobacco intervention service that includes 24/7 access to online tobacco use assessment, support, tailored quit messages and feedback from quit counselors in multiple languages

c) Information about quitting and the quitting process
d) Capacity to respond to quitting-related questions submitted via online chat groups, discussion forums, or other interactive web activities

e) Information about FDA approved medications (NRT), the capacity to screen and recommend appropriate NRT

f) Resources as to how Vermont tobacco users can interact with other online users for quit support

g) Expert support via live chat

h) Information in a patient portal format about program progress in phone (if applicable) and web program

i) Provide web-based and text support cessation services. Services may be provided as stand-alone and in support of phone counseling services. The Contractor shall provide interactive text messages, web-based, and app-based support personalized to each participant’s quit plan prior to and after the designated quit date. Protocols used shall be based on research showing effectiveness in inducing behavior change and in line with the Community Preventive Services Task Force recommendations (https://www.cdc.gov/tobacco/quit_smoking/cessation/quitlines/index.htm), North American Quitline Consortium (NAQC), and the U.S. Public Health Service’s Clinical Practice Guideline on Treating Tobacco Use and Dependence: 2008 Update. All protocols require review and approval by The State.

Text-Based Services
The Contractor will implement text-based services for participants within 5 business days of participant’s enrollment date. Text services will include:

a) Up to 300 stock text messages tailored to a participant’s quitting plan, counseling call reminders and prompts to connect with a cessation counselor, tips and games to help manage urges, and mobile tracking of tobacco usage, urges, cost savings and other measures, fully integrated with the web program.

b) The Contractor will provide participant text message utilization (messages received, replies, etc.) information in a standard suite of reports.

Nicotine Replacement Therapy and Cessation Medication Fulfillment
The Contractor will offer and send FDA approved pharmacotherapy to Participant home address, according to Protocols developed in coordination with the State. The NRT protocol used by the Contractor will be adapted from “Treating Tobacco Use and Dependence Clinical Practice Guidelines” and the 2008 Update, the 2018 Cochran review “Nicotine Replacement Therapy Versus Control for Smoking Cessation,” and the 2013 Cochran review “Pharmacological Interventions for Smoking Cessation: An Overview and Network Meta-Analysis.”

In relation to NRT fulfillment, the Contractor will:

a) Provide personalized information about NRT products and prescription cessation medications (from a reference list approved by the State) including recommended dosage, common side effects, and contraindications to tobacco users willing to quit within 30 days

b) Offer combined NRT products to participants who have registered for quitline services
c) Conduct a medical screening of users to assess the most appropriate NRT or medication, including varenicline or bupropion; decision-rules for both a phone format and a web-based format to help users select the appropriate dose and type(s) of NRT

d) Identify medical contraindications and work with healthcare providers to obtain approval for NRT. A medical doctor consent form will be required prior to placing the NRT order for participants with heart conditions (participants who have had a heart attack in the past 12 months or if they have been diagnosed with heart disease), stroke, uncontrolled hypertension, or are currently pregnant or breast-feeding.

e) Help participants assess Medicaid, Medicare and third-party insurance to determine further NRT or medication benefits

f) Coordinate with Medicaid and/or other insurance providers to seek reimbursement beyond available program benefit

g) Provide online ordering platform for the State and Quit-in-Person coaches to send NRT or medication to participant’s home address

h) Fulfill and oversee fulfillment of NRT or medication orders requested through the consumer facing online program, as well as the orders placed through the online platform for the State and 802Quits Quit-in-Person program

i) Provide a process and timeline for processing NRT or cessation medication orders. The Contractor may propose other delivery methods such as vouchers, etc.

j) Track all NRT or medication sent to tobacco users, linking records for multiple NRT or medication requests for the same individual, and enforcing eligibility criteria and yearly limits on the amount of NRT or medication provided according to the approved workplan

k) Make all follow-up calls to tobacco users requesting NRT or medication according to approved workplan. Follow-up calls will cover any questions or problems users are having with NRT or medication and will provide a brief introduction to the other Quitline services offerings.

l) Identify and prevent fraud with regard to NRT requests and resale

Information and Materials
The Contractor will provide and send information and materials to tobacco users and non-tobacco users on tobacco dependence and its treatment, the dangers of secondhand smoke, Quitline services and effectiveness, referral systems (if applicable), and other tobacco-related information as requested by the participant. Information may include advice for family and friends on helping a tobacco user quit and providing appropriate support through a quit attempt. Information and materials will include:

a) The Contractor shall develop, provide, and disseminate (via mail, texts, email, online, etc.) up-to-date, evidence-based cessation support materials that address self-help cessation techniques for tobacco users when requested by the participant within two (2) business days of the request.

b) At a minimum, the Contractor must make available tailored materials for people who smoke, use smokeless tobacco, and/or use ENDS.
c) At a minimum, the Contractor must also make available tailored materials for people who are pregnant, youth, have co-occurring substance abuse and/or behavioral health disorders, identify as LGBT, and/or identify as Native American.

d) At a minimum, materials shall be culturally competent, meet low literacy level needs with readability at a fourth-grade level, utilize pictures and graphics extensively, be available in multiple languages, and be up to date.

e) Materials may be required in additional languages, at no additional charge to the State, if call volume or other analysis by either the Contractor or the State indicates the need.

f) The Contractor may use existing materials as approved by the State.

g) The Contractor will provide a Quit Guide that can be mailed (or emailed in a .pdf format) to all callers who request it. Contractor will track requests for the Quit Guides.

h) The Contractor will provide tobacco users who are not ready to set a quit date within thirty (30) days informational materials with appropriate motivational messages to promote effective quit attempts and self-help or other appropriate materials and encouragement.

i) Contractor will provide completion letters to callers who have completed an intake call and five (5) proactive counseling sessions or suggest an alternative.

Referral Systems, Technical Assistance/Training, etc.

The Contractor will provide participant referrals, provider technical assistance and training as follows:

**Referral Systems**

The Contractor will provide administration of a clinic-based patient fax referral system to refer participants to the 802Quits program. As it relates to referral systems/services the Contractor will:

a) Be able to receive referrals and provide feedback electronically as well as through faxes and secure e-mail.

b) Provide a report reflecting the level of service provided for the referred participant to the referring provider. This outcome report should be received by the referring provider within two (2) weeks of referral.

c) Provide educational material for medical providers and others who provide fax referrals to the Quitline.

d) Provide administration of the electronic referral from healthcare providers to the Quitline, according to Protocols developed in coordination with the State.


f) Be able to receive electronic referrals through all Electronic Health Records/Electronic Medical Records (EHR/EMR) systems and provide feedback electronically through EHR/EMR systems as well as through secure e-mail.
g) Provide an outcome report reflecting the level of service provided for the referred participant to the referring provider. This outcome report should be received by the referring provider within two (2) weeks of referral.

h) Contractor is responsible for implementation of e-referral process at each site designated by the State. Contractor will provide an overview of what programming is required in order to allow for an EHR to transmit a referral to the Quitline program.

**Technical Assistance**

Contractor will provide technical assistance and consultation for healthcare professionals on effective tobacco dependence treatment issues. Topics may include:

- a) Information about 802Quits Program
- b) Up-to-date information about Nicotine Replacement Therapy (NRT) or other pharmacotherapy
- c) Referrals to the Quitline
- d) Implementation of in-office procedures following the U.S. Public Health Service’s (PHS’s) Clinical Practice Guidelines on Treating Tobacco Use and Dependence
- e) Complicated patient case management issues
- f) Community-based tobacco cessation programs
- g) Other topics as appropriate to the contract

**Training**

The Contractor will create, host, track, and maintain online trainings/webinars (both live and recorded) for providers and other community/governmental service delivery personnel (WIC staff, etc.) who work with participants that may be referred to the Quitline. The Contractor shall update the training as necessary to maintain quality. The training(s) should include:

- a) Background on 802Quits Program, the Quitline, the evidence that supports Quitlines, and how to refer to the Quitline.
- b) Best practice of brief tobacco interventions (5A’s or 2A’s and R), NRT guidelines, other clinical proactive guidelines.
- c) Contractor shall manage all administration of the Continuing Medical Education credits as well as additional credits such as Continuing Education Units, and any other educational credits the State requires. This may include verifying training completion, processing provider requests for Continuing Education credits, administering certificate for Continuing education credits to providers.
- d) Additionally, the Contractor shall be responsible for the appropriate transition of domain ownership, data, etc. for all existing Quitline trainings/webinars at no additional cost.

**Data Collection and Reporting**

The Contractor shall provide all reports as required by the State. The Contractor shall submit in real time, monthly, quarterly, and annual reports to the State to track use of the Quitline and other services provided, as well as
Participant participation levels and progress. The Contractor’s computerized tracking system to document Quitline activity must be able to accurately tabulate discrete individuals, services provided, participant demographics, and other characteristics, including referrals into and out of the system. The system must be able to produce reports on the types and amounts of services provided per participant, call patterns by time of day, day of week and month consistent and compliant with the reporting requirements negotiated with the State. The Contractor shall also provide data as requested by the State for CDC grant reporting, including the CDC data warehouse, NAQC, NQDW reporting requirements. When any Quitline promotions through television or other activities are expected to generate high call volumes, the Contractor shall provide to the State daily call volume reports upon request.

The Contractor shall also collect data that measures the performance of the Contractor in terms of waiting time for participants, volume of calls received during times when a live answer is not available, abandonment rates, the number and percent of participants who complete each intervention, and accuracy of counseling information given by the staff.

**Data Collection Protocol**

In coordination with the State, the Contractor will develop a protocol for the provision of data collection. All raw data files must include a single unique identifier for each caller that allows data from multiple files to be linked together for analysis, and if necessary, a linking file. The data files must be provided in a common “flat file format” (Excel, SPSS, and SAS are preferred). The required data set must include, at minimum, the following data elements:

a) Client data.

b) Phone and web data set including data recorded during coaching session calls.

c) Data as outlined in the NAQC MDS or subset of MDS.

d) Administrative data.

e) Intake and call disposition data, including referring provider, phone, web and media reaches per county.

f) NRT data set including quantity, dosage and shipment dates for NRT on the client level, which includes insurance company and group information.

g) An activity data set that documents what sections and features of the site were viewed, utilized.

h) Gather and share with the State data sets required to conduct an external evaluation of quit rates.

**Data Reporting**

In coordination with the State, the Contractor will develop a protocol for the provision of reports that includes at minimum:

a) Regular monthly reports

b) Special request or ad hoc request process

The State is the sole owner of the participant information. Participant data from 802Quits program may not be used by the Contractor for any purpose other than the services performed under this Contract without prior written approval of the State.
The State is the sole owner of all calls between the Quitline and Vermont participants. Recordings and/or transcripts of calls must be appropriately maintained and furnished to the State within 48 hours of request.

Quality Performance/Assurance and Evaluation
In coordination with the State, the Contractor will develop and implement quality performance/assurance activities and conduct ongoing evaluation activities as follows:

Quality Performance/Assurance Plan
The Contractor shall follow and provide to the State an annual, comprehensive quality performance/assurance plan. The quality performance plan must describe the procedures, standards, and measures to be used to ensure quality and timeliness of Counseling calls. It must also discuss how the Contractor's performance in the various areas of quality assurance is to be reported, how the reported data should be interpreted, and how that information will be used not only to maintain the quality of services, but to improve them as well. At minimum, the plan must include:

a) A secure, confidential, efficient means of transferring the data from the successful applicant to another entity as requested by CDC, NAQC or the State.

b) Collaboration with the State to provide new or additional procedures for quality assurance of services provided and the reliability/validity of the data and operation and management of the Quitline.

c) Participation in weekly or other regularly scheduled conference calls with the State and other parties to provide service updates, data reports, and other information or materials as requested by the State.

d) The Contractor shall have an annual written and ready-to-implement protocol by contract execution for addressing complaints and compliments of participants that use the suite of services. A copy of this protocol shall be submitted to the State yearly by July 1st.

e) The State may routinely make “secret shopper” calls or use any other evaluation method to verify service quality and will provide feedback to the Contractor on the results of those calls to facilitate quality improvement if necessary.

Evaluation Plan
The Vermont Department of Health has a strong, ongoing commitment to high quality program evaluation. All VDH programs are expected to build evaluation into their work. Evaluations performed by the Division of Health Promotion and Disease Prevention (HPDP) are conducted following a set of guiding principles that emphasize data utility, collaboration with stakeholders throughout the evaluation cycle, sharing resources for a larger impact, conducting mixed methods evaluation whenever possible, and looking for a balance of process and outcome evaluation as resources allow. Evaluation activities related to this agreement will include, but not be limited to the following:

a) The Contractor will provide a seven-month and a twelve-month evaluation of the Quitline services using NAQC approved MDS follow-up survey evaluation, to be reviewed by the State, to determine Participant satisfaction, seven-month and twelve-month quit rates of Participants, and perform bivariate analysis to determine correlations between Participant characteristics, satisfaction and quit rates. The quit rates shall be calculated using both intent-to-treat and respondent methodologies.
b) The Contractor must participate in evaluation projects conducted by the State’s external evaluator upon request by the State.

2.1 Business Outcomes
The State of Vermont seeks to achieve the following Business Value(s):

Customer Service: Integrated quitline services contribute to an increase in the number of tobacco users who attempt to quit, and results in a higher rate of success in quitting smoking.


Compliance: States receiving funding from Center for Disease Control are required to have a tobacco cessation quitline service to reduce tobacco use prevalence.

2.2 Dependencies and Constraints
The current solution is in place through July 14, 2020. There cannot be any lapse in services.

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

The Non-Functional Requirements include requirements for the following:
- Hosting (if applicable to your proposal)
- Security
- Data Compliance: Solutions must adhere to applicable State and Federal standards, policies, and laws. The Bidder Response Form includes a table of data types and their applicable State and Federal standards, policies, and laws. The boxes in the table that are checked are the ones that are applicable to this procurement.

3 BID PREPARATION

3.1 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.

3.2 Bidders’ Conference
A bidders’ conference is not required for this RFP.

3.3 Question and Answer Period
Any vendor requiring clarification of any section of this RFP or wishing to comment on any requirements 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 emailed 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.

3.4 **Required Content and Format for Bid Submission**

Proposals submitted for this RFP should include the following and nothing additional:

- Required number of copies
- A Cover Letter
- If applicable, a redacted copy of the response for portions that are considered proprietary and confidential.
- Certificate of Compliance (Reference Exhibit A)
- Bidder Response Form and Attachments (Reference Exhibit C)

3.4.1 **Number of Copies.** Submit an unbound original (clearly marked as such) and five (5) paper copies and one digitally searchable PDF file containing all components of the bid. See section 4.5 for instructions regarding electronic submission of bids.

3.4.2 **The Cover Letter**

Please provide an introduction to your company and proposal via a cover letter. All bids submitted to the State are considered public records. Please note in your cover letter if any information in your proposal is considered proprietary and confidential.

a. **Confidentiality.** To the extent your bid contains information you consider to be proprietary and confidential, you must comply with the following requirements concerning the contents of your cover letter and the submission of a redacted copy of your bid (or affected portions thereof).

b. The successful response will become part of the contract file and will become a matter of public record, as will all other responses received. If the response includes material that is considered by the bidder to be proprietary and confidential under the State’s Public Records Act, 1 V.S.A. § 315 et seq., the bidder shall submit a cover letter that clearly identifies each page or section of the response that it believes is proprietary and confidential. The bidder shall also provide in their cover letter a written explanation for each marked section explaining why such material should be considered exempt from public disclosure in the event of a public records request, pursuant to 1 V.S.A. § 317(c), including the prospective harm to the competitive position of the bidder if the identified material were to be released. Additionally, the bidder must include a redacted copy of its response for portions that are considered proprietary and confidential. Redactions must be limited so that the reviewer may understand the nature of the information being withheld. It is typically inappropriate to redact entire pages, or to redact the titles/captions of tables and figures. Under no circumstances can the entire response be marked confidential, and the State reserves the right to disqualify responses so marked.

3.4.3 **Certificate of Compliance (Exhibit A)**

This form must be completed and submitted as part of the response for the proposal to be considered valid.
3.4.4 State of Vermont Bidder Response Form (Exhibit C)

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 vendor proposals. The Bidder Response Form includes questions and requests for information on the following:

- Your Vendor Profile, which includes three (3) references;
- The Proposed Solution;
- The ability of your Proposed Solution to meet the State’s Functional and Non-Functional Requirements, which are listed within the Bidder Response Form;
- Your Implementation and Project Management approach and deliverables;
- The Technical Services and deliverables included in your proposal;
- Your Maintenance and Support services and service levels;
- Your Pricing for Implementation plus five (5) years of Maintenance and Support costs; and
- Any exceptions your company may have to the Contract Terms and Conditions included in this RFP at Exhibit D: State of Vermont Standard Contract For Information Technology Services and its associated Attachments. Note that exceptions to contract terms may cause rejection of the proposal.

In addition to completing the State of Vermont Bidder Response Form, the State requires vendors responding to this RFP to provide the following eight (8) attachments that are described within the Bidder Response Form:

1) A Financial Statement (and a confidentiality statement if, the financial information is considered non-public). Label it Attachment #1.
2) A Road Map that outlines the company’s short and long term goals for the proposed solution/software/system. Label it Attachment #2.
3) A PowerPoint that provides an Executive level summary of your proposal. Label it Attachment #3.
4) A proposed list of project phases, tasks and an implementation timeline. Label it Attachment #4.
5) A resume for the Project Manager you would offer for this engagement. Label it Attachment #5.
6) Your typical implementation plan. Label it Attachment #6.
7) Resumes for any technical resources that you would offer for this engagement. Label it Attachment #7.
8) A copy of your Service Level Agreement (SLA). Label it Attachment #8.
4 BID SUBMISSION

4.1 Closing Date: Bids must be received by the due date and at the location specified on the front page of this RFP.

4.2 The bid opening will be held at 109 State Street, 3rd Floor, Montpelier, VT and is open to the public.

4.3 Security Procedures: Please be advised extra time will be needed when visiting and/or delivering information to 109 State Street. All individuals visiting 109 State Street must present a valid government issued photo ID when entering the facility.

4.4 Sealed Bid Instructions: All bids must be sealed and must be addressed to the State of Vermont, Office of Purchasing & Contracting, 109 State Street – 3rd Floor, Montpelier, VT 05609-3001. BID ENVELOPES MUST BE CLEARLY MARKED ‘SEALED BID’ AND SHOW THE REQUISITION NUMBER AND/OR PROPOSAL TITLE, OPENING DATE AND NAME OF BIDDER.

4.4.1 All bidders are hereby notified that sealed bids must be received and time stamped by the Office of Purchasing & Contracting located at 109 State Street – 3rd Floor, Montpelier, VT 05609-3001 - by the time of the bid opening. Bids not in possession of the Office of Purchasing & Contracting at the time of the bid opening will be returned to the vendor, and will not be considered. Any delay deemed caused by Security Procedures and courier/mail delivery service will be at the bidder’s own risk.

4.4.2 Office of Purchasing & Contracting may, for cause, change the date and/or time of bid openings or issue an addendum. If a change is made, the State will make a reasonable effort to inform all bidders by posting at: http://www.bgs.state.vt.us/pca/bids/bids.php.

4.4.3 All bids will be publicly opened. Typically, the Office of Purchasing & Contracting will open the bid, read the name and address of the bidder, and read the bid amount. However, the Office of Purchasing & Contracting reserves the right to limit the information disclosed at the bid opening to the name and address of the bidder when, in its sole discretion, the Office of Purchasing & Contracting determines that the nature, type, or size of the bid is such that the Office of Purchasing & Contracting cannot immediately (at the opening) determine that the bids are in compliance with the RFP. As such, there will be cases in which the bid amount will not be read at the bid opening. Bid openings are open to members of the public. Bid results are a public record however, the bid results are exempt from disclosure to the public until the award has been made and the contract is executed.

4.5 Delivery Methods:

4.5.1 Security Procedures: Note that security procedures concerning delivery of any mail or parcels to 109 State Street may delay receipt of mail/parcel pieces by one business day.

4.5.2 U.S. Mail: Bidders are cautioned that it is their responsibility to originate the mailing of bids in sufficient time to ensure bids are received and time stamped by the Office of Purchasing & Contracting prior to the time of the bid opening.
4.5.3 **Express Delivery**: If bids are being sent via an express delivery service, be certain that the RFP designation is clearly shown on the outside of the delivery envelope or box. Express delivery packages will not be considered received by the State until the express delivery package has been received and time stamped by the Office of Purchasing & Contracting. Due to security procedures express deliveries must be received by 10:30 AM in order to be received by the Office of Purchasing & Contracting that same day.

4.5.4 **Hand Delivery**: Hand carried bids shall be delivered to a representative of the Office of Purchasing & Contracting prior to the bid opening.

4.5.5 **Electronic**: Electronic bids will / will not be accepted.

4.5.6 **Fax Bids**: Faxed bids will not be accepted.

4.6 **Bid Submission Checklist**

- ✓ Required Number of Copies
- ✓ Cover Letter
- ✓ Signed Certificate of Compliance (Exhibit A)
- ✓ State of Vermont Bidder Response Form and Attachments (Exhibit C)
  - o A Financial Statement (and a confidentiality statement if, the financial information is considered non-public) labeled Attachment #1.
  - o A Road Map labeled Attachment #2.
  - o Executive PowerPoint labeled Attachment #3.
  - o A proposed list of project phases, tasks and an implementation timeline labeled Attachment #4.
  - o Project Manager resume labeled Attachment #5.
  - o An Implementation plan labeled Attachment #6.
  - o Your Service Level Agreement (SLA) labeled Attachment #8.

5 **BID EVALUATION AND SELECTION**

5.1 **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.

5.1.1 **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.

5.1.2 **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 Section – Standard RFP Attachments - [http://bgs.vermont.gov/purchasing-contracting/forms](http://bgs.vermont.gov/purchasing-contracting/forms). The subcontractor reporting form is not required to be submitted with the bid response (Reference Exhibit B).

5.2 **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.

5.3 **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.

5.3.1 **Evaluation Criteria**

The State shall have the authority to evaluate Responses and select the Bidder(s) determined to be in the best interest of the State and consistent with the goals and performance requirements outlined in this RFP.

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. In general, bids are awarded based on “the best interest of the State of Vermont”.

<table>
<thead>
<tr>
<th>Evaluation Factors</th>
<th>Total Points for This Factor</th>
</tr>
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<tbody>
<tr>
<td><strong>Vendor Profile:</strong> Experience, Financial Strength, References (Bidder Response Form Part 1)</td>
<td>10%</td>
</tr>
<tr>
<td><strong>Vendor Proposal/Solution and ability to meet the State’s Functional and Non-Functional Requirements</strong> (Bidder Response Form Part 2-4)</td>
<td>35%</td>
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<tr>
<td><strong>Professional Implementation Services:</strong> Project Management and Technical services (Bidder Response Form Part 5 and 6)</td>
<td>15%</td>
</tr>
<tr>
<td><strong>Maintenance and Support Services</strong> (Bidder Response Form Part 7)</td>
<td>15%</td>
</tr>
<tr>
<td><strong>Pricing,</strong> includes licensing, maintenance and warranty (Bidder Response Form Part 8)</td>
<td>25%</td>
</tr>
<tr>
<td><strong>Acceptance of State Terms and Conditions</strong></td>
<td>Pass/Fail</td>
</tr>
<tr>
<td><strong>Adherence to Mandatory Bidding Requirements</strong></td>
<td>Pass/Fail</td>
</tr>
</tbody>
</table>

- If the RFP required 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.

- The State will not consider any prompt payment discounts terms proposed by the offeror in evaluating cost. The lowest cost proposal will receive the maximum number of points allocated to cost. The State will evaluate the point allocations for cost according to the method set forth in the RFP.
5.4 **Demonstration**

An in-person or webinar demonstration by the Vendor 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. Vendors will be responsible for all costs associated with providing the demonstration.

5.5 **Best and Final Offer**

5.5.1 **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.

5.5.2 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.

5.5.3 **Evaluation of Responses and Selection of Bidder(s).** 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.

5.6 **Contract Negotiation**

Upon completion of the evaluation process, the State may select one or more Vendors 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 the State is successful in negotiating with a Vendor, the State will issue a notice of award. In the event the State is not successful in negotiating with a selected Vendor, the State reserves the option of negotiating with another Vendor, or to end the proposal process entirely.

5.7 **Independent Review**

Per Vermont statute 3 V.S.A. 2222, The Secretary of Administration shall obtain independent expert review of any recommendation for any information technology initiated after July 1, 1996, as information technology activity is defined by subdivision (a)(10), when its total cost is $1,000,000 or greater or when required by the State Chief Information Officer. Documentation of this independent review shall be included when plans are submitted for review pursuant to subdivisions (a)(9) and (10) of this section. The independent review shall include:

- An acquisition cost assessment
- A technology architecture review
- An implementation plan assessment
- A cost analysis and model for benefit analysis
- A procurement negotiation advisory services contract
- An impact analysis on net operating costs for the agency carrying out the activity

6 **GENERAL TERMS AND CONDITIONS**

6.1 **STATEMENT OF RIGHTS:** The State of Vermont reserves the right to obtain clarification or additional information necessary to properly evaluate a proposal. Vendors may be asked to give a
verbal presentation of their proposal after submission. Failure of vendor to respond to a request for additional information or clarification could result in rejection of that vendor’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.

6.2 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.

6.2.1 The proposal must be fixed cost, inclusive of expenses, for specific deliverables. The State generally doesn’t enter into time and material contracts.

6.2.2 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. If the project contemplates doing additional work with the vendor for additions to the system or addition of new users, state the hourly rates for future work for key types of positions, i.e., Data Base Programmer, Systems Developer, Trainer, etc.

6.2.3 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.

6.2.4 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.

6.3 CONTRACTING WITH THE STATE OF VERMONT: The selected bidder(s) will be expected to sign a contract with the State according to the form prescribed by the Standard State Contract Form and its associated Attachments which is attached to this RFP as Exhibit D. The contract will obligate the bidder to provide the services and/or products identified in its bid, at the prices listed.

6.3.1 Invoicing: The bidder’s proposal must clearly specify the address for submitting payments. All payments are to be based on State of Vermont’s acceptance of agreed to, fixed price deliverables or time and materials terms, as the case may be.

6.3.2 Vendors planning to submit a bid are advised of the following:
1. The State expects the Vendor and its legal counsel to carefully review and be prepared to be bound by the Attachment C: Standard State Provisions for Contracts and Grants outlined in Exhibit D.
2. The contract is subject to review and approval by the Attorney General, the Agency of Digital Services and the Secretary of Administration. The terms and conditions of a Vendor’s software license, maintenance support agreement and service level agreement, if applicable, will be required for purposes of contract negotiations for this project. Failure to provide the applicable Vendor terms as part of the RFP response may result in rejection of the Vendor’s proposal.

3. The State has no legal authority to indemnify a vendor and this condition is not negotiable. Further, all contract terms and conditions, including a Vendor license will be subject to the laws of the State of Vermont and any action or proceeding brought by either the State or a Contractor in connection with a Contract shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. Vendors who are not able to enter into a contract under these conditions should not submit a bid.

4. Contractors will be expected to make the representations and warranties set forth in the State Contract Terms.

6.4 Non-Disclosure Agreement
The successful bidder may be required to complete a non-disclosure agreement in a form acceptable to the State.

6.5 Performance Measures
In accordance with current State of Vermont policy and procedures, the contract may include Vendor performance measures. The specific performance measures will be determined during the contract negotiation process.

6.6 Contract Term

**Contract Period:** Contracts arising from this RFP will be for a period of two years with an option to renew for up to two additional twelve-month periods. The State anticipates the start date will be July 1, 2020.

The vendor should guarantee its rate offerings, over the term of the contract, are comparable to other customers of similar size and requirements. If offerings are rendered to a comparable customer which improve the pricing agreed to in the contract, the vendor agrees to apply those same discounts and offerings to the State of Vermont.

6.7 Specification Change
Any changes or variations in the requirements or specifications set forth in this RFP will result in the issuance of an Addendum to this RFP in writing from the Office of Purchasing & Contracting. Verbal instructions or written instructions from any other source are not to be considered.

6.8 Business Registration
To be awarded a contract by the State of Vermont a Vendor (except an individual doing business in his/her own name) must be registered with the Vermont Secretary of State’s office [http://www.sec.state.vt.us/tutor/dobiz/forms/fcregist.htm](http://www.sec.state.vt.us/tutor/dobiz/forms/fcregist.htm) and must obtain a Contractor’s Business Account Number issued by the Vermont Department of Taxes [http://tax.vermont.gov/](http://tax.vermont.gov/).
6.9 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.

6.10 Costs of Preparation

The Vendor 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.

6.11 Exhibits included with this RFP:

Exhibit A: Certificate of Compliance
Exhibit B: Subcontractor Reporting Form
Exhibit C: State of Vermont Bidder Response Form
Exhibit D: State of Vermont Standard Contract For Information Technology Services and its associated Attachments
  • Attachment C: Standard State Provisions for Contracts and Grants
  • Attachment D: Other Terms and Conditions for Information Technology Contracts
  • AHS Attachment E: Business Associate Agreement
EXHIBIT A
CERTIFICATE OF COMPLIANCE

For a bid to be considered valid, this form must be completed in its entirety, executed by a duly authorized representative of the bidder, and submitted as part of the response to the proposal.

A. **NON COLLUSION:** Bidder hereby certifies that the prices quoted have been arrived at without collusion and that no prior information concerning these prices has been received from or given to a competitive company. If there is sufficient evidence to warrant investigation of the bid/contract process by the Office of the Attorney General, bidder understands that this paragraph might be used as a basis for litigation.

B. **CONTRACT TERMS:** Bidder hereby acknowledges that it has read, understands and agrees to the terms of this RFP, including Attachment C: Standard State Provisions for Contracts and Grants, and any other contract attachments included with this RFP.

C. **FORM OF PAYMENT:** Does Bidder accept the Visa Purchasing Card as a form of payment?

   ___ Yes    ___ No

D. **WORKER CLASSIFICATION COMPLIANCE REQUIREMENT:** In accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54), the following provisions and requirements apply to Bidder when the amount of its bid exceeds $250,000.00.

   **Self-Reporting.** Bidder hereby self-reports the following information relating to past violations, convictions, suspensions, and any other information related to past performance relative to coding and classification of workers, that occurred in the previous 12 months.

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<th>Summary of Detailed Information</th>
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<th>Outcome</th>
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   **Subcontractor Reporting.** Bidder hereby acknowledges and agrees that if it is a successful bidder, prior to execution of any contract resulting from this RFP, Bidder will 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), and Bidder will provide any update of such list to the State as additional subcontractors are hired. Bidder further acknowledges and agrees that the failure to submit subcontractor reporting in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54) will constitute non-compliance and may result in cancellation of contract and/or restriction from bidding on future state contracts.
E. Executive Order 05 – 16: Climate Change Considerations in State Procurements Certification

Bidder certifies to the following (Bidder may attach any desired explanation or substantiation. Please also note that Bidder may be asked to provide documentation for any applicable claims):

1. Bidder owns, leases or utilizes, for business purposes, space that has received:
   - Energy Star® Certification
   - LEED®, Green Globes®, or Living Buildings Challenge℠ Certification
   - Other internationally recognized building certification:

2. Bidder has received incentives or rebates from an Energy Efficiency Utility or Energy Efficiency Program in the last five years for energy efficient improvements made at bidder’s place of business. Please explain:

3. Please Check all that apply:
   - Bidder can claim on-site renewable power or anaerobic-digester power ("cow-power"). Or bidder consumes renewable electricity through voluntary purchase or offset, provided no such claimed power can be double-claimed by another party.
   - Bidder uses renewable biomass or bio-fuel for the purposes of thermal (heat) energy at its place of business.
   - Bidder’s heating system has modern, high-efficiency units (boilers, furnaces, stoves, etc.), having reduced emissions of particulate matter and other air pollutants.
   - Bidder tracks its energy consumption and harmful greenhouse gas emissions. What tool is used to do this? ________________
   - Bidder promotes the use of plug-in electric vehicles by providing electric vehicle charging, electric fleet vehicles, preferred parking, designated parking, purchase or lease incentives, etc..
   - Bidder offers employees an option for a fossil fuel divestment retirement account.
   - Bidder offers products or services that reduce waste, conserve water, or promote energy efficiency and conservation. Please explain:

4. Please list any additional practices that promote clean energy and take action to address climate change:

   __________________________________________________________

   __________________________________________________________

   __________________________________________________________
F. Acknowledge receipt of the following Addenda:

Addendum No.: ____________  Dated: ______________
Addendum No.: ____________  Dated: ______________
Addendum No.: ____________  Dated: ______________

Bidder Name: ____________________________  Contact Name: ____________________________
Address: ____________________________  Fax Number: ____________________________
Telephone: ____________________________  E-Mail: ____________________________

By: ____________________________  Name: ____________________________
  Signature of Bidder (or Representative)  (Type or Print)

END OF CERTIFICATE OF COMPLIANCE
EXHIBIT B

SUBCONTRACTOR REPORTING FORM

This form must be completed in its entirety and submitted prior to contract execution and updated as necessary and provided to the State as additional subcontractors are hired.

The Department of Buildings and General Services in accordance with Act 54, Section 32 of the Acts of 2009 and for total project costs exceeding $250,000.00 requires bidders to comply with the following provisions and requirements.

Contractor is required to provide a list of subcontractors on the job along with lists of subcontractor’s subcontractors and by whom those subcontractors are insured for workers’ compensation purposes. Include additional pages if necessary. This is not a requirement for subcontractor’s providing supplies only and no labor to the overall contract or project.

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<th>Subcontractor</th>
<th>Insured By</th>
<th>Subcontractor’s Sub</th>
<th>Insured By</th>
</tr>
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</table>

Date: ______________

Name of Company: ____________________________  Contact Name: ____________________________

Address: ____________________________  Title: ____________________________

Phone Number: ____________________________

E-mail: ____________________________  Fax Number: ____________________________

By: ____________________________  Name: ____________________________

Failure to adhere to Act 54, Section 32 of the Acts of 2009 and submit Subcontractor Reporting: Worker Classification Compliance Requirement will constitute non-compliance and may result in cancellation of contract and/or forfeiture of future bidding privileges until resolved.

Send Completed Form to: Office of Purchasing & Contracting
                        109 State Street
                        Montpelier, VT 05609-3001
                        Attention: Contract Administration
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.

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

   Attachment B – Payment Provisions


   Attachment D – Information Technology System Implementation Terms and Conditions

   Attachment E – Business Associate Agreement

   Attachment F – Agency of Human Services’ Customary Provisions
9. **Order of Precedence.** Any ambiguity, conflict or inconsistency between the documents comprising this contract shall be resolved according to the following order of precedence:

1) Standard Contract  
2) Attachment D Information Technology System Implementation Terms and Conditions  
3) Attachment C (Standard State Provisions for Contracts and Grants)  
4) Attachment A Statement of Work with Exhibits  
5) Attachment B Payment Provisions  
6) Attachment E Business Associate Agreement  

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.

2.3. 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.

3. 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.
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.

"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.

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].

"Requirements” means the State’s baseline Functional and Technical Requirements attached as Exhibit 1 to Attachment A of this Contract.

“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.

4. 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.

4.1. CONTRACTOR PROJECT MANAGEMENT AND SUPPORT

4.1.1 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:

<table>
<thead>
<tr>
<th>Deliverable</th>
<th>Description</th>
<th>Update Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Charter</td>
<td>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 &amp; Responsibilities; known Risks, Assumptions and/or Constraints. It should be signed off on by the State.</td>
<td>Once unless there are changes</td>
</tr>
<tr>
<td>Project Management Plan</td>
<td>The Project Management Plan will dictate specifics on how the Contractor Project Manager will administer the project and will include the following documentation: 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 they report to, and how to handle changes to the resource plan) 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”)</td>
<td></td>
</tr>
<tr>
<td>Formal Acceptance Criteria</td>
<td>Criteria that establishes what the acceptance and rejection criteria of each document on this list.</td>
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<td>------------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------------</td>
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</tr>
<tr>
<td><strong>Formal Acceptance Sign Off</strong></td>
<td>Obtain sign-off at the completion of each project deliverable as defined by the formal acceptance criteria.</td>
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</tr>
<tr>
<td><strong>Change Requests</strong></td>
<td>Formal document which outlines any changes to the Contract scope, schedule, budget, and resources.</td>
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</tr>
<tr>
<td><strong>Change Requests Log</strong></td>
<td>Tracks the specific change requests approved and their impact to the project scope, budget and schedule.</td>
<td></td>
</tr>
<tr>
<td><strong>Budget Log</strong></td>
<td>Outlines original Contract costs by deliverable with billed and paid-to-date information.</td>
<td></td>
</tr>
<tr>
<td><strong>Risk Log</strong></td>
<td>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.</td>
<td></td>
</tr>
<tr>
<td><strong>Issue/Action Items/Decision Log</strong></td>
<td>A Log of open and resolved/completed Issues. Issues should be outlined by their impact, owner, date of occurrence, and remediation strategy.</td>
<td></td>
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<tr>
<td><strong>Decision Log</strong></td>
<td>A log of all decisions made over the course of the project. Decisions should have a date and name of decider.</td>
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</tr>
<tr>
<td><strong>Requirements Documents</strong></td>
<td>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:</td>
<td></td>
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<tr>
<td></td>
<td>• 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.</td>
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<tr>
<td></td>
<td>• Business requirements document (BRD): The BRD contains a medium level of requirements as well as required metrics of project success.</td>
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<tr>
<td></td>
<td>• Functional requirements document (FRD): The FRD contains detailed requirements that can be handed off to the Contractor for execution.</td>
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<tr>
<td><strong>Test Plans</strong></td>
<td>A description of the testing approach, participants, sequence of testing and testing preparations</td>
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</tr>
<tr>
<td></td>
<td>Once</td>
<td></td>
</tr>
<tr>
<td><strong>Test Cases &amp; Results</strong></td>
<td>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).</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Create once then update with Results</td>
<td></td>
</tr>
<tr>
<td><strong>Implementation Master Schedule</strong></td>
<td>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.)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Once per implementation</td>
<td></td>
</tr>
<tr>
<td><strong>Project Status Reports</strong></td>
<td>Provides an update on the project health, accomplishments, upcoming tasks, risks and significant issues. The Status Report and the project</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Weekly</td>
<td></td>
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</tbody>
</table>
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.

| 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.

4.1.2 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.

4.1.3 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.

4.1.4 **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.

4.1.5 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.

4.1.6 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.

42 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.
4.2.1. 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.

4.2.2. 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.

4.2.3. 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.

4.3 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.

5. SCOPE OF SERVICES.

5.1 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.

5.2 Project Major Phases, Warranty and Options.

The Contractor shall, at a minimum, provide State access to a [web-based] Solution that meets the tools and functionality requirements of the State set forth in Exhibit 1 to this Attachment A. Contractor shall use system development and configuration control methodologies and the desirable sequence of project major Phases as described herein. Estimated dates in the following table shall be finalized in the IMS as described in Section 4.4, “Implementation Project Schedule.”
<table>
<thead>
<tr>
<th>PHASE</th>
<th>ESTIMATED DATES</th>
<th>PHASE DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Initiation]</td>
<td></td>
<td>Kick-off meeting. Planning and preparation of project management planning documentation.</td>
</tr>
<tr>
<td>[Requirements Gathering]</td>
<td></td>
<td>Contractor performs necessary requirements gathering to finalize functional and technical requirements and identify gaps between State requirements and Solution capabilities.</td>
</tr>
<tr>
<td>[Implementation]</td>
<td></td>
<td>Contractor installs and configures the Solution in a Test environment.</td>
</tr>
<tr>
<td>[Testing]</td>
<td></td>
<td>State subject matter experts perform Solution testing in in a test (not live) environment accordance with Contractor-developed Test plans.</td>
</tr>
<tr>
<td>[Training]</td>
<td></td>
<td>Contractor performs training of State personnel (train the trainer or train the user).</td>
</tr>
<tr>
<td>[Legacy Data Migration]</td>
<td></td>
<td>Contractor shall perform all necessary legacy data migrations using State-approved migration plan and data mapping templates.</td>
</tr>
<tr>
<td>[Deployment]</td>
<td></td>
<td>Contractor implements the tested and State-approved Solution in the production environment for additional State testing and Go-Live.</td>
</tr>
<tr>
<td>[Post-Implementation Support/Warranty]</td>
<td></td>
<td>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.</td>
</tr>
</tbody>
</table>

5.3. **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 8, “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.

5.4 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.

5.5 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.

6. ACCEPTANCE

6.1 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.

7. **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.
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

5. EXPENSES: The fee for services shall be inclusive of Contractor expenses.

6. RETAINAGE: In the discretion of the State, a contract resulting from this RFP may provide that the State withhold a percentage of the total amount payable for some or all deliverables, such retainage to be payable upon satisfactory completion and State acceptance in accordance with the terms and conditions of the contract. Not Applicable
ATTACHMENT C: STANDARD STATE PROVISIONS
FOR CONTRACTS AND GRANTS
REVISED DECEMBER 15, 2017

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.

3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial: This Agreement will be governed by the laws of the State of Vermont. 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 with regard to 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: 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. 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. 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.
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: Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of this Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party’s operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers’ compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers’ compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers’ compensation policy, if necessary to comply with Vermont law.

General Liability and Property Damage: With respect to all operations performed under this Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:
- Premises - Operations
- Products and Completed Operations
- Personal Injury Liability
- Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:
- $1,000,000 Each Occurrence
- $2,000,000 General Aggregate
- $1,000,000 Products/Completed Operations Aggregate
- $1,000,000 Personal & Advertising Injury

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than $500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than $1,000,000 combined single limit.

Additional Insured. The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Notice of Cancellation or Change. There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior written notice to the State.

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: The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 et seq. If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney’s fees, except as the same may be reduced by a court of competent jurisdiction. The Party’s liability to
the State under the False Claims Act 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. Location of State Data: No 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 continental United States, except with the express written permission of the State.

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 the 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. 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. Set Off: The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

16. Taxes Due to the State:
   A. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
   B. 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.
   C. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due the State of Vermont.
   D. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

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, he/she:

   A. is not under any obligation to pay child support; or
   B. is under such an obligation and is in good standing with respect to that obligation; or
   C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

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).

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 (“Location of State Data”); 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. Copies: Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.

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: http://bgs.vermont.gov/purchasing/debarment

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

24. Confidentiality: Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement 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 lock-outs) ("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 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-A 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 at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that 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 Grant immediately, and the State shall have no obligation to pay Subrecipient 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 granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.
For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends $500,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, 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 (COSO).

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 $1,001, 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)
1. MODIFICATIONS TO CONTRACTOR DOCUMENTS

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

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

2. NO SUBSEQUENT, UNILATERAL MODIFICATION OF TERMS BY CONTRACTOR

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

3. TERM OF CONTRACTOR’S DOCUMENTS; PAYMENT TERMS

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

4. OWNERSHIP AND LICENSE IN DELIVERABLES

4.1 Contractor Intellectual Property.

As between the parties, and subject to the terms and conditions of this Contract, Contractor and its third-party suppliers will retain ownership of all intellectual property rights in the [System], and any and all derivative works made to the [System] or any part thereof, as well as all Work Product provided to the State (“Contractor Proprietary Technology”). The State acquires no rights to Contractor Proprietary Technology except for the licensed interests granted under this Contract. The term “Work Product” means all other materials, reports, manuals, visual aids, documentation, ideas, concepts, techniques, inventions, processes, or works of authorship developed, provided or created by Contractor or its employees or contractors during the course of
performing work for the State (excluding any State Data or derivative works thereof and excluding any output from the [System] generated by the State’s use of the [System], including without limitation, reports, graphs, charts and modified State Data, but expressly including any form templates of such reports, graphs or charts by themselves that do not include the State Data).

Title, ownership rights, and all Intellectual Property Rights in and to the [System] will remain the sole property of Contractor or its suppliers. The State acknowledges that the source code is not covered by any license hereunder and will not be provided by Contractor. Except as set forth in this Contract, no right or implied license or right of any kind is granted to the State regarding the [System] or any part thereof. Nothing in this Contract confers upon either party any right to use the other party's trade names and trademarks, except for permitted license use in accordance with this Contract. All use of such marks by either party will inure to the benefit of the owner of such marks, use of which will be subject to specifications controlled by the owner.

4.2 State Intellectual Property; User Name

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 collect, access or use State Intellectual Property for any purpose other than as specified in this Contract. Upon expiration or termination of this Contract, Contractor shall return or destroy all State Intellectual Property and all copies thereof, and Contractor shall have no further right or license to such State Intellectual Property.

Unless, and then only to the extent, expressly stated in a written agreement executed by the State that specifically says it takes precedence over this particular provision, no data provided by the State or information derived from or regarding State’s use of the provider’s goods or services under this Agreement may be disclosed, provided, rented or sold to any third party for any reason unless required by law or regulation or by an order of a court of competent jurisdiction.

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.

5. CONFIDENTIALITY AND NON-DISCLOSURE; SECURITY BREACH REPORTING

5.1 For purposes of this Contract, confidential information will not include information or material which (a) enters the public domain (other than as a result of a breach of this Contract); (b) was in the receiving party’s possession prior to its receipt from the disclosing party; (c) is independently developed by the receiving party without the use of confidential information; (d) is obtained by the receiving party from a third party under no obligation of confidentiality to the disclosing party; or (e) is not exempt from disclosure under applicable State law.
5.2 **Confidentiality of Contractor Information.** The Contractor acknowledges and agrees that this Contract and any and all Contractor information obtained by the State in connection with this Contract are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq. 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.

5.3 **Confidentiality of State Information.** In performance of this Contract, and any exhibit or schedule hereunder, the Contractor acknowledges that certain State Data (as defined below), to which the Contractor may have access may contain individual federal tax information, personal protected health information and other individually identifiable information protected by State or federal law or otherwise exempt from disclosure under the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq. (“State Data”). In addition to the provisions of this Section, the Contractor shall comply with the requirements set forth in the State’s HIPAA Business Associate Agreement attached to this Contract as Attachment E.
State Data shall not be stored, accessed from, or transferred to any location outside the United States.

Unless otherwise instructed by the State, Contractor agrees to keep confidential all State Data. The Contractor agrees that (a) it will use the State Data only as may be necessary in the course of performing duties or exercising rights under this Contract; (b) it will provide at a minimum the same care to avoid disclosure or unauthorized use of State Data as it provides to protect its own similar confidential and proprietary information; (c) it will not publish, reproduce, or otherwise divulge any State Data in whole or in part, in any manner or form orally or in writing to any third party unless it has received written approval from the State and that third party is subject to a written confidentiality agreement that contains restrictions and safeguards at least as restrictive as those contained in this Contract; (d) it will take all reasonable precautions to protect the State’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 will take reasonable measures as are necessary to restrict access to State Data in the Contractor’s possession to only those employees on its staff who must have the information on a “need to know” basis. The Contractor shall not retain any State Data except to the extent required to perform the services under this Contract.

Contractor shall not access State user accounts or State Data, except in the course of data center operations, response to service or technical issues, as required by the express terms of this Contract, or at State’s written request.

Contractor may not share State Data with its parent company or other affiliate without State’s express written consent.

The Contractor shall promptly notify the State of any request or demand by any court, governmental agency or other person asserting a demand or request for State Data to which the Contractor or any third party hosting service of the Contractor may have access, so that the State may seek an appropriate protective order.

6. SECURITY OF STATE INFORMATION

6.1 Security Standards. To the extent the Contractor or its subcontractors, affiliates or agents handles, collects, stores, disseminates or otherwise deals with 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.

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

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

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

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

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

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

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

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

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

6.6 Vulnerability Testing. The Contractor shall run 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.

7. CONTRACTOR’S REPRESENTATIONS AND WARRANTIES

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

(i) The Contractor has all requisite power and authority to execute, deliver and perform its obligations under this Contract and the execution, delivery and performance of this Contract by the Contractor has been duly authorized by the Contractor.

(ii) There is no outstanding litigation, arbitrated matter or other dispute to which the Contractor is a party which, if decided unfavorably to the Contractor, would reasonably be expected to have a material adverse effect on the Contractor’s ability to fulfill its obligations under this Contract.

(iii) The Contractor will comply with all laws applicable to its performance of the services and otherwise to the Contractor in connection with its obligations under this Contract.

(iv) The Contractor (a) owns, or has the right to use under valid and enforceable agreements, all intellectual property rights reasonably necessary for and related to delivery of the services and provision of the Deliverables as set forth in this Contract; (b) shall be responsible for and have full authority to license all proprietary and/or third party software modules, including algorithms and protocols, that Contractor incorporates into its product; and (c) none of the Deliverables or other materials or technology provided by the Contractor to the State will infringe upon or misappropriate the intellectual property rights of any third party.

(v) The Contractor has adequate resources to fulfill its obligations under this Contract.
Neither Contractor nor Contractor’s subcontractors has past state or federal violations, convictions or suspensions relating to miscoding of employees in NCCI job codes for purposes of differentiating between independent contractors and employees.

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

(i) All Deliverables will be free from material errors and shall perform in accordance with the specifications therefor for a period of at least one year.

(ii) Contractor will provide to the State commercially reasonable continuous and uninterrupted access to the Service, and will not interfere with the State’s access to and use of the Service during the term of this Contract;

(iii) The Service is compatible with and will operate successfully with any environment (including web browser and operating system) specified by the Contractor in its documentation;

(iv) Each and all of the services shall be performed in a timely, diligent, professional and skillful manner, in accordance with the highest professional or technical standards applicable to such services, by qualified persons with the technical skills, training and experience to perform such services in the planned environment.

(v) All Deliverables supplied by the Contractor to the State shall be transferred free and clear of any and all restrictions on the conditions of transfer, modification, licensing, sublicensing and free and clear of any and all liens, claims, mortgages, security interests, liabilities and encumbrances or any kind.

(vi) Any time software is delivered to the State, whether delivered via electronic media or the internet, no portion of such software or the media upon which it is stored or delivered will have any type of software routine or other element which is designed to facilitate unauthorized access to or intrusion upon; or unrequested disabling or erasure of; or unauthorized interference with the operation of any hardware, software, data or peripheral equipment of or utilized by the State. Without limiting the generality of the foregoing, if the State believes that harmful code may be present in any software delivered hereunder, Contractor will, upon State’s request, provide a new or clean install of the software. Notwithstanding the foregoing, Contractor assumes no responsibility for the State’s negligence or failure to protect data from viruses, or any unintended modification, destruction or disclosure.

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

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

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

In addition to the insurance required in Attachment C to this Contract, before commencing work on this Contract and throughout the term of this Contract, Contractor agrees to procure and maintain (a) Technology Professional Liability insurance for any and all services performed under this Contract, with minimum third party coverage of $1,000,000 per claim, $1,000,000 aggregate; and (b) first party Breach Notification Coverage of not less than $1,000,000.

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

With respect to the first party Breach Notification Coverage, Contractor shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Contract.

9. LIMITATION OF LIABILITY.

CONTRACTOR’S LIABILITY FOR DAMAGES TO THE STATE ARISING OUT OF THE SUBJECT MATTER OF THIS CONTRACT SHALL NOT EXCEED THREE TIMES THE MAXIMUM AMOUNT PAYABLE UNDER THIS CONTRACT. LIMITS OF LIABILITY FOR STATE CLAIMS SHALL NOT APPLY TO STATE CLAIMS ARISING OUT OF: (A) CONTRACTOR’S OBLIGATION TO INDEMNIFY THE STATE; (B) CONTRACTOR’S CONFIDENTIALITY OBLIGATIONS TO THE STATE; (C) PERSONAL INJURY OR DAMAGE TO REAL OR PERSONAL PROPERTY; (D) CONTRACTOR’S GROSS NEGLIGENCE, FRAUD OR INTENTIONAL MISCONDUCT; OR (E) VIOLATIONS OF THE STATE OF VERMONT FRAUDULENT CLAIMS ACT. IN NO EVENT SHALL THIS LIMIT OF LIABILITY BE CONSTRUED TO LIMIT CONTRACTOR’S LIABILITY FOR THIRD PARTY CLAIMS AGAINST THE CONTRACTOR WHICH MAY ARISE OUT OF CONTRACTOR’S ACTS OR OMISSIONS IN THE PERFORMANCE OF THIS CONTRACT.

NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL OR SPECIAL DAMAGES, DAMAGES WHICH ARE UNFORESEEABLE TO THE PARTIES AT THE TIME OF CONTRACTING, DAMAGES WHICH ARE NOT PROXIMATELY CAUSED BY A PARTY, SUCH AS LOSS OF ANTICIPATED BUSINESS, OR LOST PROFITS, INCOME, GOODWILL, OR REVENUE IN CONNECTION WITH OR ARISING OUT OF THE SUBJECT MATTER OF THIS CONTRACT.

The provisions of this Section shall apply notwithstanding any other provisions of this Contract or any other agreement.

10. 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.

12 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.

13 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.

14 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.

14. 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.

15. 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.

16. 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.

17 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.

18 SOFTWARE LICENSEE COMPLIANCE REPORT.

In lieu of any requirement that may be in a Contractor Document that the State provide the Contractor with access to its System for the purpose of determining State compliance with the terms of the Contractor Document, upon request and not more frequently than annually, the State will provide Contractor with a certified report concerning the State’s use of any software licensed for State use pursuant this Contract. The parties agree that any non-compliance indicated by the report shall not constitute infringement of the licensor’s intellectual property rights, and that settlement payment mutually agreeable to the parties shall be the exclusive remedy for any such non-compliance.

20. SOV Cybersecurity Standard 19-01

All products and service provided to or for the use of the State under this Contract shall be in compliance with State of Vermont Cybersecurity Standard 19-01, which Contractor acknowledges has been provided to it, and is available on-line at the following URL:

This Business Associate Agreement ("Agreement") is entered into by and between the State of Vermont Agency of Human Services, operating by and through its Vermont Department of Health ("Covered Entity") and Party identified in this Agreement as Contractor or Grantee above ("Business Associate"). This Agreement supplements and is made a part of the contract or grant ("Contract or Grant") to which it is attached.

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

The parties agree as follows:

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

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

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

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

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

   "Individual" includes a Person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
“Protected Health Information” ("PHI") shall have the meaning given in 45 CFR § 160.103, limited to the PHI created or received by Business Associate from or on behalf of Covered Entity.

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

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

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

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

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

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

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

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

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

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


2.3 Business Associate shall submit all Reports required by this Agreement to the following email address: AHS.PrivacyAndSecurity@vermont.gov

3. **Permitted and Required Uses/Disclosures of PHI.**
3.1 Subject to the terms in this Agreement, Business Associate may Use or Disclose PHI to perform Services, as specified in the Contract or Grant. Such Uses and Disclosures are limited to the minimum necessary to provide the Services. Business Associate shall not Use or Disclose PHI in any manner that would constitute a violation of the Privacy Rule if Used or Disclosed by Covered Entity in that manner. Business Associate may not Use or Disclose PHI other than as permitted or required by this Agreement or as Required by Law and only in compliance with applicable laws and regulations.

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

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

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


5.1 With respect to Electronic PHI, Business Associate shall:

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

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

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

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

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

5.2 Reporting Unsuccessful Security Incidents. Business Associate shall provide Covered Entity upon written request a Report that: (a) identifies the categories of Unsuccessful Security Incidents; (b) indicates whether Business Associate believes its current defensive security measures are adequate to address all Unsuccessful Security Incidents, given the scope and nature of such attempts; and (c) if the security measures are not adequate, the measures Business Associate will implement to address the security inadequacies.

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

6. Reporting and Documenting Breaches.

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

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

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

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

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

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

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

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

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

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

11. **Amendment of PHI.** Business Associate shall make any amendments to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR § 164.526, whether at the request of Covered Entity or an Individual. Business Associate shall make such amendments in the time and manner reasonably designated by Covered Entity. Within five (5) business days, Business Associate shall forward to Covered Entity for handling any request for amendment to PHI that Business Associate directly receives from an Individual.
12. **Accounting of Disclosures.** Business Associate shall document Disclosures of PHI and all information related to such Disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. Business Associate shall provide such information to Covered Entity or as directed by Covered Entity to an Individual, to permit Covered Entity to respond to an accounting request. Business Associate shall provide such information in the time and manner reasonably designated by Covered Entity. Within five (5) business days, Business Associate shall forward to Covered Entity for handling any accounting request that Business Associate directly receives from an Individual.

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

14. **Termination.**

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

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

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

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

15.2 Business Associate shall report to Covered Entity any conditions that Business Associate believes make the return or destruction of PHI infeasible. Business Associate shall extend the protections of this Agreement to such PHI and limit further Uses and Disclosures to those purposes that make the return or destruction infeasible for so long as Business Associate maintains such PHI.
16. **Penalties.** Business Associate understands that: (a) there may be civil or criminal penalties for misuse or misappropriation of PHI and (b) violations of this Agreement may result in notification by Covered Entity to law enforcement officials and regulatory, accreditation, and licensure organizations.

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

18. **Miscellaneous.**

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

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

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

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

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

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

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

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

Rev. 05/21/2019
ATTACHMENT F

AGENCY OF HUMAN SERVICES’ CUSTOMARY CONTRACT/GRANT PROVISIONS

1. Definitions: For purposes of this Attachment F, the term “Agreement” shall mean the form of the contract or grant, with all of its parts, into which this Attachment F is incorporated. The meaning of the term “Party” when used in this Attachment F shall mean any named party to this Agreement other than the State of Vermont, the Agency of Human Services (AHS) and any of the departments, boards, offices and business units named in this Agreement. As such, the term “Party” shall mean, when used in this Attachment F, the Contractor or Grantee with whom the State of Vermont is executing this Agreement. If Party, when permitted to do so under this Agreement, seeks by way of any subcontract, sub-grant or other form of provider agreement to employ any other person or entity to perform any of the obligations of Party under this Agreement, Party shall be obligated to ensure that all terms of this Attachment F are followed. As such, the term “Party” as used herein shall also be construed as applicable to, and describing the obligations of, any subcontractor, sub-recipient or sub-grantee of this Agreement. Any such use or construction of the term “Party” shall not, however, give any subcontractor, sub-recipient or sub-grantee any substantive right in this Agreement without an express written agreement to that effect by the State of Vermont.

2. Agency of Human Services: The Agency of Human Services is responsible for overseeing all contracts and grants entered by any of its departments, boards, offices and business units, however denominated. The Agency of Human Services, through the business office of the Office of the Secretary, and through its Field Services Directors, will share with any named AHS-associated party to this Agreement oversight, monitoring and enforcement responsibilities. Party agrees to cooperate with both the named AHS-associated party to this contract and with the Agency of Human Services itself with respect to the resolution of any issues relating to the performance and interpretation of this Agreement, payment matters and legal compliance.

3. Medicaid Program Parties (applicable to any Party providing services and supports paid for under Vermont’s Medicaid program and Vermont’s Global Commitment to Health Waiver):

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

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

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

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

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

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

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

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

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

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

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

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

6. **Employees and Independent Contractors:**

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

7. **Data Protection and Privacy:**

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

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

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

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

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

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

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

**Reporting of Abuse, Neglect, or Exploitation.** Consistent with provisions of 33 V.S.A. §4913(a) and §6903, Party and any of its agents or employees who, in the performance of services connected with this agreement, (a) is a caregiver or has any other contact with clients and (b) has reasonable cause to believe that a child or vulnerable adult has been abused or neglected as defined in Chapter 49 or abused, neglected, or exploited as defined...
in Chapter 69 of Title 33 V.S.A. shall: as to children, make a report containing the information required by 33 V.S.A. §4914 to the Commissioner of the Department for Children and Families within 24 hours; or, as to a vulnerable adult, make a report containing the information required by 33 V.S.A. §6904 to the Division of Licensing and Protection at the Department of Disabilities, Aging, and Independent Living within 48 hours. Party will ensure that its agents or employees receive training on the reporting of abuse or neglect to children and abuse, neglect or exploitation of vulnerable adults.

9. **Information Technology Systems:**

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

1. Party’s provision of certified computing equipment, peripherals and mobile devices, on a separate Party’s network with separate internet access. The Agency of Human Services’ accounts may or may not be provided.

2. State supplied and managed equipment and accounts to access state applications and data, including State issued active directory accounts and application specific accounts, which follow the National Institutes of Standards and Technology (NIST) security and the Health Insurance Portability & Accountability Act (HIPAA) standards.

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

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

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

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

**Security and Data Transfers:** Party shall comply with all applicable State and Agency of Human Services’ policies and standards, especially those related to privacy and security. The State will advise the Party of any new policies, procedures, or protocols developed during the term of this agreement as they are issued and will work with the Party to implement any required.

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

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

10. **Other Provisions:**

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

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

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

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

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

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