



Vermont Department of Environmental Conservation

Agency of Natural Resources

## SFA - STANDARD CONTRACT FOR SERVICES

1. **Parties:** This is a contract for services between the State of Vermont, Agency of Natural Resources and the Public Utility Commission (hereinafter called the "State"), and the Regional Greenhouse Gas Initiative, Inc. with principal place of business at 90 Church Street, New York, NY (hereinafter called "Contractor"). Contractor's form of business organization is a corporation. It is the Contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, the 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 the Regional Greenhouse Gas Initiative. Detailed services to be provided by the Contractor are described in Attachment A and Appendix A thereto.
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 \$100,000.00 over the life of the contract. This Contract cannot be used as match for the purpose of obtaining additional federal funds by the Contractor without the written approval from the State.
4. **Contract Term:** The period of contractor's performance shall begin on January 1, 2023, and end on December 31, 2027.
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.
- 5.A. **Sole Source Contract for Services.** This Contract results from a "sole source" procurement under State of Vermont Administrative Bulletin 3.5 process, and Contractor hereby certifies that it is and will remain in compliance with the campaign contribution restrictions under 17 V.S.A. § 2950.
6. **Amendment:** No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered, and signed by the duly authorized representative of the State and Contractor.
7. **Termination for Convenience:** This contract may be terminated by the State at any time by giving written notice at least thirty (30) days in advance. In such event, Contractor shall be paid under the terms of this contract for all services provided to and accepted by the State prior to the effective date of termination.
8. **Work product ownership:** Upon full payment by the State, all products of the Contractor's work, including outlines, reports, charts, sketches, drawings, art work, plans, photographs, specifications, estimates, computer programs, or similar documents, become the sole property of the State of Vermont and may not be copyrighted or resold by Contractor.
9. **Matching Funds:** This contract cannot be used as match for the purpose of obtaining additional federal funds by the contractor without the written approval from the State.
10. **Attachments:** This contract consists of the following attachments which are incorporated herein:
  - Attachment A - Specifications of Work to be Performed
  - Attachment B - Payment Provisions
  - Attachment C - Customary State Contract Provisions
  - Attachment D – Information Technology System Implementation Terms and Conditions

11. 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
- (3) Attachment C
- (4) Attachment A
- (5) Attachment B

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**WE, THE UNDERSIGNED PARTIES, AGREE TO BE BOUND BY**

**THIS CONTRACT.**

**STATE OF VERMONT**

**CONTRACTOR**

**By:**

**By:**

DocuSigned by:

*John Beling*

FC103A7A103A466...

DocuSigned by:

*Andrew McKeon*

2041BF511DA9438...

**Secretary**

**Name: (Print)** \_\_\_\_\_

**Agency of Natural Resources**

**Title:** \_\_\_\_\_ Executive Director

**Date:** \_\_\_\_\_ 4/26/2023

**Date:** \_\_\_\_\_ 4/26/2023

**STATE OF VERMONT**

**By:**

DocuSigned by:

*Anthony Roisman*

24C2A139227B468...

**Chair Public Utility Commission**

**Date:** \_\_\_\_\_ 4/21/2023

## **ATTACHMENT A SPECIFICATIONS OF WORK TO BE PERFORMED**

Contractor shall provide the following services:

### **1. RESPONSIBILITIES**

1.1 The Contractor shall administer and otherwise manage the Auction Program, the CO2 Allowance Tracking System ("COATS"), the Offset Program, the Market Monitoring Program and any and all services required under the aforementioned programs pursuant to the terms of this contract and as further described in the attached Scope of Services (Appendix A).

1.2 In accordance with the Certificate of Incorporation and Bylaws of Contractor, and in order to fulfill its obligations under this contract, Contractor may enter into contracts with any person, firm, association, corporation or body politic. Any subcontract entered into by Contractor for the purposes of fulfilling its obligations under this contract must be in writing and shall be consistent with and subject to the provisions of this contract. Subcontracts shall not relieve or discharge Contractor from any duty, obligation, responsibility or liability arising under this contract. The State shall not be bound by any provisions contained in a subcontract to which it is not a party.

### **2. SCOPE OF SERVICES**

2.1 The Scope of Services under this contract is provided in Appendix A.

2.2 Changes to the Scope of Services attached hereto are permissible upon mutual written agreement of all Parties and do not require modification of this contract.

### **3. PAYMENT**

3.1 For calendar year 2023, the State agrees to pay Contractor an amount not to exceed \$20,000.00 for the Vermont portion of the total 2023 program and operating cost of Contractor, as these responsibilities are set forth in this contract.

3.2 For calendar year 2024, the State agrees to pay Contractor an amount not to exceed \$20,000.00 for the Vermont portion of the total 2024 program and operating cost of Contractor, as these responsibilities are set forth in this contract.

3.3 For calendar year 2025, the State agrees to pay Contractor an amount not to exceed \$20,000.00 for the Vermont portion of the total 2025 program and operating cost of Contractor, as these responsibilities are set forth in this contract.

3.4 For calendar year 2026, the State agrees to pay Contractor an amount not to exceed \$20,000.00 for the Vermont portion of the total 2026 program and operating cost of Contractor, as these responsibilities are set forth in this contract.

3.5 For calendar year 2027, the State agrees to pay Contractor an amount not to exceed \$20,000.00 for the Vermont portion of the total 2027 program and operating cost of Contractor, as these responsibilities are set forth in this contract.

3.6 The payment described in Articles 3.1, 3.2, 3.3, 3.4, and 3.5 will be made within 30 days of receiving the appropriate invoice from Contractor. These invoices must be emailed to [anr.anrap@vermont.gov](mailto:anr.anrap@vermont.gov).

### **4. REPORTS TO STATE**

4.1 Contractor shall, no less than quarterly provide the State with a detailed report of the activities undertaken by Contractor or its subcontractors to meet its responsibilities under Article 1 during the preceding calendar quarter.

4.2 Contractor shall after conclusion of each calendar year provide to the State a copy of the year end audit conducted by an independent auditing firm and financial statements for the calendar year.

### **5. PROJECT MANAGEMENT AND NOTICES**

5.1 The State shall, at the beginning of each calendar year, notify Contractor of the appropriate State program staff for communications regarding the program elements critical to implementation of the program including but not limited to the COATS System, the CO2 Allowance Auction Program, the CO2 Offsets Program and invoicing.

5.2 Contractor shall, within 30 days of execution of this contract, designate a contact person for all communications, questions and submittals by the State.

5.3 All notices, submissions, correspondence, and other communications shall be deemed delivered and received when submitted in writing (e.g. email) or in person, or when delivered by another appropriate method evidencing actual receipt by the State or Contractor.

## 6. MAINTENANCE OF RECORDS

6.1 Contractor shall keep, maintain, and preserve at its principal offices, through the term of this contract and for a period of seven additional years thereafter, full and detailed books, accounts, and records pertaining to the performance of its obligations hereunder which shall be made available to the State upon written request to Contractor at the contact identified pursuant to Article 5.2, above.

6.2 All documents generated or accepted in performance of this Contract shall be confidential and shall not be released to anyone without prior authorization by the State unless it is done pursuant to state law. Contractor shall not release documents according to state law without prior notice to the State.

## 7. DATA OWNERSHIP

7.1 With respect to any software computer programs, intellectual property and/or source codes developed under this Contract, by Contractor or any subcontractors thereunder, the State shall be entitled to worldwide, irrevocable, nonexclusive, license to use any such software computer programs, intellectual property and/or source codes without limitation and including all inventions, patents or patent applications derived from such inventions developed under this Agreement.

7.2 As used herein, "Intellectual Property" shall mean inventions (whether or not patentable), works of authorship, trade secrets, techniques, know-how, ideas, concepts, and algorithms.

## 8. TERMINATION OR SUSPENSION

8.1 Termination of Contract for Cause. If, for any reasons, or through any cause, Contractor shall fail to fulfill in timely or proper manner its obligations under this Contract, or if Contractor shall violate any of the covenants, agreements, or stipulations of this Contract, the State shall then have the right to terminate this Contract by giving written notice to Contractor of such termination and specifying the effective date, at least 30 days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports, or other material prepared by Contractor, under this Contract shall, at the option of State, become its property, and Contractor, shall be entitled to receive reasonable compensation as determined by the State in its sole discretion for any satisfactory work completed on such documents and other materials which is usable to the State. Whether such work is satisfactory and usable is determined by the State in its sole discretion.

8.2 Termination for Convenience of State. The State may terminate this Contract in its sole discretion at any time for any reason by giving written notice of such termination and specifying the effective date, at least 30 days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials shall, at the option of the State, become its property and Contractor shall be entitled to receive reasonable compensation as determined by the State in its sole discretion for any satisfactory work completed on such documents and other materials which is usable to the State. Whether such work is satisfactory and usable is determined by the State in its sole discretion. Such reasonable compensation shall be Contractor's sole compensation. Exercise of this right by the State shall not be deemed a breach of this Contract, and no damages shall be awarded to Contractor for exercise of this paragraph. If this Contract is terminated due to the fault of Contractor, Article 8.3 hereof relative to termination shall apply. All remaining funds paid to Contractor pursuant to Article 3 shall be returned to the State within 30 days of the date of termination.

8.3 Termination Because No Longer a Participating State. If at any time Vermont is no longer a Participating State, then the contract may be terminated by the State and/or Contractor.

## 9. SEVERABILITY

9.1 If any part of this contract is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality, or enforceability of any other part of this Agreement, and the remaining parts of this Agreement shall be enforced as if the invalid, illegal or unenforceable part were not contained therein.

**10. COMPLIANCE WITH LAWS**

10.1 Contractor agrees to comply with the provisions of all Vermont and Federal laws, local statutes, ordinances, and regulations that are applicable to the performance of this contract.

**11 11. ENTIRE AGREEMENT/CHANGES**

11.1 This contract together with any Appendices annexed hereto contains the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior agreements or understanding between the Parties regarding such subject matter, or any portion thereof.

11.2 This contract may be amended or supplemented only by a written instrument signed by duly authorized representatives for all Parties.

11.3 This contract shall be governed by and construed in accordance with the laws of the State of Vermont.

11.4 The contract may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

## APPENDIX A TO ATTACHMENT A

### Scope of Services in support of the implementation of the CO2 Budget Trading Program

Contractor will provide program implementation and program development services, as outlined in this scope of services, to the State to support the State of Vermont's participation in the Regional Greenhouse Gas Initiative ("RGGI") and the implementation of regulations for the Vermont CO2 Budget Trading Program between January 1 and December 31 of each program year.

#### Overview

Contractor will provide services to support implementation of the Vermont CO2 Budget Trading Program in the following five areas:

- I. Operation of a regional CO2 emissions and allowance tracking system known as the CO2 Allowance Tracking System ("COATS"), for use by the State in administering the Vermont CO2 Budget Trading Program in coordination with the counterpart programs in other participating states.
- II. Operation of the regional CO2 allowance auction platform, for use by the State in administering the Vermont CO2 Budget Trading Program in coordination with the counterpart programs in other participating states.
- III. Market monitoring services for monitoring of both CO2 allowance auction conduct and outcomes and monitoring of the secondary CO2 allowance market for the CO2 Budget Trading Program
- IV. Technical assistance in the review of offset project consistency applications and offset project monitoring and verification reports; and technical assistance in the review of applications for accreditation of independent offset project verifiers; and
- V. Provision of program development support services on an as-requested basis, including evaluation of additional offset categories, and the development of technical and policy recommendations related to specific CO2 Budget Trading Program elements, for evaluation and consideration by the State.

#### Scope of Services

Contractor shall provide the following services:

##### I. Emissions and Allowance Tracking System

Contractor shall provide services to support emissions and allowance tracking for the Vermont CO2 Budget Trading Program. In any area where services are requested, all deliverables, where deemed appropriate in consultation with the State, shall be presented to the State in draft form for review and approval by the State.

- a. **COATS System Requirements.** Contractor shall provide an emissions and allowance COATS system software platform that meets the following requirements necessary to support implementation of the Vermont CO2 Budget Trading Program.

- I. **COATS System Requirements.** Contractor shall develop the COATS System to support the emissions and allowance tracking and compliance aspects of the program, as well as the offsets component, of the Vermont CO2 Budget Trading Program. The COATS System shall also be able to track CO2 allowance prices, as reported during the transfer of CO2 allowances, applicable price triggers, and appropriate offsets limits.

Contractor shall use the U.S. EPA's Emissions and Allowance Tracking System operated by its Clean Air Markets Division ("CAMD") as a starting point for defining and implementing system requirements. These requirements shall include, but not be limited to, functionality, security, reports, public access, and user interface.

- II. **CO2 Emissions Data.** Tracking System CO2 emissions data reporting shall utilize the U.S. EPA Emissions Collection and Monitoring Plan System ("ECMPS") and the U.S. EPA Clean Air Market Division Business System ("CAMD CBS") emissions reporting and tracking platforms, respectively, to the extent practicable. To the extent necessary, any subcontractors engaged by Contractor shall have strong working knowledge of 40 CFR Part 75 and the U.S. EPA's emissions data systems to ensure that the program implementation strategy takes into account the

timeliness, data processing requirements, and data availability limitations associated with U.S. EPA's emissions reporting, tracking, analysis, and data storage procedure.

- III. **COATS System Deployment.** The COATS System shall include a data model, user interface, and functionality to support emissions inventory management, CO2 allowance trading, compliance and program analysis, and user security. Contractor shall also coordinate the operation of the COATS System with the administration of a regional CO2 allowance auction. Contractor shall (1) work with any independent third party hired by the State to verify the COATS System software is functioning properly, including potential redress; (2) if directed by the State, to publicly post appropriate information about the COATS System; and (3) to work with the State to use ongoing experience to continuously improve the COATS System.

As part of COATS System deployment, Contractor shall provide system documentation, user manuals, and other training tools, and update such materials on a regular basis as appropriate.

- IV. **COATS System Hosting.** To support the web application and database in a secure environment, Contractor shall contract with a third-party vendor to maintain dedicated hosting for the database. Hosting requirements shall include all appropriate security requirements for Application Service Providers (ASPs).
- V. **Emissions Data Tracking and Processing.** In order to use the emissions data reported to U.S. EPA, under 40 C.F.R. Part 75 for purposes of determining source compliance, Contractor shall maintain a process and supporting data management tools and software that allow for transfer of emissions data from CAMD CBS to the COATS System and include any necessary coordination or agreement with U.S. EPA regarding use and access to the emissions data. To the extent possible, Contractor shall use existing emissions management routines to accomplish this objective.
- VI. **Offsets Module.** Contractor shall provide and maintain a COATS System software platform that includes an offsets module to track and maintain CO2 allowances awarded to approved offset projects. Contractor shall coordinate with the appropriate representatives of the State to support administration of the offsets component of the Vermont CO2 Budget Trading Program and to ensure that the offsets applications and submittal materials used by the State align with the capabilities and needs of the COATS System. The offsets module shall have the functionality to track and monitor offsets project status details, such as the status of consistency applications and monitoring and verification submittals, as well as provide for public access to project documentation supporting such applications and submittals.
- VII. **COATS System Reports.** The COATS System software provided by Contractor shall include a reports module to provide system users with reports of system data. These reports shall include but may not be limited to: account allowance transfer reports, account holdings reports, CO2 emissions reports, offsets status reports, and source compliance summary reports.

- b. **Program Operation.** Contractor shall provide ongoing implementation and operational support for the Vermont CO2 Budget Trading Program, including the following tasks:
- i. **CO2 Allowance Program Management.** Contractor shall provide support to the State for all program activities relating to source management, allowance allocations to compliance and general accounts, and trades for both general and compliance accounts. This shall include the activity necessary to support the assignment of allowances to appropriate accounts following the successful completion and State approval of all allowance auctions, as well as the population of user accounts after State award of each offset allowance.
  - ii. **Emissions Data Management and Analysis.** Contractor shall perform all data management and quality assurance tasks necessary to ensure the availability of annual CO2 emissions data from all affected units. Contractor shall prepare and send communications to the authorized account representatives for affected sources relating to the interim, draft, and final emissions values. Contractor shall work with the State to identify and resolve any issues relating to the submission of emissions data, and the accuracy and completeness of the data. To the extent requested by the State, Contractor shall contact industry

- representatives directly to resolve any outstanding issues. Contractor shall document all issues, their resolution, and all contacts with industry representatives.
- iii. Reconciliation (True-up). Contractor shall assist the State in assessing compliance of affected sources with the Vermont CO2 Budget Trading Program. The COATS System shall support data entry of compliance certifications required by the program and the identification of CO2 allowances to be deducted during the compliance process. The COATS System shall provide for the preparation of draft and final compliance reports and will provide information to the States' staff contacts regarding possible non-compliance.
  - iv. User Technical Support. Contractor shall provide technical support to industry, the State, and public users of the COATS System. Contractor shall record all technical support requests, inquiries, or other occurrences in a log that identifies the nature of the request or events, requestor, respondent, response provided, date(s) and time(s) of response, and amount of chargeable time expended on the request and response. Records shall be provided to the State's Project Manager on a periodic basis, or on demand, as requested. As necessary, Contractor shall provide assessments and recommendations relating to performance of the system based on technical support levels and user feedback. Contractor shall not be responsible for interpretation of the State's regulations, and/or interpretation of actions taken by the State in enforcement of those regulations.
  - v. System and Database Support. Contractor shall be responsible for all aspects of the COATS System maintenance and database support and management. This shall include database initialization and setup, ongoing database quality assurance activities, management of all user accounts and security, coordination and monitoring of the Application Service Provider support activities, database security, application performance, and all other tasks required to ensure high system availability and performance.

## II. Allowance Auction Platform

Contractor shall implement and administer a process and platform for the auctioning of CO2 allowances. Contractor shall provide services in three general areas: pre-auction, auction implementation, and post-auction. Services shall provide for CO2 allowance auctions to be held quarterly (four auction cycles per calendar year).

### a. Pre-auction Services

- i. Consultation. Contractor shall work with the State to modify existing auction administrative procedures as necessary to improve administration of quarterly auctions and to develop new auction procedures as appropriate.
- ii. Auction Notices. Contractor, in consultation with the State, shall create documents and associated information necessary to inform auction participants about all relevant details of the auction process and requirements for each auction event. Each notice of auction shall provide a specific description of the auction format that will be used, the quantities of CO2 allowances to be auctioned, all applicable participation requirements, and the process for administering the auction. Such information shall be made available on a website maintained and hosted by Contractor specifically dedicated to RGGI auctions. Contractor shall prepare for, host, and facilitate at least one conference call for prospective auction participants prior to each auction, as well as receive and respond to written questions submitted by conference call participants.
- iii. Participant Qualification. Contractor, in consultation with the State, shall assist in the development of all qualification application materials and documents and shall manage, under the direction of the State, the application process, including receiving and reviewing each qualification application to determine completeness and accuracy of the information submitted. Contractor shall be responsible for collecting and managing all auction financial security submissions and/or escrow accounts on behalf of the State. Contractor, in consultation with the State, shall be responsible for notifying bidders of their qualification status and auction specific participation status and maintaining a database of all qualified parties and bidders approved to participate in each auction.
- iv. Auction Documentation and Training. To prepare for each auction, Contractor shall create and distribute auction materials, such as participation instructions, final auction procedures and manuals, as well as the distribution of user codes and passwords to qualified auction participants. In addition, Contractor shall be responsible for training auction participants in the use of the auction software platform.

### b. Auction Implementation Services



- i. Auction Platform. Contractor shall provide and administer, on behalf of the State, a secure online auction platform capable of accommodating an auction in all of the following formats:
  1. A sealed bid, uniform price auction
  2. An ascending price, multiple-round auction

Furthermore, the online auction platform shall be capable of managing CO2 allowance purchase limits based on specifications provided by the State, and simultaneous auctions of current year allowances and future vintage year CO2 allowances. Such platform shall be capable of tracking bidding activity and must provide for audit level documentation of such activity, in accordance with auction monitoring protocols established by Contractor in consultation with the State.

**c. Post-Auction Services.** Contractor shall, on behalf of the State, arrange for and facilitate the transfer of funds from successful bidders to an account designated by the State and arrange for the return of financial security to bidders. Contractor shall also be responsible for coordinating the operation of the COATS System for the transfer of CO2 allowances awarded at each auction at the direction of the State to the COATS System compliance or general accounts of the winning bidders. Contractor shall also be required to: (1) work with any independent third party hired by the State to verify the results of the auction; (2) if directed by the State, to post appropriate information about auction results; and (3) to work with the State to use ongoing auction experience to continuously improve subsequent auctions.

### III. Market Monitoring

Contractor shall provide market monitoring services in three general areas: monitoring and auditing of CO2 allowance auctions, monitoring of relevant secondary CO2 allowance market activity, and provision of consultative services addressing market monitoring.

- a. Monitoring and Auditing of Allowance Auctions. Contractor shall provide professional monitoring of all CO2 allowance auctions, some of which may involve a subset of participating states and may or may not include CO2 allowances submitted for auction by the State. Contractor shall develop data collection methods, metrics, and analytic techniques for monitoring CO2 allowance auction performance and thresholds for identifying any collusion, market power, and/or market manipulation that may impact the efficiency and performance of the CO2 allowance auctions.
- b. Monitoring of Secondary Market Behavior. Contractor shall monitor all relevant publicly available data and indicators of market behavior in the secondary CO2 allowance market that may be expected to significantly impact the performance of CO2 allowance auctions and the secondary CO2 allowance market.
- c. Consultative Services. Contractor shall provide expert advice to the State regarding how any aspects of the CO2 allowance auction process should be altered in order to improve the performance and efficiency of the auctions and ensure the functioning of a fair and competitive CO2 allowance market.

### IV. Program Development Support

Contractor shall provide program development support to the State on an as-requested basis to facilitate State consideration of modifications to and/or expansion of the Vermont CO2 Budget Trading Program. Such services may include but are not limited to the following:

- a. Evaluation of program implementation and identification of areas for potential improvement
- b. Electricity simulation modeling and macroeconomic analysis.
- c. Evaluation of additional offset categories.
- d. Development of technical recommendations related to specific CO2 Budget Trading Program elements.

### V. Project Reporting

Contractor shall designate a Project Manager, who shall be the primary contact with the State. The Project Manager shall be responsible for monitoring and ensuring progress for all tasks and subtasks, and for ensuring timely delivery of all deliverables outlined in this scope of services. The Contractor Project Manager shall be responsible for all project reporting to the State. In any area where deliverables will be provided, the State may request that such deliverables be presented to the State in draft form for review and ultimate approval by the State.

**ATTACHMENT B  
PAYMENT PROVISIONS**

1. The State shall pay Contractor annually as invoiced for the State's share of Contractor annual program costs and operating expenses an amount not to exceed \$20,000.00 per year for 2023, 2024, 2025, 2026, and 2027, or a total of \$100,000.00 for the duration of the contract.
2. Contractor shall email detailed invoices to [anr.anrap@vermont.gov](mailto:anr.anrap@vermont.gov). Invoices and deliverables must include the contract number. Please provide an itemized description of completed deliverable(s) achieved during the invoice period.
3. Contractor is conferred blanket approval from the State to execute any subcontracts associated with this Agreement and related amendments according to attachment C, #19. The Contractor must verify and document that none of its subcontractors are listed on the federal debarment list located at <https://sam.gov/content/home> or the State debarment list maintained by the Vermont Buildings and General Services (BGS) and located at: <https://bgs.vermont.gov/purchasing-contracting/debarment>. Both the name of the entity and name of the primary point of contact must be checked.
4. If the work described in any invoice as provided by the Contractor has not been completed to the satisfaction of the State, as determined by the project manager, the State reserves the right to withhold payment until the invoiced work has been satisfactorily completed. Overdue balances resulting from non-payment for unsatisfactory work will not be subject to interest or finance charges. The State will measure sufficient progress by examining the performance required under the workplan in conjunction with the milestone schedule, the time remaining for performance within the project period and/or the availability of funds necessary to complete the project. The State may terminate the assistance agreement for failure to ensure reasonable completion of the project within the project period. The State shall not be responsible for expenses incurred by the Contractor.
5. Payment terms are Net 30 days from the date the State is in receipt of an error-free invoice.
6. All invoices must be received within 90 days after the end date of this contract.

**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

*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. 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 to 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 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 Suspension or 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-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)

**ATTACHMENT D**  
**INFORMATION TECHNOLOGY SYSTEM IMPLEMENTATION**  
**TERMS AND CONDITIONS (rev. 07/14/2022)**

**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.

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

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

“Work Product” means any tangible or intangible ideas, inventions, improvements, modifications, discoveries, development, customization, configuration, methodologies or processes, designs, models, drawings, photographs, reports, formulas, algorithms, patterns, devices, compilations, databases, computer programs, work of authorship, specifications, operating instructions, procedures manuals or other documentation, technique, know-how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection), that is specifically made, conceived, discovered or reduced to practice by Contractor, either solely or jointly with others, pursuant to this Contract. Work Product does not include Contractor Intellectual Property or third party intellectual property.

To the extent delivered under this Contract, upon full payment to Contractor in accordance with Attachment B, and subject to the terms and conditions contained herein, Contractor hereby (i) assigns to State all rights in and to all Deliverables, except to the extent they include any Contractor Intellectual Property; and (ii) grants to State a perpetual, non-exclusive, irrevocable, royalty-free license to use for State’s internal business purposes, any Contractor Intellectual Property included in the Deliverables in connection with its use of the Deliverables and, subject to the State’s obligations with respect to Confidential Information, authorize others to do the same on the State’s behalf. Except for the foregoing license grant, Contractor or its licensors retain all rights in and to all Contractor Intellectual Property.

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

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

### 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"). 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 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.

- (vi) Neither Contractor nor Contractor's subcontractors has past state or federal violations, convictions or suspensions relating to miscoding of employees in NCCI job codes for purposes of differentiating between independent contractors and employees.

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

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

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

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

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

In addition to the insurance required in Attachment C to this Contract, before commencing work on this Contract and throughout the term of this Contract, Contractor agrees to procure and maintain (a) Technology Professional Liability

insurance for any and all services performed under this Contract, with minimum third party coverage of \$1,000,000.00 per claim, \$1,000,000.00 aggregate. To the extent Contractor has access to, processes, handles, collects, transmits, stores or otherwise deals with State Data, Contractor shall maintain first party Breach Notification Coverage of not less than \$1,000,000.00.

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

## **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.

## **11 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.

## **12 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.

## **13 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.

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

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