

Green Mountain Care Board
144 State Street
Montpelier, VT 05602

802-828-2177
www.gmcboard.vermont.gov

Kevin Mullin, Chair
Jessica Holmes, PhD
Robin Lunge, JD, MHCD
Maureen Usifer
Tom Pelham
Susan Barrett, JD, Executive Director

MEMORANDUM

TO: Susanne Young; Secretary, Agency of Administration (AOA)
FROM: Susan Barrett; Executive Director, Green Mountain Care Board (GMCB)
DATE: April 26, 2018
SUBJECT: Request to Execute Contract with Retroactive Date

In 2013, the Green Mountain Care Board (GMCB) executed a contract with Adaptive Planning, Inc. (now Adaptive Insights, Inc. or Adaptive) to implement an integrated hospital performance planning, budgeting, forecasting and reporting solution. The term of the agreement was February 18, 2013 through February 17, 2018. On November 15, 2017, in anticipation of the expiration of the contract, the GMCB issued an RFP for this work. Adaptive was the only bidder. Negotiations with Adaptive were complicated and extended beyond February 18, 2018, the expiration of the old contract. Adaptive continued to allow the GMCB to use the solution, which is essential to several GMCB functions, while the parties negotiated the terms of the new agreement. The GMCB hereby requests authorization to execute the new contract with an effective date of February 18, 2018 so that there is clarity around the GMCB's use of the Adaptive system from the expiration of the old contract through the execution of the new one.



State of Vermont
Agency of Digital Services
133 State Street, 5th Floor
Montpelier, VT 05633-0210

Agency of Administration

[phone] 802-828-4141

MEMO

Date: 04/26/2018

To: John Quinn - CIO

VIA: Jon Provost

From: ADS Procurement Advisory Team (PAT)

Subject: CIO approval of Contract 36067 between Adaptive Insights and the Green Mountain Care Board.

The Green Mountain Care Board submitted for PAT review a contract with Adaptive Insights for a web-based integrated performance planning, budgeting, forecasting and reporting solution.

Adaptive currently provides this solution for GMCB who last November did an RFP to evaluate if there were other market alternatives they should consider for this. Adaptive Insights was the only bidder.

The GMCB has had a very satisfactory opinion of this software and this contract serves to put a new contract in place for a new 4 year term. The value of the contract is \$210,774.00.

Since the RFP GMCB and Adaptive have had some longer than expected negotiations and as a result this request is back dated to Feb 18, 2018.

The PAT Team recommends CIO approval of this Contract.



ADS Review Verification Sheet

Project Name:	Business Performance Management
Agency/Dept.	GMCB

ADS Reviewer Summary & Sign-off

Reviewer	ABC Review			
	Reviewer Name	Date Received	Date Review Completed	Ok to Proceed to with project from Reviewer's perspective?
EPMO/OPM	Rick Steventon			
Enterprise Architecture	John Hunt			
Security	Nik Znamenskis			
IT Leader				
CTO	Mark Combs			
Deputy Secretary	Shawn Nailor			
CIO	John Quinn			Date e-signed approval:

	RFP			
	Reviewer Name	Date Received	Date Review Completed	Ok to Post RFP from Reviewer's perspective?
IT Contracting Specialist	Peter J Kipp/Jonathan Provost			
EPMO/OPM	Sandra Vachon			
Enterprise Architecture	John Hunt			
Security	Nik Znamenskis			
IT Leader				N/A
Data Management Officer	Andrew Laing			
CTO	Mark Combs			
Deputy Secretary	Shawn Nailor			
CIO	John Quinn			Date e-signed approval:

	Independent Review	
	Response	Date
CIO Approved IR Report		
CIO Approved Project to Proceed		

	Gartner Review			
	Business Process	Inquiry Date	Review Date	Business -Completion Date
Inquiry - RFI				
Document Review - RFP/Generic				
Contract Review				

	Contract			
	Reviewer Name	Date Received	Date Review Completed	Ok to Sign Contract from Reviewer's perspective?
IT Contracting Specialist	Peter J Kipp/Jon Provost	4/24/2018	4/26/2018	Yes
EPMO/OPM	Rick Steventon	4/24/2018		
Enterprise Architecture	John Hunt	4/24/2018	4/26/2018	Yes
Security	Nik Znamenskis	4/24/2018	4/25/2018	Yes
IT Leader	Darwin Thompson	4/24/2018	4/26/2018	Yes
Data Management Officer	Andrew Laing	4/24/2018		n/a
CTO	Mark Combs	4/24/2018	4/26/2018	Yes
Deputy Secretary	Shawn Nailor			
CIO	John Quinn			Date e-signed approval:

STATE OF VERMONT CONTRACT SUMMARY AND CERTIFICATION ----- Form AA-14 (12/15/2017)

Note: All sections must be completed. Incomplete forms will be returned to the originating department.

I. CONTRACT INFORMATION:

Agency/Department: Green Mountain Care Board **Contract #:** 36067 **Amendment #:**
Vendor Name: Adaptive Insights, Inc. **VISION Vendor No:** 322436
Vendor Address: 3350 W Bayshore Road, Ste. 200, Palo Alto, CA 94303
Starting Date: 2/18/2018 **Ending Date:** 2/17/2022 **Amendment Date:**
Summary of agreement or amendment: Business Performance Management

II. FINANCIAL & ACCOUNTING INFORMATION

Maximum Payable: \$210,774.00 Prior Maximum: \$ Prior Contract # (If Renewal):
Current Amendment: \$ Cumulative amendments: \$ % Cumulative Change:
Business Unit(s): 3330; ; - [notes:] **VISION Account(s): 507600;**
Estimated Funding Split: % GF % SF % EF % Other
 % TF % GC % FF (name)

III. PROCUREMENT & PERFORMANCE INFORMATION (section A & B)

A. The agency has taken reasonable steps to control the price of the contract and to allow qualified organizations to compete for the work authorized by this contract. The agency has done this through:
 Standard Bid/RFP Simplified Sole Source Qualification Based Selection Statutory

B. Contract includes **performance measures/guarantees** to ensure the quality and/or results of the service? Yes No

IV. TYPE OF AGREEMENT (select all that apply)

Personal Service Construction Arch/Eng. Marketing Info. Tech. Prof. Service
 Non-Personal Service Retiree/Former SOV EE Financial Trans Zero-Dollar Privatization Other
 Commodity

V. SUITABILITY FOR CONTRACT FOR SERVICE

Yes No n/a Does this contract meet the determination of an Independent Contractor? If "NO", the contractor must be set up and paid on payroll through the VTHR system.

VI. CONTRACTING PLAN APPLICABLE

Is any element of this contract subject to a pre-approved Agency/Dept. Contracting Waiver Plan? Yes No

VII. CONFLICT OF INTEREST

By signing below, I (Agency/Dept. Head) certify that no person able to control or influence award of this contract had a pecuniary interest in its award or performance, either personally or through a member of his or her household, family, or business.
 Yes No Is there an "appearance" of a conflict of interest so that a reasonable person may conclude that this party was selected for improper reasons: (If yes, explain)

VIII. PRIOR APPROVALS REQUIRED OR REQUESTED

Yes No Agreement must be Certified by the Attorney General under 3 V.S.A. § 342 (sign line #4 below)
 Yes No Attorney General review As To Form is required or requested: _____ (AAG initial)
 Yes No Agreement must be approved by the Secretary of ADS/CIO
 Yes No Agreement must be approved by the CMO: for Marketing services over \$25,000
 Yes No Agreement must be approved by Comm. Human Resources: for Privatization, Retirees, Former Employees, & if a Contract fails the IRS test.
 Yes No Agreement must be approved by the Secretary of Administration

IX. AGENCY/DEPARTMENT HEAD CERTIFICATION; APPROVAL

I have made reasonable inquiry as to the accuracy of the above information (sign in order):

1-Date	1-Agency/Department Head		2-Date	2-Agency Secretary (if required)	
3a-Date	3a-CIO	3b-Date	3b-CMO	3c-Date	3c-Commissioner DHR
4-Date	4-Attorney General		5-Date	5-Secretary of Administration	

MEMO

Date: 11/09/2017

To: John Quinn - CIO

VIA: Jon Provost e-Signed by Jonathan C Provost
on 2017-11-09 18:53:02 GMT

From: ADS Procurement Advisory Team (PAT)

Subject: Request for CIO Approval to post RFP for GMCB for Business Performance Management

Green Mountain Care Board submitted an RFP for approval to post for a Business Performance Management System. This system will provide an integrated performance planning, budgeting, forecasting and reporting solution for the Board.

This was brought before PAT at our 10/26 meeting and the disposition was that we wanted to see an ITABC form completed.

GMCB sent over an ITABC that we reviewed at our meeting at 11/09/2017. The ABC form was incomplete and lacked information about how they would measure success. It did however tell us the lifecycle costs of \$413,000 so it does not require oversight and does not require an IR.

The discussion then led to the timeline for this activity and that further delay in posting could inhibit their ability to get a new solution in place in the bounds of their timeline. Deb Damore and Shawn Nailor both indicated we should in parallel, get the RFP posted and have GMCB update the ITABC.

Additionally, Mark Combs would like to see EA involvement in this and have a member included in the review team. This was communicated to Erin Collier at GMCB.

Based on the above, the PAT Team recommends approval to post this RFP. Jon Provost will follow up with the business next week on collecting the updated ITABC.



STANDARD CONTRACT FOR TECHNOLOGY SERVICES

1. **Parties.** This is a contract for services between the State of Vermont, Green Mountain Care Board (hereinafter called “State”), and Adaptive Insights, with a principal place of business in Mountain View, CA, (hereinafter called “Contractor”). Contractor’s form of business organization is corporation. It is Contractor’s responsibility to contact the Vermont Department of Taxes to determine if, by law, Contractor is required to have a Vermont Department of Taxes Business Account Number.

2. **Subject Matter.** The subject matter of this contract is services generally on the subject of an integrated business performance planning, budgeting, forecasting, and reporting solution for the State. Detailed services to be provided by Contractor are described in Attachment A.

3. **Maximum Amount.** In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$210,774.00.

4. **Contract Term.** The period of Contractor’s performance shall begin on February 18, 2018 and end on February 17, 2022 (“Subscription Term”).

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

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

7. **Termination for Convenience.** This contract may be terminated by the State at any time by giving written notice at least thirty (30) days in advance. In such event, Contractor shall be paid under the terms of this contract for all services provided to and accepted by the State prior to the effective date of termination and no refund shall be due for any fees previously paid. Notwithstanding the foregoing, the parties acknowledge that in the event the State terminates this Contract for a breach by the Contractor in accordance with Section 27 of Attachment C, the Contractor shall refund a pro-rata portion of the prepaid fees based on the number of years remaining in the Subscription Term.

8. **Attachments.** This contract consists of 28 pages including the following attachments which are incorporated herein:

Attachment A – Specifications of Work to be Performed

Attachment B – Payment Provisions

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

Attachment D – Information Technology Professional Services Contracts

Attachment E – Support and Service Levels

Attachment F – Modifications to Standard State Provisions

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

- 1) Standard Contract
- 2) Attachment D – Information Technology Professional Services Contracts
- 3) Attachment F – Modifications to Standard State Provisions
- 4) Attachment C – Standard State Provisions for Contracts and Grants
- 5) Attachment A – Specifications of Work to be Performed

- 6) Attachment B – Payment Provisions
- 7) Attachment E – Support and Service Levels

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT

By the State of Vermont:

By the Contractor:

Date: _____

Date: _____

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

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

1. PURPOSE

This Contract sets forth the terms and conditions under which Contractor agrees to provide the State with a web-based, integrated performance planning, budgeting, forecasting, and reporting solution (the “Solution” or “System”).

The State collects or plans to collect and analyze information from a variety of individuals and organizations involved in healthcare payment and delivery, including commercial health insurance carriers, Vermont community hospitals, veteran’s hospitals, psychiatric hospitals, accountable care organizations, physician practices and clinics, nursing homes, home health agencies, dentists, chiropractors, physical therapists, psychologists, podiatrists, optometrists, durable medical equipment and vision products companies, pharmaceuticals, community health agencies and various smaller medical/health care professional entities (“Health Care Entity(ies)”).

The Solution shall allow for the collection of information from these data sources by the State and provide reporting and forecasting capabilities to the State. It is anticipated that the Solution will allow the State access to reports on at least 10 years of hospital and expenditure analysis data (provided it is loaded into the system) along with analytical and reporting capabilities to facilitate the hospital and accountable care organization budget review processes and the annual expenditure analysis review. It is expected that Health Care Entity reporters will directly upload data into the Solution, substantially reducing the burden of data collection and validation on State staff. This Contract specifies the obligations of each party with additional provisions detailed in the Attachments and Exhibits.

2. EXISTING SYSTEMS

The Solution currently used by the State is Adaptive Insights for Planning, an integrated web-based software, which the State licenses from Contractor under State contract #24077.

Since this software has been previously installed and this contract acts to renew the contract for four (4) additional years, there are no professional services required for implementation or configuration of the software (“Professional Services”) or services required to create custom Deliverables or Work Product (“Custom Services”) included. Services included by Contractor are ongoing support and maintenance, monitoring, support, backup and recovery, and technology updates and upgrades as described herein (individually and collectively referred to herein as the “Services”), as necessary for the State’s productive use of the Solution as further set forth in this Contract and governed by the terms and Service Level Agreement in Attachment E.

3. OBJECTIVE

This Contract provides an additional four-year subscription to the Adaptive Insights platform and renews existing contract #24077 Adaptive Insights (project was implemented in phases in 2013).

This Contract includes the following Software Licenses:

Product	Quantity
Adaptive Planning Base Fee (Corporate)	2
Adaptive Planning - Standard Seat	32
Adaptive Planning - Analysis Seat	15
Process Management (Corporate)	2
Discovery Professional (Corporate) - Base Fee	2

OfficeConnect Base Fee (Corporate)	2
Sandbox Instance	2
Authentication (Corporate)	2
Multi-Instance Uplift Fee - Admin Seats	3
Multi-Instance Uplift Fee for Standard Seats	3
OfficeConnect Seat Uplift Fee - Multi-Instance Seat	5
Discovery Professional - Seat Uplift Fee for Multi-Instance Seats	15

Description of Licenses Covered by Contract:

Adaptive Planning Base Fee

The Planning package includes budgeting, forecasting, management and ad hoc reporting and analytics, variance analysis and, the capability to manually import data into Adaptive Suite via Excel/.csv files,

Standard Seats:

Standard Seats provide the flexibility so that the Customer's user administrator can assign user roles and permissions in any way that suits their planning process.

Full Seat users can perform any system capability designated to them by the Customer's user administrator. Customer user administrator can assign any system permission to any Full Seat user as desired.

Standard Seats can act as business users, financial model builders, and as security administrators, depending on Customer's preferences.

Standard Seats can enter and save data on planning sheets (budgets, forecasts, workforce plans); and create, view and share web-based reports.

Standard Seats get unlimited access to eLearning.

Full Seat users associated with the Planning & Analytics package can also create, view, and share OfficeConnect board reports and create, view, and share Discovery Professional dashboards.

Analysis Seats:

Analysis Seats are used to enable broad, organization-wide participation in an active planning process.

Analysis Seats can view planning sheets (budgets, forecasts, workforce plans); view reports; create and save personal reports; view Discovery Professional dashboards; and create and save personal Discovery Professional dashboards.

(Note that Discovery Professional use is only available for seats purchased with the Planning & Analytics package.)

Analysis Seats can drill down from reports and can use cell explorer.

Analysis Seats cannot save sheets, including not being able to enter and save cell and sheet notes.

Analysis Seats cannot use OfficeConnect.

Instances

Multiple Planning or Planning & Analytics packages can be purchased for use in different divisions of a single company or to model different parts of the business. These separate packages are referred to as "instances." Instances can operate completely independent or they can be linked in a parent-child fashion such that child instances can share data with a parent instance. Linked instances enable a consolidated view across different parts of the business and across different models. Seats can be configured to access any instances purchased by a purchasing entity at no additional charge.

Sandbox Instance

A sandbox instance is a copy of the customer's production Planning or Planning & Analytics instance.

A sandbox instance is typically used for the purpose of testing changes prior to making changes to the production model. This provides a way to make model and dashboard experimental changes without impacting ongoing work in the production environment. Sandboxes can be 'refreshed' to reflect the current state and data of the production instance upon request. Two refreshes per year are available at no additional charge. Additional refreshes beyond the included two can be purchased.

Disk Storage

Ample disk storage of 500GB is included with every Instance. To date, the average Adaptive customer consumes approximately 1.7GB of storage. Consuming significantly more disk space only occurs if the customer model includes a combination of these factors: large numbers of accounts, levels and dimensions AND hundreds of stored versions or if the customer stores very large (i.e., multi-GB) files in the Reports file sharing area. An additional charge would be incurred for exceeding the 500GB disk allotment.

Further details regarding the scope of the System License to be provided to the State is set forth in Attachment D.

4. SUPPORT AND SERVICE LEVELS

Attachment E describes the Service Levels and other technical support Contractor will provide for the System as part of the contract and fees paid by the State under this Attachment A.

5. CONTRACTOR STAFF

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

- a. Contractor shall be responsible, at its own cost and expense, for all recruitment, hiring, Contractor-specific training, education and orientation for all Contractor Personnel assigned or to be assigned to perform Services or support the Requirements.
- b. All Contractor Personnel, in addition to any Contractor security policies and procedures, shall be required to comply with the security requirements in this Contract
- c. Contractor shall conduct its hiring process in compliance with all applicable Federal and State laws to include, but not be limited to, anti-discrimination laws.
 - i. **Eligibility for Employment:** Contractor shall verify that all prospective employees are eligible for employment in the United States.
 - ii. **Criminal Records:** Contractor or an agent of Contractor shall perform criminal background checks on all prospective employees utilizing a national criminal database acceptable to the State. Before any Contractor Personnel begin work on the Services x) such background check shall have returned a "no record" result or, y) to the extent that the result revealed that a felony record or records exist for a given individual, the associated conviction(s) shall be unrelated to the work to be performed as specified under the Equal Employment Opportunities Commission's EEOC Enforcement Guidance regarding the employment of convicted felons issued April 25, 2012. Contractor shall provide the State with notice of proposed Contractor Personnel with felony or misdemeanor convictions that involve a crime against a person; a crime involving the use or misuse of computer network; a crime involving weapons, explosives or arson; a crime involving

trade secret/proprietary information; a crime involving theft, dishonesty, embezzlement, breach of fiduciary duty, identity theft, or other financial-related crimes; a felony conviction for drug possession; or a crime involving the distribution or trafficking of illegal drugs and/or controlled substances.

- d. All Contractor Personnel providing or assigned to provide Services or otherwise in a position to obtain or have access to State Information, shall execute a non-disclosure agreement with confidentiality obligations substantially similar to those in this Agreement.
- e. The timing for transfer, reassignment or replacement of Contractor Personnel who might be performing Professional Services directly for the State (if any) will be coordinated with requirements for timing and other elements of the Services to maintain continuity in the performance of the Services and avoid interruption or disruption to the Services or any failures to maintain Service Levels.

5.1 CONTROL OF CONTRACTOR PERSONNEL

Contractor shall be fully responsible for the management, compensation, and performance of all Contractor Personnel, and the filing of all returns and reports and the withholding and/or payment of all applicable federal, State, and local wage tax, or employment-related taxes, including, but not limited to, income taxes, gross receipt taxes, taxes measured by income, social security taxes, and unemployment taxes for Contractor and Contractor's employees. Notwithstanding the foregoing, Contractor's employees shall adhere to the State's policies and procedures, of which Contractor is made aware while on State Premises and shall behave and perform in a professional manner if Contractor is performing Professional Services or Custom Services on State Premises. Furthermore, during Contractor's performance of Professional Services or Custom Services on State Premises, the State, may, in its reasonable discretion, require Contractor to replace any Contractor Personnel, including but not limited to Key Project Staff, working hereunder who does not adhere to, behave, and perform consistent with the State's policies and procedures, or otherwise engages in unprofessional or unethical conduct, or abuses any illegal substance or alcohol, or engages in illegal activities or consistently underperforms. The State shall provide written notice to Contractor of the requirement of replacement, or with whom there are irresolvable personality conflicts. Contractor shall use reasonable efforts to promptly and expeditiously replace Key Project Staff and replace all other personnel within fifteen (15) business days of receipt of the written notice unless otherwise mutually agreed. The State's right to request replacement of Contractor personnel hereunder relates solely to the removal of individuals from work on this Contract with the State and does not create an employment relationship. Nothing in this Contract authorizes the State to direct the Contractor's termination of the employment of any individual.

6. DESCRIPTION OF SYSTEM CAPABILITIES

Contractor and State agree that the overall purpose of the use of the System is as follows:

High Level Functional Requirements:

1. Provide an integrated performance planning, budgeting, forecasting and reporting solution
2. Provide a platform for target driven planning – both at the Organization level, Healthcare Provider level and Payer level.
3. Provide a flexible, robust, extensible and scalable business performance management solution which will support future growth.
4. Provide “What-If” scenario modeling capabilities.
5. Support the capture of financial, operational and statistical information in a manner that provides historical retention, updating, and data integrity.
6. Provide separate instances for different regulatory purposes (separate instances for hospital budgets vs. expenditure analysis)

7. A single source for the integrated reporting of actual results of healthcare providers and payers (strategic plan, budget, or forecast).
8. Enhance actual and plan performance reporting, analysis capabilities and processes.
9. Enhance the comparison and analyses of multiple scenarios.
10. Enhance variance analysis capabilities and associated explanations and commentary.
11. Increase the visibility of the assumptions and documentation for healthcare provider/payer combinations
12. Integrate financial and operational data from external data sources to facilitate budgeting, forecasting, and analysis.
13. Provide graphical and dashboard visuals.
14. Support the capture of healthcare provider/payer development assumptions, and documentation.
15. Reduce labor-intensive data collection, manipulation and reporting processes.
16. Automate data integration, and report production and distribution.
17. Provide timely updates within the BPM solution for actual data.

The State further acknowledges and agrees that the existing Solution previously provided to the State meets the foregoing requirements of the State.

**ATTACHMENT B
PAYMENT PROVISIONS**

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

1. Prior to commencement of work and release of any payments, Contractor shall submit to the State:
 - a. a certificate of insurance consistent with the requirements set forth in Attachment C, Section 8 (Insurance), and with any additional requirements for insurance as may be set forth elsewhere in this contract; and
 - b. a current IRS Form W-9 (signed within the last six months).
2. Payment terms are **Net 30** days from the date the State receives an error-free invoice with all necessary and complete supporting documentation.
3. Invoices shall be submitted to the State at the following address: Erin Collier, Green Mountain Care Board, 144 State Street, Montpelier, VT 05602.
4. Contractor shall submit invoices to the State and be paid for the Services as set forth below:

Upon Contract signing, Contractor will submit one invoice that is reflective of the full Subscription Term of 4 years for the System and Services. See Contractor's Order Form.

Order Form and Agreement



Adaptive Insights, Inc.
3350 W. Bayshore Road, Suite 200
Palo Alto, CA 94303
United States

Offer valid through: 1/31/2018
Prepared by:
Julia Schwartz
jschwartz@adaptiveinsights.com

Customer Information

Company Name Green Mountain Care Board (GMCB) 89 Main Street, Third Floor, City Center Montpelier, VT, 05620 United States	Main Contact Lori Perry Senior Financial Policy Analyst lori.perry@vermont.gov 802 828 6971	Billing Contact Lori Perry Senior Financial Policy Analyst lori.perry@vermont.gov 802 828 6971	Provisioning Contact Lori Perry Senior Financial Policy Analyst lori.perry@vermont.gov 802 828 6971
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Order Information

Start Date: 2/18/2018	Billing Terms: Net 30	Order Type: Renewal	Quote #: Q-61341
End Date: 2/17/2022	Currency: USD	Convert Trial:	Partner: Carlson Management Consulting
Term (Months): 48	Fiscal Year End:	PO Number: _____	

Subscription Items

Product	Quantity	
Adaptive Planning Base Fee (Corporate)	2	
Adaptive Planning - Standard Seat	32	
Adaptive Planning - Analysis Seat	15	
Process Management (Corporate)	2	
Discovery Professional (Corporate) - Base Fee	2	
OfficeConnect Base Fee (Corporate)	2	
Sandbox Instance	2	
Authentication (Corporate)	2	
Multi-Instance Uplift Fee - Admin Seats	3	
Multi-Instance Uplift Fee for Standard Seats	3	
OfficeConnect Seat Uplift Fee - Multi-Instance Seat	5	
Discovery Professional - Seat Uplift Fee for Multi-Instance Seats	15	
Subscription Subtotal:		USD 335,200
Subscription Discount:		USD 124,426
Total Subscription:		USD 210,774

Totals (excludes any applicable local taxes)

Subscription Total:	USD 210,774
Service Total:	USD 0
Grand Total:	USD 210,774

**ATTACHMENT C: STANDARD STATE PROVISIONS
FOR CONTRACTS AND GRANTS
REVISED DECEMBER 15, 2017**

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

2. Entire Agreement: This Agreement, whether in the form of a contract, State-funded grant, or Federally-funded grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.

3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial: This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under this Agreement. Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

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

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

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

7. Defense and Indemnity: The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits.

After a final judgment or settlement, the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.

The Party shall indemnify the State and its officers and employees if the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.

Notwithstanding any contrary language anywhere, in no event shall the terms of this Agreement or any document furnished by the Party in connection with its performance under this Agreement obligate the State to (1) defend or indemnify the Party or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party or any third party.

8. Insurance: Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of this Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

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

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

Premises - Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate

\$1,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal & Advertising Injury

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

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

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

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

10. False Claims Act: The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be

reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

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

12. Location of State Data: No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside the continental United States, except with the express written permission of the State.

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

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

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

16. Taxes Due to the State:

- A. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- B. Party certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- C. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due 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 not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

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

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

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

21. Copies: Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.

22. Certification Regarding Debarment: Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in Federal programs, or programs supported in whole or in part by Federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

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

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

25. Force Majeure: Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) ("Force Majeure"). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement,

substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

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

27. Termination:

A. Non-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.

ATTACHMENT D
INFORMATION TECHNOLOGY PROFESSIONAL SERVICES
TERMS AND CONDITIONS (rev. 3/10/17)

1. OWNERSHIP AND LICENSE OF INTELLECTUAL PROPERTY

1.1 State System Licensing (“System License”): This System License governs access and use of the System as described and provided by Contractor. Subject to the State’s compliance with the terms and conditions of this Contract, the Contractor hereby grants the State a non-exclusive, nontransferable, revocable, limited license during the Subscription Term to use the System for the State’s internal business purposes.

1.2 Restrictions. The State agrees not to: (i) use the System except as expressly authorized in this Contract; (ii) use any device, software, or routine that (a) interferes with any application, function, or use of the System, or (b) is intended to damage, detrimentally interfere with, surreptitiously intercept, or expropriate any system, data or communication; (iii) resell, sublicense, time-share, or otherwise share the System or Services with any third party; (iv) frame or mirror the System; (v) decompile, disassemble or reverse-engineer the underlying software that is part of the System or otherwise attempt to derive its source code; (vi) use the System either directly or indirectly to support any activity that is illegal; (vii) access the System for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes; (viii) attempt to disable or circumvent any security features of the System, or permit unauthorized access to the System; or (ix) authorize any third parties to do any of the above.

1.3 Contractor Intellectual Property. Contractor shall exclusively own and retain all right, title and interest in and to any work, ideas, inventions, discoveries, tools, methodology, computer programs, processes and improvements and any other intellectual property, tangible or intangible, of any kind used or developed by Contractor or its personnel in connection with providing the System or Services (“Contractor Intellectual Property”), including all worldwide patent rights (including patent applications and disclosures), copyright rights, moral rights, trade secret rights, know-how and any other intellectual property rights therein. State will have no rights in the Contractor Intellectual Property except as expressly agreed to in writing by the parties. Nothing in this Agreement will be deemed to restrict or limit Contractor’s right to perform similar services for any other party. Contractor and/or its licensors own all worldwide right, title and interest in and to the System and Services, including all worldwide intellectual property rights therein. The State may not delete or in any manner alter the copyright, trademark, and other proprietary rights notices appearing in or on the System or Services as provided. Should the State require a license for the use of Contractor Intellectual Property in connection with use of the System and any items that Contractor is required to deliver to the State under this Contract (“Deliverables”), the Contractor shall grant the State a royalty-free license for such use during the applicable Subscription Term.

1.4 State Intellectual Property. The State shall retain all right, title and interest in and to (i) all content and all property, data and information furnished by or on behalf of the State or any agency, commission or board thereof, and to all information that is created under this Contract, including, but not limited to, all State Data (as defined in Attachment D) that is generated under this Contract as a result of the use by the State and its employees, contractors, and agents (including Health Care Entities) who the State has authorized and for whom the State has purchased a subscription (each with a user login and password) to use the System on behalf of the State (“Authorized Users”); 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 with State Data, “State Intellectual Property”).

Contractor may not use State Intellectual Property for any purpose other than as specified in this Contract. The State will manage and control access to its account (by Authorized Users) and the use and processing of State Data by the System. State Data will not be accessed by or on behalf of Contractor except as necessary to identify, investigate, or resolve technical problems with the System or to verify the State’s and its Authorized Users compliance with the terms of this Agreement. State

Data that is accessed by or on behalf of Contractor will (1) be kept confidential, (2) handled according to applicable laws and regulations, and (3) not be shared with any unauthorized personnel or comingled with other customer's data. Upon expiration or termination of this Contract, Contractor shall return or destroy all State Intellectual Property and all copies thereof as set forth in Section 8 below, and Contractor shall have no further right or license to such State Intellectual Property.

Other than as expressly set forth in this Agreement, 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.

1.5 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 work product, creation, material, item, deliverable, documentation, information and/or other items that is specifically made, conceived, discovered or reduced to practice by Contractor, either solely or jointly with others, in the course of providing Custom Services, if any, pursuant to this Contract. Work Product does not include Contractor Intellectual Property or third party intellectual property. The parties acknowledge and agree that as of the Effective Date, there are no plans for Contractor to provide Custom Services and/or create custom Deliverables or Work Product for the State of Vermont under this Contract.

If the parties should mutually agree in writing to amend this Contract to include the performance of Custom Services by Contractor, and 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 which was provided to the State in the performance of Custom Services without explicit permission from 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.

State User Accounts: The State shall be responsible for all activity occurring under the State's account by Authorized Users. Authorized User passwords are for named individual users and cannot be shared or used by more than one user at a time, although, the State may reassign an Authorized User in its account (but not their password) to a new Authorized User who is replacing a former Authorized User (who no longer requires access or use of the System). The State will: (i) maintain the accuracy, completeness, and timeliness (within 30 days of any change) of the information the State provides in accordance with this Contract; and (ii) notify the Contractor immediately of any unauthorized use of any password or account or any other known or suspected breach of security. The State shall obtain, maintain and support all internet access, computer hardware, and other equipment and services needed for its access to the System. All State Data, as defined below, will be stored on servers owned or controlled by Contractor. The State shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with State use of the System, including those related to export regulations, data privacy, international communications and the transmission of technical or personal data. The Services shall not be exported or re-

exported directly or indirectly in violation of any applicable export laws or used for any purposes prohibited by such export laws.

1.6 Usage Data: In addition to certain information about Authorized Users, their accounts, and the services and support provided with the System, Contractor may maintain other information about the general use of the System by all customers, including the duration and frequency of user use of the System, the pages viewed and searches performed, and other anonymous usage data (collectively "Usage Data"). Contractor uses the Usage Data for internal business purposes only, including improving, testing and providing the System and related services. Subject to Contractor's confidentiality obligations with respect to the State and State Data, Contractor may disclose Usage Data in aggregate form (e.g. data aggregated from the State and other states or other customers use of the Service which does not identify individual users or the State) for promotion, statistical analysis, market analysis, financial analysis and other such purposes.

2. CONFIDENTIALITY AND NON-DISCLOSURE; SECURITY BREACH REPORTING

2.1 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.

2.2 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.

2.3 Confidentiality of State Information. In performance of this Contract, and any exhibit or schedule hereunder, the Party acknowledges that certain State Data (as defined below), to which the Contractor may have access may contain hospital and accountable care organization budget data, expenditure analysis data, and supporting metadata such as reporting organizations, code sets, data validation rules and calculations data ("State Data"). Before receiving or controlling 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. Without limiting Contractor's confidentiality and security obligations set forth elsewhere in this Contract, the State acknowledges that the System is not designed (or intended) to process or manage (i) any patient medical or other health information protected by the Health Insurance Portability and Accountability Act or similar U.S. or foreign laws and regulations; (ii) Cardholder Data, as that term is defined in the PCI standards; (iii) any Personally Identifiable Information as defined in 9 V.S.A. § 2430(5)(A) ("Protected Information") and inclusion of any Protected Information in the System is not recommended.

State Data shall not be stored, accessed from, or transferred to any location outside the United States.

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 (provided the State acknowledges that no State approval is necessary for Contractor's use of authorized subcontractors to assist Contractor with the provision of the System to its customers generally); (d) it will take all reasonable precautions to protect the State's information; and (e) it will not otherwise appropriate such State Data 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 (i) in the course of data center operations or response to service or technical issues, as required by the express terms of this Contract; (ii) to comply with the law, regulatory requirements, or legal or regulatory process; (iii) to enforce this Agreement; (iv) to respond to claims that the State is using the Services to perform or support activities that violate the law or the rights of third parties, or (v) at State's written request.

Contractor may not share State Data with its parent company or other affiliate without State's express written consent except to the extent such affiliate provides assistance to Contractor with the provision of the System to its customers generally.

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. Contractor may disclose State Data if the disclosure is necessary to comply with a valid court order or subpoena or to comply with applicable law, rule or regulation of governmental authority.

3. SECURITY OF STATE INFORMATION.

3.1 Security Standards. To the extent Contractor has access to, processes, handles, collects, transmits, stores or otherwise deals with State Data, the Contractor represents and warrants that it has implemented and it shall maintain during the Subscription Term of this Contract the industry standard administrative, technical, and physical safeguards and controls consistent with the AICPA SOC 2 Type 2 audit principles of confidentiality, security, availability, and processing integrity, 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 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.

3.2 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 by resulting in the unauthorized access, use or disclosure of State Data (a “Security Breach”), the Contractor shall notify the State within 72 hours of its discovery. Contractor shall immediately determine the nature and extent of the Security Breach, use reasonable commercial efforts to remediate the breach, which may include efforts to 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.

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 (“PII”) or other event requiring notification. Notwithstanding the foregoing, the State acknowledges that the State has exclusive control and responsibility for determining what data is submitted to the System, and for obtaining all necessary consents and permissions for submission of PII, and providing processing instructions for such PII to the Contractor.

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 (but excluding any unauthorized disclosures to the extent caused by the State, Health Care Entities, Authorized Users or by any employees, agents, or subcontractors of the foregoing in breach of the State’s obligations under this Agreement).

3.3 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.

3.4 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.

3.5 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.

4. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

4.1 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 pending 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 Contractor as a provider of the System and 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 services 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 services 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. The State's sole and exclusive remedy for a breach of this warranty in this subsection (iv) shall be the indemnification set forth in Section 10 below.
- (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.

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

- (i) 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.

- (ii) During the Subscription Term: (i) the System will function substantially in accordance with Contractor's online user instructions and help files, as such may be updated from time to time ("Documentation"), and (ii) such functionality of the System will not be materially decreased. The State's sole and exclusive remedy for Contractor's breach of the foregoing warranties in this subsection 4.2(ii) will be for Contractor to use commercially reasonable efforts pursuant to the support terms set forth in Attachment E to modify the System to achieve the warranted functionality and if Contractor cannot restore such functionality, the State will be entitled to terminate the Agreement and receive a pro rata refund of the unused fees paid under the Agreement for use of the System for the terminated portion of the Subscription Term. Such warranties will only apply if the applicable System has been used in accordance with the Documentation, this Agreement, and applicable law.
- (iii) 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, if any, 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 downloadable 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 of State data.

4.3 Warranty Disclaimer. Contractor does not offer financial and accounting advice. Contractor may provide general information about standard accounting principles, but such general information is intended for informational purposes only, and is not intended to be relied upon as professional accounting advice. Contractor does not warrant that the operation of Services or the System will be error free or uninterrupted. EXCEPT FOR THOSE EXPRESS WARRANTIES SET FORTH IN THIS CONTRACT, CONTRACTOR HEREBY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE.

5. PROFESSIONAL LIABILITY AND CYBER LIABILITY INSURANCE COVERAGE

In addition to the insurance required in Attachment C to this Contract, before commencing work on this Contract and throughout the term of this Contract, Contractor agrees to procure and maintain (a) Technology Professional Liability insurance for any and all services performed under this Contract, with minimum third-party coverage of \$1,000,000 per claim, \$5,000,000 aggregate. To the extent Contractor has access to, processes, handles, collects, transmits, stores or otherwise deals with State Data, Contractor shall maintain first party Breach Notification Coverage of not less than \$1,000,000.

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

6. REMEDIES FOR DEFAULT. 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.

7. TERMINATION

7.1 Upon an expiration or termination of this Contract, the rights and licenses granted hereunder will automatically terminate and the State may not continue to use the System. 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 Data, State Intellectual Property or other State information and materials are to be transferred in connection with termination. Upon termination or expiration of the Agreement other than for the State's material breach, Contractor shall reasonably assist the State in exporting and extracting any and all State data, in a mutually agreed to format, 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 and the related fees for such services.

7.2 Return of Property. Upon termination of this Contract for any reason whatsoever, upon the State's request, Contractor shall immediately deliver to State all State Intellectual Property and State Data, 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.

8. DESTRUCTION OF STATE DATA. At any time during the term of this Contract (i) within 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 State Intellectual Property and State Data, Contractor shall securely dispose of all copies, whether in written, electronic or other form or media, of State Intellectual Property and State Data according to National Institute of Standards and Technology (NIST) approved methods, and certify in writing to the State that such State Data has been disposed of securely. Further, upon the relocation of State Data, Contractor shall securely dispose of such copies from the former data location according to National Institute of Standards and Technology (NIST) approved methods 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.

9. IRS TERMS IF FEDERAL TAX INFORMATION WILL BE PROCESSED OR STORED (Per IRS Publication 1075) – INTENTIONALLY OMITTED

10. Copyright, Patent or Other Intellectual Property Infringement Indemnity. Contractor will defend, indemnify and hold the State harmless from and against any loss, damage, liability or cost (including reasonable attorneys' fees) to the extent that it is based upon a third party claim that the System or Services, as provided by Contractor and used within the scope of this Agreement, infringes or violates any third party's U.S. copyright or trademark rights; provided that the State promptly notifies Contractor in writing of any and all such claims. In the event of any loss, damage, liability or cost for which Contractor is obligated to indemnify the State hereunder, Contractor shall have sole control of the defense and/or settlement thereof at Contractor's expense; provided that the State may participate in such defense using its own counsel, at its own expense. If the State's use of the System or Services is, or in Contractor's opinion is likely to be, enjoined due to a claim specified above, Contractor may, at its sole option and expense: (a) procure for the State the right to continue using the System or Services under the terms of this Agreement; (b) replace or modify the System or Services so that they are non-infringing; or (c) if options (a) and (b) above cannot be accomplished despite Contractor's reasonable efforts, then Contractor may terminate the license rights and Contractor's obligations hereunder with respect to the System or Services and refund the State the unused portion of the fees prepaid for the remainder of the Subscription Term.

Notwithstanding anything to the contrary in this Agreement regarding intellectual property and infringement claims, 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. LIMITATION OF LIABILITY.

IN NO EVENT SHALL CONTRACTOR'S AGGREGATE LIABILITY TO THE STATE EXCEED US \$1,000,000. THIS LIMITATION 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 FALSE CLAIMS ACT. IN NO EVENT SHALL CONTRACTOR'S LIABILITY BE LIMITED FOR THIRD PARTY CLAIMS AGAINST THE CONTRACTOR WHICH MAY ARISE OUT OF CONTRACTOR'S ACTS OR OMISSIONS.

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 OR LOSS OF ANTICIPATED BUSINESS OR PROFITS IN CONNECTION OR ARISING OUT OF THE SUBJECT MATTER OF THIS CONTRACT.

12. Miscellaneous: This Contract is intended for the sole and exclusive benefit of the parties and is not intended to benefit any third party. Only the parties to this Contract may enforce it. If any portion hereof is found to be void or unenforceable, the remaining provisions of this Contract shall remain in full force and effect.

13. Modification of Contractor Documents

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

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.

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.

ATTACHMENT E
SUPPORT AND SERVICE LEVEL

1. **Upgrades and Corrections:**
 - a. During the Subscription Term, the Contractor will provide, test and install bug fixes, error corrections, updates and upgrades (additional features, functionality and/or improvements) to the then-current System at no additional cost to the State.
 - b. Upgrades and corrections will support any functionality provided to the State as part of the initial System configuration and implementation.
 - c. The Contractor shall notify the State as soon as possible of any known System bugs, errors or problems that they can reasonably assume may impact the State.
2. **System Availability:** The System and Services provided hereunder will be operational and available to the State at least 99.5 % of the time in any calendar month excluding scheduled downtime (as described in subsection F below) and Force Majeure events (as defined in Attachment C).
3. **Technical Support Hours:** The Contractor provides technical support phone and email services Monday through Friday, 9 AM to 9 PM EST with the exception of recognized US holidays.
4. **System and Hosted Service Monitoring, Escalation, Problem Reporting and Response Time:** The Contractor shall provide 24/7 support and monitoring of the Hosted Service infrastructure that delivers the System to the State. This monitoring includes ensuring availability in accordance with the Service Level Agreement and appropriate monitoring of user activity, usage and other interactions with the System. Only account administrator(s) may contact Contractor technical support personnel to report a problem with the System. When submitting a problem report, the State must (1) notify Contractor of the problem with the System and provide information regarding the problem (to enable Contractor to reproduce the problem), and (2) provide Contractor with reasonable assistance, as requested, to help troubleshoot the problem. Contractor will not be responsible for providing support for problems in the operation or performance of the System if the problem relates to errors in the State's data, formulas, databases, access to other software or databases, or from any unauthorized use or modification of the System (based on the documentation that is provided with the System).
5. **Technical Support Contact Information:** support@adaptiveplanning.com
6. **Scheduled Maintenance and Upgrades:** The Contractor shall notify the State of periods of scheduled maintenance at least three days prior to the commencement of any planned downtime period (defined as a period of 10 consecutive minutes of system unavailability) to the extent possible. Notification of scheduled maintenance and downtime associated with the implementation of upgrades will be pre-announced via email communication to the State's designated contact. Scheduled Downtime will occur outside of the State's normal working hours or 7:45 am EST to 4:30 pm EST, Monday through Friday. Scheduled Downtime is not considered Downtime for purposes of this Contractor SLA, and will not be counted towards any Downtime Periods
7. **Escalation:** The Contractor will provide the State with management contract information for escalation in the event that a reported problem is not resolved to the State's satisfaction.
8. **Service Level Reporting:** The Contractor will publish the actual uptime on a monthly basis at: <http://www.adaptiveplanning.com/technology/saas-infrastructure/saas-performance/> or the then public equivalent. A hard copy shall be made available upon request.
9. **Service Level Performance Credits:** If in a calendar month the 99.5% uptime commitment is not met, Contractor will credit State with one month of Subscription Fees. Except as stated below, this credit is the State's sole and exclusive remedy, and must be requested in writing prior to the tenth day of the month following such service level interruption. This credit will extend the current Subscription Term by one month. Notwithstanding the foregoing, the operation of and access to the Services may be interfered with by numerous factors outside of Contractor's control and Contractor will not be liable for any such costs, losses, expenses, damages, or liabilities arising out of or related to any delay or failure in performance under this Agreement resulting directly or indirectly from causes beyond Contractor's control.

If Contractor fails to meet uptime commitment in any two consecutive months within a six-month period, State may, after receipt of written request, receive a pro-rata refund of all prepaid fees for the remaining portion of Subscription Term from the date of receipt of such notification and terminate this Agreement, and such termination will be the States sole and exclusive remedy for such failures.

**ATTACHMENT F
MODIFICATIONS TO STANDARD STATE PROVISIONS**

The Parties agree that the provisions of Attachment C – Standard State Provisions for Contracts and Grants, are modified as set forth in this Attachment F.

1. Section 7 (Defense and Indemnity) is deleted and replaced with the following:

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 negligent act or omission or intentional misconduct 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 a negligent act or omission or intentional misconduct 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 negligent act or omission or intentional misconduct 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.

2. Section 12 (Location of State Data) is deleted and replaced with the following:

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 as necessary to support, manage, and improve the System, or with the express written permission of the State. For clarity, State data will be hosted solely in Adaptive's US data centers.

3. Section 13 (Records Available for Audit) is deleted and replaced with the following:

13. Records Available for Audit: The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information relating to transactions and activities, financial and non-financial, which is produced or acquired by the Party in the performance of the provision of the System specifically to the State under 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. In addition, upon request, the Party will provide the State with a copy of its annual, independent SSAE-16 or SOC (or successor type) audit report covering the operations of the Party.

4. Section 19 (Sub-Agreements) is deleted and replaced with the following:

19. Sub-Agreements: Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State, excluding subcontracting related to the provision of the System for the Party's customers generally. 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. Notwithstanding the foregoing, Party may, with prior written notice to the State, assign this Agreement in its entirety to the surviving party in a merger of the Party into another entity or in an acquisition of all or substantially all of the Party's assets. This Agreement will be binding upon and inure to the benefit of the Party's successors and assigns as authorized in the preceding sentence.

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 under this Agreement solely for the State of Vermont and all subcontracts for work performed under this Agreement 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").

5. Section 24 (Confidentiality) is deleted and replaced with the following:

24. Confidentiality: Party acknowledges and agrees that this Agreement and any and all Contractor 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., as further described in Attachment D, Section 2.2.

6. Section 27 (Termination) is modified by deleting subsection C (Termination Assistance) and replacing it with the following:

- 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 as further described in Attachment D. 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 as further described in Attachment D.

With respect to section 31 (Requirements Pertaining Only to Federal Grants and Subrecipient Agreements) and section 32 (Requirements Pertaining Only to State-Funded Grants), the Parties agree that no federal or State-funded grants (directly or as a Subrecipient) shall be issued to and received by Contractor pursuant to this Agreement.