

**STANDARD CONTRACT FOR SERVICES**

1. **Parties.** This is a contract for services between the State of Vermont, Green Mountain Care Board (hereinafter called “State”), and Oliver Wyman, LLC, a Delaware limited liability company, with a principal place of business at 1166 Avenue of the Americas, New York, NY 10036 (hereinafter called “Contractor”). 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 related to community engagement regarding hospital sustainability. 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 \$1,050,000.00.

4. **Contract Term.** The period of Contractor’s performance shall begin on August 1, 2023 and end on July 31, 2025, with the potential for up to two one-year extensions at the option of the State.

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

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

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

8. **Attachments.** This contract consists of 24 pages including the following attachments which are incorporated herein:

Attachment A – Statement of Work

Attachment B – Payment Provisions

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

Attachment D – Other 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, unless specifically stated otherwise in such document:

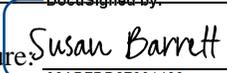
1. Standard Contract

2. Attachment D Other Provisions

- 3. Attachment C (Standard Contract Provisions for Contracts and Grants)
- 4. Attachment A
- 5. Attachment B

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

By the State of Vermont:

Date: 7/3/2023  
DocuSigned by:  
 Signature:   
98AD7DD27001403...  
 Name: Susan Barrett  
 Title: Executive Director

By Oliver Wyman, LLC:

Date: 7/3/2023  
DocuSigned by:  
 Signature:   
9DC77618FE4C447...  
 Name: Bruce Hamory  
 Title: Partner

## ATTACHMENT A – STATEMENT OF WORK

### A. Background

Section 2 of [Act 167](#) (2022) requires that the GMCB, in collaboration with the Director of Health Care Reform in the Agency of Human Services, “develop and conduct a data-informed, patient-focused, community-inclusive engagement process for Vermont’s hospitals to reduce inefficiencies, lower costs, improve population health outcomes, reduce health inequities, and increase access to essential services while maintaining sufficient capacity for emergency management.”

Broad goals for Act 167 Section 2 include:

- Learning from health and human services providers and community members regarding unmet needs, local priorities, and barriers to delivery system transformation;
- Analyzing data and producing information necessary to support the provider and community engagement process, identify opportunities for hospital transformation, and assess resource needs and potential impacts;
- Clearly and consistently communicating the current state of Vermont’s hospital system and relevant trends to hospital leadership, key stakeholders, and community members;
- Supporting hospital preparedness for value-based payment models that holds providers accountable for cost and quality, as well as for changes in the delivery system;
- Structuring engagement in such a way that it avoids duplication or added burden, particularly for health and human services providers; and
- Building collaboration and engagement at the local level.

There are three streams of work associated with the goals of Act 167 Section 2:

1. Health system data analytics and resource estimates
2. Broad community and provider engagement in and across all Hospital Service Areas in Vermont
3. Technical assistance for hospitals to develop localized transformation plans (not specified or funded in Act 167; this work to be led by Vermont’s Agency of Human Services)

This Statement of Work outlines expectations for tasks related to the second stream of work: **Broad community and provider engagement in and across all Hospital Service Areas (HSAs) in Vermont.**

The work of this contract will require coordination with other State of Vermont contractors working on additional tasks as described in Act 167 Section 2 including, health system data analytics, hospital transformation, payment reform, payment model development, regulatory redesign, and Vermont’s All-Payer Model Agreement with the federal government.

The specific tasks and final deliverables for this contract are described in detail in Section B of this Attachment A.

### B. Contractor shall perform the following tasks:

#### Requirements

Contractor shall support the Green Mountain Care Board in conducting a data informed, patient-focused, community-inclusive engagement process for Vermont’s hospitals that leads to the development of options and recommendations for the State, hospitals, and/or communities in line with the goals of Act 167 Section 2. This work will be undertaken in collaboration with AHS and additional contractors.

The engagement process should not duplicate the Community Health Needs Assessment process in which Vermont hospitals engage every three years.

### Scope of Work

The contractor will complete the following tasks, outlined in more detail below:

1. Develop an Onboarding and Community and Provider Engagement Plan.
2. Facilitate a multi-stage stakeholder and community engagement process for all HSAs.
3. Create materials for stakeholder process by HSA and audience.
4. Assess and compile existing data and analyze data collected from stakeholder process.
5. Identify gaps in data and propose updated or new analysis and, under the direction of the State, collaborate with other contractors.
6. Identify and develop stakeholder and data-informed options for the State, hospitals, and/or communities.
7. Provide ongoing project management.

#### *Task 1: Develop an Onboarding and Community and Provider Engagement Plan.*

Within the first thirty (30) days of the contract period, Contractor will design and propose an Engagement Plan that will support the bi-directional flow of information, trends, and insights between all stakeholders (GMCB, AHS, hospitals and other health and human services providers, payers, and the public), and allow the contractor to make community- and data-informed recommendations to the state, communities, and hospital leadership. The process may include in-person meetings, on-line meetings, or both (subject to State approval), and may include multiple forums of different types in each community (e.g., targeted small group meetings, focus groups, large public forums).

Contractor shall propose and rely on collaborative and community-inclusive processes to inform insights (e.g., strategies used in participatory research). This may require targeted engagement of sub-populations. The developed engagement process should provide opportunities for meaningful participation by health care professionals and health care providers (including those providing primary care services) both hospital-employed and independent or community-based; hospital boards of directors; other health and human services organizations; employers; payers; Vermonters who have direct experience with all aspects of Vermont's health care system; Vermonters who are diverse with respect to race, income, sexual orientation and gender identity, age, disability status, and mental health and substance use treatment and service needs; and local legislators.

The iterative, multi-stage Engagement Plan shall include the following elements, at a minimum:

1. A review of key documents needed to better understand trends, insights, and the current, projected, and potential states of the hospital delivery system in each region.
2. Planned meetings with GMCB members and staff, other key State of Vermont entities (including the Agency of Human Services Director of Health Care Reform, Office of Rural Health, and others as requested), and non-State stakeholders (e.g., the Vermont Association of Hospitals and Health Systems).
3. Planned 1<sup>st</sup> round meetings with hospital leadership and community entities to learn about unmet health needs and local priorities. Vermont hospitals and their nonprofit boards should be a starting place for engagement in each of the 14 HSAs to communicate the intent of this work, receive initial feedback, and build support for engagement. First round meetings should focus on reviewing current national, state, and local data and trends, and can be held virtually.

4. A plan, which may include focus groups, for engaging diverse communities of Vermonters focusing on those most at risk for experiencing health inequities and health care discrimination, considering race/ethnicity, language, gender identity and expression, sexuality, rurality, disability, and other categories.
5. Suggested materials that will be developed and presented throughout the engagement process to share information with the State, hospitals, and other stakeholders.
  - a. This should include at least two rounds of materials:
    - i. Materials to share preliminary data gathered from review of key documents.
    - ii. Materials needed to share recommendations, findings from any new analysis performed, and findings from synthesized qualitative information gathered throughout the community and provider engagement process.
6. With guidance provided by the State, design a rationale/criteria and subsequent recommendations or options for prioritizing HSAs and transformation activities across the State, hospitals, and communities, with a recommendation for how to sequence the process across the state of Vermont (e.g., by hospital type, region, need, readiness, etc.). Methods for identifying options and/or recommendations for, and the potential impacts of, actions the State, hospitals, and communities can take to reduce inefficiencies, lower costs, improve population health outcomes, reduce health inequities, and increase access to essential services, that are informed by lessons learned, data collected, and engagement with communities and stakeholders.
7. A set of 2<sup>nd</sup> round meetings with hospital leadership and community entities that is inclusive of all 14 HSAs (exact number to be determined in partnership with the State based on prioritization and recommendations). Second round meetings should focus on presenting findings and information gleaned from engagement process as well as options the State, hospitals, and communities could take to reduce inefficiencies, lower costs, improve population health outcomes, reduce health inequities, and/or increase access to essential services. Options will be tailored to each community's local needs, resources, and projected outlook, and will be prioritized based on Contractor's analysis and expertise. Second round meetings with HSAs should occur in-person.
8. A timeline for all contract activities, spanning 6-9 months following contract execution.

The Board will review the draft plan, suggest changes, and approve the final plan within forty-five (45) days of contract execution. The contractor will routinely update the project plan to reflect changes, if any, in the nature and timing of project activities. All changes are subject to the State Contract Manager's approval throughout the duration of the contract.

*Task 2: Facilitate a multi-stage stakeholder and community engagement process for all HSAs.*

Contractor will provide facilitation for the community engagement process based on the accepted, final Engagement Plan. The project team shall include leaders and staff who have experience facilitating successful community engagement processes, ideally with specific expertise in engaging rural communities, working with a multitude of provider types, and are seen as a trusted entity by the leaders and community members with whom they have previously engaged. This will include a physician or other clinician with direct clinical experience or experience in executive leadership in a health care organization.

The drafting of agendas and facilitation of meetings may require coordination with other State of Vermont contractors working on additional tasks as described in Act 167 Section 2, including health system data analytics, hospital transformation, payment reform, payment model development, regulatory redesign, and Vermont's All-Payer Model Agreement with the federal government.

*Task 3: Create materials for stakeholder process by HSA and audience.*

Contractor will synthesize information provided from the State, AHS, and other contractors and develop materials, tailored by HSA and audience, to be used throughout the community and provider engagement process. Materials will be outlined in the approved Engagement Plan and should clearly and consistently communicate the current state of Vermont's hospital system, relevant trends, and recommendations and/or options for transformation to hospital leadership, key stakeholders, and community members. The State may request sample materials prior to approving this aspect of the Engagement Plan. Examples of materials could include PowerPoint slides, handouts, or website content.

*Task 4: Assess and compile existing data and analyze data collected from stakeholder process.*

The contractor will review key documents, agreed upon in the Engagement Plan, needed to better understand the current, projected, and potential states of the hospital delivery system in each region. The contractor shall also synthesize qualitative information gathered throughout the community and provider engagement process and package the data for each community so that it is easily understood by community members and all involved stakeholders. This data should include what was learned from health and human services providers and community members regarding relevant trends, unmet needs, local priorities, barriers to delivery system transformation, and readiness to implement transformation activities.

*Task 5: Identify gaps in data and propose updated or new analysis and, under the direction of the State, collaborate with other contractors.*

The contractor will identify any needs for updated or new analysis needed to make recommendations and to support hospital transformation planning. Those needs will be communicated to the State, or other contractor(s) if directed, as they are identified.

As requested by the State, Contractor will support the State and other State contractors in developing resource estimates, and participating in advisory groups, for delivery system reforms or transformation initiatives identified through the community and provider engagement process.

*Task 6: Identify and develop Stakeholder and data informed options for State, hospitals, and/or communities.*

Using the contractor's expertise and all available information, the contractor will interpret and incorporate the results of the engagement process and all data analysis performed to outline possible and relevant transformation initiatives, including those identified through the community and provider engagement process. Options will be tailored to each community's local needs, resources, and projected outlook, and will be prioritized based on Contractor's analysis and expertise.

This Task could include presentations at public GMCB meetings and/or to legislative committees at the request of the State.

As requested by the State, Contractor will collaborate with other State contractor(s) to estimate resources necessary to implement recommended transformation initiatives.

*Task 7: Provide ongoing project management.*

Contractor shall provide a project manager to work as the primary point of contact with the State. This person shall schedule at a minimum, bi-weekly, or as otherwise needed, meetings to discuss progress with State staff and State-identified key partners, provide written draft products for State review and feedback, and incorporate State feedback into final written products to the satisfaction of the State prior to payment. If requested, the project manager will work with the state to identify the appropriate team members to participate in State meetings as attendees, presenters, or facilitators.

As a part of its project management duties, the Contractor Project Manager will attend an agreed upon number of informational and status meetings and, when appropriate, call and lead such meetings. Such meetings may include the Project Management Team, the Contract Administrator, other consultants, elected officials, and other stakeholders as designated by the State. The Contractor Project Manager shall work directly with the State GMCB representative to define, manage, and control the project scope, timeline, issue escalation and resolution processes. Contractor shall deliver written status reports on a bi-weekly basis.

Status information shall include, at a minimum: all planned tasks accomplished, planned tasks that are incomplete, or behind schedule in the previous week (with reasons given for those behind schedule); all tasks planned for the upcoming two weeks; an updated status of tasks (entered into the project plan and attached to the status report – e.g., percent completed, resources assigned to tasks, etc.); and the status of any corrective actions undertaken. The report will also contain items such as the current status of the project's technical progress and contractual obligations; achievements to date; risk management activities; unresolved issues; requirements to resolve unresolved issues; action items; problems; significant changes to Contractor's organization or method of operation, to the project management team, or to the deliverable schedule, where applicable.

In addition, Contractor will create and routinely update the project plan to reflect changes, if any, in the nature and timing of project activities, all changes being subject to the State Contract Manager's approval. Any changes to project timelines and deliverable timelines indicated in this contract or the Engagement Plan must be requested and approved in writing by the State Contract Manager. Project deliverables and activities will be subject to the State's approval process to be defined by the State during the project kick-off.

### **Contractor Sub-agreements**

The State acknowledges and understands that Contractor will enter into a sub-agreement with West Monroe Partners for the performance of Services hereunder. Contractor shall deliver a copy of all such sub-agreements to the State for review upon request. Provided further, that the Contractor will ensure that any sub-agreement meets State requirements, including, but not limited to, Attachment C, section 19, and Attachment D, section 2.3.

**ATTACHMENT B – PAYMENT PROVISIONS**

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

1. Prior to commencement of work and release of any payments, Contractor shall submit to the State:
  - a. a certificate of insurance consistent with the requirements set forth in Attachment C, Section 8 (Insurance), and with any additional requirements for insurance as may be set forth elsewhere in this contract; and
  - b. a current IRS Form W-9 (signed within the last six months).
2. Payment terms are **Net 30** days from the date the State receives an error-free invoice with all necessary and complete supporting documentation. The Contractor reserves the right to suspend the provision of Services in the event of non-payment by the State.
3. Contractor shall submit detailed invoices itemizing all work performed during the invoice period, including the dates of service, rates of pay, hours of work performed, and any other information and/or documentation appropriate and sufficient to substantiate the amount invoiced for payment by the State. All invoices must include the Contract # for this contract.
4. Contractor shall submit invoices to the State in accordance with the schedule set forth in this Attachment B. Unless a more particular schedule is provided herein, invoices shall be submitted not more frequently than monthly.
5. **EXPENSES:** The fee for services shall be inclusive of Contractor expenses.
6. If Contractor fails to meet its performance obligations as mutually agreed under this contract, Contractor shall correct or re-perform the services and deliverables at no additional cost to the State.
7. Invoices shall be submitted to the State at [GMCB.BusinessOffice@vermont.gov](mailto:GMCB.BusinessOffice@vermont.gov).
8. The payment schedule for delivered products, or rates for services performed, and any additional reimbursements, are as follows:

| <b>Milestone</b>  | <b>Payment Amount</b> |
|---|-----------------------|
| Approved Engagement Plan                                    | \$100,000             |
| Round 1 materials approved by the State                     | \$150,000             |
| Round 1 meetings held in 7 of 14 HSAs                       | \$150,000             |
| Round 1 meetings held in 14 of 14 HSAs                      | \$150,000             |
| Recommendations submitted and accepted by the State         | \$100,000             |
| Round 2 meetings held in half of agreed upon locations      | \$100,000             |
| Round 2 meetings held in remainder of agreed upon locations | \$150,000             |
| Project complete = final payment                            | \$150,000             |
| <b>TOTAL</b>  | <b>\$1,050,000</b>    |

9. The services shall be provided for a fixed fee.

**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.

(End of Standard Provisions)

**ATTACHMENT D**  
**OTHER PROVISIONS**

**1. OWNERSHIP AND LICENSE IN DELIVERABLES**

**1.1 Contractor Intellectual Property.** Contractor shall retain all right, title and interest in and to any work, ideas, inventions, discoveries, tools, methodology, computer programs, processes and improvements and any other intellectual property, tangible or intangible, that has been created by Contractor prior to entering into this Contract or hereafter acquired (“Contractor Intellectual Property”). Should the State require a license for the use of Contractor Intellectual Property in connection with the development or use of the items that Contractor is required to deliver to the State under this Contract, including Work Product (“Deliverables”), the Contractor shall grant the State a royalty-free license for such development and use. For the avoidance of doubt, Work Product shall not be deemed to include Contractor Intellectual Property, provided the State shall be granted an irrevocable, perpetual, non-exclusive royalty-free license to use any such Contractor Intellectual Property that is incorporated into Work Product.

**1.2 State Intellectual Property.** The State shall retain all right, title and interest in and to (i) all content and all property, data and information furnished by or on behalf of the State or any agency, commission or board thereof, and to all information that is created under this Contract, including, but not limited to, all data that is generated under this Contract as a result of the use by Contractor, the State or any third party of any technology systems or knowledge bases that are developed for the State and used by Contractor hereunder, and all other rights, tangible or intangible; and (ii) all State trademarks, trade names, logos and other State identifiers, Internet uniform resource locators, State user name or names, Internet addresses and e-mail addresses obtained or developed pursuant to this Contract (collectively, “State Intellectual Property”).

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

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

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

“Work Product” means all intellectual property in project materials developed by the Contractor specifically and exclusively for the State in the course of providing the services hereunder (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection). Work Product does not include Contractor Intellectual Property or third party intellectual property.

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

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

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

**1.4 Use of Services and Work Product.** The Work Product and services provided hereunder by the Contractor may include advice and recommendations; however, all decisions in connection with the implementation of such advice and recommendations shall be the sole responsibility of, and made by, the State, provided that, for the avoidance of doubt, this sentence shall not limit Contractor’s liability for its own negligence or willful misconduct. The Work Product and such services are furnished solely for the internal use of the State and State entities and, without mutual agreement of the parties, shall not be disclosed in whole or in part to any third party, except in accordance with applicable law, provided that the final Work Product may be shared externally.

## **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 individual federal tax information, personal protected health information and other individually identifiable information protected by State or federal law or otherwise exempt from disclosure under the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq ("State Data"). 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.

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; (d) it will take all reasonable precautions to protect the State's information; and (e) it will not otherwise appropriate such information to its own use or to the use of any other person or entity. Contractor will take reasonable measures as are necessary to restrict access to State Data in the Contractor's possession to only those employees on its staff who must have the information on a "need to know" basis. The Contractor shall not retain any State Data except to the extent required to perform the services under this Contract.

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

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

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

### **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 term of this Contract the highest industry standard administrative, technical, and physical safeguards and controls consistent with NIST *Special Publication 800-53* (version 4 or higher) and *Federal Information Processing Standards Publication 200* and designed to (i) ensure the security and confidentiality of State Data; (ii) protect against any anticipated security threats or hazards to the security or integrity of the State Data; and (iii) protect against unauthorized access to or use of State Data. Such measures shall include at a minimum: (1) access controls on information systems, including controls to authenticate and permit access to State Data only to authorized individuals and controls to prevent the Contractor employees from providing State Data to unauthorized individuals who may seek to obtain this information (whether through fraudulent means or otherwise); (2) industry-standard firewall protection; (3) encryption of electronic State Data while in transit from the Contractor networks to external networks; (4) measures to store in a secure fashion all State Data which shall include 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 (a “Security Breach”), the Contractor shall notify the State promptly and in no event later than within 48 hours after its discovery. Contractor shall immediately determine the nature and extent of the Security Breach, contain the incident by stopping the unauthorized practice, recover records, shut down the system that was breached, revoke access and/or correct weaknesses in physical security. Contractor shall report to the State: (i) the nature of the Security Breach; (ii) the State Data used or disclosed; (iii) who made the unauthorized use or received the unauthorized disclosure; (iv) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and (v) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. The Contractor shall provide such other information, including a written report, as reasonably requested by the State. Contractor shall analyze and document the incident and provide all notices required by applicable law.

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

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

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

In addition to any other indemnification obligations in this Contract, the Contractor shall 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.

#### **4. CONTRACTOR’S REPRESENTATIONS AND WARRANTIES**

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

- a. 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.
- b. 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.
- c. The Contractor will comply with all laws applicable to its performance of the services and otherwise to the Contractor in connection with its obligations under this Contract.
- d. 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.
- e. The Contractor has adequate resources to fulfill its obligations under this Contract.
- f. 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:

- a. 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.

## **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, \$2,000,000 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 \$2,000,000.

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** 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. Contractor shall assist the State in exporting and extracting any and all State data, in a format usable without the use of the Services and as agreed to by State, at no additional cost. Any transition services requested by State involving additional knowledge transfer and support may be subject to a contract amendment for a fixed fee or at rates to be mutually agreed upon by the parties.

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

**7.2 Return of Property.** Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to State all State Intellectual Property and State Data (including without limitation any Deliverables for which State has made payment in whole or in part), 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 within thirty days of (i) the State's written request or (ii) termination or expiration of this Contract for any reason, Contractor shall securely dispose of all copies, whether in written, electronic or other form or media, of 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. Notwithstanding the foregoing, the Contractor shall be permitted to retain copies of State Data in accordance with its legal, disaster recovery and records retention requirements, but subject to its confidentiality obligations.

**9. SOV Cybersecurity Standard Update 2023-01:** Contractor confirms that all products and services provided to or for the use of the State under this Agreement shall be in compliance with *State of Vermont Cybersecurity Standard 23-01*, which prohibits the use of certain branded products in State information systems or any vendor system that is supporting State information systems, and is available on-line at: <https://digitalservices.vermont.gov/cybersecurity/cybersecurity-standards-and-directives>

**10. LIMITATION OF LIABILITY.** CONTRACTOR'S LIABILITY FOR DAMAGES TO THE STATE ARISING OUT OF THE SUBJECT MATTER OF THIS CONTRACT SHALL NOT EXCEED TWO TIMES THE MAXIMUM AMOUNT PAYABLE UNDER THIS CONTRACT, OR \$2,000,000.00, WHICHEVER IS GREATER. LIMITS OF LIABILITY FOR STATE CLAIMS SHALL NOT APPLY TO STATE CLAIMS ARISING OUT OF: (A) CONTRACTOR'S OBLIGATION TO INDEMNIFY THE STATE; (B) CONTRACTOR'S CONFIDENTIALITY OBLIGATIONS TO THE STATE; (C) PERSONAL INJURY OR DAMAGE TO REAL OR PERSONAL PROPERTY; (D) CONTRACTOR'S GROSS NEGLIGENCE, FRAUD, OR INTENTIONAL MISCONDUCT; OR (E) VIOLATIONS OF THE STATE OF VERMONT FALSE CLAIMS ACT. IN NO EVENT SHALL THIS LIMIT OF LIABILITY BE CONSTRUED TO LIMIT CONTRACTOR'S LIABILITY TO THIRD PARTIES FOR THIRD PARTY CLAIMS DIRECTLY AGAINST THE CONTRACTOR WHICH MAY ARISE OUT OF CONTRACTOR'S ACTS OR OMISSIONS IN THE PERFORMANCE OF THIS CONTRACT.

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

THIS SECTION SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

**11. CHANGES TO ATTACHMENT C:** Notwithstanding anything herein to the contrary, for the purposes of this Agreement, the parties agree to amend Attachment C as follows:

11.1 The first sentence of the first paragraph of Attachment C, Section 7 (Defense and Indemnity), is hereby revised as follows:

“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 willful misconduct of, or nonconformance with the requirements of this Agreement by, the Party or ~~of~~ any agent of the Party in connection with the performance of this Agreement, or breach of this Agreement by the Party or any agent of the Party, as well as for the loss or damage to tangible property caused by the Party or any agent of the Party.”

11.2 The third paragraph of Attachment C, Section 7 (Defense and Indemnity) is hereby revised as follows:

“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 willful misconduct of, or nonconformance with the requirements of this Agreement by, the Party or an agent of the Party in connection with the performance of this Agreement, or breach of this Agreement by the Party or any agent of the Party.”

11.3 Section 23 of Attachment C (Conflict of Interest) is hereby revised as follows:

“

It is Party’s practice to serve multiple clients within industries, including those with potentially opposing interests. Accordingly, Party may have served, may currently be serving or may in the future service other clients whose interests may be adverse to those of the State. In all such situations, Party will maintain the confidentiality of each client’s information and will abide by non-disclosure procedures (such as firewall protocols and other safeguards) to ensure that all confidences are protected and that the Work Product

and services provided by Contractor to the State under this Agreement are not influenced by Contractor's interests in work for other clients.

If the State determines that a conflict of interest, as determined by the State, exists, the State may invoke its right to terminate this Contract.

During the provision of the Services hereunder and for a period of six months after the completion thereof, Contractor employees who perform work under this Agreement shall not be assigned by the Contractor to perform substantially similar services for any participant in the healthcare market in the State of Vermont, unless otherwise approved in writing by the State."

11.4 Section 26 of Attachment C (Marketing) is hereby revised as follows:

"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. The State will not refer to the Party for advertising or promotion purposes or refer to the Party in a press release, without the Party's prior review and written consent. To the extent the State refers to the Party in response to interviews by the press, the State shall promptly inform the Party of the content of such interview."

11.5 Section 27 C of Attachment C (Termination Assistance) is hereby revised as follows:

"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. The Party shall be permitted to retain copies of Confidential Information in accordance with its legal, disaster recovery and records retention requirements, but subject to its confidentiality obligations."

11.6 The following additional provisions are hereby added to Attachment C:

**"33. USE OF STATE INFORMATION AND DATA.** The Party will use all information supplied by the State without independently verifying the same. The Party assumes no responsibility for the accuracy or completeness of such information."