

1. **Parties.** This is a contract for services between the State of Vermont, Green Mountain Care Board (hereinafter called "the State"), and Deloitte Transactions and Business Analytics, LLP (DTBA), with a principal place of business in New York, NY (hereinafter called "Contractor" or "Party"). Contractor's form of business organization is a limited liability partnership. 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 performing financial analyses and financial scenario modeling regarding the University of Vermont Medical Center's proposal to replace the existing electronic health record (EHR) systems of four Vermont hospitals with a single-platform EHR system. 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 \$80,000.00.

4. **Contract Term.** The period of Contractor's performance shall begin on June 6, 2017 and end on July 18, 2017.

5. **Prior Approvals.** If approval by the Attorney General's Office or the Secretary of Administration is required, (under current law, bulletins, and interpretations), neither this contract nor any amendment to it is binding until it has been approved by either or both such persons.

- Approval by the Attorney General's Office is required.
- Approval by the Secretary of Administration is required.
- Approval by the CIO/Commissioner DII is not required.

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. **Cancellation.** This contract may be canceled by either party by giving written notice at least thirty (30) days in advance.

8. **Attachments.** This contract consists of 22 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 (revision date 07/01/2016)
- Attachment D - Other Contract 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) This document (Standard Contract)
- (2) Attachment D (Other Contract Provisions)
- (3) Attachment C (Standard Contract Provisions for Contracts and Grants)
- (4) Attachment A (Statement of Work)
- (5) Attachment B (Payment Provisions)

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

By the State of Vermont:

Date: 6/5/17  
Signature:   
Name: Susan J. Barrett  
Title: Executive Director

By the Contractor:

Date: 6/5/2017  
Signature:   
Name: George Psarianos  
Title: MANAGING DIRECTOR

## **Attachment A Statement of Work**

### **1. Introduction**

- 1.1 Pursuant to 18 V.S.A. Sections 9375(b)(8) and 9433, the State has duties and powers necessary for the implementation of Vermont's Certificate of Need (CON) program.
- 1.2 Contractor will perform the work covered in this contract and complete such work in a period of time not to exceed six (6) weeks from the date of execution of this contract and receipt of required documentation from the State to complete the analysis.

Contractor will perform an analysis of existing debt capacity studies and analytics and provide the State with observations and recommendations to assist it to analyze and understand the capacity of the University of Vermont Medical Center (UVMCMC) to meet and sustain its ongoing operating costs and financial commitments relating to a CON that proposes an upgrade of the University of Vermont Health Network's Electronic Health Record system ("Proposed Project").

### **2. A. Scope of Work**

Under this contract, Contractor will as requested by the State:

- 2.1 Analyze and comment on the existing debt capacity studies and analytics as provided by UVMCMC, its advisors and consultants, including underlying assumptions, financial plans, and cash flow analyses relating to UVMCMC's capacity to initiate and sustain the financing of the Proposed Project.
- 2.2 Conduct interviews with UVMCMC, its advisors and consultants as needed to obtain an understanding of information relating to the debt capacity studies and analytics referenced in 2.1, above.
- 2.3 Analyze and comment on the financial tables, projections, and financing documents prepared by or on behalf of UVMCMC, its advisors and consultants and provide observations and recommendations on the functionality (including formulas and logic) of the financial model provided by UVMCMC.
- 2.4 Provide the State with observations and recommendations to assist the State with its assessment of UVMCMC's capacity to meet and sustain all ongoing operating costs and financial commitments.
- 2.5 Analyze the Proposed Project to identify potential significant project completion risks as well as strengths, weaknesses, opportunities and threats (SWOT), and provide a comparative analysis of significant performance indicators as measured against publicly available information for comparable major teaching hospitals.

- 2.6 (A) Provide a progress report that includes its initial findings and analysis, in writing, no later than fourteen (14) calendar days following the start date of this contract, and respond to any questions the State may have relating to the services performed hereunder during the period the Contractor is engaged. The parties may agree, in writing, to waive the progress report.
- (B) Provide the State with its final findings and analysis in a Report which may include supporting tables, graphs, or other appropriate narrative and graphics. Contractor will provide the State a draft of the final Report on or before July 10, 2017, and will present its findings via teleconference to the State and/or its staff to allow the State's questions and comments to be incorporated into the final Report. Contractor will provide the State with a final Report no later than six (6) weeks from the date of execution of this contract and receipt of required documentation from the State to complete the analysis.
- 2.7 Notify the State in writing regarding anticipated delays in meeting the Report submission due dates stipulated in sections 2.6(A) and 2.6(B), above, no later than five (5) business days prior to each deadline. Contractor shall include in such notification the reasons for delayed delivery, including specific issues causing the delay, actions being taken to mitigate anticipated delays, and proposed alternative completion dates.
- 2.8 In the event of unanticipated delays in meeting the report submission deadlines stipulated in sections 2.6(A) and 2.6(B), Contractor will notify the State within two (2) business days after the submission deadline regarding the delay and provide a detailed written explanation for the delay, within five (5) business days after the submission deadline.
- 2.9 Failure of Contractor to comply with the submission requirements for any report or notification of delay as set forth in sections 2.6 through 2.8, may, at the sole discretion of the State, be deemed a material breach of this contract.

### **3. Other General Contract Requirements**

- 3.1 Throughout the project, Contractor shall provide a preliminary response to inquiries from the State related to any matter within the scope of work described above within two (2) business days and a detailed response within five (5) business days, or within a mutually-agreed time frame.
- 3.2 The State and Contractor shall work in good faith to meet the spirit and intent of the terms of this contract.
- 3.3 The State shall pay fees to Contractor as set forth in Attachment B.
- 3.4 Contractor shall meet via teleconference as requested by the State during the course of this agreement.

**Attachment B**  
**Payment Provisions**

1. The maximum amount payable under this contract, including any and all expenses, is not to exceed the amount stated on page 1, paragraph 3 of this Contract (the "Maximum Amount"), which amount shall be paid by State funds (and is not Federally funded). The Maximum Amount is not intended under this Contract as any form of a guaranteed amount.
2. Payments for subcontractors will only be made upon approval by the State (See Attachment C, #19, as modified by Attachment D).
3. Charges payable by the State under this contract for services rendered by Contractor will be computed on a time and materials basis at the following rates:

Position	Rate per hour
Managing Director	\$ 498
Senior Manager	\$ 465
Manager	\$ 433
Senior Consultant	\$ 380
Consultant	\$ 328

4. The Contractor will submit a first invoice for services provided and expenses incurred after four weeks from the date of execution of this Contract and a second invoice for services provided and expenses incurred upon the GMCB's receipt of the final report to the State for services provided and expenses incurred. Invoices must include: unique invoice number; dates of service for specified contract deliverable; and the address for remittance of payment. The parties agree that Contractor will not be required to incur expenses, including travel expenses, in connection with this Contract.
5. The State will compensate Contractor under the terms of the contract for services for the Services performed and expenses incurred, through the term or effective date of termination of this engagement. Payment terms for this contract shall be NET 30 days from the date the State receives an error-free invoice with all necessary and complete supporting documentation. The State shall pay Contractor in accordance with the aforementioned payment terms.
6. Invoices shall be submitted to:

Erin Collier  
Green Mountain Care Board  
89 Main Street  
Montpelier, VT 05620

**ATTACHMENT C: STANDARD STATE PROVISIONS  
FOR CONTRACTS AND GRANTS  
REVISED JULY 1, 2016**

**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 the 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. In the event the State withholds approval to settle any such claim, then the Party shall proceed with the defense of the claim but under those circumstances, the Party's indemnification obligations shall be limited to the amount of the proposed settlement initially rejected by the State.

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 in the event that 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.

The Party agrees that in no event shall the terms of this Agreement nor any document required by the Party in connection with its performance under this Agreement obligate the State to defend or indemnify the Party or otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party except to the extent awarded by a court of competent jurisdiction.

**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 the 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 the Contract, 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. Federal Requirements Pertaining to Grants and Subrecipient Agreements:**

**A. Requirement to Have a Single Audit:** In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, 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 the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, 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 the case that this Agreement is a Grant funded in whole or in part by Federal funds, in accordance with 2CFR 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.

**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 the 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 the 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 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 23 ("Certification Regarding Use of State Funds"); Section 31 ("State Facilities"); and Section 32 ("Location of State Data").

**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. Certification Regarding Use of State Funds:** In the case that 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.

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

**25. 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.

**26. 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.

**27. 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.

**28. Termination:** In addition to any right of the State to terminate for convenience, the State may terminate this Agreement as follows:

- 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. No Implied Waiver of Remedies:** A 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.

**29. 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.

**30. 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.

**31. 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.

**32. 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 continental United States, except with the express written permission of the State.

(End of Standard Provisions)

### ATTACHMENT D: Other Contract Provisions

1. Confidentiality. The parties hereby agree that Section 25 (Confidentiality) of Attachment C is hereby deleted entirely and replaced with the following text:

The Party agrees, with respect to information obtained in relation to the services performed under this contract, to keep information related to the State and all agencies and companies related to this contract confidential using at least the same degree of care as it employs in maintaining in confidence its own confidential information of a similar nature, but in no event less than a reasonable degree of care, and agrees not to use any State confidential information obtained in relation to the services performed under this contract for any purpose other than as permitted by this contract or authorized by the State. The State hereby consents to the receiving party disclosing State confidential information: (i) as expressly permitted in this contract; (ii) to contractors located within the United States, in connection with this contract, that have agreed to be bound by confidentiality obligations similar to those in this Section, (iii) as may be required by law or regulation, or in accordance with applicable professional standards or rules, or in connection with litigation pertaining to this contract, or (iv) to the extent such information (A) is or becomes publicly available other than as the result of a disclosure in breach hereof, (B) becomes available to the Party on a nonconfidential basis from a source that the Party believes is not prohibited from disclosing such information to the Party, (C) is already known by the Party without any obligation of confidentiality with respect thereto, or (D) is developed by the Party independently of any disclosures made to the Party. The Party agrees not to publish, reproduce, or otherwise divulge such information in whole or in part, in any manner or form or authorize or permit others to do so, except in order to perform its obligations under this contract. The Party will take reasonable measures as are necessary to restrict access to confidential information in the Party's possession to those employees who must have the information to perform their job. The Party agrees to promptly notify, in writing, the State's authorized representative in the event the Party confirms that there has been unauthorized disclosure of State confidential information in breach of this requirement.

The Party 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 Party may have access, so that the State may seek an appropriate protective order.

The Party acknowledges and agrees that this Contract and any and all Party 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 Party, and which gives the Party an opportunity to obtain business advantage over competitors who do not know it or use it.

The State shall immediately notify the Party 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 Party information. The Party 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. The Party 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; provided the State complied with this Section 1.

All services performed, and deliverables created, under this Contract shall be solely for the State's benefit, and are not intended to be relied upon by any person or entity other than the State. Except as required by law, the State shall not disclose the services or deliverables, or refer to the services or deliverables in any communication, to any person or entity.

2. **Obligations Regarding Protected Information.** The Party shall assure compliance by the Party of any and all obligations the Party may have under HIPAA and any other applicable state or federal law regarding protected health, personal, or otherwise confidential information.
3. **Security.** The Party shall maintain security and confidentiality policies and procedures consistent with industry standards with regard to the information obtained from regulated entities. The Party shall have recovery procedures in place to handle replacement of data in the event of a disaster.
4. **Conflict of Interest.** The parties hereby agree that Section 24 (Conflict of Interest) of Attachment C is hereby deleted entirely and replaced with the following text:

If an unlawful conflict of interest exists between a regulated entity and a member or members of the Party's staff, the Party shall substitute similarly qualified individuals for the conflicted members. If an unlawful conflict of interest exists between the Party and a regulated entity, the State may immediately remove that assignment from the Party, or may invoke its right to terminate this Contract pursuant to paragraph 7 on page 1 of this contract. The Party agrees that the failure to disclose any such conflicts shall be deemed an event of default under this Contract, and this Contract may be terminated in accordance with Section 16 of this Attachment D.
5. **Protection of Personal Information.** The Party agrees to establish and maintain policies and procedures designed to ensure compliance with 9 V.S.A. Chapter 62 (Protection of Personal Information) with respect to data collected in connection with the Party's activities pursuant to the Contract.
6. **Prior Approval of Workers.** The State shall have the right to approve any personnel the Party proposes to assign to work requested by the State prior to the commencement of such work, which approval will not be unlawfully or unreasonably withheld. If the

proposed personnel of the Party are not approved by the State in accordance with the preceding sentence, the Party will propose alternative individuals for the State's consideration. The State's right to approve or request replacement of Party personnel hereunder relates solely to the removal of individuals from work on this Contract with the State and does not create any employment or principal-agent relationship. Nothing in this Contract authorizes the State to direct the Party's termination of, or other adverse action related to, the employment of any individual.

7. **Intellectual Property/Work Product Ownership.** Upon full payment to the Party under this Contract, and subject to the terms and conditions herein, the Party shall assign to State all ownership rights in and to all data, technical information, materials first gathered, originated, developed, or prepared by the Party for delivery to the State under this agreement, including, but not limited to all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and printouts, notes and memoranda, written procedures and documents, which are prepared by the Party for delivery to the State specifically for this agreement ("Work Product"), except to the extent any Work Product contains any Party Technology. "Party Technology" means all works of authorship, materials, information, and other intellectual property created prior to or independently of the performance of the services, or created by the Party or its subcontractors as a tool for their use in performing the services, plus any modifications or enhancements thereto and derivative works based thereon. Upon full payment to the Party under this Contract, and subject to the terms and conditions contained herein, the Party hereby grants to the State a perpetual, non-exclusive, irrevocable, royalty-free license to use, for the State's internal business purposes, any Party Technology included in the Work Product in connection with its use of the Work Product and, subject to the State's obligations with respect to Party's Confidential Information, the right to sublicense the same to contractors solely for their use in providing services to the State on the State's behalf. Except for the foregoing license grant, the Party or its licensors retain all rights in and to all Party Technology.

To the extent any Party Technology provided to the State hereunder constitutes inventory within the meaning of section 471 of the Internal Revenue Code, such Party Technology is licensed to the State by the Party as agent for its product company subsidiary on the terms and conditions contained herein. The rights granted in this Section 7 do not apply to any works of authorship, materials, information, and other intellectual property (including any modifications or enhancements thereto or derivative works based thereon) that are subject to a separate license agreement between the State and any third party.

The Work Product shall be delivered to the State of Vermont in accordance with any timing requirements agreed to in this contract and otherwise upon 30 days' notice by the State; provided that any work-in-progress Work Product shall be provided on an as-is basis, without warranty of any kind.

The Party shall not sell or copyright the portion of any Work Product produced under this agreement that is owned by the State pursuant to this Section 7 without explicit permission from the State.

- 8. Notices.** All notices hereunder shall be (a) in writing; (b) delivered to the representatives of the parties at the addresses set forth below unless changed by either party by notice to the other party; and (c) effective upon receipt.

Bruce T. Spector  
Deloitte Transactions and Business Analytics LLP  
30 Rockefeller Plaza  
New York, NY 10112

Judy Henkin  
Green Mountain Care Board  
89 Main Street, 3<sup>rd</sup> Floor  
Montpelier, VT 05620

- 9. Severability.** If any provision of this Contract is unenforceable, such provision shall not affect the other provisions, but such unenforceable provision shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permissible the intent of the parties set forth herein.

- 10. Survival and Interpretation.** All provisions that are intended by their nature to survive performance of the services under this Contract shall survive such performance, or the expiration or termination of this contract. Each of the provisions of these terms shall apply to the fullest extent of the law, whether in contract, statute, tort (such as negligence), or otherwise notwithstanding the failure of the essential purpose of any remedy. Any references herein to the term "including" shall be deemed to be followed by "without limitation."

- 11. Force Majeure.** The parties hereby agree that Section 26 (Force Majeure) of Attachment C is hereby deleted entirely and replaced with the following text:

Neither party shall be liable for any delays or nonperformance directly or indirectly resulting from circumstances or causes beyond its reasonable control, including: fire, epidemic, or other casualty; act of God; war or other violence; or any law, order, or requirement of any governmental agency or authority. The nonperforming party asserting Force Majeure shall promptly notify the other party of the event giving rise to the Force Majeure, and use commercially reasonable efforts to perform notwithstanding the event giving rise to the Force Majeure.

- 12. Limitation on Warranties.** This is a services engagement. The Party warrants that it shall perform the Services in good faith and with due professional care. THE PARTY DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.



**13. Services Exclusions.** In connection with the Services, in no event shall the Party be required to (1) provide testimony, (2) serve as a witness, (3) update any Deliverable (as defined herein) for any events or circumstances occurring subsequent to the date of such Deliverable, or (4) furnish additional work or services, unless pursuant to a separate, signed agreement with terms and conditions that are acceptable to the Party and the State. The State acknowledges that the Deliverables are complete only when accepted, as applicable, in their entirety and only for the purpose stated therein. For the purpose of this paragraph, the Deliverables are accepted when the State provides written notice of acceptance to the Party. Furthermore, the State acknowledges that: (1) neither the Services nor any Deliverables, in whole or in part, shall constitute a fairness or solvency opinion; (2) the Party will not provide any legal advice or address any questions of law; and (3) the performance of the Services does not constitute an audit conducted in accordance with generally accepted auditing standards, an examination of internal controls, or other attestation or review services in accordance with standards established by the American Institute of Certified Public Accountants, the Public Company Accounting Oversight Board (the "PCAOB"), or other regulatory body.

**14. State Responsibilities, Third Party Information, and Assumptions.**

- 14.1. The State shall cooperate with the Party in the performance of the Services, including providing the Party with reasonable facilities and timely access to data, information, and personnel of the State. The Party shall not be responsible for, among other things, (1) the accuracy and completeness of all data and information provided by the State to the Party for purposes of the performance of the Services, (2) making all management decisions and performing all management functions; and (3) evaluating the adequacy and results of the Services. The Party's performance is dependent upon the timely and effective satisfaction of the State's responsibilities hereunder and timely decisions and approvals of the State in connection with the Services. The Party shall be entitled to rely on all decisions and approvals of the State.
- 14.2. The Party may use information and data furnished by parties other than the State and its agents if the Party in good faith believes that such information and data is reliable. The Party, however, shall neither be responsible for, nor provide any assurance regarding, the accuracy or completeness of any such information or data.
- 14.3. The Party shall be entitled to assume, without independent verification, the accuracy and completeness of any and all assumptions provided to the Party by or on behalf of the State for purposes of the performance by the Party of the Services.
- 14.4. The State shall be solely responsible for, and the Party shall have no responsibility for, any and all (1) financial and tax reporting, and (2) matters of legal description or title relating to or arising from the Services.
- 14.5. The Party shall be entitled to make, and shall have no responsibility for, the following assumptions regarding the assets, properties, or business interests included in the Services: (1) title is good and marketable; (2) such assets, properties, or business interests are free and clear of any and all liens or encumbrances; (3) there is full compliance with all applicable federal, state, local, and national regulations and laws (including, without limitation, zoning regulations); (4) there are no encroachments; (5) the land is free of adverse soil conditions that could prohibit development of the property to its highest and best use; (6) there is responsible ownership and competent management with respect to such assets, properties, or

business interests; (7) all required licenses, certificates of occupancy, consents, or legislative or administrative authority from any federal, state, local, or national government, private entity, or organization have been obtained or renewed or will be obtained or renewed when needed for any use on which the Services are to be based; and (8) any plot plans, sketches, drawings, or other exhibits that may be included in a Deliverable, if any, are included only to assist the reader in visualizing the property.

- 14.6. The Party shall not assume any responsibility for identifying structural conditions and the Services (1) will be based upon surface rights only, and no analysis will be made of the subsurface or of hazardous waste conditions, if any, and (2) shall not take into consideration the possibility of the existence of asbestos; PCB transformers; other toxic, hazardous, or contaminated substances; underground storage tanks; or the cost of removal of any such substance or item. The Party is not qualified to detect, and shall not be responsible for detecting, such substances or items.

**15. Professional Liability Insurance.** 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, the Party agrees to procure and maintain Professional Liability insurance for any and all services performed under this Contract, with minimum coverage of \$5,000,000.00 per claim, \$10,000,000.00 aggregate.

**16. Termination.** The parties hereby agree that Section 28 (Termination) of Attachment C is hereby modified as follows:

- D. The lead-in to Section 28 is modified to read: "In addition to any right of either party to terminate for convenience, this Agreement may be terminated as follows:"
- E. The State shall provide the Party with written notice of its intent to terminate under Section 28(A) as much in advance as possible.
- F. The following shall be added as new Sections 28(D) and (E).
  - a. **Section 28(D): Termination for Independence Reasons:** The Party may terminate this Agreement or performance of any part of the Services, upon written notice to the State, if the Party determines that performance of any part of the Services would be in conflict with law, or independence or professional rules.
  - b. **Section 28(E): Effect of Termination:** In the event of any cancellation or termination of this contract for any reason, the State will pay the Party for the services rendered and expense incurred up through the effective date of cancellation or termination.

**17. Indemnification.** The parties hereby agree that Section 7 (Defense and Indemnity) of Attachment C is hereby deleted entirely and replaced with the following text:

The Party shall indemnify and defend the State and its officers and employees against all claims or suits arising in whole or in part from all Claims attributable to the claims of third parties solely for bodily injury, death, or physical damage to real or tangible personal property, to the extent

directly and proximately caused by the negligence or intentional misconduct of the Party while engaged in the performance of the services hereunder.

The Party shall indemnify and defend the State for any employment-related payment obligations (including taxes, interest, and penalties arising therefrom) assessed against the State with respect to the Party's personnel performing the Services, except to the extent that such payment obligations are assessed against the State as a result of acts or omissions of the State.

The Party shall indemnify and defend the State from all Claims brought against the State by any subcontractor of the Party or any other person performing a portion of the Services under this contract for payment of its fees to the extent caused by the Party's failure to pay such fees in accordance with the terms of the applicable subcontract.

The Party shall indemnify and defend the State and its officers and employees from all Claims attributable to the claims of third parties for infringement by any Work Product of any U.S. patent existing at the time of delivery and known to the Party or copyright or any unauthorized use of any trade secret, except to the extent that such infringement or unauthorized use arises from, or could have been avoided except for (i) modification of such Work Product other than by the Party or its subcontractors or use thereof in a manner not contemplated by this Contract, (ii) the failure of the indemnified party to use any corrections or modifications made available by the Party, (iii) information, materials, instructions, specifications, requirements or designs provided by or on behalf of the indemnified party, or (iv) the use of such Work Product in combination with any platform, product, network or data not provided by the Party. If the State's use of any such Work Product, or any portion thereof, is or is likely to be enjoined by order of a court of competent jurisdiction as such an infringement or unauthorized use, the Party, at its option and expense, shall have the right to (x) procure for the State the continued use of such Work Product, (y) replace such Work Product with a non-infringing Work Product, or (z) modify such Work Product so it becomes non-infringing; provided that, if (y) or (z) is the option chosen by the Party, the replacement or modified Work Product is capable of performing substantially the same function. In the event the Party cannot reasonably procure, replace or modify such Work Product in accordance with the immediately preceding sentence, the Party may require the State to cease use of such Work Product and refund the professional fees paid to the Party with respect to the Services giving rise to such Work Product. The foregoing provisions of this Section constitute the sole and exclusive remedy of the indemnified parties, and the sole and exclusive obligation of Contractor, relating to a claim that any of the Party's Work Product infringes any patent, copyright or other intellectual property right of a third party.

The State shall notify the Party in the event of any such claim or suit that is subject to indemnification under this Contract ("Indemnity Claim"), and the Party shall have control over the defense of any Indemnity Claim. The State retains the right to participate at its own expense in the defense of any Indemnity Claim. The State shall have the right to approve all proposed settlements of Indemnity Claims, except such approval is not required if the sole relief provided is the payment of monetary damages by the Party and, to the extent that any non-monetary relief is provided, such non-monetary relief is applicable only to the Party.

**18. Limitation on Damages.** THE PARTY AND ITS PERSONNEL SHALL NOT BE LIABLE TO THE STATE FOR ANY CLAIMS, LIABILITIES, OR EXPENSES RELATING TO THIS ENGAGEMENT ("CLAIMS") FOR AN AGGREGATE AMOUNT IN EXCESS OF THREE TIMES THE MAXIMUM AMOUNT (AS STATED IN PAGE 1, PARAGRAPH 3 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 LIMITATION SHALL NOT APPLY TO THE EXTENT RESULTING FROM THE GROSS NEGLIGENCE, RECKLESSNESS, BAD FAITH, FRAUD, OR INTENTIONAL MISCONDUCT OF THE PARTY OR ITS SUBCONTRACTORS, OR TO ANY CLAIM (A) FOR WHICH THE PARTY HAS AN EXPRESS OBLIGATION TO INDEMNIFY THE STATE, OR (B) RESULTING FROM A DISCLOSURE OF STATE CONFIDENTIAL INFORMATION BY THE PARTY IN BREACH OF THE PARTY'S CONFIDENTIALITY OBLIGATIONS UNDER SECTION 1 OF THIS ATTACHMENT D.

The provisions of this Section shall apply notwithstanding any other provisions of this Contract or any other agreement, and shall survive the expiration or termination of this Contract.

**19. Subcontracting:** The parties hereby agree that the first two sentences of Section 19 (Sub-Agreements) are hereby deleted entirely and replaced with the following text:

Except with respect to affiliates of the Party disclosed to the State prior to the execution of this Agreement, the Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other individual or entity without the prior written approval of the State. Party shall be responsible to the State for the Services performed by any subcontractor (including any affiliate or other person performing work under this Agreement) to the same extent that Party would be responsible hereunder to the State if Party had performed such Services.

**20. Continuity of Performance:** The parties hereby agree that Section 29 (Continuity of Performance) of Attachment C is hereby deleted entirely and replaced with the following text:

In the event of a dispute between the Party and the State, but subject to their termination rights, 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.

**21. Transition Assistance:** The parties hereby agree that Section 30 (Transition Assistance) of Attachment C is hereby deleted entirely and replaced with the following text:

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, not to exceed twenty-five (25) hours. 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.

**22. Insurance:** The parties hereby agree that Section 8 (Insurance) of Attachment C is hereby deleted entirely and replaced with the following text:

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 the 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 and Advertising 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 each accident. 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 each accident.

*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 with respect to Party's acts or omissions in

performance of its services as defined in this Agreement. 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 with respect to Additional Insured status.

*Notice of Cancellation or Change.* There shall be no cancellation, material adverse change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days prior written notice to the State by Party in the event Party is unable to procure replacement insurance meeting the requirements and specifications herein in such situations.

**23. Location of Data:** The parties hereby agree that Section 32 (Location of Data) of Attachment C is hereby deleted entirely and replaced with the following text:

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 continental United States, except with the express written permission of the State. The State hereby expressly consents to the Party performing the following services under this Contract outside of the continental United States through an affiliate of the Party: assisting the Party in analyzing and reviewing financial models provided by the State or created by the Party, drafting reports and performing other analyses and administrative tasks. As such, the State hereby agrees that the prohibition contained in the first sentence of this clause will not apply to a State data being processed, transmitted, stored, or transferred outside continental United States as a result of the Party performing such services outside of the continental United States.