STATE OF VERMONT
PARTICIPATING ADDENDUM NO. [#30649]

SOFTWARE RESELLER AGREEMENT
MASSACHUSETTS AGREEMENT NO. ITS58

CDW GOVERNMENT LLC

1. ***Parties.*** This Participating Addendum is a contract between the **State of Vermont**, Department of Buildings and General Services, Office of Purchasing & Contracting (hereinafter "State" or "Vermont"), and **CDW Government LLC, a for-profit corporation with principal place of business in Vernon Hills, IL.** (hereinafter "Contractor"). It is the Contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, the Contractor is required to have a Vermont Department of Taxes Business Account Number.

2. ***Subject Matter.*** The subject matter of this Participating Addendum is the purchase of Software products pursuant the Massachusetts ITS58 Software Reseller Agreement for Computer Software and Services (hereinafter the "Master Agreement"), which is hereby incorporated by reference and shall apply to any and all purchases made under this Participating Addendum.

3. ***Contract Term.*** The period of Contractor's performance shall begin on March 1, 2016 and end on June 30, 2020, unless terminated earlier in accordance with the terms of this Participating Addendum or the Master Agreement.

4. ***Scope of Services.*** The Contractor shall provide the services and products set forth in the Master Agreement to Eligible Entities, as defined herein, in accordance with the requirements set forth in this Participating Addendum.

5. ***Prior Approvals.*** In accordance with current State law, bulletins, and interpretations, this Participating Addendum shall not be binding until it has been approved by the Vermont Attorney General's Office, the Secretary of Administration, and the State's Chief Information Officer.

6. ***Agreement; Amendment.*** This Participating Addendum and the Master Agreement (including all amendments and attachments thereto) represents the entire agreement between the parties. No changes, modifications, or amendments in the terms and conditions of this Participating Addendum shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.

7. ***Attachments***. This Participating Addendum consists the following attachments which are incorporated herein and shall apply to the purchase of any products or services made under this Participating Addendum:
   Attachment A: General Provisions of Contract
   Attachment B: Payment Provisions
   Attachment C: "Standard State Provisions for Contracts and Grants" effective 9/01/15
   Attachment D: Standard State Provisions for Information Technology Contracts
   Attachment E: Business Associate Agreement
   Attachment F: Agency of Human Services' Customary Contract Provisions
   Attachment G: ITS58 Purchase Order Form (including exhibits)

8. ***Order of Precedence***. Any ambiguity, conflict or inconsistency between the provisions which constitute this agreement shall be resolved according to the following order of precedence:

1) This Participating Addendum (including all Attachments, with Attachment D primary, then Attachment C, then the rest of the attachments in alphabetic order)
2) Massachusetts ITS58 Software Reseller Agreement for Computer Software and Services
3) Any Purchase Order issued hereunder.

9. ***Entire Agreement.*** This Participating Addendum and the Master Agreement (including all amendments and attachments thereto) constitute the entire agreement between the parties concerning the subject matter of this Participating Addendum and replaces any prior oral or written communications between the parties, all of which are excluded. There are no conditions, understandings, agreements, representations or warranties, expressed or implied, that are not specified herein. This Participating Addendum may be modified only by a written document executed by the parties hereto.

By signing below the Contractor agrees to offer the same products and/or services as on the Massachusetts ITS58 Software Reseller Agreement for Computer Software and Services, at prices equal to or lower than the prices on that contract.

IN WITNESS WHEREOF, the parties have executed this Participating Addendum as of the date of execution by both parties below.

Participating State: Vermont	Contractor: CDW Government LLC
By: E-SIGNED by Deborah Damore on 2016-04-20 16:51:49 GMT	By:
Name: Deborah Damore	Name: Dario J. Bertocchi
Title: Director	Title: Sr. Manager, Program Sales
Date: Purchasing & Contracting	Date: 4/11/2016

Reviewed By: CL

#30649

ATTACHMENT A: GENERAL PROVISIONS OF CONTRACT

1. **Eligible Entities**: This Participating Addendum may be used by all departments, offices, institutions, and other agencies of the State of Vermont and counties (hereinafter "State Purchasers") according to the process for ordering and other restrictions applicable to State Purchasers set forth herein.

   Political subdivisions of the State of Vermont under 29 V.S.A. § 902(a) and any institution of higher education chartered in Vermont and accredited or holding a certificate of approval from the State Board of Education (hereinafter "Additional Purchasers") may participate in this contract at the same prices, terms and conditions. Further, items furnished to Additional Purchasers will be billed directly to and paid for by the Additional Purchaser. Neither the State of Vermont nor its Commissioner of Buildings and General Services, personally or officially, assumes any responsibility or liability for Additional Purchasers.

2. **Available Products & Services**: The following products and services listed in the Master Agreement are available for purchase under this Participating Addendum:

   a. Software (including Software as a Service ("SaaS")).

   b. Training

   c. Pre-sales assistance

   d. Documentation

   e. Installation

   f. Configuration

   g. Maintenance

   h. Support

   i. Customization

   j. Volume License Agreement (VLA) administration

   k. In addition, software packaged with hardware as an appliance may be provided, but only with the written approval of the State Contract Manager on a case-by-case basis.

3. **Restricted Products**:

   a. Restricted Software Publishers. Any products available from a publisher pursuant to (i) the State's participation in a NASPO-Valuepoint State Cooperative Agreement or (ii) a separate agreement concerning the State's licensed use of publisher's products may not be purchased hereunder by State Purchasers without prior approval from the State CIO/DII Commissioner. This restriction is not applicable to Additional Purchasers.

   b. Software as a Service ("SaaS"). SaaS means the capability provided to the consumer to use the provider's applications running on a cloud infrastructure. The applications are accessible from various client devices through a thin-client interface such as a Web browser (e.g., Web-based email) or a program interface. The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage or even individual application capabilities, with the possible exception of limited user-specific application configuration settings. State Purchasers may not procure Software as a Service without first preparing specific terms for the procurement (refer to Attachment H hereto) and obtaining prior approval from the Office of the Attorney General and State CIO/DII Commissioner. The foregoing restriction does not apply to Additional Purchasers. Contractor must comply with requirements as identified in the Master Agreement Request for Responses ITS58 (hereinafter "RFR ITS58") Section 3.2.11.3.

   c. Certain Third Party Terms. Any product or service accompanied by Software Publisher terms purporting to establish an aggregate limit or cap on liability for claims may not be purchased hereunder by State Purchasers without prior approval from the Attorney General's Office and the State Director of Risk Management.

d. **Infrastructure as a Service ("IaaS") and Platform as a Service ("PaaS") are NOT provided under this Contract.**

4. **Quarterly Spreadsheet Report**: The Contractor shall deliver a copy of the required Quarterly Spreadsheet Reports (May 15th, August 15th, November 15th, and February 15th) described in RFR ITS58 Section 3.6.5.1.3 to the State Contract Manager at SOV.ThePathForward@vermont.gov.

5. **User Generated Reports**: The Contractor shall at the request of the State Contract Manager or an Eligible Entity, provide reporting as described in RFR ITS58 Section 3.6.5.2.

6. **Primary Contacts**: The primary contact individuals for this this Participating Addendum are as follows (or their named successors):

Contractor

Name	Dan Yuhas
Address	2 Corporate DR.
Telephone	203/851-5866
Fax	847/990-8137
E-mail	Danyuha@cdwg.com

State of Vermont

Name	State of Vermont, Stephen Fazekas
Address	10 Baldwin Street, Montpelier, VT 05633-7501
Telephone	802/828-2210
Fax	802/828-2222
E-mail	stephen.fazekas@vermont.gov

The parties will keep and maintain current at all times a primary point of contact for administration of this Participating Addendum.

7. **Agency of Human Services Standard State Contract Provisions**: The parties agree that the Business Associate Agreement (BAA), set forth as Attachment E hereto, and the Agency of Human Services Standard State Contract Provisions, set forth as Attachment F hereto, shall be incorporated into specific Purchase Orders as applicable.

8. **No Lease Agreements for State Purchasers**: State Purchasers are prohibited from leasing under this Participating Addendum. This restriction is not applicable to Additional Purchasers. Lease purchase and term lease are allowable only for Additional Purchasers whose rules and regulations permit those acquisition methods for the goods/services being procured. With a lease purchase, the purchasing entity owns the licenses or other goods once all lease payments have been made. With a term lease, the purchasing entity does not retain ownership of the software license or other goods when the term expires. Term leases are permitted only in conjunction with term leases of hardware, where the leased software runs on the leased hardware. Additional Purchasers shall be responsible for obtaining financing via a third party leasing company in accordance with the procurement laws and regulations governing the Additional Purchaser. The third party leasing company will pay the Contractor.

9. **Volume License Agreements (VLAs)**: The Contractor shall, at the request of the State Contract Manager, assume administration responsibilities for any VLA as described in RFR ITS58, Section 3.2.3.

10. **Presales Assistance**: The Contractor shall, at the request of an Eligible Entity, provide presales assistance as described in RFR ITS58 Section 3.2.4.

11. **"Three way" Agreements**: For purchases in excess of $25,000.00, the Contractor must agree to be a party to a written agreement between the Eligible Entity, the Contractor, and the Software Publisher containing negotiated terms relating to the software and/or services as described in RFR ITS58, Section 3.2.11.1. The Purchase Order Form

attached hereto as Attachment G may be signed by both the Software Publisher and the Contractor in satisfaction of this requirement.

a. The contract language set forth in Section 3.2.11.1 may be modified based on the requirements of the Eligible Entity. Additionally, a separate agreement between the State of Vermont and the Software Publisher shall satisfy this requirement.

b. This requirement is not applicable to Additional Purchasers.

12. **Software Publisher Bids**:

a. State Purchasers planning to obtain software with a total cost of ownership greater than $15,000 (or current threshold set forth in State Administrative Bulletin 3.5) are required to conduct a competitive Request For Quote (RFQ) that is open to all bidders who meet the RFQ qualifications, except in any of the following circumstances:

i. Software is proprietary to the operation of a particular device; or

ii. Acquisition is limited to obtaining additional licenses or modules solely to expand State Purchaser's existing use of the software.

b. Software Publishers responding to an RFQ must agree to provide the software and service through the Master Agreement. The Contractor must provide a letter to the Software Publisher (see Appendix 5 to the Master Agreement for the text of this letter) to be submitted with Software Publisher's bid, with a price quote that includes the Contractor's markup.

c. Contractor must agree that it will represent multiple Software Publishers if it is approached to submit a letter and there is sufficient time prior to the Quote Due Date to perform this function. Contractor is not required to agree that they will submit letters on behalf of all Software Publishers; however, if they refuse to submit a letter on behalf of a Software Publisher they must (if requested by the Eligible Entity) provide an explanation as to why they would not submit a letter.

13. **Statement of Work (SOW)**: Any engagements involving services such as installation, configuration, customization, and other services pertaining to delivery or use of software, will require a Statement of Work (SOW). State Purchasers should use the SOW template that is incorporated into the Purchaser Order Form attached hereto as Attachment G. The Purchase Order Form template shall be modified only with prior approval of Chief Procurement Officer, Office of the Attorney General and State CIO/DII Commissioner. Vermont Eligible Entities may include additional non-conflicting terms in the SOW.

14. **Emergency Response Plans/Preparedness**: In a declared state of emergency where the safety and wellbeing of Vermont citizens are at risk, Contractor may be asked to supply the state with the commodities and/or services under the Statewide Contract on a priority basis. Contractor shall provide a list of emergency contact information including name, position/title, phone, email and cell phone.

15. **Transactions Requiring State CIO Approval**: In accordance with 22 V.S.A. § 901 (a)(4)(A), State Purchasers must obtain prior written approval from the State Chief Information Officer for any individual Purchase Order with a cost in excess of $500,000, or such lower threshold set forth in Administrative Bulletin 3.5 and applicable at the time of order. Such written approval must be affixed to the Purchase Order. Contractor shall not execute or fulfill any individual Purchase Order in excess of $500,000 unless such Purchase Order is accompanied by specific written approval from Vermont's Chief Information Officer. This restriction is not applicable to Additional Purchasers.

16. **Contractor Requirements**:

a. **Quality.** All products provided by Contractor under this Participating Addendum will be new and unused, unless otherwise stated. Factory seconds or remanufactured products will not be accepted unless specifically requested by the State. All products provided by Contractor must meet all federal, state, and local standards for quality and safety requirements. Products not meeting these standards will be deemed unacceptable and

returned to Contractor for credit at no charge to the State.

b. **Time to Return Phone Calls or Respond to Emails.** The Contractor shall return phone calls and respond to emails within a maximum of four business hours after a phone call is placed or an email is received. Please note that an automated acknowledgment does not count as a "response."

c. **On-line Software Catalog.** The Contractor shall maintain an on-line catalog of available software, with pricing specific to the State of Vermont. The catalog must be accessible via any commonly used browser, with no need to download additional software. Both Volume License Agreement software and other software must be included in the catalog. It must be available 24x7, except for scheduled maintenance. It must also include a mechanism for on-line ordering. The Catalog must be updated daily. The website must be ADA compliant. Additionally:

    i. The catalog must allow searches by Volume License Agreement, Software Publisher, product name, OEM product number, and type of software (i.e., GIS, database).

    ii. The catalog must show only those products which Eligible Entities are allowed to obtain from the Contractor.

    iii. The Contractor shall make any information needed to log in to the catalog available to any Eligible Entity who wishes to do so, whether by assigning different codes to each Eligible Entity or establishing a single set of login codes and distributing these codes to Eligible Entities. This method must not require any administrative tasks on the part of the State Contract Manager.

    iv. Product price displayed online is a 'not-to-exceed' product price quote based on contract markup/markdown and Contractor Cost. For high dollar purchases, or quantity purchases, the Eligible Entity will be advised by the State to request a quote by contacting Contractor's representative off-line. The online pricing must allow for overrides when a quote with a negotiated better price has been offered.

d. **Notification of Upcoming Maintenance Expiration.** The Contractor must notify Eligible Entities three months prior to the expiration date of any software maintenance services, and monthly thereafter until an order is placed, the Eligible Entity confirms that they do not wish to renew the maintenance services and/or to receive further reminders, or the expiration date has passed. If the email notification to the Eligible Entity is returned as undeliverable, the Contractor shall notify other contacts at the Eligible Entity, if any, and if unable to communicate the upcoming maintenance expiration to any representative of the Eligible Entity, to notify the State Contract Manager.

e. **Upgrades and/or "Patches".** In cases where the Contractor is the only entity to receive version upgrades or patches from the OEM, the Contractor must distribute these to license holders. Acceptable methods include distribution of media, provision of access to a secure web site to download the upgrades or patches, or information provided to license holders which will enable them to access the appropriate area of the OEM web site. If Upgrades/Patches are to be downloaded by the Eligible Entity from the Software Publisher or other site, the Contractor shall assist the Eligible Entity as necessary to enable the Eligible Entity to obtain such releases or updates from the Publisher.

f. **Software Publisher Relationships.** The Software Reseller shall maintain a relationship with the following Tier 1 publishers ADOBE, CA TECHNOLOGIES, CHECKPOINT, COMPUTER SQUARE INC, DELL QUEST, IBM, INFORMATICA, KRONOS, MCAFEE, MICROSOFT CORPORATION, ORACLE, RSA SECURITY, SYMANTEC, VMWARE, WEBSENSE

g. **Software from a Software Publisher Who Has No Prior Relationship with the Contractor.** The Contractor must work to establish relationships with Software Publishers who are new to them to obtain quotes and be able to deliver software in a timely fashion. If after one business day the Contractor has been unable to obtain a quote and assurances that the Contractor will be able to provide the software, the Contractor must contact the Eligible Entity with a status report. The Contractor and the Eligible Entity should mutually agree as to whether the Contractor will continue to pursue a quote and agreement with the Software Publisher, and what, if any, the expected timeframe will be, or whether the Contractor will provide the Eligible Entity with a written

statement that the Contractor cannot supply the software. If the Software Reseller has been unable to obtain a quote and agreement with the Software Publisher within 10 days of the request for quote, the Software Reseller must, if requested to do so, provide a written statement that the Contractor cannot supply the software to the Eligible Entity

17. **Quotes**:

a. **Obtaining Quotes.** The Contractor shall accept requests for quotes by toll-free telephone, fax, email, or via eCommerce, and shall provide quotes by telephone, fax, email or via eCommerce as requested by the Eligible Entity. Quotes generated by the online catalog shall be guaranteed in the same manner as quotes provided through other means.

b. **Software Currently In Catalog, Including Volume License Agreements.** The Contractor shall provide quotes within a maximum of four business hours after receiving a request for a quote, for software which is currently in the Contractor's catalog.

c. **Delivery Method Shown on Quote.** The quote must clearly indicate the method of delivery, whether via media, download, or some other means.

d. **Quote Content.** Contractor shall ensure that all applicable license terms and maintenance terms are included in the quote.

i. If a license or maintenance agreement attached to the quote identifies different types of licenses or maintenance, the quote must indicate which is being quoted.

ii. The Contractor shall provide maintenance quotes with both the start date and the end date of the maintenance period. If the cost of maintenance is bundled with the license price, the Contractor shall provide a quote that explicitly identifies the dates of coverage.

iii. The quote must contain the Publisher's Customer ID/Account ID attached to the Agency/Licenses that are requested.

iv. The Contractor shall attach to the quote any terms that have been specifically negotiated between the Eligible Entity and Software Publisher (and shall inquire of the Software Publisher as to the existence of any specifically negotiated terms). If, following inquiry, no specifically negotiated terms exist, the Contractor shall attach to the quote any standard terms of the Software Publisher that bind the Eligible Entity, including but not limited to license, maintenance, subscription, SaaS, and click-through terms.

e. **Guaranteed 30 Day Quote.** The Contractor shall honor all quotes for 30 calendar days, regardless of price increases. If it is known that a price increase will occur during the 30 calendar days following the quote, the contractor may provide two quotes, based upon the date that the order is receive.

f. **Quotes Requested on Behalf of Eligible Entities.** All quotes requested on behalf of Eligible Entities shall have the same requirements as quotes requested directly by Eligible Entities, with the additional requirement that both the ordering entity and the Eligible Entity must be named on the quote. If the Software Publisher has established Volume License Agreement requirements that would preclude a company from procuring software from the Contractor and providing it to an Eligible Entity on a pass-through basis, the Contractor must promptly notify the company that this is the case.

18. **Ordering**:

a. Any order placed by an Eligible Entity for a product or service available under this Participating Addendum (hereinafter "Purchase Order") shall be deemed to be a sale governed by the prices and other terms and conditions of this Participating Addendum, provided that the Master Agreement number and the Participating Addendum Number must appear on every Purchase Order placed under this Participating Addendum.

b. **Acquisition Method(s).** The acquisition method(s) to acquire goods and/or services from this Solicitation are

outright purchase; subscription, monthly, annual, or other time unit service charges; fee for service (time and materials or fixed price); and license.

c. **Method of Ordering for State Purchasers.** For State Purchasers in which Desktop Support Services are provided by the Vermont Department of Information and Information, all purchases shall be coordinated through the Vermont Department of Information and Innovation.

d. **Purchase Orders.** State Purchasers may only order items available under this Participating Addendum through the use of a written Purchase Order following the format set forth in Attachment G hereto. Verbal orders and orders placed through the Contractor's online software catalog (as contemplated under section 17.c, above) shall not become effective unless or until a confirming Purchase Order is issued. Any terms associated with a Purchase Order shall be null and void if such terms either conflict with, or are less protective of the State than, the terms of this Participating Addendum. This restriction is not applicable to Additional Purchasers.

19. **Shipping and Delivery**: The Contractor shall comply with requirements as described in RFR ITS58 Section 3.2.7.

20. **Return of Unused Software or Appliances**: The Contractor shall comply with requirements as described in RFR ITS58 Section 3.2.7.7.

ATTACHMENT B: PAYMENT PROVISIONS

1. **Payment Terms:** Net 30 from the date the State receives an error-free invoice with full and complete supporting documentation.

2. **F.O.B. Delivered:** All equipment pricing is to include F.O.B. delivery to the ordering facility. No request for extra delivery cost will be honored.

3. **Pricing:** Current product offerings, pricing and discounts can be found at The State of Massachusetts Commbuys webpage for Contract # ITS58 on-line at:

   https://www.commbuys.com/bso/external/purchaseorder/poSummary.sdo?docId=PO-15-1080-OSD01-OSD10-00000004888&releaseNbr=0&parentUrl=contract.

   Within the above webpage, click on the Agency Attachments link entitled "CONTRACT USER GUIDE LATEST VERSION" and refer to pages 20-21 for pricing.

   The following represents an overview of product pricing:

   Software discounts are off the Cost as set forth in the Cost Schedule. The discounts provided will remain valid for the Contract Term. The discounts provided are floor discounts (minimum guarantees) and individual transactions may qualify for additional, incremental discounts or incentives provided by Contractor at its sole discretion.

   Eligible Entities may also actively solicit Contractor for deeper discounts than the minimum contract pricing as set forth in the Cost Schedule. In any event, final transactional pricing shall be determined by the Contractor and not by Manufacturers; provided, however, that the minimum discounts set forth on the Cost Schedule are met.

4. **Invoicing:** Invoices shall be submitted on the Contractor's standard billhead and forwarded directly to the Eligible Entity ordering materials or services and shall specify the address to which payments will be sent.

5. **Purchasing Card:** The State Purchasing Card may be used for the payment of invoices by State Purchasers only. Use of the Purchasing Card requires all required documentation applicable to the purchase. The Purchasing Card is a payment mechanism, not a procurement approach and, therefore, does not relieve departments from adhering to all procurement laws, regulations, policies, procedures, and best practices. This includes but is not limited to the application of all sales and use tax laws, rules and policies as applicable to the purchase.

6. **Travel Expenses and All Other Expenses:** Expenses shall be reimbursable only to the extent set forth in a particular Purchase Order and consistent with the requirements as described in RFR ITS58 Section 3.3.6. For purchases by State Purchasers, to the extent expenses are allowed in a particular Purchase Order, reimbursement shall be limited to the applicable amounts allowed for State of Vermont employees.

ATTACHMENT C: STANDARD STATE PROVISIONS

FOR CONTRACTS AND GRANTS

1. **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.

2. **Applicable Law:** This Agreement will be governed by the laws of the State of Vermont.

3. **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.

4. **Appropriations:** 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.

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, Liability:** The Party will act in an independent capacity and not as officers or employees of the State.

   The Party shall defend the State and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party. 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.

   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.

   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.

7. **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.

   General Liability and Property Damage: With respect to all operations performed under the contract, 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 Per Occurrence
$1,000,000 General Aggregate
$1,000,000 Products/Completed Operations Aggregate
$ 50,000 Fire/ Legal/Liability

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

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: $1,000,000 combined single limit.

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

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

9. **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.

10. **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.

11. **Fair Employment Practices and Americans with Disabilities Act**: Party agrees to comply with the requirement of Title 21V.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. Party further agrees to include this provision in all subcontracts.

12. **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.

13. **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.

14. **Child Support**: (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.

15. **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 also agrees to include in all subcontract or subgrant agreements a tax certification in accordance with paragraph 13 above.

16. **No Gifts or Gratuities**: Party shall not give title or possession of any thing 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.

17. **Copies**: All written reports prepared under this Agreement will be printed using both sides of the paper.

18. **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

19. **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.

20. **Internal Controls:** In the case that this Agreement is an award 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).

21. **Mandatory Disclosures:** In the case that this Agreement is an award 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.

22. **Conflict of Interest:** Party must disclose in writing any potential conflict of interest in accordance with Uniform Guidance §200.112, Bulletin 5 Section X and Bulletin 3.5 Section IV.B.

(End of Standard Provisions)

ATTACHMENT D
STANDARD STATE PROVISIONS
FOR INFORMATION TECHNOLOGY CONTRACTS

1. **ORDER OF PRECEDENCE; CONTRACTOR DOCUMENTATION.**

The parties specifically agree that any language or provisions contained in a Contractor Document is of no force and effect if such language or provisions conflict with the terms of Attachment C or Attachment D to this Contract. Further, in no event shall any Contractor Document: (a) require indemnification by the State of the Contractor; (b) waive the State's right to a jury trial; (c) establish jurisdiction in any venue other than the Superior Court of the State of Vermont, Civil Division, Washington Unit; (d) designate a governing law other than the laws of the State of Vermont; (e) constitute an implied or deemed waiver of the immunities, defenses, rights or actions arising out of State's sovereign status or under the Eleventh Amendment to the United States Constitution; (f) limit the time within which an action may be brought hereunder; or (g) require the State to maintain the confidentiality of the Contractor without regard to the laws of the State of Vermont.

For purposes of this Attachment D, "Contractor Document" shall mean one or more document, agreement or other instrument required by the Contractor in connection with the performance of the services set forth in Attachment A hereto, regardless of format, including any other paper or "shrinkwrap," "clickwrap" or other electronic version thereof.

No modification or addition to the limited warranties set forth in this Agreement is authorized unless it is set forth in an amendment to this Contract.

2. **TERM OF CONTRACTOR'S DOCUMENTS.**

Contractor acknowledges and agrees that, to the extent a Contractor Document provides for alternate term or termination provisions, including automatic renewals, such sections shall be waived and shall have no force and effect. All Contractor Documents shall run concurrently with the term of this Contract.

3. **OWNERSHIP AND LICENSE IN DELIVERABLES**

Unless otherwise specified in a specific Purchase Order concerning procurement of a SaaS product:

3.1 Contractor Intellectual Property. Contractor shall retain all right, title and interest in and to all Contractor Intellectual Property that Contractor delivers to the State in accordance with Attachment A of this Contract. "Contractor Intellectual Property" means any intellectual property, tangible or intangible, that is owned by Contractor and contained in or necessary for the use of the items that Contractor is required to deliver to the State under this Contract, including Work Product ("Deliverables"). Should the State require a license for the use of Contractor Intellectual Property in connection with the development or use of the 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 any such Contractor Intellectual Property that is incorporated into Work Product.

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

Contractor may not 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.

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

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

To the extent delivered under this Contract, upon full payment to Contractor in accordance with Attachment B, and subject to the terms and conditions contained herein, Contractor hereby (i) assigns to State all rights in and to all Deliverables, except to the extent they include any Contractor Intellectual Property; and (ii) grants to State a perpetual, non-exclusive, irrevocable, royalty-free license to use for State's internal business purposes, any Contractor Intellectual Property included in the Deliverables in

connection with its use of the Deliverables and, subject to the State's obligations with respect to Confidential Information, authorize others to do the same on the State's behalf. Except for the foregoing license grant, Contractor or its licensors retain all rights in and to all Contractor Intellectual Property.

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

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

4. CONFIDENTIALITY AND NON-DISCLOSURE; SECURITY BREACH REPORTING

4.1 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.

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.

4.2 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. 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 continental United States.

Unless otherwise instructed by the State, Contractor agrees to keep confidential all information received and collected by Contractor in connection with this Contract ("State Data"). The Contractor agrees not to publish, reproduce, or otherwise divulge any State Data in whole or in part, in any manner or form or authorize or permit others to do so. 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 use State Data only for the purposes of and in accordance with this Contract. The Contractor shall 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.

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.

4.3 Security Breach Reporting. In the event of any actual or suspected security breach the Contractor either suffers or learns of that either compromises or could compromise State Data in any format or media, whether encrypted or unencrypted (for example, but not limited to: physical trespass on a secure facility; intrusion or hacking or other brute force attack on any State environment; loss or theft of a PC, laptop, desktop, tablet, smartphone, removable data storage device or other portable device; loss or theft of printed materials; or failure of security policies) (collectively, a "Security Breach"), the Contractor shall immediately (and in no event more than twenty-four hours after discovering the breach) notify appropriate State personnel of such Security Breach.

Contractor shall identify the affected State Data and inform the State of the actions it is taking or will take to reduce the risk of further loss to the State. Contractor shall provide the State the opportunity to participate in the investigation of the breach and to exercise control over reporting the unauthorized

disclosure. The Contractor shall provide such other information, including a written report, as reasonably requested by 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, HIPAA and/or HITECH) that require notification in the event of unauthorized release of personally-identifiable information or other event requiring notification. In the event of a breach of any of the Contractor's security obligations or other event requiring notification under applicable law ("Notification Event"), the Contractor agrees to fully cooperate with the State, assume responsibility for such notice if the State determines it to be appropriate under the circumstances of any particular Security Breach, and assume all costs associated with a Security Breach and Notification Event, including but not limited to, notice, outside investigation and services (including mailing, call center, forensics, counsel and/or crisis management), and/or credit monitoring, in the sole determination of the State.

The Contractor shall fully indemnify, defend, and save harmless the State from and against any and all fines, criminal or civil penalties, judgments, damages and assessments, including reasonable expenses suffered by, accrued against, charged to or recoverable from the State resulting from a Security Breach or the unauthorized disclosure of State Data by the Contractor, its officers, agents, employees, and subcontractors.

5 SUBCONTRACTORS

Contractor shall be responsible for directing and supervising each of its subcontractors and any other person performing any of the Work under an agreement with Contractor. Contractor shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing any of the Work under an agreement with Contractor or any subcontractor.

6 CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

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

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

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

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

(iv) The Contractor owns, or has the right to use under valid and enforceable agreements, all intellectual property rights reasonably necessary for and related to delivery of the services and provision of the deliverables as set forth in this Contract and none of the deliverables or other

materials or technology provided by the Contractor to the State will infringe upon or misappropriate the intellectual property rights of any third party.

(v) The Contractor has adequate resources to fulfill its obligations under this Contract.

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

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

(i) All deliverables will be free from material errors and shall perform in accordance with the specifications therefor.

(ii) The services shall be performed in a timely, diligent, professional and workpersonlike 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. At its own expense and without limiting any other rights or remedies of the State hereunder, the Contractor shall re-perform any services that the State has determined to be unsatisfactory in its reasonable discretion, or the Contractor shall refund that portion of the fees attributable to each such deficiency.

(iii) The services shall be performed in accordance with the highest professional or technical standards applicable to such services, provided however that if a conflicting specific standard is provided in this Agreement, such specific standard will prevail.

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

(v) Any time software is delivered to the State, whether delivered via electronic media or the internet, no portion of such software or the media upon which it is stored or delivered will have any type of software routine or other element which is designed to facilitate unauthorized access to or intrusion upon; or unrequested disabling or erasure of; or unauthorized interference with the operation of any hardware, software, data or peripheral equipment of or utilized by the State. Notwithstanding the foregoing, Contractor assumes no responsibility for the State's negligence or failure to protect data from viruses, or any unintended modification, destruction or disclosure.

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

6.4 Effect of Breach of Warranty. If, at any time during the term of this Contract, software or the results of Contractor's work fail to perform according to any warranty of Contractor under this Contract, the State shall promptly notify Contractor in writing of such alleged nonconformance, and Contractor shall provide at no additional cost of any kind to the State, the maintenance required.

7 INDEMNIFICATION.

The Contractor acknowledges and agrees that the laws and the public policy of the State of Vermont prohibit the State from agreeing to indemnify contractors and other parties. The Contractor agrees that, to the extent a Contractor Document expressly provides for or implies indemnification of the Contractor and/or other third parties by the State, such sections shall be waived and shall have no force and effect with respect to the State.

Notwithstanding anything to the contrary set forth in Attachment C of this Contract, the Contractor shall have no obligation to indemnify the state, its officers or employees from and against any claims, suits, actions, losses, damages, liabilities, costs and expenses attributable solely to the acts or omissions of the State, its officers, employees or agents.

8 PROFESSIONAL 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 Technology Professional Liability insurance for any and all services performed under this Contract, with minimum third party coverage of $2,000,000 per claim, $3,000,000 aggregate, and first party Breach Notification Coverage of not less than $2,000,000.

9 SOVEREIGN IMMUNITY. The Contractor acknowledges that 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 any such immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State's entry into this Contract.

10 DISPUTE RESOLUTION

10.1 Governing Law; Jurisdiction. The Contractor agrees that this Contract, including any Contractor Document, shall be governed by and construed in accordance with the laws of the State of Vermont and that any action or proceeding brought by either the State or the Contractor in connection with this Contract shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Contractor irrevocably submits to the jurisdiction of such court in respect of any such action or proceeding. The State shall not be liable for attorneys' fees in any proceeding.

10.2 Contractor Default. The Contractor shall be in default under this Contract if Contractor commits any material breach of any covenant, warranty, obligation or certification under this Contract, fails to perform the Services in conformance with the specifications and warranties provided in this Contract, or clearly manifests an intent not to perform future obligations under this Contract, and such breach or default is not cured, or such manifestation of an intent not to perform is not corrected by reasonable written assurances of performance within thirty (30) days after delivery of the State's notice period, or such longer period as the State may specify in such notice.

10.3 State Default. State shall be in default under this Contract if State commits any material breach or default of any covenant, warranty, or obligation under this Contract and State fails to cure such failure within thirty (30) business days after delivery of Contractor's notice or such longer period as Contractor may specify in such notice.

10.4 Trial by Jury. The Contractor acknowledges and agrees that public policy prohibits the State from agreeing to arbitration and/or from waiving any right to a trial by jury. Therefore, Contractor further acknowledges and agrees that, to the extent a Contractor Document expressly provides for arbitration or waiver of the State's right to a jury trial of the Contractor and/or other third parties by the State, such sections shall be waived and shall have no force and effect with respect to the State.

10.5 Trade Secret, Patent, and Copyright Infringement. The State shall not be deemed to waive any of its rights or remedies at law or in equity in the event of Contractor's trade secret, patent and/or copyright infringement.

10.6 Limits on Actions Prohibited. The Contractor acknowledges and agrees that 12 V.S.A. § 465 renders null and void any contractual provision which limits the time in which an action may be brought under the contract, or waives the statute of limitations.

10.7 Continuity of Performance. In the event of a dispute between the Contractor and the State, each party will continue to perform its obligations under this Contract during the resolution of such dispute unless and until this Contract is terminated in accordance with its terms.

11 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.

12 NO IMPLIED WAIVER OF REMEDIES.

No delay or failure to exercise any right, power or remedy accruing to either party upon breach or default by the other under this Contract shall impair any such right, power or remedy, or shall be construed as a waiver of any such right, power or remedy, nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing.

13 CONTRACTOR BANKRUPTCY.

Contractor acknowledges that if Contractor, as a debtor in possession, or a trustee in bankruptcy in a case under Section 365(n) of Title 11, United States Code (the "Bankruptcy Code"), rejects this Contract, the State may elect to retain its rights under this Contract as provided in Section 365(n) of the Bankruptcy Code. Upon written request of the State to Contractor or the Bankruptcy Trustee, Contractor or such Bankruptcy Trustee shall not interfere with the rights of the State as provided in this Contract, including the right to obtain the State Intellectual Property.

14 FACILITIES.

14.1 State Facilities. During the term of this Contract, the State may make available to Contractor space in any State facility applicable to the Services, subject to the conditions that Contractor: (i) shall only use such space solely and exclusively for and in support of the Services; (ii) shall not use State facilities to provide goods or services to or for the benefit of any third party; (iii) shall comply with the leases, security, use and rules and agreements applicable to the State facilities; (iv) shall not use State facilities for any unlawful purpose; (v) shall comply with all policies and procedures governing access to and use of State facilities that are provided to Contractor in writing; (vi) instruct Contractor personnel not to photograph or record, duplicate, disclose, transmit or communicate any State information, materials, data or other items, tangible or intangible, obtained or available as a result of permitted use of State facilities; and (vii) return such space to the State in the same condition it was in at the commencement of this Contract, ordinary wear and tear excepted. State facilities will be made available to Contractor on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

14.2 Contractor Facilities. Contractor will be responsible for procuring, managing, maintaining and otherwise making available all Contractor Resources necessary to provide the Services in accordance with the Requirements hereunder. . Contractor shall not impact services through any relocation of any Contractor facilities providing services pursuant to this Contract ("Contractor Facilities"). . Any such relocation shall be without additional cost to the State.

15 CONFLICTS OF INTEREST

Contractor shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest. Contractor agrees that the failure to disclose any such conflicts shall constitute a material breach of this Contract, and shall be grounds for immediate termination of this Contract.

16 MISCELLANEOUS

16.1 Taxation fo Purchases. All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

16.2 Force Majeure. Neither party shall be liable to the other for the failure or delay of performance of any obligation hereunder if such failure or delay is wholly or principally caused by acts or events beyond the nonperforming party's reasonable control making it illegal or impossible to perform their obligations under this Contract. The following events shall constitute Force Majeure for purposes of this Contract: acts of civil or military authority; fires, floods, earthquakes or other natural disasters; war or riots; or government embargoes. The nonperforming party asserting Force Majeure must promptly notify the other party of the event giving rise to the Force Majeure. Performance shall only be excused hereunder if the nonperforming party can 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 Contract, 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.

16.3 Marketing. Contractor 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.

ATTACHMENT E

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is entered into by and between **the State of Vermont** ("Covered Entity") and **Contractor** ("Business Associate"). This Agreement supplements and is made a part of the Contract to which it is an attachment.

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

The parties agree as follows:

1. **Definitions**. All capitalized terms in this Agreement have the meanings identified in this Agreement, 45 CFR Part 160, or 45 CFR Part 164.

   The term "Services" includes all work performed by the Business Associate for or on behalf of Covered Entity that requires the use and/or disclosure of protected health information to perform a business associate function described in 45 CFR 160.103 under the definition of Business Associate.

   The term "Individual" includes a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

   The term "Breach" means the acquisition, access, use or disclosure of protected health information (PHI) in a manner not permitted under the HIPAA Privacy Rule, 45 CFR part 164, subpart E, which compromises the security or privacy of the PHI. "Compromises the security or privacy of the PHI" means poses a significant risk of financial, reputational or other harm to the individual.

2. **Permitted and Required Uses/Disclosures of PHI**.

   2.1 Except as limited in this Agreement, Business Associate may use or disclose PHI to perform Services, as specified in the underlying contract with Covered Entity. Business Associate shall not use or disclose PHI in any manner that would constitute a violation of the Privacy Rule if used or disclosed by Covered Entity in that manner. Business Associate may not use or disclose PHI other than as permitted or required by this Agreement or as Required by Law.

   2.2 Business Associate may make PHI available to its employees who need access to perform Services provided that Business Associate makes such employees aware of the use and disclosure restrictions in this Agreement and binds them to comply with such restrictions. Business Associate may only disclose PHI for the purposes authorized by this Agreement: (a) to its agents (including subcontractors) in accordance with Sections 8 and 16 or (b) as otherwise permitted by Section 3.

3. **Business Activities**. Business Associate may use PHI received in its capacity as a "Business Associate" to Covered Entity if necessary for Business Associate's proper management and administration or to carry out its legal responsibilities. Business Associate may disclose PHI received in its capacity as "Business Associate" to Covered Entity for Business Associate's proper management and administration or to carry out its legal responsibilities if a disclosure is Required by Law or if (a) Business Associate obtains reasonable written assurances via a written agreement from the person to whom the information is to be disclosed that the PHI shall remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person and (b)

the person notifies Business Associate, within three business days (who in turn will notify Covered Entity within three business days after receiving notice of a Breach as specified in Section 5.1), in writing of any Breach of Unsecured PHI of which it is aware. Uses and disclosures of PHI for the purposes identified in this Section must be of the minimum amount of PHI necessary to accomplish such purposes.

4. **Safeguards**. Business Associate shall implement and use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this Agreement. With respect to any PHI that is maintained in or transmitted by electronic media, Business Associate shall comply with 45 CFR sections 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards) and 164.316 (policies and procedures and documentation requirements). Business Associate shall identify in writing upon request from Covered Entity all of the safeguards that it uses to prevent impermissible uses or disclosures of PHI.

5. **Documenting and Reporting Breaches**.

   5.1 Business Associate shall report to Covered Entity any Breach of Unsecured PHI as soon as it (or any of its employees or agents) become aware of any such Breach, and in no case later than three (3) business days after it (or any of its employees or agents) becomes aware of the Breach, except when a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security.

   5.2 Business Associate shall provide Covered Entity with the names of the individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of the Breach and any other available information that is required to be given to the affected individuals, as set forth in 45 CFR §164.404(c), and, if requested by Covered Entity, information necessary for Covered Entity to investigate the impermissible use or disclosure. Business Associate shall continue to provide to Covered Entity information concerning the Breach as it becomes available to it.

   5.3 When Business Associate determines that an impermissible acquisition, use or disclosure of PHI by a member of its workforce does not pose a significant risk of harm to the affected individuals, it shall document its assessment of risk. Such assessment shall include: 1) the name of the person(s) making the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons supporting the determination of low risk of harm. When requested by Covered Entity, Business Associate shall make its risk assessments available to Covered Entity.

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

7. **Providing Notice of Breaches.**

   7.1 If Covered Entity determines that an impermissible acquisition, access, use or disclosure of PHI for which one of Business Associate's employees or agents was responsible constitutes a Breach as defined in 45 CFR §164.402, and if requested by Covered Entity, Business Associate shall provide notice to the individuals whose PHI was the subject of the Breach. When requested to provide notice, Business Associate shall consult with Covered Entity about the timeliness, content and method of notice, and shall receive Covered Entity's approval concerning these elements. The cost of notice and related remedies shall be borne by Business Associate.

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

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

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

8. **Agreements by Third Parties**. Business Associate shall ensure that any agent (including a subcontractor) to whom it provides PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity agrees in a written agreement to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such PHI. For example, the written contract must include those restrictions and conditions set forth in Section 14. Business Associate must enter into the written agreement before any use or disclosure of PHI by such agent. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the use or disclosure of PHI. Business Associate shall provide a copy of the written agreement to Covered Entity upon request. Business Associate may not make any disclosure of PHI to any agent without the prior written consent of Covered Entity.

9. **Access to PHI**. Business Associate shall provide access to PHI in a Designated Record Set to Covered Entity or as directed by Covered Entity to an Individual to meet the requirements under 45 CFR 164.524. Business Associate shall provide such access in the time and manner reasonably designated by Covered Entity. Within three (3) business days, Business Associate shall forward to Covered Entity for handling any request for access to PHI that Business Associate directly receives from an Individual.

10. **Amendment of PHI**. Business Associate shall make any amendments to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR 164.526, whether at the request of Covered Entity or an Individual. Business Associate shall make such amendments in the time and manner reasonably designated by Covered Entity. Within three (3) business days, Business Associate shall forward to Covered Entity for handling any request for amendment to PHI that Business Associate directly receives from an Individual.

11. **Accounting of Disclosures**. Business Associate shall document disclosures of PHI and all information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528. Business Associate shall provide such information to Covered Entity or as directed by Covered Entity to an Individual, to permit Covered Entity to respond to an accounting request. Business Associate shall provide such information in the time and manner reasonably designated by Covered Entity. Within three (3) business days, Business Associate shall forward to Covered Entity for handling any accounting request that Business Associate directly receives from an Individual.

12. **Books and Records**. Subject to the attorney-client and other applicable legal privileges, Business Associate shall make its internal practices, books, and records (including policies and procedures and PHI) relating to the use and disclosure of PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity available to the Secretary in the time and manner designated by the Secretary. Business Associate shall make the same information available to Covered Entity (without regard to the attorney-client or other applicable legal privileges) upon Covered Entity's request in the time and manner reasonably designated by Covered Entity so that Covered Entity may determine whether Business Associate is in compliance with this Agreement.

13. **Termination.**

13.1 This Agreement commences on the Effective Date and shall remain in effect until terminated by Covered Entity or until all of the PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity subject to Section 17.7.

13.2 If Business Associate breaches any material term of this Agreement, Covered Entity may either: (a) provide an opportunity for Business Associate to cure the breach and Covered Entity may terminate this Contract without liability or penalty if Business Associate does not cure the breach within the time specified by Covered Entity; or (b) immediately terminate this Contract without liability or penalty if Covered Entity believes that cure is not reasonably possible; or (c) if neither termination nor cure are feasible, Covered Entity shall report the breach to the Secretary. Covered Entity has the right to seek to cure any breach by Business Associate and this right, regardless of whether Covered Entity cures such breach, does not lessen any right or remedy available to Covered Entity at law, in equity, or under this Contract, nor does it lessen Business Associate's responsibility for such breach or its duty to cure such breach.

14. **Return/Destruction of PHI.**

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

14.2 Business Associate shall provide to Covered Entity notification of any conditions that Business Associate believes make the return or destruction of PHI infeasible. If Covered Entity agrees that return or destruction is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible for so long as Business Associate maintains such PHI.

15. **Penalties and Training**. Business Associate understands that: (a) there may be civil or criminal penalties for misuse or misappropriation of PHI and (b) violations of this Agreement may result in notification by Covered Entity to law enforcement officials and regulatory, accreditation, and licensure organizations. If requested by Covered Entity, Business Associate shall participate in training regarding the use, confidentiality, and security of PHI.

16. **Security Rule Obligations**. The following provisions of this Section apply to the extent that Business Associate creates, receives, maintains or transmits Electronic PHI on behalf of Covered Entity.

16.1 Business Associate shall implement and use administrative, physical, and technical safeguards in compliance with 45 CFR sections 164.308, 164.310, and 164.312 with respect to the Electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate shall identify in writing upon request from Covered Entity all of the safeguards that it uses to protect such Electronic PHI.

16.2 Business Associate shall ensure that any agent (including a subcontractor) to whom it provides Electronic PHI agrees in a written agreement to implement and use administrative, physical, and technical safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of the Electronic PHI. Business Associate must enter into this written agreement before any use or disclosure of Electronic PHI by such agent. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the use or disclosure of

Electronic PHI. Business Associate shall provide a copy of the written agreement to Covered Entity upon request. Business Associate may not make any disclosure of Electronic PHI to any agent without the prior written consent of Covered Entity.

16.3 Business Associate shall report in writing to Covered Entity any Security Incident pertaining to such Electronic PHI (whether involving Business Associate or an agent, including a subcontractor). Business Associate shall provide this written report as soon as it becomes aware of any such Security Incident, and in no case later than three (3) business days after it becomes aware of the incident. Business Associate shall provide Covered Entity with the information necessary for Covered Entity to investigate any such Security Incident.

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

17. Miscellaneous.

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

17.2 Business Associate shall cooperate with Covered Entity to amend this Agreement from time to time as is necessary for Covered Entity to comply with the Privacy Rule, the Security Rule, or any other standards promulgated under HIPAA.

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

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

17.5 As between Business Associate and Covered Entity, Covered Entity owns all PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity.

17.6 Business Associate shall abide by the terms and conditions of this Agreement with respect to all PHI it receives from Covered Entity or creates or receives on behalf of Covered Entity under this Contract even if some of that information relates to specific services for which Business Associate may not be a "Business Associate" of Covered Entity under the Privacy Rule.

17.7 The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the expiration or termination of this Agreement. For example: (a) the provisions of this Agreement shall continue to apply if Covered Entity determines that it would be infeasible for Business Associate to return or destroy PHI as provided in Section 14.2 and (b) the obligation of Business Associate to provide an accounting of disclosures as set forth in Section 11 survives the expiration or termination of this Agreement with respect to accounting requests, if any, made after such expiration or termination.

ATTACHMENT F

AGENCY OF HUMAN SERVICES' CUSTOMARY CONTRACT PROVISIONS

1. Agency of Human Services – Field Services Directors will share oversight with the department (or field office) that is a party to the contract for provider performance using outcomes, processes, terms and conditions agreed to under this contract.

2. 2-1-1 Data Base: The Contractor providing a health or human services within Vermont, or near the border that is readily accessible to residents of Vermont, will provide relevant descriptive information regarding its agency, programs and/or contact and will adhere to the "Inclusion/Exclusion" policy of Vermont's United Way/Vermont 211. If included, the Contractor will provide accurate and up to date information to their data base as needed. The "Inclusion/Exclusion" policy can be found at www.vermont211.org

3. Medicaid Program Contractors:

   Inspection of Records: Any contracts accessing payments for services through the Global Commitment to Health Waiver and Vermont Medicaid program must fulfill state and federal legal requirements to enable the Agency of Human Services (AHS), the United States Department of Health and Human Services (DHHS) and the Government Accounting Office (GAO) to:

   Evaluate through inspection or other means the quality, appropriateness, and timeliness of services performed; and Inspect and audit any financial records of such Contractor or subcontractor.

   Subcontracting for Medicaid Services: Having a subcontract does not terminate the Contractor, receiving funds under Vermont's Medicaid program, from its responsibility to ensure that all activities under this agreement are carried out. Subcontracts must specify the activities and reporting responsibilities of the Contractor or subcontractor and provide for revoking delegation or imposing other sanctions if the Contractor or subcontractor's performance is inadequate. The Contractor agrees to make available upon request to the Agency of Human Services; the Department of Vermont Health Access; the Department of Disabilities, Aging and Independent Living; and the Center for Medicare and Medicaid Services (CMS) all contracts and subcontracts between the Contractor and service providers.

   Medicaid Notification of Termination Requirements: Any Contractor accessing payments for services under the Global Commitment to Health Waiver and Medicaid programs who terminates their practice will follow the Department of Vermont Health Access, Managed Care Organization enrollee notification requirements.

   Encounter Data: Any Contractor accessing payments for services through the Global Commitment to Health Waiver and Vermont Medicaid programs must provide encounter data to the Agency of Human Services and/or its departments and ensure that it can be linked to enrollee eligibility files maintained by the State.

   Federal Medicaid System Security Requirements Compliance: All contractors and subcontractors must provide a security plan, risk assessment, and security controls review document within three months of the start date of this agreement (and update it annually thereafter) to support audit compliance with 45CFR95.621 subpart F, *ADP* (Automated Data Processing) *System Security Requirements and Review Process*.

4. Non-discrimination Based on National Origin as evidenced by Limited English Proficiency. The Contractor agrees to comply with the non-discrimination requirements of Title VI of the Civil Rights Act of 1964, 42 USC Section 2000d, et seq., and with the federal guidelines promulgated pursuant to Executive Order 13166 of 2000, which require that contractors and subcontractors receiving federal funds must assure that persons with limited English proficiency can meaningfully access services. To the extent the Contractor provides assistance to individuals with limited English proficiency through the use of oral or written translation or interpretive services in compliance with this requirement, such individuals cannot be required to pay for such services.

5. Voter Registration. When designated by the Secretary of State, the Contractor agrees to become a voter registration

agency as defined by 17 V.S.A. §2103 (41), and to comply with the requirements of state and federal law pertaining to such agencies.

6. Drug Free Workplace Act. The Contractor will assure a drug-free workplace in accordance with 45 CFR Part 76.

7. Privacy and Security Standards.

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

   Substance Abuse Treatment Information: The confidentiality of any alcohol and drug abuse treatment information acquired by or provided to the Contractor or subcontractor shall be maintained in compliance with any applicable state or federal laws or regulations and specifically set out in 42 CFR Part 2.

   Other Confidential Consumer Information: The Contractor agrees to comply with the requirements of AHS Rule No. 08-048 concerning access to information. The Contractor agrees to comply with any applicable Vermont State Statute, including but not limited to 12 VSA §1612 and any applicable Board of Health confidentiality regulations. The Contractor shall ensure that all of its employees and subcontractors performing services under this agreement understand the sensitive nature of the information that they may have access to and sign an affirmation of understanding regarding the information's confidential and non-public nature.

   Social Security numbers: The Contractor agrees to comply with all applicable Vermont State Statutes to assure protection and security of personal information, including protection from identity theft as outlined in Title 9, Vermont Statutes Annotated, Ch. 62.

8. Abuse Registry. The Contractor agrees not to employ any individual, use any volunteer, or otherwise provide reimbursement to any individual in the performance of services connected with this agreement, who provides care, custody, treatment, transportation, or supervision to children or vulnerable adults if there is a substantiation of abuse or neglect or exploitation against that individual. The Contractor will check the Adult Abuse Registry in the Department of Disabilities, Aging and Independent Living. Unless the Contractor holds a valid child care license or registration from the Division of Child Development, Department for Children and Families, the Contractor shall also check the Central Child Protection Registry. (See 33 V.S.A. §4919(a) (3) & 33 V.S.A. §6911(c) (3)).

9. Reporting of Abuse, Neglect, or Exploitation. Consistent with provisions of 33 V.S.A. §4913(a) and §6903, any agent or employee of a Contractor who, in the performance of services connected with this agreement, has contact with clients or is a caregiver and who has reasonable cause to believe that a child or vulnerable adult has been abused or neglected as defined in Chapter 49 or abused, neglected, or exploited as defined in Chapter 69 of Title 33 V.S.A. shall make a report involving children to the Commissioner of the Department for Children and Families within 24 hours or a report involving vulnerable adults to the Division of Licensing and Protection at the Department of Disabilities, Aging, and Independent Living within 48 hours. This requirement applies except in those instances where particular roles and functions are exempt from reporting under state and federal law. Reports involving children shall contain the information required by 33 V.S.A. §4914. Reports involving vulnerable adults shall contain the information required by 33 V.S.A. §6904. The Contractor will ensure that its agents or employees receive training on the reporting of abuse or neglect to children and abuse, neglect or exploitation of vulnerable adults.

10. Intellectual Property/Work Product Ownership. All data, technical information, materials first gathered, originated, developed, prepared, or obtained as a condition of this agreement and used in the performance of this agreement - including, but not limited to all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and printouts, notes and memoranda, written procedures and documents, which are prepared for or obtained specifically for this agreement - or are a result of the services required under this grant - shall be considered "work for hire" and remain the property of the State of Vermont, regardless of the state of completion - unless

otherwise specified in this agreement. Such items shall be delivered to the State of Vermont upon 30 days notice by the State. With respect to software computer programs and / or source codes first developed for the State, all the work shall be considered "work for hire," i.e., the State, not the Contractor or subcontractor, shall have full and complete ownership of all software computer programs, documentation and/or source codes developed.

The Contractor shall not sell or copyright a work product or item produced under this agreement 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's materials.

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

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

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

1. Contractor's provision of certified computing equipment, peripherals and mobile devices, on a separate Contractor's network with separate internet access. The Agency of Human Services' accounts may or may not be provided.
2. State supplied and managed equipment and accounts to access state applications and data, including State issued active directory accounts and application specific accounts, which follow the National Institutes of Standards and Technology (NIST) security and the Health Insurance Portability & Accountability Act (HIPAA) standards.

The State will not supply e-mail accounts to the Contractor.

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

14. Non–discrimination. The Contractor will prohibit discrimination on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under Title IX of the Education Amendments of 1972, or on the basis of race, color or national origin under Title VI of the Civil Rights Act of 1964. No person shall on the grounds of sex (including, in the case of a woman, on the grounds that the woman is pregnant) or on the grounds of religion, be excluded from participation in, be denied the benefits of, or be subjected to discrimination, to include sexual harassment, under any program or activity supported by state and/or federal funds.

The Contractor will also not refuse, withhold from or deny to any person the benefit of services, facilities, goods, privileges, advantages, or benefits of public accommodation on the basis of disability, race, creed, color, national origin, marital status, sex, sexual orientation or gender identity under Title 9 V.S.A. Chapter 139.

15. **Environmental Tobacco Smoke.** Public Law 103-227, also known as the Pro-children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, child care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such Federal funds.

    The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where Women, Infants, & Children (WIC) coupons are redeemed.

    Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

    Contractors are prohibited from promoting the use of tobacco products for all clients. Facilities supported by state and federal funds are prohibited from making tobacco products available to minors.

Attachment F - Revised AHS -12/10/10

ATTACHMENT G

ITS58 PURCHASE ORDER FORM

NOTE: THIS FORM MUST BE USED FOR ALL STATE PURCHASES UNDER ITS58. AREAS WITHIN THIS FORM THAT ARE HIGHLIGHTED ARE TO BE MODIFIED AS NEEDED BY USERS OF THIS FORM. PROVISIONS WITHIN THIS FORM THAT ARE NOT HIGHLIGHTED, INCLUDING EXHIBIT 1 (SOFTWARE RIDER), MAY ONLY BE REVISED WITH PRIOR APPROVAL OF CHIEF PROCUREMENT OFFICER, OFFICE OF THE ATTORNEY GENERAL AND STATE CIO/DII COMMISSIONER.

State of Vermont Participating Addendum No. #30064 ("Participating Addendum")

Software Reseller Agreement Massachusetts Agreement No. ITS58 ("Master Agreement")

Purchase Order No. _____ (Please refer to this assigned Purchase Order # on all correspondence, delivery documents and invoices.)

This Purchase Order between the State of Vermont, CONTRACTING AGENCY (hereinafter the "State") and CONTRACTOR NAME, with principal place of business in CITY, STATE, (hereinafter the "Contractor") is an agreement entered into in accordance with the above-captioned Participating Addendum and Master Agreement. The parties acknowledge and agree that all terms and conditions of the Participating Addendum and Master Agreement (including respective amendments and attachments therewith) are hereby incorporated by reference and shall apply to this Purchase Order as if specifically appended hereto. This Purchase Order shall not in any way amend, conflict with, or supersede the Participating Agreement or Master Agreement, and any provision purporting to do so shall be void and have no effect. [Add the following sentence as applicable to AHS purchases:] This Purchase Order incorporates Attachments E and F attached to the Participating Addendum.

1. **Time for Performance:** The term of this Purchase Order shall begin on _____ and end on _____ (the "Initial Term"). The Initial Term may be extended as the parties may agree.

2. **Scope:** The Contractor shall, in full satisfaction of the specific requirements of the Participating Addendum and this Purchase Order, provide the products and related services set forth herein. Software-as-a-Service shall be subject to the specific terms set forth in Exhibit 2 to this Purchase Order. The State shall have no obligation to pay for SaaS provided hereunder without specific terms therefor being set forth in Exhibit 2 to this Purchase Order. No Licensor terms, including standard click through license or website terms or use of privacy policy shall apply to Purchasing Entities unless such terms are included as an exhibit to this Purchase Order.

3. **Price:** The maximum amount payable under this Purchase Order is $_____. In no case shall the total amount payable under this Purchase Order, including any amendments that may arise, exceed $500,000 (or such lower threshold set forth in Administrative Bulletin 3.5 and applicable at the time of order) without written approval of the State of Vermont CIO.

4. **Software Products/Pricing: [MODIFY TABLE AS NEEDED]**

Product Name/SKU	Quantity	Per Unit Cost	Maintenance Period	Maintenance Cost

a. Delivery: Contractor shall deliver the software via (select one) digital download/ physical media.

b. Returns: Unopened software can be returned with no restocking fee up to 30 days from the date of receipt.

5. [ADD THIS SECTION IF APPLICABLE] **Related Services/Pricing:**
   a. Indicate each of the services pertaining to delivery or use of the software (e.g. configuration, customization, training, etc.) and include the following
      i. brief description of the work for each, with reference to any applicable exhibits
      ii. Deliverable Date(s) or Phases
   b. [ADD/REMOVE AS APPLICABLE] For services performed at an hourly rate on a time and materials basis, State shall pay Contractor at the rate of $___ per hour, however, total payment for services shall not exceed $_____.
   c. [ADD/REMOVE AS APPLICABLE] The State shall retain 10% of each payment to hold until the satisfactory completion of [indicate applicable related service(s)] by the prescribed time and to the satisfaction of the State. Payment of retained fees shall occur [one month after the completion date upon receipt of invoicing from Contractor][MODIFY AS NEEDED], provided State has accepted all applicable deliverables under this Purchase Order.

6. **Additional Payment Provisions:** In addition to the terms set forth in Attachment B of the Participating Addendum, the following payment terms shall apply to this Purchase Order:

   a. Submit invoices to: State of Vermont, [CONTRACTING AGENCY], [CONTRACTING AGENCY ADDRESS].

   b. Contractor invoices shall include the Participating Addendum No. and Purchase Order No. which appear at top of this Form.

   c. Payments shall be made only upon approval and acceptance by the State.

   d. [ADD IF APPLICABLE] The following expenses shall be reimbursable only to the extent set forth in this Purchase Order and consistent with the requirements as described in RFR ITS58 Section 3.3.6. For purchases by State Purchasers, reimbursement of expenses hereunder shall be limited to the applicable amounts allowed for State of Vermont employees.

      i. List allowable reimbursable expenses and corresponding rates

   e. ADD OTHER TERMS AS APPLICABLE; BUT NOTE THAT OTHER TERMS CANNOT AMEND, CONFLICT WITH OR SUPERSEDE PAYMENT TERMS OF THE MASTER AGREEMENT OR THE PARTICIPATING ADDENDUM

7. **Amendment:** This Purchase Order may not be changed or otherwise amended except in a writing that is numbered and signed by the fully-authorized representatives of the State and the Contractor.

8. **Cancellation:** The State reserves the right to cancel this Purchase Order (a) for convenience upon written notice at least thirty (30) days in advance, (b) if appropriations are insufficient to support this Agreement after the project starts, or (c) due to unsatisfactory performance that is detailed in writing to the Contractor by the State and which remains uncured by the Contractor for more than fifteen (15) days following Contractor's receipt of such written notice from the State, or such longer period of time provided that the Contractor proceeds with reasonable diligence, as determined by the State, to completely cure. In the event the State cancels this Purchase Order for any of the preceding reasons, the State will pay for all completed and accepted deliverables up until the date of cancellation.

9. **No Implied Waivers:** No delay or failure to exercise any right, power or remedy accruing to either party upon breach or default by the other under this Purchase Order shall impair any such right, power or remedy, or shall be construed as a waiver of any such right, power or remedy nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing.

10. **Exhibits; Order of Precedence:** This Purchase Order includes the following exhibits, which shall prevail in descending order in the event there exists any ambiguity or inconsistency between them.

    Exhibit 1: Standard State Rider to Software Licenses and End User License Agreements
    Exhibit 2: SaaS Terms (if applicable)
    Exhibit 3: Licensor Terms and Conditions (for example, Support & Maintenance Agreement and/or End User License Agreement – can be included as separate exhibits if necessary)

Taxes Due to the State. Contractor certifies under the pains and penalties of perjury that, as of the date this SOW Agreement is signed, the Contractor 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.

Certification Regarding Suspension or Debarment. Contractor certifies under the pains and penalties of perjury that, as of the date this contract amendment is signed, neither Contractor nor Contractor'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. Contractor further certifies under pains and penalties of perjury that, as of the date this contract amendment is signed, Contractor is not presently debarred, suspended, nor named on the State's debarment list at: http://bgs.vermont.gov/purchasing/debarment.

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS AGREEMENT.

<Insert Contractor Name>

_____ _____
Signature Date

STATE OF VERMONT, <Insert Requesting Agency or business unit>

_____ _____
Signature Date

EXHIBIT 1

Standard State Rider to Software Licenses and End User License Agreements

1. **MODIFICATIONS TO LICENSOR DOCUMENTS.** To the extent Contractor's third party licensors ("Licensor") are licensing or deemed to license Software products to the State of Vermont (the "State") in connection with the State's use of any product or service supplied by Contractor to the State under this agreement, no Licensor terms, including standard click through license or website terms or use of privacy policy ("Licensor Document"), shall apply to Purchasing Entities unless such terms are included in the Purchase Order to which this Rider is attached. This Rider shall in all cases take precedence over the Licensor Documents and any ambiguity, conflict or inconsistency in the Licensor Documents shall be resolved in accordance with this order of precedence. The State's use of such product or service, including third party products embedded therein, shall constitute the Licensor's acceptance of the following terms:

   (a) Any requirement that the State defend or indemnify Licensor or otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or license verification costs of Licensor, is hereby deleted from the Licensor Document.

   (b) Any requirement that the State agree to binding arbitration or otherwise waive the State's right to a jury trial is hereby deleted from Licensor Documents.

   (c) Licensor agrees that any the Licensor Documents shall be governed by and construed in accordance with the laws of the State of Vermont and that any action or proceeding brought by either the State or Licensor in connection with this Contract shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit.

   (d) Nothing in the Licensor Documents shall constitute an implied or deemed waiver of the immunities, defenses, rights or actions arising out of State's sovereign status or under the Eleventh Amendment to the United States Constitution.

   (e) Any provision which defines obligations of the State to maintain the confidentiality of Licensor shall be subject to the Vermont Public Records Act, 1 V.S.A. § 315 et seq.

   (f) Any provision establishing an aggregate limit or cap on liability for State claims is hereby deleted from the Licensor Document. Limitations or exclusions of liability shall not apply to State claims arising out of (i) Licensor's obligation to indemnify the State for infringement; (ii) personal injury or damage to real or personal property; or (iii) gross negligence, fraud or intentional misconduct. Limits of liability shall not apply to third party claims arising from the acts or omissions of a party in the performance of this Agreement.

   (g) To the extent Licensor is a "data collector" for purposes of 9 V.S.A. §2430, Licensor shall comply with all applicable requirements of 9 V.S.A. §2435.

   (h) Licensor shall have no right to access State systems to audit the State use of Licensor's product. Upon request, the State shall provide Licensor with a certified report concerning the State's use of any software licensed for State use. Settlement payment shall be the exclusive remedy for any non-compliance.

   (i) Fair Employment Practices and Americans with Disabilities Act: Licensor agrees to comply with the requirement of Title 21V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Licensor 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 Licensor under this Agreement. Licensor further agrees to include this provision in all subcontracts for services performed in the State of Vermont.

   (j) Certification Regarding Debarment: Licensor certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Licensor nor Licensor'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. Licensor further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Licensor is not presently debarred, suspended, nor named on the State's debarment list at: http://bgs.vermont.gov/purchasing/debarment
   For purposes of this Standard State Rider:

2. **NO SUBSEQUENT, UNILATERAL MODIFICATION OF TERMS BY LICENSOR ("SHRINK WRAP").** Notwithstanding any other provision or other unilateral license terms which may be issued by Licensor after the dated date of this Rider, and irrespective of whether any such provisions have been proposed prior to or after the issuance of an order for the products and services being purchased by the State, as applicable, the components of which are licensed under the Licensor Documents, or the fact that such other agreement may be affixed to or accompany the products and services being purchased by the State, as applicable, upon delivery ("shrink wrap"), the terms and conditions set forth herein shall supersede and govern licensing and delivery of all products and services hereunder.

EXHIBIT 2

SAAS INSTRUCTIONS AND STANDARD CLOUD TERMS

A. Instructions for Procuring SaaS with ITS58

ITS58 may be used for software as a service (SaaS). The standard cloud terms appearing below in Section B of this Attachment must be attached to any RFQ for a SaaS procurement.

"Software-as-a-Service" (SaaS) means the capability provided to the consumer to use the provider's applications running on a cloud infrastructure. The applications are accessible from various client devices through a thin-client interface such as a Web browser (e.g., Web-based email) or a program interface. The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.

Review and edit SaaS terms before attaching to the RFQ. Prior to attaching the terms to the RFQ, the procuring agency/department should review the SaaS terms and make any changes needed for the procurement. Below is a guide to reviewing and editing the SaaS terms prior to attaching them to the RFQ; consult legal counsel if you need additional guidance.

Attach SaaS terms to the contract. The SaaS terms are intended to be an addendum to any standard terms that the vendor has. You should negotiate the vendor's standard terms (typically found in a Subscription Agreement and Service Level Agreement) so that they conform with the SaaS terms. If the vendor's standard terms sufficiently address a provision in the SaaS terms, you can remove the corresponding provision from the SaaS terms. The final version of the SaaS terms, after reviewing them against the vendor's standard terms, must be attached to and made part of the signed contract.

Guidelines for pre-posting review of Cloud Terms:

A. Subscription Terms: Do not change this section.

B. Support and Training: Edit this section to reflect actual support and training needs. For instance, is phone support needed 24x7 or only during business hours? Is online training required?

C. Service Levels: Edit this section to reflect actual service level requirements for the particular technology and technical needs.

Consider uptime needs (#1). Do you require 99.99% uptime, which allows approximately 5 minutes of unscheduled downtime per month? Is 99.9 sufficient (approximately 45 minutes per month)?

Edit #6 to define what "repeated or consistent failures" mean to you. Some examples: failure to achieve 99% uptime for two months in a six-month period; more than one severe defect in a month; failure to meet metrics for responding to defect reports for two consecutive months. It is critical to ensure that you have the right to terminate the agreement if service delivery becomes unacceptably bad. What constitutes an unacceptable level of performance that may cause you to terminate the contract?

D. Updates and Upgrades: Edit #3 and #4 if you require a different amount of notice for updates and upgrades. You may also delete #3 and #4 and substitute the following language: "Service Provider will notify Customer as far in advance as possible, and in any event at least thirty (30) days in advance, if any upcoming change to the Service will

require Customer to modify its business environment or practices (e.g., currently supported browser is being phased out, workflow is being changed)."

E. Customer Data: Do not change this section.

F. Data Privacy and Security:

YOU MUST CLASSIFY YOUR DATA by determining whether the vendor's system will be transmitting, storing, or generating data that contains sensitive or personal information or information that is protected by law. Prior to contract execution, Service Provider and Customer must cooperate and hold a meeting to determine whether any sensitive or personal information will be stored or used in the Service that is subject to any law, rule or regulation providing for specific compliance obligations (e.g., HIPAA, FERPA, IRS Pub. 1075). If so, then Service Provider and Customer must review the Service specifications to determine whether the Service is appropriate for the level of sensitivity of the data to be stored or used in the Service, and Service Provider must document in the Agreement how the Service complies with such law

Edit #1 to explain what data will be in the system and why it is protected. Consult your agency's legal counsel to determine which laws, if any, apply to the protection of this data. List these laws in #1 revising the "including but not limited to [list of laws]" at the end of the sentence. Examples: "social security numbers, driver's license numbers, and financial account information in combination with a person's name are protected personally identifiable information under Title 9 V.S.A. chapter 62"; student information is also protected under FERPA; health information is also protected under HIPAA. (This list is not intended to be complete. Note that multiple laws may apply.)

Edit #2 to reflect how the Service will comply with any such laws identified in #1. If Service Provider has separate documentation reflecting how the Service complies with applicable laws, this documentation should be attached to the contract and cross-referenced in #2.

G. Warranty: Consider whether you need a warranty for a time period (a 30-day warranty, for example) during which the vendor must repair defects. If so, you should add it here.

H. Subcontractors: Do not change this section.

I. Disaster Recovery:

You may change the disaster recovery time period in #1.

Note that #2 of this section requires you to obtain documentation from the vendor showing how the vendor's system supports your data protection requirements.

Determine whether your system is mission-critical. If it is, revise #3 to delete the words "If Customer designates the Service as mission-critical, as determined by Customer in its sole discretion." If your system is not mission critical, delete #3.

J. Records and Audit: Do not change this section.

L. Transition Assistance: Do not change this section.

B. State of Vermont Cloud Procurement Terms

The following legal terms apply to subscriptions to cloud SaaS offerings (each referred to as the "Service") by an eligible purchaser ("Customer") within the State of Vermont ("State"). These terms shall supplement any terms provided by the Contractor ("Service Provider"). Changes to the terms below not contemplated by the accompanying instructions must be approved by the State CIO/DII Commissioner and the Attorney General's Office. These terms must be attached to and made part of the executed Purchase Order ("Agreement").

"Software-as-a-Service" (SaaS) means the capability provided to the consumer to use the provider's applications running on a cloud infrastructure. The applications are accessible from various client devices through a thin-client interface such as a Web browser (e.g., Web-based email) or a program interface. The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.

A. SUBSCRIPTION TERMS

1. Service Provider grants to Customer a license or right to (i) access and use the Service, (ii) use underlying software as embodied or used in the service, and (iii) view, copy, download (if applicable), and use documentation.

2. No terms, including a standard click-through license or website terms of use or privacy policy, shall apply to Customer unless Customer has expressly agreed to such terms by appending them to a signed agreement. Further, in no event shall any terms: (a) require indemnification by the State of the Service Provider; (b) waive the State's right to a jury trial; (c) establish jurisdiction in any venue other than the Superior Court of the State of Vermont, Civil Division, Washington Unit; (d) designate a governing law other than the laws of the State of Vermont; (e) constitute an implied or deemed waiver of the immunities, defenses, rights or actions arising out of State's sovereign status or under the Eleventh Amendment to the United States Constitution; or (f) limit the time within which an action may be brought hereunder.

B. SUPPORT AND TRAINING

1. Service Provider must provide technical support via online helpdesk and toll-free phone number, at minimum during Business Hours (Monday through Friday from 8:00 a.m. to 6:00 p.m. Eastern Time), and 24x7x365 if required by Customer and requested prior to contract execution.

2. Service Provider must make training available online to users.

3. All support and training shall be provided at no additional cost to Customer, except for customized support and training expressly requested by Customer.

C. SERVICE LEVELS

Service Provider must provide a Service Level Agreement (SLA) that contains, at minimum, the following terms:

Uptime; scheduled maintenance

1. SLA must include (1) a specified guaranteed annual or monthly uptime percentage, at minimum 99.99%; and (2) a definition of uptime and how it is calculated.

2. For purposes of calculating uptime percentage, scheduled maintenance may be excluded up to ten (10) hours per month, but unscheduled maintenance and any scheduled maintenance in excess of ten (10) hours must be included as downtime

3. Scheduled maintenance must occur: with at least two (2) business days' advance notice; at agreed-upon times when a minimum number of users will be using the system; and in no event during Business Hours.

Defects; other SLA metrics

4. SLA must include: (1) response and resolution times for defects; (2) at least three levels of defect classifications (severe, medium, low); and (3) any other applicable performance metrics (e.g., latency, transaction time or system speeds) based on industry standards.

5. While the Service Provider may initially classify defects, Customer determines final classification of defects.

Remedies

6. SLA must include remedies for failure to meet guaranteed uptime percentage, response and resolution times, and other metrics, which may include fee reductions and extensions in service period at no cost.

7. Repeated or consistent failures to meet SLA metrics result in (1) a refund of all fees paid by Customer for the period in which the failure occurred; (2) participation by Service Provider in a root cause analysis and corrective action plan at Customer's request; and (3) a right for Customer to terminate without penalty and without waiver of any rights upon written notice to Service Provider.

Reports

8. Service Provider will provide Customer with a written report (which may be electronic) of performance metrics, including uptime percentage and record of service support requests, classifications, and response and resolution times, at least quarterly or as requested by Customer. Service Provider shall maintain accurate, reasonably detailed records pertaining to Service Levels, including service availability and downtime. Customer may independently audit the report at Customer's expense.

9. Representatives of Service Provider and Customer shall meet as often as may be reasonably requested by either party to review the performance of the Service and to discuss technical plans, financial matters, system performance, service levels, and any other matters related to this Agreement.

10. Service Provider will provide to Customer regular status reports during unscheduled downtime, at least twice per day or upon request

11. Service Provider will provide Customer with root cause analysis within thirty (30) days of unscheduled downtime at no additional cost

D. UPDATES AND UPGRADES

1. Service Provider will make updates and upgrades available to Customer at no additional cost when Service Provider makes such updates and upgrades generally available to its users.

2. Service Provider will notify Customer at least sixty (60) days in advance prior to any major update or upgrade.

3. Service Provider will notify Customer at least five (5) business days in advance prior to any minor update or upgrade, including hotfixes and installation of service packs, except in the case of an emergency such as a security breach.

4. No update, upgrade or other change to the Service may decrease the Service's functionality, adversely affect Customer's use of or access to the Service, or increase the cost of the Service to Customer.

E. CUSTOMER DATA

1. Customer retains full right and title to data provided by Customer and any data derived therefrom, including metadata (collectively, the "Customer Data").

2. Service Provider shall not collect, access, or use user-specific Customer Data except as strictly necessary to provide Service to Customer. No information regarding Customer's use of the Service may be disclosed, provided, rented or sold to any third party for any reason unless required by law or regulation or by an order of a court of competent jurisdiction. This obligation shall extend beyond the term of the Agreement in perpetuity.

3. Service Provider shall not use any information collected in connection with the Agreement, including the Customer Data, for any purpose other than fulfilling its obligations under the Agreement.

4. At no time may any Data or processes which either belong to Customer, or are intended for Customer's exclusive use, be copied, disclosed, or retained by Service Provider for subsequent use in any transaction that does not include Customer.

5. Customer Data must remain at all times within the continental United States. Service Provider must disclose to Customer the identity of any third-party host of Customer Data prior to the signing of this Agreement.

6. Customer shall have access to the Customer Data at any time during the term of the Agreement or for up to three (3) months after the term (so long as the Customer Data remains in the Service Provider's possession). Within ten (10) business days of a request by Customer, the Service Provider will make available to Customer a complete and secure (i.e. encrypted and appropriately authenticated) download file of Customer Data in a format acceptable to Customer including all schema and transformation definitions and/or delimited text files with documented, detailed schema definitions along with attachments in their native format. *Provided, however*, in the event the Service Provider ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, the Service Provider shall immediately return all Customer Data to Customer control; including, but not limited to, making all necessary access to applicable remote systems available to the Customer for purposes of downloading all Customer Data. The Service Provider's policies regarding the retrieval of data upon the termination of services have been made available to the Customer upon execution of this Agreement under separate cover. The Service Provider shall provide the Customer with not less than thirty (30) days advance written notice of any material amendment or modification of such policies.

7. Upon termination of this Agreement for any reason whatsoever, Service Provider shall immediately deliver to Customer all Customer Data (including without limitation any Deliverables for which Customer has made payment in whole or in part), that are in the possession or under the control of Service Provider in whatever stage of development and form of recordation such Customer property is expressed or embodied at that time.

8. Three (3) months after the termination or expiration of the Agreement or upon Customer's earlier written request, and in any event after Customer has had an opportunity to export and recover the Customer Data, Service Provider shall at its own expense destroy and erase from all systems it directly or indirectly uses or controls, in a manner that assures the State that the information is rendered unrecoverable, all tangible or intangible forms of the Customer Data and Customer's Confidential Information, in whole or in part, and all copies thereof except such records as are required by law. To the extent that any applicable law prevents Service Provider from destroying or erasing Customer Data as described in the preceding sentence, Service Provider shall retain, in its then current state, all such Customer Data then within its right of control or possession in accordance with the confidentiality, security and other requirements of this Agreement, and perform its obligations under this section as soon as such law no longer prevents it from doing so.

Service Provider shall, upon request, send a written certification to Customer certifying that it has destroyed the Customer Data and Confidential Information in compliance with this section.

F. DATA PRIVACY AND SECURITY

1. Service Provider must comply with all applicable laws related to data privacy and security, as may be amended from time to time, including, but not limited to, Chapter 62 of Title 9 of the Vermont Statutes, HIPAA, HITECH, FERPA and/or IRS Pub. 1075.

2. If "personally identifiable information," as defined in 9 V.S.A. §2430(5), will be stored or used in the Service, then Service Provider is a "data collector" as such term is defined in Chapter 62 of Title 9 of the Vermont Statutes (9 V.S.A. §2430(3)).

3. Service Provider shall provide a secure environment for Customer Data, and any hardware and software, including servers, network and data components provided by Service Provider as part of its performance under this Agreement, in order to protect, and prevent unauthorized access to and use or modification of, the Service and Customer Data. The Service Provider 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 Customer Data; (ii) protect against any anticipated security threats or hazards to the security or integrity of the Customer Data; and (iii) protect against unauthorized access to or use of Customer Data. Such measures shall include at a minimum: (1) access controls on information systems, including controls to authenticate and permit access to Customer Data only to authorized individuals and controls to prevent the Service Provider employees from providing Customer 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 Customer Data while in transit from the Service Provider networks to external networks; (4) measures to store in a secure fashion all Customer 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 Customer Data; (6) measures to ensure that the Customer 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 Customer 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 Service Provider systems that are used in the provision of the services against intrusion on a twenty-four (24) hour a day basis.

4. Customer Data must be partitioned from other data in such a manner that access to it will not be impacted or forfeited due to e-discovery, search and seizure or other actions by third parties obtaining or attempting to obtain Service Provider's records, information or data for reasons or activities that are not directly related to Customer's business.

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

6. Service Provider may not share Customer Data with its parent company or other affiliate without Customer's express written consent.

7. In the event of any breach of the Service's security that adversely affects Customer Data or Service Provider's obligations with respect thereto, or any evidence that leads Service Provider to reasonably believe that such a breach is imminent, Service Provider shall immediately (and in no event more than twenty-four hours after discovering such

breach) notify Customer. Service Provider shall identify the affected Customer Data and inform Customer of the actions it is taking or will take to reduce the risk of further loss to Customer. Service Provider shall provide Customer the opportunity to participate in the investigation of the breach and to exercise control over reporting the unauthorized disclosure. The Service Provider shall provide such other information, including a written report, as reasonably requested by the Customer.

8. In the event that personally identifiable information is compromised, Service Provider shall be responsible for providing breach notification to the affected individuals in coordination with the State.

9. Service Provider shall fully indemnify, defend, and save harmless the Customer from and against any and all fines, criminal or civil penalties, judgments, damages and assessments, including reasonable expenses suffered by, accrued against, charged to or recoverable from the State resulting from a security breach or the unauthorized disclosure of Customer Data by the Service Provider, its officers, agents, employees, and subcontractors.

G. WARRANTY

In addition to the warranties set forth in the Participating Addendum, Service Provider warrants that:

1. Service Provider will provide to Customer commercially reasonable continuous and uninterrupted access to the Service, and will not interfere with Customer's access to and use of the Service during the term of this Agreement.

2. The Service is compatible with and will operate successfully with any environment (including web browser and operating system) specified by Service Provider in its documentation.

H. SUBCONTRACTORS

1. Before and during the term of this Agreement, Service Provider must notify Customer prior to any subcontractor providing any services, directly or indirectly, to Customer under this Agreement that materially affect the Service being provided to Customer, including: hosting; data storage; security and data integrity; payment; and disaster recovery. Customer must approve all such subcontractors identified after the effective date of the Agreement.

2. Service Provider is responsible for its subcontractors' compliance with the Agreement, and shall be fully liable for the actions and omissions of subcontractors as if such actions or omissions were performed by Service Provider.

I. DISASTER RECOVERY

1. Service Provider agrees to maintain and follow a disaster recovery plan designed to maintain Customer access to the Service, and to prevent the unintended destruction or loss of Customer Data. The disaster recovery plan shall provide for and be followed by Service Provider such that in no event shall the Service be unavailable to Customer for a period in excess of twenty-four (24) hours.

2. The Service Provider's back-up policies have been made available to the Customer upon execution of this Agreement under separate cover. The Service Provider shall provide the State with not less than thirty (30) days advance written notice of any material amendment or modification of such policies.

3. If Customer designates the Service as mission-critical, as determined by Customer in its sole discretion: (1) Service Provider shall review and test the disaster recovery plan regularly, at minimum twice annually; (2) Service Provider shall back up Customer Data no less than twice daily in an off-site "hardened" facility located within the continental United States; and (3) in the event of Service failure, Service Provider shall be able to restore the Service, including Customer Data, with loss of no more than twelve (12) hours of Customer Data and transactions prior to failure.

J. RECORDS AND AUDIT. In addition to requirements set forth in the Participating Addendum:

1. Examination and Audit. Service Provider will maintain and cause its permitted contractors to maintain a complete audit trail of all transactions and activities, financial and non-financial, in connection with this Contract. Service Provider will provide to the Customer, its internal or external auditors, clients, inspectors, regulators and other designated representatives, at reasonable times (and in the case of State or federal regulators, at any time required by such regulators) access to Service Provider personnel and to any and all Service Provider facilities or where the required information, data and records are maintained, for the purpose of performing audits and inspections (including unannounced and random audits) of Service Provider and/or Service Provider personnel and/or any or all of the records, data and information applicable to this Contract. At a minimum, such audits, inspections and access shall be conducted to the extent permitted or required by any laws applicable to the Customer or Service Provider (or such higher or more rigorous standards, if any, as Customer or Service Provider applies to its own similar businesses, operations or activities), to (i) verify the accuracy of charges and invoices; (ii) verify the integrity of Customer Data and examine the systems that process, store, maintain, support and transmit that data; (iii) examine and verify Service Provider's and/or its permitted contractors' operations and security procedures and controls; (iv) examine and verify Service Provider's and/or its permitted contractors' disaster recovery planning and testing, business resumption and continuity planning and testing, contingency arrangements and insurance coverage; and (v) examine Service Provider's and/or its permitted contractors' performance of the Services including audits of: (1) practices and procedures; (2) systems, communications and information technology; (3) general controls and physical and data/information security practices and procedures; (4) quality initiatives and quality assurance, (5) contingency and continuity planning, disaster recovery and back-up procedures for processes, resources and data; (6) Service Provider's and/or its permitted contractors' efficiency and costs in performing Services; (7) compliance with the terms of this Contract and applicable laws, and (9) any other matters reasonably requested by the Customer. Service Provider shall provide and cause its permitted contractors to provide full cooperation to such auditors, inspectors, regulators and representatives in connection with audit functions and with regard to examinations by regulatory authorities, including the installation and operation of audit software.

2. Software Licensee Compliance Report. Upon request and not more frequently than annually, the State will provide Service Provider with a certified report concerning the State's use of any software licensed for State use pursuant this Contract. The parties agree that any non-compliance indicated by the report shall not constitute infringement of the licensor's intellectual property rights, and that settlement payment mutually agreeable to the parties shall be the exclusive remedy for any such non-compliance.

3. Operations Security. The Service Provider shall cause an SSAE 16 SOC 2 Type 2 audit report to be conducted annually. The audit results and the Service Provider's plan for addressing or resolution of the audit results shall be shared with the Customer within sixty (60) days of the Service Provider 's receipt of the audit results. Further, on an annual basis, within 90 days of the end of the Service Provider's fiscal year, the Service Provider shall transmit its annual audited financial statements to the State.

K. TRANSITION ASSISTANCE

1. Service Provider shall reasonably cooperate with other parties in connection with all services to be delivered under this Agreement, including without limitation any successor provider to whom Customer Data is to be transferred in connection with termination. Service Provide shall assist Customer in exporting and extracting the Customer Data, in a format usable without the use of the Service and as agreed to by Customer, at no additional cost. Any transition services requested by Customer involving additional knowledge transfer and support may be subject to a separate transition SOW on a time and materials basis either for a fixed fee or at rates to be mutually agreed upon by the parties.

2. If Customer determines in its sole discretion that a documented transition plan is necessary, then no later than sixty (60) days prior to termination, Service Provider and Customer shall jointly create a written Transition Plan Document

identifying transition services to be provided and including an SOW if applicable. Both parties shall comply with the Transition Plan Document both prior to and after termination as needed.