

Retainer Contract for IT Professional Services
LiRo GIS Inc.

STANDARD CONTRACT

1. **Parties.** This is a contract (hereinafter “Retainer Contract”) between the **State of Vermont**, through its Department of Buildings and General Services, Office of Purchasing & Contracting (“State”), and LiRo GIS Inc., with principal place of business at Syosset, NY (“Contractor”). Contractor’s form of business organization is Corporation. It is the Contractor’s responsibility to contact the Vermont Department of Taxes to determine if, by law, the Contractor is required to have a Vermont Department of Taxes Business Account Number.
2. **Subject Matter.** This Retainer Contract authorizes and establishes requirements for State Agencies to procure from Contractor certain information technology professional services in the categories set forth in Attachment A1 hereto. Contractor services shall only be provided pursuant to Statement of Work Agreement executed with a State Agency. Contractor agrees to provide its services at or below the established rates and subject to and in accordance with all requirements of this Retainer Contract, and Contractor understands and agrees that the terms and conditions of this Retainer Contract shall apply to the Contractor’s performance of services under any Statement of Work Agreement.
3. **Maximum Amount.** Statement of Work Agreements under this Retainer Contract are not authorized to include a maximum amount payable greater than \$500,000.00, provided however, the State Chief Information Officer shall have sole and exclusive discretion to waive this restriction for any specific Statement of Work Agreement.
4. **Contract Term.** The term of this Retainer Contract shall begin on May 1, 2021 and end on April 30, 2023. The term of this Retainer Contract may be extended for up to twenty-four months at the discretion of the State. Upon the termination of this Retainer Contract, no new SOW Agreements may be issued, any outstanding SOW Agreements shall continue unless or until terminated in accordance with the terms of the SOW Agreement, and the Parties acknowledge and agree that the terms of this Retainer Contract shall survive and apply to each outstanding SOW Agreement.
5. **Prior Approvals.** In accordance with current State law, bulletins, and interpretations, this Retainer Contract 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. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this Retainer Contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor. The parties acknowledge and agree that the SOW Agreement process set forth herein shall not be used to effectuate any changes, modifications, or amendments in the terms and conditions of this Retainer Contract, and that any provision in a SOW Agreement purporting to modify the terms and conditions established by this Retainer Contract shall be null and void.

7. **Termination for Convenience.** This Retainer Contract may be terminated by the State at any time by giving written notice at least thirty (30) days in advance.

8. **Attachments.** This Retainer Contract consists of 23 pages including the following attachments which are incorporated herein and shall apply to each SOW Agreement executed pursuant to this Retainer Contract:
 - Attachment A: General Scope of Work
 - Attachment A1: IT Service Categories, Roles and Rates
 - Attachment B: Payment Provisions
 - “Attachment C: Standard State Provisions for Contracts and Grants” a preprinted form (12/15/17). The term “Agreement” as used in Attachment C shall be deemed to refer to this Retainer Contract and each SOW Agreement entered into by Contractor hereunder. The term “State” as used in Attachment C shall be deemed refer to the State and any Agency of the State that enters into a SOW Agreement with Contractor.
 - Attachment D: Information Technology Professional Services Terms and Conditions (3/21/19). The term “State” as used in Attachment D shall be deemed refer to the State and any Agency of the State that enters into a SOW Agreement with Contractor.

9. **Order of Precedence.** Any ambiguity, conflict or inconsistency among the documents comprising this Master Agreement shall be resolved according to the following order of precedence:
 - 1) Standard Contract (pages 1 and 2 of this document)
 - 2) Attachment D (Technology Terms and Conditions)
 - 3) Attachment C (Standard Contract Provisions for Contracts and Grants)
 - 6) Attachment A
 - 7) Attachment A1
 - 8) Attachment B

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

State of Vermont	LiRo GIS Inc.
By:	By:
Name: Jennifer Fitch	Name:
Title: Commissioner - Buildings and General Services	Title:
Date:	Date:

ATTACHMENT A: GENERAL SCOPE OF WORK

1. This Retainer Contract is executed pursuant to the State's IT retainer services program under which Contractor has been pre-qualified by the State to provide professional services in one or more of the categories identified and described in Attachment A1 of this agreement (the "Services").
2. Contractor agrees to provide, when requested by an agency, department, office, commission, board or other authority of the State of Vermont ("Agency"), its Services subject to and consistent with all requirements set forth herein.
3. Contractor Services shall only be performed if and to the extent required in a Statement of Work (SOW) Agreement executed directly with an Agency. Services performed under a SOW Agreement shall be subject to and governed by the terms and conditions of this Retainer Contract.
4. The State's process for an Agency to procure IT retainer services from pre-qualified vendors is set forth online at <https://bgs.vermont.gov/purchasing%20and%20contracting/current%20contrats/information-technology> , which information is hereby incorporated by reference as if set forth fully herein. Contractor agrees that it must follow the State's process to obtain and execute SOW Agreements against this Retainer Contract.
5. SOW Agreements executed against this Retainer Contract shall specify, at a minimum:
 - A. The detailed description of the Service(s) necessary to meet the Agency's business requirements, consistent with any one or more of the categories of service authorized by this Retainer Contract;
 - B. The place and time period for performance;
 - C. The Contractor roles and rates, or other pricing elements consistent with this Retainer Contract;
 - D. The Agency's billing address;
 - E. The name and contact information for the Agency's primary contact and the Contractor's primary contact for the project;
 - F. The maximum amount payable by the Agency to Contractor under the SOW Agreement;
 - G. A unique identifier for the SOW Agreement; and
 - H. The State of Vermont Contract Number.
6. SOW Agreements may include additional terms as necessary to comply with local, state or federal laws or regulations applicable to the Agency. By way of information, and without limitation:
 - A. When required in a SOW Agreement, Contractor's security controls shall conform to 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”), 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 and the Federal Information Security Management Act (“FISMA”), 44 U.S.C. 3541 et seq. and Family Education Rights and Privacy Act, 20 U.S.C. § 1232g (FERPA), as applicable.

- B. When required in a SOW Agreement, the terms and conditions of the State of Vermont Business Associate Agreement, revised May 2019 (available online at: <https://bgs.vermont.gov/purchasing-contracting/forms>) will be executed by Contractor and Agency and will be incorporated and apply to Contractor Services provided under the SOW Agreement.
 - C. When required in a SOW Agreement, the State of Vermont Agency of Human Services’ Customary Contract Provisions dated May 2018 (available online at: <https://bgs.vermont.gov/purchasing-contracting/forms>) shall be apply to a SOW Agreement.
 - D. Any additional assurances required by federal or state law, such as, but not limited to, the above, shall be noticed in the Agency’s SOW-RFP and required by the SOW Agreement resulting therefrom.
7. General Requirements: The following requirements shall apply to all Contractor Services performed in any SOW Agreement executed against this Retainer Contract.
- A. **CONTRACTOR RESOURCES:** Contractor shall obtain approval in advance from the Agency, of all Contractor employees, independent contractors or agents proposed for each SOW-RFP Project (“Key Personnel”). Key Personnel shall be identified in each SOW Agreement. Contractor shall use reasonable efforts to make available all Key Personnel for the entire life of the SOW RFP Project. Contractor shall not change Key Personnel without providing the Agency written justification and obtaining prior written approval of the Agency. Agency approvals for replacement of Key Personnel will not be unreasonably withheld. The replacement of Key Personnel shall have comparable or greater skills and applied experience than being replaced and be subject to reference and background checks described above. If Contractor removes Key Personnel for any reason, Contractor agrees to provide replacement Key Personnel and shall provide the first thirty (30) days of such replacement resource(s) with equivalent skill at no charge.

Notwithstanding the foregoing, the State acknowledges that Key Personnel may become unavailable due to termination of employment for any reason, through disability or death, illness, or through leave of absence such as FMLA or National Guard duty for example. In such circumstances, Contractor shall promptly notify the Agency in writing of the impending or actual departure of any Key Personnel and of the qualifications and identity of proposed replacement Key Personnel.

The Agency shall have the right to reasonably disapprove of any replacement Key Personnel.

If Key Personnel does not perform up to acceptable or professional standards as required in this Retainer Contract and the SOW Agreement, Contractor shall, when notified by the Agency, either replace the employees, independent contractors or agents with approved employees, independent contractors or agents or take remedial action agreed by Agency to ensure that Contractor Resources are acceptable to the Agency for the SOW Agreement. An Agency's right to request replacement of Contractor personnel hereunder relates solely to the removal of individuals from work on the particular SOW Agreement and does not create any employment or principal-agent relationship with the Agency or the State. Nothing in this Retainer Contract or any SOW Agreement entered into hereunder authorizes the Agency or the State to direct the Contractor's termination of, or other adverse action related to, the employment of any individual.

- B. **SOW AGREEMENT:** Based upon an evaluation of SOW Proposals, if Contractor is selected, a specific SOW Agreement will be entered into between the Agency and the Contractor, which will bind the Contractor to the terms of the SOW Agreement, including Project-specific payment terms. All SOW Agreements shall be subject to the terms of this Retainer Contract.

The Agency representative identified in the SOW Agreement may perform administrative functions, issue written directions; monitor Contractor compliance with the terms and conditions of this Retainer Contract and the SOW Agreement; and approve project deliverables.

Contractor shall be responsible for achieving on budget/on time/on target (e.g., within scope) completion of the applicable SOW Agreement.

- C. **CERTIFICATION OF SOW AGREEMENT:** All SOW Agreements valued at \$25,000 or more per year shall be submitted to the State of Vermont Office of the Attorney General for a determination in accordance with 3 V.S.A. § 342 that such engagement is not contrary to the spirit and intent of the classification plan and merit system principles and standards provided by Chapter 13 of Title 3 of the Vermont Statutes. Certification when required shall be indicated in the space provide within the SOW Agreement.
- D. **NON-DISCLOSURE AGREEMENT:** In some cases, Contractor may be required to sign a Non-Disclosure Agreement in a form acceptable to the Agency in order to protect confidential State data to which the Contractor, its employees, subcontractors or agents may have access.
- E. **CONTRACT MANAGEMENT OVERSIGHT ACTIVITIES:** The State's Enterprise Project Management Office (EPMO) or designee may monitor the progress of any or all of the SOW Agreements in order to ascertain whether the Contractor is completing its work in accordance with this Retainer Contract and

the applicable SOW Agreement. In all cases, Contractor shall remain solely responsible for achieving on-budget/on-time completion of the applicable SOW Agreement.

F. REQUIRED PROJECT POLICIES, GUIDELINES AND METHODOLOGIES:

The Contractor shall be required to comply with all applicable laws, regulations, policies, standards and guidelines affecting information technology projects, which may be created or changed periodically. It is the responsibility of the Contractor to ensure adherence and to remain abreast of new or revised laws, regulations, policies, standards and guidelines affecting specific project execution. The most recent version of the following State policies can be found online at

<https://digitalservices.vermont.gov/working-us/policies>

- Information Security Policy https://digitalservices.vermont.gov/sites/digitalservices/files/documents/policy/SoV_Information_Security_Standard.pdf
- Cybersecurity Directive 2019 https://digitalservices.vermont.gov/sites/digitalservices/files/documents/policy/ADS_Cybersecurity_Directive_19-01.pdf
- Physical Security for Computer Protection <https://digitalservices.vermont.gov/sites/digitalservices/files/document/s/policy/ADS-Physical-Security-for-Computer-Protection.pdf>
- Third-Party Connectivity <https://digitalservices.vermont.gov/sites/digitalservices/files/documents/policy/ADS-Third-Party-Network-Connectivity.pdf>
- Mobile Device Policy
- System/Service Password Policy https://digitalservices.vermont.gov/sites/digitalservices/files/documents/policy/ADS-InformationSecurityPolicies_FINAL.pdf
- User Password Policy and Guidelines https://digitalservices.vermont.gov/sites/digitalservices/files/documents/policy/ADS-InformationSecurityPolicies_FINAL.pdf
- Digital Media and Hardware Disposal Policy, Standard and Procedure <https://digitalservices.vermont.gov/sites/digitalservices/files/document/s/policy/ADS-Digital-Media-and-Hardware-Disposal-Policy.pdf>
- Phishing and Incident Response Policy <https://digitalservices.vermont.gov/sites/digitalservices/files/documents/policy/ADS-Phishing%20Incident-Response-Process-9-19-17.pdf>
- Vermont Accessibility Standard <https://digitalservices.vermont.gov/sites/digitalservices/files/documents/web-policy/ADS-VermontAccessibilityStandard2017.pdf>

G. SOW PROGRESS REPORTING TO THE AGENCY: The Contractor and each Agency shall conduct progress meetings as set forth in the applicable SOW Agreement. Contractor shall submit a project progress report to the Agency

representative identified in the SOW Agreement via email and each progress report shall contain, at a minimum, the following information:

- E-mail subject line: Contracting Agency name, IT service category name, reporting period and "Progress Report."
- Work accomplished during the frequency period and all tasks planned for the upcoming frequency period.
- Deliverable progress, as a percentage of completion.
- Problem areas, including scope creep, deviation from the work plan; tasks incomplete, or behind schedule in the previous week (with reasons given for those behind schedule); and the status of any corrective actions undertaken and other unresolved issues and requirements to resolve unresolved issues.
- Planned activities for the next reporting period.
- Gantt chart updated from the original to show actual progress; as applicable, explanations for variances and plan for completion on schedule.
- An accounting report for the current reporting period and a cumulative summary of the totals for both the current and previous reporting periods. The accounting report shall include amounts invoiced-to-date and paid-to-date.
- Significant changes to Contractor's organization or method of operation or to the Project management team, where applicable.

H. MONTHLY REPORTING TO THE STATE: Contractor shall submit monthly reports to the State detailing all SOWs issued to it under this Retainer Contract for the reporting period. Reports shall be submitted as an email attachment to: SOV.ITContractingandProcurement@vermont.gov and SOV.ThePathForward@vermont.gov .

Each report must contain the contract number for this Retainer Contract and detail for each SOW Agreement, the following information: Agreement #, Amount, Date of SOW Agreement, and an accurate description of the services procured, including IT Service Category(ies), each Contracting Agency's address, contact name, and telephone number; SOW Title(s); and price charged per SOW Agreement, with totals for each SOW Agreement in each reporting period. The State reserves the right to request additional information or to modify the following reporting periods.

If there is no activity during the reporting period, Contractor's reporting shall state "no activity". Reports are due by the 15th of every month.

State shall promptly notify Contractor of any changes to the above email addresses for purposes of submitting reports under this section.

Failure submit complete reports in a timely manner and in the format required may result in suspension or termination of this Retainer Contract and any SOW Agreements in place.

- I. **WORK LOCATION:** Unless otherwise specified by the Agency in a SOW Agreement, all project work will be performed in Vermont at the site(s) identified by the Agency and the Contractor will be responsible for using its own mode of transportation for travel to and between designated sites.

Where applicable, the Agency will provide desks, telephone, LAN connections, and printers. Unless otherwise specified in the SOW RFP, the Agency will not provide desktop PCs and/or laptops to Contractor for use during the project.

If specific laptop computers or other mobile peripheral devices are required by Contractor, then the Contractor must provide its own compatible equipment and will be given the appropriate support by the Agency.

Contractor will be provided support by the Agency in setting up any accounts or connections required (i.e. Agency email system, network connectivity, network printing etc.). Contractor will have access to State phones for use in business calls related to performance of the services. Agencies will not pay Contractor's cell phone bills.

Attachment A1: IT Service Categories, Roles and Rates

Vendor Name: LiRo GIS, Inc.

IT Service Category	Title of Positions	Hourly Rate	
		On-Site	Remote
<p>E.Enterprise GIS Services</p> <p>Contractor shall provide services to integrate, store, edit, analyze, and display geographically-referenced information in a client/server or web-based environment.</p> <p>Following are Requirements and Capabilities for this Service:</p> <ul style="list-style-type: none"> • Implement and support Enterprise GIS services as part of an enterprise IT environment; • Identify, design, and implement mechanisms for acquiring, developing, implementing, and managing services as enterprise activities; • Cost-benefit analysis of migrating/integrating exiting databases with GIS; • Systems analysis, design and spatial database development; • Spatial referencing of spatial and non-spatial data; • Integrate spatially referenced data with other functional areas in an organization; • GIS system and data maintenance; • Data quality assurance (e.g. data accuracy, precision, consistency, completeness) according to data quality standards/guidelines of the State; • Collect, create or acquire digital spatial data such as orthophotography, elevation data, transportation features, streams, or parcel maps; • Create maps using spatial data for Web content, publication or other uses; • Link data with maps using geocoding; • Define, develop, configure, implement and maintain GIS solutions, including COTS packages; • Manipulate geographical data; • Perform queries, analysis and visualization; • Leverage existing data sets and data assets of the State, as necessary; • Interface disparate GIS data sets to GIS solution; • Develop Custom GIS application to present data in standalone and web based environments. 	<p>Geospatial Project Manager III Geospatial Project Manager II Geospatial Project Manager I Geospatial Subject Matter Expert Geospatial Analyst III Geospatial Analyst II Geospatial Analyst I Geospatial Technician II Geospatial Technician I Geospatial Software Developer III Geospatial Software Developer II Geospatial Software Developer I Geospatial Field Data Collector II Geospatial Field Data Collector I Geospatial Enterprise Architect Geospatial System Architect</p>	<p> \$100.00 \$ 80.00</p>	<p>\$200.43 \$186.92 \$159.88 \$180.00 \$140.00 \$120.00 \$ 90.00 \$ 75.00 \$ 65.00 \$200.43 \$150.00 \$120.88 \$185.00 \$160.00</p>

Attachment A1: IT Service Categories, Roles and Rates

<p>M. Mobile App Development Services</p> <p>Contractor shall provide services in accordance with the following requirements and capabilities:</p> <p>Provide a seamless omni-channel experience on any device.</p> <p>Front end development</p> <ul style="list-style-type: none"> • A sharp UI matched to design mockups with pixel-perfect accuracy • A consistent UX across the entire application • Animations and effects that don't compromise performance • Cross platform support <p>Back end development</p> <ul style="list-style-type: none"> • A solid architecture to accommodate future growth at scale • Flexibility to integrate with other systems and third-party services • Advanced data structures to provide actionable insights • Cutting-edge security features to protect your users, processes, and data • Analytics & Reporting • Q & C testing 	<p>Mobile Development Project Manager</p> <p>Mobile Software Developer III</p> <p>Mobile Software Developer II</p> <p>Mobile Software Developer I</p>		<p>\$159.88</p> <p>\$200.43</p> <p>\$150.00</p> <p>\$120.88</p>

ATTACHMENT B – PAYMENT PROVISIONS

1. Payment obligations shall only arise if and to the extent agreed in a Statement of Work Agreement between Contractor and an Agency executed against this Retainer Contract. Contractor will be paid for services actually performed and accepted by the Agency, up to the maximum amount payable specified in the applicable SOW Agreement.
2. The Agency shall pay the Contractor upon satisfactory completion of the services and acceptance thereof by the Agency for all work identified in the applicable SOW Agreement. Rates established in a SOW Agreement may be on the basis of either fixed price deliverables or time and materials.
 - a. For Services performed on a time and materials basis, Contractor shall be paid based on documentation and itemization of work performed and included in invoicing. Invoicing must contain a detail of services including a summary of work performed, location, dates, hours of work performed, work completed, and rates of pay, which may not exceed the hourly rates set forth in Attachment A1.
 - b. For fixed price deliverables, Contractor shall be paid in accordance with the payment schedule included in the applicable SOW Agreement.
 - c. All rates shall be inclusive of any and all Contractor fees and expenses, including mileage.
3. Contractor rates in a SOW Agreement may not exceed the rates set forth in Attachment A1. Further, roles not specified in Attachment A1 are not authorized to be provided in a SOW Agreement.
4. If the Agency approves in writing in advance Contractor Personnel working remotely, at a location other than as directed by the Agency, all Contractor Personnel hours worked remotely must be clearly reported as remote and invoiced at the appropriate remote rate.
5. Contractor will be paid for actual hours worked (no overtime). Contractor shall not bill for travel time.
6. Invoicing. Payment will only be made upon completion and acceptance of the deliverables as defined in the applicable SOW Agreement. The Contractor shall submit invoices for payment upon acceptance of separately priced deliverables, or on a time and materials basis, as the case may be, following written acceptance from the Contracting Agency that the deliverable is complete. A copy of the notice(s) of acceptance shall accompany all invoices submitted for payment. Invoices shall be sent to the Contracting Agency at the address provided in the SOW Agreement.
7. Payment of invoices shall be Net 30 from the date the Agency receives an error-free invoice with full and complete supporting documentation.
8. Retainage. Contractor agrees that any SOW Agreement may provide, in the discretion of the Agency, that the Agency withhold a percentage, determined in the discretion of the Agency, of the total amount payable for each SOW Agreement deliverable, to be payable only after satisfactory completion and the State's final acceptance of the SOW Project.

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

“Attachment C: Standard State Provisions for Contracts and Grants” revised December 15, 2017 constitutes part of this Agreement and is hereby incorporated by reference as if fully set forth herein and shall apply to the purchase of all good or services made under this Agreement. A copy of this document is available online at: <https://bgs.vermont.gov/purchasing-contracting/forms>.

**ATTACHMENT D:
INFORMATION TECHNOLOGY PROFESSIONAL SERVICES
TERMS AND CONDITIONS (rev. 3/21/19)**

1. OWNERSHIP AND LICENSE IN DELIVERABLES

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

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

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

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

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

“Work Product” means 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.

2. CONFIDENTIALITY AND NON-DISCLOSURE; SECURITY BREACH REPORTING

2.1 For purposes of this Contract, confidential information will not include information or material which (a) enters the public domain (other than as a result of a breach of this Contract); (b) was in the receiving party’s possession prior to its receipt from the disclosing party; (c) is independently developed by the receiving party without the use of confidential information; or (d) is obtained by the receiving party from a third party under no obligation of confidentiality to the disclosing party.

2.2 Confidentiality of Contractor Information. The Contractor acknowledges and agrees that this Contract and any and all Contractor information obtained by the State in connection with this Contract are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq. The State will not disclose information for which a reasonable claim of exemption can be made pursuant to 1 V.S.A. § 317(c), including, but not limited to, trade secrets, proprietary information or financial information, including any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not

patented, which is known only to the Contractor, and which gives the Contractor an opportunity to obtain business advantage over competitors who do not know it or use it.

The State shall immediately notify Contractor of any request made under the Access to Public Records Act, or any request or demand by any court, governmental agency or other person asserting a demand or request for Contractor information. Contractor may, in its discretion, seek an appropriate protective order, or otherwise defend any right it may have to maintain the confidentiality of such information under applicable State law within three business days of the State's receipt of any such request. Contractor agrees that it will not make any claim against the State if the State makes available to the public any information in accordance with the Access to Public Records Act or in response to a binding order from a court or governmental body or agency compelling its production. Contractor shall indemnify the State for any costs or expenses incurred by the State, including, but not limited to, attorneys' fees awarded in accordance with 1 V.S.A. § 320, in connection with any action brought in connection with Contractor's attempts to prevent or unreasonably delay public disclosure of Contractor's information if a final decision of a court of competent jurisdiction determines that the State improperly withheld such information and that the improper withholding was based on Contractor's attempts to prevent public disclosure of Contractor's information.

The State agrees that (a) it will use the Contractor information only as may be necessary in the course of performing duties, receiving services or exercising rights under this Contract; (b) it will provide at a minimum the same care to avoid disclosure or unauthorized use of Contractor information as it provides to protect its own similar confidential and proprietary information; (c) except as required by the Access to Records Act, it will not disclose such information orally or in writing to any third party unless that third party is subject to a written confidentiality agreement that contains restrictions and safeguards at least as restrictive as those contained in this Contract; (d) it will take all reasonable precautions to protect the Contractor's information; and (e) it will not otherwise appropriate such information to its own use or to the use of any other person or entity.

Contractor may affix an appropriate legend to Contractor information that is provided under this Contract to reflect the Contractor's determination that any such information is a trade secret, proprietary information or financial information at time of delivery or disclosure.

2.3 Confidentiality of State Information. In performance of any SOW Agreement made under this Retainer Contract, Contractor acknowledges that certain State Data, to which the Contractor may have access may contain individual federal tax information, personal protected health information and other individually identifiable information protected by State or federal law or otherwise exempt from disclosure under the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq. In addition to the provisions of this Section, the Contractor shall comply with the requirements set forth in the State's HIPAA Business Associate Agreement when applicable and attached to a SOW Agreement made under this Retainer Contract. Before receiving or controlling State Data, the Contractor will have an information security policy that protects its systems and processes and media that may contain State Data from internal and external security threats and State Data from unauthorized disclosure, and will have provided a copy of such policy to the State.

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

The Contractor agrees that (a) it will use the State Data only as may be necessary in the course of performing duties or exercising rights under this Contract; (b) it will provide at a minimum the same care to avoid disclosure or unauthorized use of State Data as it provides to protect its own similar confidential and proprietary information; (c) it will not publish, reproduce, or otherwise divulge any State Data in whole or in part, in any manner or form orally or in writing to any third party unless it has received written approval from the State and that third party is subject to a written confidentiality agreement that contains restrictions and safeguards at least as restrictive as those contained in this Contract; (d) it will take all reasonable precautions to protect the State's information; and (e) it will not otherwise appropriate such information to its own use or to the use of any other person or entity. Contractor will take reasonable measures as are necessary to restrict access to State Data in the Contractor's possession to only those employees on its staff who must have the information on a "need to know" basis. The Contractor shall not retain any State Data except to the extent required to perform the services under this Contract.

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

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

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

3. SECURITY OF STATE INFORMATION.

3.1 Security Standards. To the extent Contractor has access to, processes, handles, collects, transmits, stores or otherwise deals with State Data, the Contractor represents and warrants that it has implemented and it shall maintain during the term of this Contract the highest industry standard administrative, technical, and physical safeguards and controls consistent with NIST *Special Publication 800-53* (version 4 or higher) and *Federal Information Processing Standards Publication 200* and designed to (i) ensure the security and confidentiality of State Data; (ii) protect against any anticipated security threats or hazards to the security or integrity of the State Data; and (iii) protect against unauthorized access to or use of State Data. Such measures shall include at a minimum: (1) access controls on information systems, including controls to authenticate and permit access to State Data only to authorized individuals and controls to prevent the Contractor employees from providing State Data to unauthorized individuals who may seek to obtain this information (whether through fraudulent means or otherwise); (2) industry-standard firewall protection; (3) encryption of electronic State Data while in transit from the Contractor networks to external networks; (4) measures to store in a secure fashion all State Data which shall include multiple levels of authentication; (5) dual control procedures, segregation of duties, and pre-

employment criminal background checks for employees with responsibilities for or access to State Data; (6) measures to ensure that the State Data shall not be altered or corrupted without the prior written consent of the State; (7) measures to protect against destruction, loss or damage of State Data due to potential environmental hazards, such as fire and water damage; (8) staff training to implement the information security measures; and (9) monitoring of the security of any portions of the Contractor systems that are used in the provision of the services against intrusion on a twenty-four (24) hour a day basis.

3.2 Security Breach Notice and Reporting. The Contractor shall have policies and procedures in place for the effective management of Security Breaches, as defined below, which shall be made available to the State upon request.

In addition to the requirements set forth in any applicable Business Associate Agreement as may be attached to the SOW Agreement, in the event of any actual security breach or reasonable belief of an actual security breach the Contractor either suffers or learns of that either compromises or could compromise State Data (a “Security Breach”), the Contractor shall notify the State within 24 hours of its discovery. Contractor shall immediately determine the nature and extent of the Security Breach, contain the incident by stopping the unauthorized practice, recover records, shut down the system that was breached, revoke access and/or correct weaknesses in physical security. Contractor shall report to the State: (i) the nature of the Security Breach; (ii) the State Data used or disclosed; (iii) who made the unauthorized use or received the unauthorized disclosure; (iv) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and (v) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. The Contractor shall provide such other information, including a written report, as reasonably requested by the State. Contractor shall analyze and document the incident and provide all notices required by applicable law.

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

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

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

In addition to any other indemnification obligations in this Contract, the Contractor shall fully indemnify and save harmless the State from any costs, loss or damage to the State resulting from

a Security Breach or the unauthorized disclosure of State Data by the Contractor, its officers, agents, employees, and subcontractors.

4. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

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

- (i) The Contractor has all requisite power and authority to execute, deliver and perform its obligations under this Contract and the execution, delivery and performance of this Contract by the Contractor has been duly authorized by the Contractor.
- (ii) There is no pending litigation, arbitrated matter or other dispute to which the Contractor is a party which, if decided unfavorably to the Contractor, would reasonably be expected to have a material adverse effect on the Contractor's ability to fulfill its obligations under this Contract.
- (iii) The Contractor will comply with all laws applicable to its performance of the services and otherwise to the Contractor in connection with its obligations under this Contract.
- (iv) The Contractor (a) owns, or has the right to use under valid and enforceable agreements, all intellectual property rights reasonably necessary for and related to delivery of the services and provision of the services as set forth in this Contract; (b) shall be responsible for and have full authority to license all proprietary and/or third party software modules, including algorithms and protocols, that Contractor incorporates into its product; and (c) none of the services or other materials or technology provided by the Contractor to the State will infringe upon or misappropriate the intellectual property rights of any third party.
- (v) The Contractor has adequate resources to fulfill its obligations under this Contract.
- (vi) Neither Contractor nor Contractor's subcontractors has past state or federal violations, convictions or suspensions relating to miscoding of employees in NCCI job codes for purposes of differentiating between independent contractors and employees.

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

- (i) Each and all of the Services shall be performed in a timely, diligent, professional and skillful manner, in accordance with the highest professional or technical standards applicable to such services, by qualified persons with the technical skills, training and experience to perform such services in the planned environment.
- (ii) Any time software is delivered to the State, whether delivered via electronic media or the internet, no portion of such software or the media upon which it is stored or delivered will have any type of software routine or other element which is designed to facilitate unauthorized access to or intrusion upon; or unrequested disabling or erasure of; or unauthorized interference with the operation of any hardware, software, data or peripheral equipment of or utilized by the State. Without limiting the generality of the foregoing, if the State believes that harmful code may be present in any software delivered hereunder, Contractor will, upon State's request, provide a new or clean install of the software. Notwithstanding the foregoing, Contractor assumes no responsibility for the State's negligence or failure to protect data from viruses, or any unintended modification, destruction or disclosure.

- (iii) To the extent Contractor resells commercial hardware or software it purchased from a third party, Contractor will, to the extent it is legally able to do so, pass through any such third party warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will not relieve the Contractor from Contractor's warranty obligations set forth herein.

5. PROFESSIONAL LIABILITY AND CYBER LIABILITY INSURANCE COVERAGE

In addition to the insurance required in Attachment C to this Contract, before commencing work on this Contract and throughout the term of this Contract, Contractor agrees to procure and maintain (a) Technology Professional Liability insurance for any and all services performed under this Contract, with minimum third party coverage of \$1,000,000.00 per claim, \$2,000,000.00 aggregate. To the extent Contractor has access to, processes, handles, collects, transmits, stores or otherwise deals with State Data, Contractor shall maintain first party Breach Notification Coverage of not less than \$1,000,000.00.

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

With respect to the first party Breach Notification Coverage, Contractor shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Contract.

- 6. REMEDIES FOR DEFAULT.** In the event either party is in default under this Contract, the non-defaulting party may, at its option, pursue any or all of the remedies available to it under this Contract, including termination for cause, and at law or in equity.

7. TERMINATION

7.1 Contractor shall reasonably cooperate with other parties in connection with all services to be delivered under this Contract, including without limitation any successor provider to whom State Data, State Intellectual Property or other State information and materials are to be transferred in connection with termination. Contractor shall assist the State in exporting and extracting any and all State data, in a format usable without the use of the Services and as agreed to by State, at no additional cost. Any transition services requested by State involving additional knowledge transfer and support may be subject to a contract amendment for a fixed fee or at rates to be mutually agreed upon by the parties.

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

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

- 8. DESTRUCTION OF STATE DATA.** At any time during the term of this Contract within thirty days of (i) the State's written request or (ii) termination or expiration of this Contract for any reason, Contractor shall securely dispose of all copies, whether in written, electronic or other form or media, of State Data according to National Institute of Standards and Technology (NIST) approved methods, and certify in writing to the State that such State Data has been disposed of securely. Further, upon the relocation of State Data, Contractor shall securely dispose of such copies from the former data location according to National Institute of Standards and Technology (NIST) approved methods and certify in writing to the State that such State Data has been disposed of securely. Contractor shall comply with all reasonable directions provided by the State with respect to the disposal of State Data.
- 9. IRS TERMS IF FEDERAL TAX INFORMATION WILL BE PROCESSED OR STORED (Per IRS Publication 1075)**

To the extent Contractor's performance under this Contract involves the processing or storage of Federal tax information, then, pursuant to IRS Publication 1075, the following provisions shall apply in addition to any other security standard or requirements set forth in this Contract:

A. PERFORMANCE

In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by its employees with the following requirements:

1. All work will be done under the supervision of the Contractor or the Contractor's employees.
2. The Contractor and the Contractor's employees with access to or who use Federal tax information must meet the background check requirements defined in IRS Publication 1075.
3. Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Disclosure to anyone other than an officer or employee of the Contractor will be prohibited.
4. All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
5. The Contractor certifies that the data processed during the performance of this Contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the Contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the Contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
6. Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the State or his or her designee. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard

copy printouts, and will provide the State or its designee with a statement containing the date of destruction, description of material destroyed, and the method used.

7. All computer systems processing, storing, or transmitting Federal tax information must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal tax information.
8. No work involving Federal tax information furnished under this Contract will be subcontracted without prior written approval of the IRS.
9. The Contractor will maintain a list of employees authorized access. Such list will be provided to the State and, upon request, to the IRS reviewing office.
10. The State will have the right to void the Contract if the Contractor fails to provide the safeguards described above.

B. CRIMINAL/CIVIL SANCTIONS:

1. Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
2. Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC section 7213A and 7431, and set forth at 26 CFR 301.6103(n)-1.

3. Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to State records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
4. Prior to Contractor having access to Federal tax information, Contractor shall certify that each Contractor employee or other individual with access to or who use Federal tax information on Contractor's behalf pursuant to this Contract understands the State's security policy and procedures for safeguarding Federal tax information. Contractor's authorization to access Federal tax information hereunder shall be contingent upon annual recertification. The initial certification and recertification must be documented and placed in the State's files for review. As part of the certification, and at least annually afterwards, Contractor will be advised of the provisions of IRCs 7431, 7213, and 7213A (see IRS Publication 1075 *Exhibit 4, Sanctions for Unauthorized Disclosure*, and *Exhibit 5, Civil Damages for Unauthorized Disclosure*). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches (See Publication 1075, Section 10). For both the initial certification and the annual certification, the Contractor must sign a confidentiality statement certifying its understanding of the security requirements.

C. INSPECTION:

The IRS and the State, with 24 hours' notice, shall have the right to send its officers, employees, and inspectors into the offices and plants of the Contractor for inspection of the facilities and operations provided for the performance of any work under this Contract. for compliance with the requirements defined in IRS Publication 1075. The IRS's right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology assets that access, store, process or transmit Federal tax information. On the basis of such inspection, corrective actions may be required in cases where the Contractor is found to be noncompliant with Contract safeguards.

10. SOV Cybersecurity Standard 19-01

All products and service provided to or for the use of the State under this Contract shall be in compliance with State of Vermont Cybersecurity Standard 19-01, which Contractor acknowledges has been provided to it, and is available on-line at the following URL:

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

11. *No effect of Click-Through or Other Additional Terms and Conditions.* Where the State is required to click-through or otherwise accept or made subject to any electronic terms and

conditions to use or access any product or service purchased hereunder, such terms and conditions are not binding and shall have no force or effect as to the product or service, this Agreement, or the applicable order for the product or service. Further, any terms and conditions of a Party's invoice, acknowledgment, confirmation, or similar documents, shall not apply to any order under this Agreement, or to this Agreement, and any such terms and conditions on any such document are objected to without need of further notice or objection.