

STATE OF VERMONT PARTICIPATING ADDENDUM # 41686
PURCHASING PROGRAM: ITS75 MULTISTATE SOFTWARE AND SERVICES

Contractor: Copley Consulting Group

Parent Agreement: Commonwealth of Massachusetts Request for Responses (RFR) ITS75 with its attachments and exhibits

Contractor Price and Rate Card:

<https://www.commbuys.com/bs0/external/purchaseorder/poSummary.sdo?docId=PO-20-1080-OSD03-SRC01-21146&releaseNbr=0&external=true&parentUrl=close>

Purchasing Program Webpage: <https://www.commbuys.com/bs0/external/bidDetail.sdo?docId=BD-20-1080-OSD03-SRC01-48438&external=true&parentUrl=bid>

1. **Parties.** This Participating Addendum (“Agreement”) is a contract between the State of Vermont, through its Department of Buildings and General Services, Office of Purchasing & Contracting (hereinafter “State” or “Vermont”), and the Contractor identified above. 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 Participating Addendum authorizes the purchase of software and services from Contractor as further described in the Parent Agreement identified above, pursuant to which Contractor has been awarded the following category:

Category 2: Niche Software Resellers and Distributors

This Category contains Software Resellers that specialize in the sale of one specific product, a small market segment of products, or an aligned grouping of products. More than 50% of Software Sales, including Maintenance Contracts, but not including any other services, must be attributed to the company’s specialty.

Products include Commercial Off the Shelf Software (COTS); and Software as a Service (“SaaS”), Platform as a Service (PaaS), and Infrastructure as a Service (IaaS), collectively “Cloud Services”. Contractor must have a resale and/or distribution agreement with the software publishers prior to reselling and/or distributing the products under ITS75. Contractor must ensure that the products and services provided comply with the applicable terms of ITS75.

In addition, software packaged with hardware as an appliance may be provided, but only with the written approval of the State’s Chief Procurement Officer on a case-by-case basis.

Services include software related services such as pre-sales assistance, licensing consultation including volume license agreement (VLA) administration, technical design, implementation, integration, installation, configuration, customization, training, documentation, maintenance, support, and cloud migration and monitoring. Contractor may, with the approval of the Purchasing Entity, work with sub-contractors to provide these services.

3. **Integrated Agreement; Order of Precedence.** This written Agreement contains the final and complete agreement of the parties. The parties do not intend to be bound by any additional terms not included, or expressly incorporated by reference, in this writing. The following documents constitute part of this Agreement and are hereby incorporated by reference as if fully set forth herein and shall apply to this Agreement and to all orders made under this Agreement as though fully set forth therein. Any conflict or ambiguity among these documents shall be resolved by giving priority to these documents in the order listed below.

Contractor: Copley Consulting Group

- a. “Standard State Provisions for Contracts and Grants” revised December 15, 2017. A copy of this document is attached to the Parent Agreement as Attachment VT1 and identified at RFR Section 3.6.3 and is otherwise available online at: <https://bgs.vermont.gov/purchasing-contracting/forms>;
 - b. “Other Provisions for the State of Vermont” revised March 8, 2019. A copy of this document is attached to the Parent Agreement as Attachment VT2 and identified in RFR Section 3.6.3;
 - c. The additional terms and conditions set forth in the Exhibits 1-3 Cloud Services Terms attached to the Parent Agreement as are identified in RFR Section 3.6.1;
 - d. The balance of the Parent Agreement inclusive of its attachments and exhibits not otherwise listed above; and
 - e. Contractor’s response to the Commonwealth’s RFR ITS75, as revised and awarded by the Commonwealth.
4. **Definitions.** Capitalized terms used, but not defined herein, have the meanings ascribed to such terms in the Parent Agreement.
 5. **Entities Authorized to Use This Agreement.** This Participating Addendum may be used by (a) all departments, offices, institutions, and other agencies of the State of Vermont and counties (each a “State Purchaser”) according to the process for ordering and other restrictions applicable to State Purchasers set forth herein; and (b) political subdivisions of the State of Vermont and any institution of higher education chartered in Vermont and accredited or holding a certificate of approval from the State Board of Education as authorized under 29 V.S.A. § 902 (each an “Additional Purchaser”). State Purchasers and Additional Purchasers are also referred to herein as a “Purchasing Entity” or “Purchasing Entities”. Issues concerning eligibility to purchase under this Agreement are solely within the authority of the State of Vermont Chief Procurement Officer. The State of Vermont and its officers and employees shall have no responsibility or liability for Additional Purchasers. Each Additional Purchaser is to make its own determination whether this Participating Addendum and the Parent Agreement are consistent with its procurement policies and regulations.
 6. **Contract Term.** This Agreement shall begin on **June 15, 2021** and end upon expiration of the Parent Agreement (the “Term”), unless terminated earlier in accordance with the terms of this Participating Addendum or the Parent Agreement. An amendment to the Term of this Participating Addendum shall not be necessary in the event of the renewal or extension of the Parent Agreement.
 7. **Available Products and Services.** All products, services and accessories listed within the Purchasing Program Webpage (identified atop this Agreement) may be purchased under this Participating Addendum subject to the requirements for ordering established under this Agreement. Contractor shall be responsible to the Purchasing Entity for successful performance and compliance with all requirements in accordance with the terms and conditions set forth by this Agreement. Contractor acknowledges and agrees that each and all of the promises it makes as “Contractor” in the Parent Agreement and in this Participating Addendum will apply to all products and services provided hereunder, regardless of who is providing or licensing the product or performing the work.
 8. **Product/Service Documents.** “Product/Service Documents” shall mean one or more document, agreement or other instrument required in connection with the acquisition or performance of the

products and services being procured by the Purchasing Entity, whether required by Contractor or any third parties whose products and/or services are available for purchase under this Agreement, regardless of format, including the license agreement, end user license agreement, service level agreement, or similar document, any hyperlinks to documents contained in the Product/Service Documents and any other paper or electronic version thereof. Contractor promises that each of the third parties whose products and/or services are available for purchase under this Agreement (each a “Provider”) understands and agrees that the terms and conditions of this Agreement, including the documents incorporated by reference into this Agreement, are applicable to the Provider’s products and/or services, and that the Product/Service Documents are subordinate to and modified by the terms of this Agreement. NO TERMS OF ANY PRODUCT/SERVICE DOCUMENTS SHALL APPLY TO A PURCHASING ENTITY EXCEPT AND THEN ONLY TO THE EXTENT A PURCHASING ENTITY EXPRESSLY ACCEPTS SUCH TERMS BY INCLUDING THE PRODUCT/SERVICE DOCUMENTS IN THE APPLICABLE ORDER. THE PARTIES ACKNOWLEDGE AND AGREE THAT ANY TERMS OR CONDITIONS IN THE PRODUCT/SERVICE DOCUMENTS NOT ALLOWABLE UNDER LAW OR THAT MATERIALLY CONFLICT WITH THE APPLICABLE TERMS AND CONDITIONS ESTABLISHED BY THIS AGREEMENT WILL NOT APPLY, AND THAT THIS AGREEMENT WILL CONTROL IN THE EVENT OF ANY AMBIGUITY OR MATERIAL CONFLICT BETWEEN THE PRODUCT/SERVICE DOCUMENTS AND THIS AGREEMENT. FURTHER, AND WITHOUT LIMITING THE GENERALITY OF THE FOREGOING SENTENCE, NOTWITHSTANDING ANY LANGUAGE TO THE CONTRARY, CONTRACTOR ACKNOWLEDGES AND AGREES THAT PURCHASING ENTITIES DO NOT INTEND TO BE BOUND, AND WILL NOT BE BOUND, BY ANY PRODUCT/SERVICE DOCUMENTS TERMS TO THE EXTENT SUCH TERMS: (A) REQUIRE INDEMNIFICATION BY THE PURCHASING ENTITY OF THE CONTRACTOR OR A THIRD PARTY; (B) WAIVE THE PURCHASING ENTITY’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 PURCHASING ENTITY’S SOVEREIGN STATUS OR UNDER THE ELEVENTH AMENDMENT TO THE UNITED STATES CONSTITUTION; (F) ESTABLISH NEW OR DIFFERENT PAYMENT OBLIGATIONS OF THE PURCHASING ENTITY THAN ARE ESTABLISHED UNDER THE AGREEMENT; (G) REDUCE OR DIMINISH THE OBLIGATIONS REGARDING THE SECURITY, CONFIDENTIALITY, AND INTEGRITY OF THE PURCHASING ENTITY’S DATA AS ARE ESTABLISHED UNDER THE AGREEMENT; (H) ESTABLISH RIGHTS IN THE USE OF OR ACCESS TO PURCHASING ENTITY’S DATA FOR ANY REASON OTHER THAN PERFORMANCE OF THE PRODUCT OR SERVICE; (I) ESTABLISH RIGHTS OF OWNERSHIP IN THE PURCHASING ENTITY’S DATA; OR (J) LIMIT THE TIME WITHIN WHICH AN ACTION MAY BE BROUGHT.

9. ***No effect of Click-Through or Other Extrinsic Terms and Conditions.*** Where a Purchasing Entity 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 Purchasing Entity, 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 document, shall not apply to any order made 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.

10. ***Term and Payment Provisions in Product/Service Documents.*** All Product/Service Documents shall run concurrently with the term of the applicable order made hereunder; provided, however, to the extent the Purchasing Entity has purchased a perpetual license to use software, hardware or other services, such license shall remain in place unless expressly terminated in accordance with the terms of the perpetual license. Contractor acknowledges and agrees for itself and for its Providers that to the extent any language in a Product/Service Document provides for alternate term or termination provisions, including automatic renewals, or provides for payment terms that differ from the payment terms set forth in this Agreement, such language shall be waived and shall have no force and effect.
11. ***Subsequent Unilateral Modification of Product/Service Documents.*** Notwithstanding any other provision or other unilateral license terms which may be issued by Contractor or any Provider after the dated date of this Agreement, 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 Purchasing Entity, as applicable, the components of which are licensed under the Product/Service Documents, or the fact that such other agreement may be affixed to or accompany the products and services being purchased hereunder, as applicable, upon delivery ("shrink wrap"), the terms and conditions set forth in this Agreement shall in all cases take precedence over the Product/Service Documents included in any order executed hereunder, and any ambiguity, conflict or inconsistency in the Product/Service Documents shall be resolved in favor of this Agreement, including the terms of the documents expressly incorporated into this Agreement.
12. ***No Lease Agreements.*** Leasing in any manner is not an allowable acquisition method for Vermont State Purchasers, and the Contractor is prohibited from leasing to State Purchasers under this Participating Addendum. Additional Purchasers are not subject to this prohibition and may negotiate lease agreements with Contractor if permissible.
13. ***Requirements for Ordering.***
 - a. Each order placed under this Agreement ("Order") shall be considered a separate contract between the Purchasing Entity and the Contractor and shall be deemed to incorporate all the terms and conditions of this Agreement. Nothing contained in any Order made under this Agreement shall amend or vary the terms of this Agreement. Additional terms which do not conflict with the terms of this Agreement may be included in an Order, if mutually agreed upon by the Contractor and the Purchasing Entity.
 - b. All Orders placed under this Participating Addendum must be in writing and shall, at a minimum, specify the following:
 - i. The product(s) being delivered and the place and time of delivery;
 - ii. The service(s) required and the place and time period for performance;
 - iii. The Purchasing Entity's billing address;

- iv. The price per unit, rates, or other pricing elements consistent with this Agreement;
 - v. A maximum amount payable by the Purchasing Entity under the Order;
 - vi. A unique identifier for the order; and
 - vii. The State of Vermont Participating Addendum Number.
 - viii. The Product/Service Documents applicable to the product or service being ordered.
- c. As applicable, Orders shall include specifically negotiated statement of work or service level agreement terms as necessary for the product and/or service to meet the Purchasing Entity's requirements.
 - d. Orders may include additional terms as necessary to comply with local, state or federal laws or regulations applicable to the Purchasing Entity.
 - e. The State's Agency of Digital Services is the only entity authorized to place orders on behalf of State Purchasers. (Additional Purchasers are not subject to this requirement). Orders placed from any other source shall not be binding against the State, or the State Purchaser. Contractor can verify orders for State Purchasers by contacting ADS.ITPurchasing@vermont.gov . Contractor agrees that it will not accept or fulfill orders placed on behalf of State Purchasers from any other source. Contractor's failure to meet this requirement may result in suspension or termination of this Participating Addendum.

14. *Payment Provisions and Invoicing.*

- a. Product offerings and complete details of product pricing, including discounts, applicable to this Participating Addendum are set forth in the Price Schedule maintained on-line at Purchasing Program Webpage listed above.
- b. Purchasing Entities may solicit the Contractor (or Fulfillment Partner/Authorized Reseller, if applicable) for deeper discounts than the minimum contract pricing as set forth in the Price Schedule (e.g., additional volume pricing, incremental discounts, firm fixed pricing or other incentives).
- c. If applicable, all equipment pricing is to include F.O.B. delivery to the ordering facility. No request for extra delivery cost will be honored.
- d. In the discretion of the Purchasing Entity, retainage may be specified in an Order, in an amount mutually agreeable to the parties.
- e. Payment terms are Net 30 days from the date the Purchasing Entity receives an error-free invoice with all necessary and complete supporting documentation, subject to any prompt-pay discounts offered by Contractor. Invoices shall itemize all products delivered or work performed during the invoice period, including, as applicable, the dates of service, rates of pay, hours of work performed, and any other information and/or documentation appropriate and sufficient to substantiate the amount invoiced for payment. As applicable, a copy of the notice(s) of acceptance shall accompany invoices submitted for payment.

Contractor: Copley Consulting Group

- a. Reports shall be formatted as an excel spreadsheet and transmitted electronically to SOV.ThePathForward@vermont.gov .
17. **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.
18. **Amendment.** 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.
19. **Termination.** This Participating Addendum may be terminated by the State at any time with thirty days prior written notice to the Contractor. Upon termination or expiration of this Participating Addendum, each party will assist the other in orderly termination of the Participating Addendum and the transfer of all assets, tangible and intangible, as may facilitate the orderly, non-disrupted business continuation of each party. This provision shall not relieve the Contractor and Purchasing Entity of their respective obligations to perform under any Order executed prior to the effective date of termination or expiration of this Participating Addendum.
20. **Primary Contacts.** The Parties will keep and maintain current at all times a primary point of contact for this Participating Addendum. The primary contacts for this this Participating Addendum are as follows:
 - a. **For the Contractor:**

Name:	Jim Reilly
Phone:	856/437-0546
Email:	jreilly@copleycg.com
 - b. **For the State:**

Name:	State of Vermont, Stephen Fazekas
Address:	109 State Street, Montpelier, VT 05633-3001
Phone:	802/828-2210
Fax:	802/828-2222
Email:	Stephen.fazekas@vermont.gov
21. **Vermont Business Associate Agreement.** If required by an order made by a State Purchaser under this Participating Addendum, 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>) shall be incorporated by reference and apply to the order. This provision shall not apply to Additional Purchasers.
22. **Vermont Federal Terms Supplement (Non-Construction).** If required by an order made by a State Purchaser under this Participating Addendum, the “STATE OF VERMONT- FEDERAL TERMS SUPPLEMENT (Non-Construction) for all Contracts and Purchases of Products and Services Connected with 2020 Pandemic,” which is attached to this Participating Addendum, shall be

Contractor: Copley Consulting Group

incorporated by reference and apply to the order. This provision shall not apply to Additional Purchasers.

By signing below Contractor agrees to offer the products and services on the Parent Agreement at prices equal to or lower than the prices listed on the Parent Agreement.

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT

By the State of Vermont:

By Copley Consulting Group

Date: _____

Date: _____

Signature: _____

Signature: _____

Name: Jennifer Fitch - Commissioner

Name: _____

Buildings & General Services

Title: _____

Title: _____

STATE OF VERMONT- FEDERAL TERMS SUPPLEMENT (Non-Construction)**for all Contracts and Purchases
of Products and Services Connected with 2020 Pandemic****BYRD ANTI-LOBBYING AMENDMENT**

Contractors who apply or bid for an award of \$100,000 or more certify that each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier, up to the recipient who in turn will forward the certification(s) to the awarding agency

PROCUREMENT OF RECOVERED MATERIALS

In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated Items unless the products cannot be acquired-

1. Competitively within a time frame providing for compliance with the contract performance schedule;
2. Meeting contract performance requirements; or
3. At a reasonable price

Information about this requirement, along with the list of EPA-designated items, is available at the EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

The Contractor also agrees to comply with all other applicable requirements of section 6002 of the Solid Waste Disposal Act.

CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The contractor agrees to report each violation to the State of Vermont and understands and agrees that the State of Vermont will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.
4. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
5. The contractor agrees to report each violation to the State of Vermont and understands and agrees that the State of Vermont will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
6. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA. **a.** Standard. Non-Federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).

CONTRACTOR BREACH, ERRORS AND OMISSIONS

Contractor: Copley Consulting Group

1. Any breach of the terms of this contract, or material errors and omissions in the work product of the contractor must be corrected by the contractor at no cost to the State, and a contractor may be liable for the State's costs and other damages resulting from errors or deficiencies in its performance.
2. Neither the States' review, approval or acceptance of nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract.
3. The rights and remedies of the State provided for under this contract are in addition to any other rights and remedies provided by law or elsewhere in the contract.

TERMINATION FOR CONVENIENCE

1. General

- a. Any termination for convenience shall be effected by delivery to the Contractor an Order of Termination specifying the termination is for the convenience of the Agency, the extent to which performance of work under the Contract is terminated, and the effective date of the termination.
- b. In the event such termination occurs, without fault and for reasons beyond the control of the Contractor, all completed or partially completed items of work as of the date of termination will be paid for in accordance with the contract payment terms.
- c. No compensation will be allowed for items eliminated from the Contract.
- d. Termination of the Contract, or portion thereof, shall not relieve the Contractor of its contractual responsibilities for work completed and shall not relieve the Contractor's Surety of its obligation for and concerning any just claim arising out of the work performed.

2. Contractor Obligations

After receipt of the Notice of Termination and except as otherwise directed by the State, the Contractor shall immediately proceed to:

- a. To the extent specified in the Notice of Termination, stop work under the Contract on the date specified.
 - b. Place no further orders or subcontracts for materials, services, and/or facilities except as may be necessary for completion of such portion(s) of the work under the Contract as is (are) not terminated.
 - c. Terminate and cancel any orders or subcontracts for related to the services, except as may be necessary for completion of such portion(s) of the work under the Contract as is (are) not terminated.
 - d. Transfer to the State all completed or partially completed plans, drawings, information, and other property which, if the Contract had been completed, would be required to be furnished to the State.
 - e. Take other action as may be necessary or as directed by the State for the protection and preservation of the property related to the contract which is in the possession of the contractor and in which the State has or may acquire any interest.
 - f. Make available to the State all cost and other records relevant to a determination of an equitable settlement.
- ##### 3. Claim by Contractor

Contractor: Copley Consulting Group

After receipt of the Notice of Termination from the state, the Contractor shall submit any claim for additional costs not covered herein or elsewhere in the Contract within 60 days of the effective termination date, and not thereafter. Should the Contractor fail to submit a claim within the 60-day period, the State may, at its sole discretion, based on information available to it, determine what, if any, compensation is due the Contractor and pay the Contractor the determined amount.

4. Negotiation

Negotiation to settle a timely claim shall be for the sole purpose of reaching a settlement equitable to both the Contractor and the State. Settlement shall be based on actual costs incurred by the Contractor, as reflected by the contract rates. Consequential damages, loss of overhead, loss of overhead contribution of any kind, and/or loss of anticipated profits on work not performed shall not be included in the Contractor's claim and will not be considered, allowed, or included as part of any settlement.