**STATE OF VERMONT**

**STANDARD RIDER**

**TO SOFTWARE LICENSES AND END USER LICENSE AGREEMENTS**

1. **MODIFICATIONS TO PROVIDER DOCUMENTS.** The State and the Software Publisher/Services Provider (“Provider”) specifically agree that, for purposes of execution of the Provider Documents and this Rider (collectively, “Agreement”), and notwithstanding any language to the contrary in Provider Documents, the Provider Documents are hereby modified and superseded as follows:

(**a**) Any requirement that the State defend or indemnify any party or otherwise be liable for the expenses or reimbursement, including attorneys’ fees, collection costs or license verification costs of any party, is hereby deleted.

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

(**c**) Provider 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 Provider in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit.

(**d**) Nothing in the Provider 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 limits the time within which an action may be brought is hereby deleted.

(**f**) Any obligations of the State to maintain the confidentiality of information shall be subject to the laws of the State of Vermont.

(**g**) State purchases must be invoiced tax free. An exemption certificate will be furnished upon request covering otherwise taxable items.

(**h**) To the extent Provider Documents permit access to State systems for the purpose of verifying State compliance with the terms of the Provider Documents, then, in lieu of any such right, the following shall apply: upon request and not more frequently than annually, the State agrees to provide Provider with a certified report concerning the State’s use of any software licensed for State use pursuant this Agreement. Provider agrees that any non-compliance indicated by the report shall not constitute infringement of Provider’s intellectual property rights, and that settlement payment mutually agreeable to the parties shall be the exclusive remedy for any such non-compliance. This clause shall not be interpreted to provide an independent right to access State systems where there is no such right expressed in Provider Documents.

(**i**) Any time software is delivered to the State, whether delivered via electronic media or the internet, to Provider’s best knowledge following due inquiry, 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.

(**j**) Limitations or exclusions of liability shall not apply to State claims arising out of (i) Provider’s confidentiality obligations (ii) Provider’s obligations to defend and indemnify the State; (iii) personal injury or damage to real or tangible personal property; or (iv) gross negligence, fraud or intentional misconduct. Limits of liability for State claims shall not be construed to limit Provider’s liability to any third party for any claims a third party may have directly against Provider which may arise out of Provider’s acts or omissions in the performance of this Agreement.

(**k**) To the extent Provider is a “data collector” for purposes of 9 V.S.A. §2430, it shall comply with all applicable requirements of 9 V.S.A. §2435.

(**l**) Records Available for Audit: Provider 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 Provider 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 this 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.

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

(**n**) The State may set off any sums which Provider owes the State against any sums due Provider 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 set forth in 32 V.S.A. § 3113.

(**o**) Taxes Due to the State: Provider certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, Provider 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.

(**p**) No Gifts or Gratuities: Provider shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

(**q**) Certification Regarding Debarment: Provider certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Provider nor Provider’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. Provider further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Provider is not presently debarred, suspended, nor named on the State’s debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

(**r**) Any provision regarding automatic renewal shall be waived and shall have no force and effect.

(**s**) The State retains full right and title to data provided by State and any data derived therefrom, including metadata (collectively, the “State Data”). Provider shall not collect, access, or use user-specific State Data except as strictly necessary to provide licensed service to State. No information regarding State’s use of the licensed 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 this Agreement in perpetuity. Provider shall not use any information collected in connection with this Agreement, including the State Data, for any purpose other than fulfilling its obligations under this Agreement. At no time may any State Data or processes which either belong to State, or are intended for State’s exclusive use, be copied, disclosed, or retained by Provider for subsequent use in any transaction that does not include State.

For purposes of this Standard State Rider:

“State” shall mean the State of Vermont, acting through one or more of its agencies, departments, boards, commissions or other entities empowered to enter into contracts on behalf of the State.

“Provider Documents” shall mean one or more document, agreement or other instrument required by Provider in connection with the performance of the products and services being procured by the State, regardless of format, including the license agreement, end user license agreement or similar document to which this Rider is attached, any hyperlinks to documents contained in the Provider Documents and any other paper or “shrinkwrap,” “clickwrap” or other electronic version thereof.

1. **ORDER OF PRECEDENCE.** Notwithstanding any other provision or other unilateral license terms which may be issued by Provider 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 Provider 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. This Rider shall in all cases take precedence over the Provider Documents and any ambiguity, conflict or inconsistency in the Provider Documents shall be resolved in accordance with this order of precedence.

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|  | **I HEREBY ACCEPT THESE TERMS AND CONDITIONS:** |
|  |  |
|  | SIGNATURE |
|  |  |
|  | PRINT NAME |
|  |  |
|  | TITLE |
|  |  |
|  | COMPANY NAME |
|  |  |
|  | DATE |