

**STANDARD CONTRACT FOR SERVICES**

1. **Parties.** This is a contract for services between the State of Vermont, Department of Buildings and General Services, Office of Purchasing and Contracting. (hereinafter called "State"), and Audio-Video Corporation, with a principal place of business in Albany, NY, (hereinafter called "Contractor"). Contractor's form of business organization is corporation. It is Contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, Contractor is required to have a Vermont Department of Taxes Business Account Number.

2. **Subject Matter.** The subject matter of this contract is services generally on the subject of providing AV Equipment and Services. Detailed services to be provided by Contractor are described in Attachment A.

3. **Maximum Amount.** In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$200,000.00.

4. **Contract Term.** The period of Contractor's performance shall begin on July 1, 2023 and end on June 30, 2025. The Contract Term may be renewed for Two additional one-year periods with mutual agreement between both parties.

5. **Prior Approvals.** This Contract shall not be binding unless and until all requisite prior approvals have been obtained in accordance with current State law, bulletins, and interpretations.

6. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.

7. **Termination for Convenience.** This contract may be terminated by the State at any time by giving written notice at least thirty (30) days in advance. In such event, Contractor shall be paid under the terms of this contract for all services provided to and accepted by the State prior to the effective date of termination.

8. **Primary Contacts.** The Parties will keep and maintain current at all times a primary point of contact for this Agreement, which are presently as follows:

**a. For the Contractor:**

Name: Josh Coli

Phone: 802-373-8550

Email: coli@audiovideocorp.com

**b. For the State:**

Name: Kevin Cooke, State Purchasing Agent

Phone: 802-249-7495

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Email: kevin.cooke@vermont.gov

9. **Attachments.** This contract consists of 21 pages including the following attachments which are incorporated herein:

Attachment A - Statement of Work

Attachment B - Payment Provisions

Attachment C – “Standard State Provisions for Contracts and Grants” a preprinted form (revision date 12/15/2017)

Attachment D - INFORMATION TECHNOLOGY PROFESSIONAL SERVICES  
TERMS AND CONDITIONS

10. **Order of Precedence.** Any ambiguity, conflict or inconsistency between the documents comprising this contract shall be resolved according to the following order of precedence:

- (1) Standard Contract
- (2) Attachment D
- (3) Attachment C (Standard Contract Provisions for Contracts and Grants)
- (4) Attachment A
- (5) Attachment B

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

By the State of Vermont:

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: Jennifer M.V. Fitch

Title: Commissioner - Buildings and  
General Services

By the Contractor:

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTACHMENT A – STATEMENT OF WORK****ATTACHMENT A: GENERAL PROVISIONS OF CONTRACT**

1. **Available Products & Services:** The following products and services are available for purchase under this Contract:

Category 1: Interactive Whiteboards & Touchscreens (SmartBoards, other brands of interactive white boards, Touch screen LCD and LED displays.)

Category 2: Presentation Systems Multimedia Projectors (PA systems, Speakers, Projectors, Screens

Category 3: Televisions (LCD, LED, PLASMA, televisions and displays.)

Category 4: Media Accessories (AV cables, Carts, Brackets, Stands, Media Players.)

Category 5: Services

\*Services may include warranty services, labor, maintenance, installation, de-installation, factory integration (software or equipment components), asset management, recycling/disposal, training and certification, pre-implementation design, disaster recovery planning and support, service desk/helpdesk, and any other directly related technical support service required for the effective operation of a Product supplied under this Contract.

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

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

3. **Restrictions:** The restrictions in this section shall apply to all purchases made by State Purchasers under this Contract.
  - a. **Third Party Products.** Contractor shall attach to any and all quotes for Third Party Products the applicable third-party terms that will bind the purchaser. State Purchasers may not procure Third Party Products that include third party terms that would bind the State Purchaser without prior approval from the Chief Procurement Officer, Office of the Attorney General and State CIO, which approvals shall not be granted without consideration of applicable third party terms. Contractor is not authorized to sell Third Party Products to a State Purchaser without verification from the State Purchaser that these requisite approvals have been obtained.
  - b. **Services Transactions over \$15,000.** State Purchasers may not procure Services with a cost in excess of \$15,000 without prior approval from the Office of the Attorney General and State CIO. Contractor is not authorized to sell Services to a State Purchaser without verification from the State Purchaser that these requisite approvals have been obtained.

4. **General Requirements:**

- a. **INTEGRATION** – Contractor shall guarantee proper network operation and interoperability with existing State network standards as specified by ADS.
- b. **ON GOING SUPPORT** – Contractor shall ensure proper operation of hardware and software and provide support for all components as part of the turnkey solution for the term of the contract including helpdesk and onsite maintenance.

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- c. Quotes may include value added options; however, all value added options shall be directly related to the scope of the Contract. The State reserves the right to include or exclude any proposed value added options in the final Purchase Order.
  - d. Contractor shall identify the contract number on all quotes.
  - e. The Contractor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by the Contractor, its subcontractors and their principals, officers, employees and agents under this Agreement. In performing the specified services, the Contractor shall follow practices consistent with generally accepted professional and technical standards. The Contractor shall be responsible for ensuring that all services, products and deliverables furnished pursuant to this Agreement comply with the technology and security standards and policies promulgated by the Agency of Digital Services (ADS) If any service, product or deliverable furnished pursuant to this Agreement does not conform to ADS standards, the Contractor shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform to ADS standards. The Contractor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Vermont caused by the Contractor's failure to ensure compliance with ADS standards.
5. **Installation of Equipment:** Contractor shall provide and install Interactive Smartboard/Touch Screen Equipment turnkey solutions (AV category) and or supplemental Projector & TV equipment and services For Basic On-site Turn Key installation, Contractor shall:
- a. Supply as part of the deliverable all essential components of a completely functional system as defined in the Purchase Order. Essential components may include, but are not limited to, hardware, building wiring, portable carts "if applicable", cables, cable management devices, mounting brackets, racks and software provided by the contractor.
  - b. Install, assemble, and configure all components (connection cables, securing cables, mounting hardware, brackets, etc.) for proper operations.
  - c. Perform power-up, initial system configuration, system diagnostics and confirm system equipment is functioning properly.
  - d. Provide technical point of contact an overview (orientation) of the system and its operation
  - e. Dress (tie-wrap) all cables and arrange equipment to appropriate or designated areas
  - f. Clean room and all installed equipment to restore room to its original condition
  - g. Coordinate end user / system administrator training schedule
  - h. Supply the purchaser with all serial and model numbers as well as IP addresses "if applicable"
  - i. After installation, contractor shall initiate all applicable warranties, as well as paperwork relative to invoicing.
  - j. Provide all backboards, connector blocks, patch cords, connector cables and any additional equipment. All equipment and accessory materials must be new with no refurbished, reconditioned, used or previously installed materials permitted unless expressly agreed to in advance by the State.
  - k. All cable used in this installation shall conform to National Electric Code Articles 800 and 725 for use in telephone systems and interconnecting cable runs as modified by the latest version of local electrical codes. Proper fire-stop restorations shall be made to all structural penetrations as specified in the NEC, UL and local fire codes.
  - l. Installation shall be conducted to ensure a minimum of interruption to the purchaser.
  - m. For Installations that require additional cabling runs, jack installation beyond the basic turnkey installation the contractor shall include the hours or labor and cost of parts in the quote.

6. **Maintenance & Support:** A primary consideration for system selection will be the vendor's ability to provide maintenance, service and support. This section establishes the minimum requirements of the Maintenance Agreement.
- a. Contractor shall supply a rate card if requested, listing annual maintenance cost for the installed audio and video systems for the post-warranty year of installation. These costs are to be listed for Helpdesk, next day parts shipment, or onsite maintenance services. Contractor shall be very specific as to what is covered and what time and material costs are. Maintenance costs are to be itemized in a separate section.
  - b. Contractor shall guarantee response time of within four (4) hours for emergency service as required by the owner agency. That service may be delivered via remote diagnostics with onsite response if the problems cannot be corrected remotely. Regular service shall be guaranteed by the close of business the following business day if identified by 2:00PM EST. It is mandatory to have a toll-free dial-up telephone support service with remote diagnostic troubleshooting capabilities. The Contractor shall provide help desk services and remote diagnostics to the State of Vermont on purchases made from this contract. Problem determination, tracking, reporting and follow-up with callers shall be provided. The Contractor shall provide help desk and remote diagnostics for existing systems. Maintenance escalation procedures shall be defined if response times are not met. Contractor shall list maintenance response times for onsite 4-hour emergency or next day and Helpdesk 1 hour.
  - c. The Contractor's help desk services and remote diagnostics shall be available, at a minimum, Monday through Friday, 7:30 a.m. to 5:00 p.m. EST. The Contractor shall provide an answering service, pager, or voice mail system to receive incoming calls during hours that helpdesk is not attended.
  - d. The Contractor agrees that the supplies or services furnished under the Contract shall be covered by the most favorable commercial warranties the Contractor has given or offered to any customer for such supplies or services.
  - e. The Contractor's enhanced warranty shall include full parts replacement, including all onsite labor and shipping costs. Defective material shall be returned to the Contractor for repair or replacement and returned to the installation site at no cost to the purchaser. In stock replacement parts shall ship within 48 hours.
  - f. Extended warranties shall be fully explained in writing.
  - g. In cases where the State is not permitted to manage/modify the automation equipment (server/computer/other) that controls testing or monitoring devices, the Contractor agrees to update and provide patches for the automation equipment and any installed operating systems or applications on a quarterly basis (at minimum). The Contractor will submit a report to the State of updates installed within 30 days of the installation as well as a Plan of Actions and Milestones (POA&M) to remediate any vulnerabilities ranging from Critical to Low. The contractor will provide an upgrade path or compensatory security controls for any operating systems and applications listed as beyond "end-of-life" or EOL, within 90 days of the EOL and complete the EOL system's upgrade within 90 days of the approved plan.
7. **Reporting:** Contractor shall submit quarterly reports electronically detailing the purchasing of all items under this Contract. The reports shall be submitted and sent as an attachment to SOV.ThePathForward@Vermont.gov . Reports shall contain accurate descriptions of the products, goods or services procured, purchaser information, quantities procured and prices paid. This report shall include all sales under this Contract. Any exception to this mandatory requirement or failure to submit complete reports, or in the format required, may result in corrective action, up to and including termination for cause. Contractor's reporting shall state "no activity" for any month in which there is no activity during a quarterly reporting period.

Quarterly reports must be submitted in accordance with the following schedule:

**Reporting Period**

**Report Due**

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January 1 - March 31

April 30

April 1 - June 30

July 31

July 1 - September 30

October 31

October 1 - December 31

January 31

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

The Parties will keep and maintain current at all times a primary point of contact for administration of this Contract.

9. **Orders:** Any order placed by the State or an Additional Purchaser for a product or service available under this Contract (hereinafter "Purchase Order") shall be deemed to be a sale governed by the prices and other terms and conditions of this Contract, provided that the Contract Number must appear on every Purchase Order placed under this Contract. The Contract Number must appear on every Purchase Order placed under this Contract.

- a. **Method of Ordering for State Purchasers:** State Purchasers must solicit Quotes before making any purchases under this Contract. Written Purchase Orders, including electronic orders, must be used to order items available under this Contract. Verbal orders shall not be accepted by Contractor.

The restrictions set forth in this section are not applicable to Additional Purchasers.

- b. **Transactions over \$500,000:** In accordance with 22 V.S.A. § 901 (a)(4)(A), State Purchasers must obtain prior written approval from the State Chief Information Officer for any individual Purchase Order with a cost in excess of \$500,000, and such written approval must be affixed to the Purchase Order. Contractor shall not execute or fulfill any individual Purchase Order in excess of \$500,000 unless such Purchase Order is accompanied by specific written approval from Vermont's Chief Information Officer. This restriction is not applicable to Additional Purchasers.

- c. **No Lease Agreements:** State Purchasers are prohibited from leasing under this Contract.

This restriction is not applicable to Additional Purchasers.

- d. **Delivery:** Liability for product delivery remains with the Contractor until the product is properly delivered and accepted. Contractor shall ensure that shipments are securely and properly packed, according to accepted commercial practices, without extra charge for packing cases or other containers. Upon delivery, such containers will become the property of the State unless otherwise stated. Delivered goods that either do not conform to the specifications or are not in good condition upon receipt shall be replaced promptly by Contractor.

The State does not agree to reimburse Contractor for expenses except as may be specified in Attachment B to this Contract.

A Purchasing Entity shall determine whether all Products and Services delivered meet the Contractor's published specifications (a.k.a. "Specifications"). No payment shall be made for any Products or Services until the Purchasing Entity has accepted the Products or Services. The Purchasing Entity will make every effort to notify the Contractor within thirty (30) calendar days following delivery non-acceptance of a Product or Service. In the event that the Contractor has not been notified within 30 calendar days from delivery of Product or completion of Service, the Product and Services will be deemed accepted on the 31<sup>st</sup> day after delivery of Product or completion of Services. This clause shall not be applicable if accepting testing and corresponding terms have been mutually agreed by both parties in writing.

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

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standards will be deemed unacceptable and returned to Contractor for credit at no charge to the State.

- f. **Business Associate Agreement (BAA), and the Agency of Human Services Standard State Contract Provisions:** The parties agree that the Business Associate Agreement (BAA) and the Agency of Human Services Standard State Contract Provisions, as mutually negotiated, shall be incorporated into this Agreement by amendment, as applicable.



**ATTACHMENT B – PAYMENT PROVISIONS**

The maximum dollar amount payable under this contract is not intended as any form of a guaranteed amount. The Contractor will be paid for products or services actually delivered or performed, as specified in Attachment A, up to the maximum allowable amount specified on page 1 of this contract.

1. Prior to commencement of work and release of any payments, Contractor shall submit to the State:
  - a. a certificate of insurance consistent with the requirements set forth in Attachment C, Section 8 (Insurance), and with any additional requirements for insurance as may be set forth elsewhere in this contract; and
  - b. a current IRS Form W-9 (signed within the last six months).
2. Payment terms are **Net 30** days from the date the State receives an error-free invoice with all necessary and complete supporting documentation.
3. Contractor shall submit detailed invoices itemizing all work performed during the invoice period, including 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 by the State. All invoices must include the Contract # for this contract.
4. Contractor shall submit invoices to the State in accordance with the schedule set forth in this Attachment B. Unless a more particular schedule is provided herein, invoices shall be submitted not more frequently than monthly.
5. Invoices shall be submitted to the State at the following address listed on the purchase order.
6. The payment schedule for delivered products, or rates for services performed, and any additional reimbursements, are as follows:
  - A. Pricing off List. Insert brands and percentage off of each brand if different manufacturers provide different discounts, please list it by manufacturer.

Deliverable Description	% off list
<b>Category 1: Interactive Whiteboards &amp; Touchscreens</b>	
Clear Touch – Interactive Displays & Technology Solutions	10%
Promethean – Electronic Interactive Displays	15%
Sharp/NEC – Interactive Display Systems	10%
SMART Technologies Inc. – Interactive Displays	15%
ViewSonic – Interactive Displays Systems	15%
<b>Category 2: Presentation Systems Multimedia Projectors</b>	
Barco – Projectors	5%
Digital Projection – Projectors	10%
Eiki International – Projectors	10%
Epson – Projectors & Presentation Technologies	15%
Panasonic – Projectors	10%
Sony Professional – Projectors	10%

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ViewSonic – Projectors	15%
<b>Category 3: Televisions</b>	
LG Electronics – Display Systems	5%
Panasonic – Displays	5%
Planar – Display Solutions	5%
Samsung – Display Systems	5%
Sharp/NEC Display Solutions	5%
Sony Professional – Display Solutions	5%
Viewsonic – Displays	5%
<b>Category 4: Media Accessories</b>	
1 Beyond	5%
Absen	5%
AJA	5%
Ashly Audio	5%
Atlas-IED	5%
Atlona	5%
Audio Implements	5%
Aurora	5%
Autocue	5%
AVSG_MISC – Cables, Connectors, Hardware & Equipment	5%
AVFI	5%
Barco	5%
Biamp	5%
Blackmagic Design	5%
Bosch	5%
Brightline	5%
Broadcast Pix	5%
C2G Cables to Go	5%
Chief Manufacturing	15%
Cisco	5%
Clear-Com	5%
Clear-Touch	5%
Cobalt	5%
Crestron	5%
Da-lite	15%
Denon	5%
DiGiCo	5%
Digital Projection	5%
Draper	5%
Elmo	5%
Epson	5%
Extron	5%
FSR	5%

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Harman Professional: AKG, AMX, BSS, Crown, dbx, JBL Pro, Lexicon & Soundcraft	5%
K-Array	5%
Lectrosonics	5%
Leightronix	5%
Libec	5%
Liebert	5%
Listen Technologies	5%
Marshall Electronics	5%
Master Clock	5%
Mersive Technologies	5%
Middle Atlantic/Wiremold	10%
Millers Presentation Furniture	5%
MSE Audio	5%
Music Tribe: Behringer, Midas, Tannoy, Lab Gruppen, Turbosound, Lake, TC & Klark Teknik	5%
NewTek	5%
Peerless	5%
Planar	5%
Panasonic	5%
Polycom-Plantronics	5%
Promethean	5%
Prompter People	5%
QSC	10%
RCF	5%
RDL	5%
Roland	5%
Ross Video	5%
Samsung	5%
Sennheiser	5%
Sharp/NEC	5%
Shure	5%
SONY Professional	5%
Spectrum Industries	5%
Strand	5%
Tightrope Media Systems	5%
tvOne	5%
Uniset	5%
Vaddio	5%
Vari-Lite and Strand	5%
ViewSonic	5%
Visix	5%
Whirlwind	5%
Wolfvision	5%
Yamaha Audio	5%

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## B. Labor Rates:

Service Category/Title of Positions	Hourly Rate
Technician Pre-Build Performs Off-Site Integration & Testing	\$125
Installer On-Site Installation & Integration	\$125
Service Technician	\$125
Consultation	\$125
Application Analyst – Engineering Design & Consultation	\$125
Document Preparation CAD, Signal Flow Architectural etc	\$125
Programming – Programs & Designs Control Systems, DSP, GUI Interfaces	\$125
GUI Design – Programming Design & Consultation	\$125
Trainer – Minimum 4 Hours	\$125
Travel	\$125

Statements & Noted Exceptions to Pricing for A & B	
*Manufacturer Software Services & Renewals	MAP or EDU pricing applies
*Manufacturer Extended Warranty Options	MAP or EDU pricing applies
*Premium Service Options	See AVC Customer Care Statement

*Freight & Delivery Costs	Added cost for each purchase line item
*Labor Rates & Service	M-F 8AM-5PM EST

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

“Attachment C: Standard State Provisions for Contracts and Grants” (revision version dated 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 goods and/or services by the State 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. 03/10/2023)

**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; 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; (d) is obtained by the receiving party from a third party under no obligation of confidentiality to the disclosing party; or (e) is not exempt from disclosure under applicable State law.

**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 this Contract, and any exhibit or schedule hereunder, the Party acknowledges that certain State Data (as defined below), to which the Contractor may have access may contain individual federal tax information, personal protected health information and other individually identifiable information protected by State or federal law or otherwise exempt from disclosure under the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq ("State Data"). 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 this Contract, 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, \$1,000,000.00 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.

- 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. **SOV Cybersecurity Standard Update 2023-01:** Contractor confirms that all products and services provided to or for the use of the State under this Agreement shall be in compliance with *State of Vermont Cybersecurity Standard 2023-01*, which prohibits the use of certain branded products in State information systems or any vendor system that is supporting State information systems, and is available on-line at:

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