

Retainer Contract for Training Services, Curriculum Development and Consulting Services

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 Integrative Inquiry LLC, with principal place of business at Bass Harbor, ME (“Contractor”). Contractor’s form of business organization is limited liability company. 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 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 \$250,000.00.
4. **Contract Term.** The term of this Retainer Contract shall begin on December 15, 2023 and end on December 14, 2025. The term of this Retainer Contract may be extended for an additional period of 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 State’s Chief Information Officer and the Department of Buildings and General Services Commissioner.
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 19 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: Professional Service Categories and Rates
 - Attachment B: Payment Provisions
 - Attachment C: Standard State Provisions for Contracts and Grants” a preprinted form (12/7/23). 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: OTHER PROVISIONS (03-10-23). 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) Retainer Standard Contract (pages 1 and 2 of this document)
 - 2) Attachment C (Standard Contract Provisions for Contracts and Grants)
 - 3) Attachment D
 - 6) Attachment A
 - 7) Attachment A1
 - 8) Attachment B

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

State of Vermont	Integrative Inquiry LLC
By:	By:
Name: Jennifer M.V. 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 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. 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 or delivery method, e.g., virtual, hybrid 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.
5. 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 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.

- C. 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.
- 6. 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.

Attachment A1: Professional Service Categories and Rates

Professional Service Category – Trainer(s)	Daily Rate	
Category 1: Training Services	On-Site	Remote
<p>Training Services: The Center for Achievement in Public Service (CAPS) is the State of Vermont’s statewide training center and offers “elective” classes for state employees and municipalities who enroll at their own discretion or at the recommendation or referral of their supervisor or manager. CAPS also runs other programs which may require a guest trainer on subject matter built into a larger training program (e.g., Vermont Leadership Exploration and Development (VTLEAD), a multi-course leadership curriculum designed to provide extensive practice and application opportunities).</p> <p>Training curriculum should identify current trends and provide expanded knowledge of a subject(s) to broaden and increase the State’s workforce and municipality’s knowledge through theory, skill-based learning, and practical application. Curriculum should focus on organizational development to build change and achieve greater effectiveness by increasing competencies in the skills needed in today’s workforce to grow and retain employees.</p> <p>Various delivery approaches will be used to heighten engagement and support learning styles to include in-person, located at the CAPS Training Facility or elsewhere around Vermont, virtual utilizing MS Teams, Zoom, other compatible platforms (authorized by the state) or hybrid environment. Bidders shall have the knowledge and capacity to solely deliver training online, hybrid or in-person.</p> <p>Subjects being sought (not all inclusive, bidders are encouraged to include additional training subjects):</p> <ul style="list-style-type: none"> • Cultural Competence: Diversity, Racial Equity, Inclusion, Civility • Systems Change Management: People, Culture, Technology, Strategy, Design, Task, etc. • Generational Differences: How to Engage, Values, Communication Style, Work Environments • Public Speaking • On-Boarding Best Practices • Project Management • Coaching, Delegating • Facilitation Skills • Emotional Intelligence • English / Writing Basics • Strategic Decision Making • Building Accountability • Motivation and Positivity • Business Etiquette/ Professional Conduct: Develop specialized training, for increased communication, team building and other approaches to increase employee motivation and engagement • Facilitation Training • Psychological First Aid • Knowledge Transfer/ Succession Planning • Presentation Skills • Conflict Management 	<p>\$ Same as remote + 1500\$ per trip.</p>	<p>\$1100 for 3h workshop, \$1600 for 6h workshop</p> <p>For 1 facilitator</p> <p>(an additional facilitator would be and additional 200\$/hour of training)</p> <p>(See proposed services for list of training subjects and objectives.)</p>

Attachment A1: Professional Service Categories and Rates

<ul style="list-style-type: none">• Understanding and Implementing Trauma-Informed Care Principles• Business Analysis Essentials• Data Analytics and Reporting• Disability Awareness and Empowerment• Basic Keys to Writing and Winning Grants• Case Management Techniques and Best/Effective Practices• Mental Health, De-escalation, and Mental Health Issues for Clients• Accounting Essentials• Internal Controls Best Practices• Financial Management Best Practices• Office Best Practices• Grants Management Best Practices		
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Attachment A1: Professional Service Categories and Rates

Professional Service Category – Curriculum Development	Hours	Rate
<p>Category 2: Design / Development</p> <p>2.2 Curriculum Development:</p> <ul style="list-style-type: none"> • Leveraging Diversity: The importance of having diverse perspectives on your team and creating a culture of inclusiveness and belonging within teams • Team building: Effective and productive communication within teams; Building trust and morale; Problem solving skills within team dynamics; Cross-cultural differences within teams; embracing diverse perspectives; Building a culture of collaboration within teams; Cohesive teams in a hybrid environment • Organizational productivity: Productive meetings; Effective time management; Managing priorities and competing demands • Customer Service • Change Management: Concepts and models of change management; Preparing for change; Planning for change; Overcoming Barriers and leading change; Adapting to change • Communication • Conflict management: Strategies for conflict resolution; leveraging positive conflict; Conflict v/s difference of opinion; Importance of diverse perspectives • Morale and motivation • Professional conduct <p>The State of Vermont will own the curriculum developed and any associated materials and documents, for all specialized training. Curriculum shall include:</p> <ul style="list-style-type: none"> • Detailed facilitator handbook to include details (time and activity descriptions) • Activity materials, • Templates, guides, and resources (books, links, videos, etc.) <p>Curriculum design will ensure learning of concepts, skills and tools that can be applied in the state government setting.</p> <p>Content will address how concepts and methodologies can best be applied in a diverse setting (workforce and/or clients; culture, age, nationality, accessibility, learning styles and other aspects).</p>	<p>\$1200 to create a custom-built and branded 3h module</p>	<p>Instructional design rate: \$150/hour.</p>

Attachment A1: Professional Service Categories and Rates

Professional Service Category – Consulting Services	Hourly Rate	
Category 3: Engagement	On-Site	Remote
<p>Consulting Services: To support leaders and managers of Vermont State Government in their efforts to attract and retain an engaged, high performing workforce. Workforce development needs assessments may be performed to determine nature and scope of consulting needs, coaching, conflict resolution, succession planning or other intervention. Contractor(s) may meet initially, in-person with State of Vermont agency and/or department heads and may interact via phone, email, skype, MS Teams, etc. during the information gathering phase.</p> <p>Examples of Consulting:</p> <ul style="list-style-type: none"> • CAPS provides succession planning training to agencies/departments where projects are identified. Agencies/department that need additional project assistance may engage with a consultant subject matter experts (SME's) to work with them on their succession planning efforts. Based on the needs of the agency/department, consultants may problem solve and identify current state and strategize the development and integrated approach to succession management, continual assessment of employee turnover, provide a formal, written succession plan as a framework for succession initiatives and/or develop processes to facilitate knowledge transfer. • Creating a positive work culture: Developing strategies to increase morale and motivation while managing a team working in a hybrid work environment. Effective ways of managing performance in hybrid/remote situations • Diversity, Equity, and Inclusion (DEI) initiatives: Creating and maintaining an inclusive culture; Weaving DEI into everyday actions and decisions; Awareness of impact of implicit bias on decision making and strategies to mitigate the same • Leadership Development – Executive Mentoring, Leadership Team Effectiveness, Teambuilding, Strategic Planning, Goal Setting, Measuring Effectiveness of initiatives, Communicating Change • Identify goals to continue development of supervisory skills and tools • Address questions, challenges or barriers being faced • Develop strategies to maximize interaction with the team • Develop strategies to increase morale and motivation • Develop strategies for improved performance. • Internal Controls Best Practices • Financial Management Best Practices • Office Best Practices • Grants Management Best Practices 	N/A	\$250/hour

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. 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).
3. 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, delivery method, 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.
4. 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.
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 7, 2023**

“Attachment C: Standard State Provisions for Contracts and Grants” (revision version dated December 7, 2023) 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 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 Professional Liability/Errors and Omission Insurance for any and all services performed under this contract, with minimum coverage of \$500,000.00 per claim, \$500,000.00 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 \$500,000.00.

Before commencing work on this Contract, 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>