

From: [Office of the Vermont Attorney General](#)
To: [AGO - Public Records Requests](#)
Subject: Public Records Request Form Form submitted on Office of the Vermont Attorney General
Date: Wednesday, March 18, 2020 11:57:43 AM
Attachments: [VT-Department-of-Environmental-Conservation-Conversion-of-Loans-and-Grants-Tracking-System-to-a-Cloud-Based-Platform-RFP-January-2018.pdf](#)

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

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Last Name	Bianchi
Organization	SmartSimple
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Phone Number	(307) 363-5460

Please describe the records you are requesting and provide as much specificity as possible, including applicable date ranges.

SmartSimple Software Ltd. is making a formal FOIA records request for electronic copies of all other vendor proposals and documentation related to Org Name request for proposal of a CONVERSION OF LOANS AND GRANTS TRACKING SYSTEM TO A CLOUD-BASED PLATFORM (Issue date: Jan. 4 2018. Due Date: Feb. 2 2018. Project Start Date: June 1 2018)

If any information is required on behalf of SmartSimple, or if you have any questions, please feel free to reply to the included email.

Thanks,
Anthony

Please take note of the following disclaimer:

1. This public records request, including any associated correspondence, will be considered a public record in its entirety. As such, it will be made available to any member of the public upon request.
2. Do not include any sensitive information, such as medical information, financial account numbers, or Social Security numbers. The AGO will contact you if additional information is required.
3. Submission of this form does not constitute receipt of it by the AGO. Your public records request will be considered received on the next business day following its submission.

Attachment

<https://ago.vermont.gov/wp-content/uploads/formidable/14/VT-Department-of-Environmental-Conservation-Conversion-of-Loans-and-Grants-Tracking-System-to-a-Cloud-Based-Platform-RFP-January-2018.pdf>

Agreement

I agree that I have read the directions and disclaimers on this form and that the information that I have provided is accurate to the best of my knowledge. Clicking the Declaration below is equivalent to my electronic signature.

Declaration (Required)

Declaration (Required)

Date Submitted

March 18, 2020



Department of Buildings and General Services
Office of Purchasing & Contracting

109 State Street [phone] 802-828-2211
Montpelier VT 05609-3001 [fax] 802-828-2222

<http://bgs.vermont.gov/purchasing>

Agency of Administration

**SEALED BID
INFORMATION TECHNOLOGY REQUEST FOR PROPOSAL
FOR
CONVERSION OF LOANS AND GRANTS TRACKING SYSTEM TO A CLOUD-BASED
PLATFORM**

Expected RFP Schedule Summary:

ISSUE DATE	January 4, 2018
BIDDERS CONFERENCE	Tuesday 16, 2018, 3pm (EST)
QUESTIONS DUE	January 19, 2018
RFP RESPONSES DUE BY	February 2, 2018 – 4pm (EST)
FINALIST DEMONSTRATIONS	February 22, 2018
SELECTION NOTIFICATION	March 2, 2018
PROJECT STARTS	June 1, 2018

PLEASE BE ADVISED THAT ALL NOTIFICATIONS, RELEASES, AND AMENDMENTS ASSOCIATED WITH THIS RFP WILL BE POSTED AT:

<http://www.bgs.state.vt.us/pca/bids/bids.php>

THE STATE WILL MAKE NO ATTEMPT TO CONTACT INTERESTED PARTIES WITH UPDATED INFORMATION. IT IS THE RESPONSIBILITY OF EACH BIDDER TO PERIODICALLY CHECK THE ABOVE WEBPAGE FOR ANY AND ALL NOTIFICATIONS, RELEASES AND AMENDMENTS ASSOCIATED WITH THIS RFP.

PURCHASING AGENT: Stephen Fazekas
TELEPHONE: (802) 828-2210
E-MAIL: stephen.fazekas@vermont.gov
FAX: (802) 828-2222

1 RFP OVERVIEW

1.1 Overview

The Office of Purchasing & Contracting on behalf of the Vermont DEPARTMENT OF ENVIRONMENTAL CONSERVATION (the State) is soliciting competitive sealed, fixed price proposals (Proposals) for its conversion of SQL-based database for water infrastructure financing loan and grants management to a cloud-accessible format (the Work) from qualified offerors. If a suitable offer is made in response to this Request for Proposal (RFP), the State may enter into a contract (the Contract) to have the selected offeror (the Contractor) perform all or part of the Work. This RFP provides details on what is required to submit a Proposal in response to this RFP, how Proposals will be evaluated, and what will be required of the Contractor in performing the Work.

This is a Request for Competitive Sealed Proposals (RFP) to select the vendor who can perform the Scope of Work described in Section 2 of this RFP.

1.2 RFP Objective

The outcome of this RFP is the acquisition of a software solution meeting the requirements of the RFP as defined in the scope of work.

1.3 Department Background and Philosophy

This project shall support the work of the Vermont Water Infrastructure Financing Program (WIFP) located with the Facilities Engineering Division, which provides funding to Vermont's Clean Water and Drinking Water projects in the form of low interest loans through the State Revolving Funds (SRF). Support for the current software platform used to manage these loans is due to sunset, and a new platform must be developed to replace it. A web-based platform will provide a more efficient and effectively solution for management of WIFP activities.

1.4 Current Business Environment

The Water Infrastructure Financing Program (WIFP) provides loans and grants to support drinking water, wastewater, and stormwater infrastructure as well as other water quality improvement projects. The program receives a standard grant amount from EPA that is matched with state capitalization dollars. The proposed web-based database is budgeted and will be paid and maintained from our administrative funds. This funding is expected to remain stable and there should be no issues in funding this project.

1.5 Minority Business Enterprises/Womens' Business Enterprises.

The applicant is aware that 1) they will need to agree to the State of Vermont Customary Contract Provisions (Attachment C) and Environmental Protection Agency Standard Terms and Conditions for Federal Sub-recipients (Attachment D) to execute an agreement for this project; and 2) in executing a grant agreement they will need to fulfill the Good Faith Efforts to ensure that disadvantaged business enterprises (Minority Business Enterprises/Womens' Business Enterprise) have the opportunity to compete for procurements funded by this grant (see page 16 and Attachment D).

The Department of Environmental Conservation has the following “fair share” procurement objectives for Minority Business Enterprise (MBE)/Womens’ Business Enterprise (WBE), and requires all grantees to try and meet these objectives for any subcontractor procurement under this award.

	MBE	WBE
Supplies	1.00%	3.50%
Services	1.00%	3.50%
Equipment	1.00%	3.50%

More information on Good Faith Efforts that any grantee will agree to in executing a grant agreement is in Section 12 of Attachment D. A list of MBE/WBE firms relevant to the work awarded under this grant are available in Attachment F.

If your proposal claims contribution to the Fair Share Goals, make sure to list the names of the DBE entity/entities, a contact person, email address, and the program which has certified the entity as a DBE.

2 SCOPE OF WORK

The State of Vermont is interested in obtaining bids for a software solution to meet the following business need(s):

- A. Transition of current database. The current database should be converted to a web-based solution with the following features:
 - i. All program, project, and financial data must be retained and transferred to the new solution without data cleanup by staff. Without limitation, this includes loan numbers, loan values, parties, dates, funding authorizations, repayments, payment requests and disbursements, loan amortization schedules, and agreement histories.
 - ii. Data fields for tracking and managing fund balances, trial balances, and all other financial and accounting information.
 - iii. Ability to track projects with multiple funding sources, allowing for centralized information on project cost summaries, payment requests, and obligations.
 - iv. A password protected system, with industry-standard protections against malware, viruses, and other security threats. The solution should maintain and protect the integrity of all data, with data backup every hour during regular business hours of 8am to 5pm, Eastern Standard Time.
 - v. Proposals should include scenarios for either State hosting or Contractor hosting of the solution.
 - vi. Security controls to assign staff to certain projects with differing roles and authorities.
 - vii. Integration and inclusion of links from the solution to our electronic records management system (IronPIG).
 - viii. Integration and automation of auto-generated templates including payment request forms, loan approval and agreement documents, engineering approval letters, and custom email templates.
 - ix. Ability to generate and track federal cash draw requests. Vermont combines all disbursements from each month into a cash draw request and submits to EPA for reimbursement.
 - x. Ability to reconcile monthly loan repayment information with the database to decrease manual entry.
 - xi. Integration and automation of reporting of project information to EPA’s Public Benefit Reporting (PBR) and Clean Water Benefit Reporting (CBR) systems.
 - xii. A tracking mechanism and reporting functionality for Disadvantaged Business Enterprises (DBE), including fields for DBE contractor tracking by project, and report generation in MS Excel format.
- B. The web-based database should include the following features:

- i. Ability to create reports instantly in-house for any desired field and have those reports exportable as both a .pdf file as well as an MS excel or word document.
- ii. Auto-generation of project cost summary (PCS) that allows for inclusion of individual project components such as grant eligibility, green project reserve tracking, and multiple funding source. This PCS would also include the built-in engineering fee curve that the state applies to all engineering efforts.
- iii. Ability to complete funding applications online.
- iv. A secure, external dashboard that applicants, borrowers, and other stakeholders can access to see pertinent loan and payment request information.
- v. Ability for existing loan holders to complete payment requests online.
- vi. Web-based priority list application entry and submittal by external applicants.
- vii. Ability to manipulate ranking criteria, and generate priority lists from the database.
- viii. Capability to manipulate priority list ranking criteria and data sets including Median Household Income, unemployment, and population.
- ix. Inclusion of project checklists at the loan level for each loan step to allow for deliverable tracking with the option to link to our electronic records management program.
- x. Change in project hierarchy to Party, Project, Funding Source, Loan, to allow for tracking of projects funded by multiple programs.
- xi. Automated prevailing wage and labor compliance record keeping and reporting system allowing for automated tracking, monitoring, and enforcement of Davis-Bacon requirements.
- xii. Cloud based reporting and management system for efficient Davis Bacon review and reporting.
 - o Web portal for external reporting
 - o Comprehensive Davis-Bacon project management
 - o Automatic prevailing wage verification
 - o Automatic data processing for any accounting system
 - o Electronic fringe benefits statement reporting
 - o Statistic reporting functionality
- xiii. Cloud-based document submittal, review and approval functionality for American Iron and Steel requirements.
- xiv. Compatibility with future potential features, including an easy-to-access smartphone application.

C. Trial, Warranty and Training Period.

- i. Proposals should include a product trial and warranty period. Proposals should also include staff training and a detailed user manual for all functions of the solution.

D. Maintenance and Support. Proposals should include information on long-term support, including:

- i. Periodic software updates as required to keep system current, including possible additional database interfaces/modifications as requested by the State.
- ii. Possibility of hosting capabilities of web-based platform.
- iii. "Help-desk" type of support for small concerns, typically that would require less than four hours of support per month.

2.1 Business Outcomes

The State of Vermont seeks to achieve the following Business Value(s):

- Cost savings—This office has undergone a significant shift in duties to include the management of grants and contracts that were previously managed in another division. To date, the current Loan and Grants Tracking System (LGTS) solution has allowed us to achieve great efficiency to make these additional duties possible. Loan processing has cut down from a tedious several-week process to a centralized one week turn-around time. It is believed this web-based capability will continue this efficiency gain in areas of payment requests, loan application, and payment request. Staff will be moved to more value-added work and increasingly automating manual entry functions.
- Customer Service Improvement-Any time you can speed up the process for our external customers (loan recipients), you are greatly improving customer service. The goal would be a to create a transparent database that they can check the progress of their approvals, executed agreements, and payment requests in real time.
- Risk Reduction-This program deals with millions of dollars in transactions every year. Each of those dollars come with complex cross-cutting requirements that must be followed and documented. Moving to a web-based version will improve data quality and reduce the amount of improper payment findings at audit or EPA review.

2.2 Dependencies and Constraints

The transition from the current system to the new system needs to be managed so that there is no time where the Program is without a software Solution. Efforts should be made to avoid double entry of data during the transition.

2.3 Functional and Non-Functional Requirements

The State's Functional and Non-Functional Requirements are provided in the attached State of Vermont Bidder Response Form (Exhibit C) and the Requirements Workbook (Exhibit E).

Detailed Functional Requirements

Offerors must specify how, and to what extent, the solution being proposed satisfies each of the requirements listed in the Bidders Response Form in Exhibit C and the Requirements Workbook in Exhibit E. Offerors should select a Response Code for each item which best describes how their proposed solution meets that requirement (a list of Response Codes is provided in the Workbook instructions) and must provide a brief description of how the requirement is to be met in the Offeror Response column. Offerors must respond to every requirement in the Workbook. Requirements that have an "M" in the Mandatory column are those which must be met in order for a proposal to be considered. Offerors may propose an alternative to meet a mandatory requirement. Proposed alternatives should be described in the Offeror Response column. If necessary, additional information can be submitted as an attachment, please reference the requirement's Req ID# in the attachment. DEC, at its sole discretion, will determine if the proposed alternative meets the intent of the original mandatory requirement. DEC will determine clarity and completeness in the responses to any of the provisions in this RFP. DEC reserves the right to require clarification or request supporting documentation of any and all requirements questions.

Non-Functional Requirements (NFRs)

NFRs have been developed to help both the State and prospective service providers understand the required system qualities, e.g., system attributes - security, reliability, maintainability, scalability, and usability needed for all State Information Technology projects costing more than \$100,000 and/or involving State data security. These NFRs help both parties understand how an IT implementation project will be implemented. State and Federal standards are cited allowing the service provider access to details around the environment that will be used to deliver the technology systems.

Vendors should respond to each item in the Requirements Workbook in Exhibit E. The "Requirement Fulfilled" field should be filled with Y/N, Y indicating Yes, N indicating No. The "Notes" field should be filled with notes or clarifications about the NFR if any are required.

3 BID PREPARATION

3.1 Single Point of Contact

All communications concerning this RFP are to be addressed in writing to the State Contact listed on the front page of this RFP. Actual or attempted contact with any other individual from the State concerning this RFP is strictly prohibited and may result in disqualification.

3.2 Bidders' Conference

A bidders' conference is required for this RFP. A mandatory/non-mandatory bidders' conference will be held at 109 State Street - Montpelier, VT 05609-3001 at the date and time indicated on the front page of this RFP. Bidders can appear by calling in to telephone number: 1 (888) 394-8197, passcode: 215422. This number is subject

to change, and bidders are encouraged to confirm this number by emailing Chris Rottler at chris.rottler@vermont.gov one day prior to the scheduled meeting.

3.3 Question and Answer Period

Any vendor requiring clarification of any section of this RFP or wishing to comment or take exception to any requirements of the RFP must submit specific questions in writing no later than the deadline for question indicated on the first page of this RFP. Questions may be emailed to the point of contact on the front page of this RFP. Any comments, questions, or exceptions not raised in writing on or before the last day of the question period are waived. At the close of the question period a copy of all questions or comments and the State's responses will be posted on the State's web site <http://www.bgs.state.vt.us/pca/bids/bids.php>. Every effort will be made to post this information as soon as possible after the question period ends, contingent on the number and complexity of the questions.

3.4 Required Content and Format for Bid Submission

Proposals submitted for this RFP should include the following and nothing additional:

- Required number of copies
- A Cover Letter
- If applicable, a redacted copy of the response for portions that are considered proprietary and confidential.
- Certificate of Compliance (Reference Exhibit A)
- Bidder Response Form and Attachments (Reference Exhibit C)
- Conversion of Loans and Grants Tracking System to a Cloud-Based Platform Requirements Workbook (Exhibit E)

3.4.1 Number of Copies. Submit an unbound original (clearly marked as such) and three (3) paper copies and one digitally searchable PDF file on a USB thumb drive, containing all components of the bid. See section 4.5 for instructions regarding electronic submission of bids.

3.4.2 The Cover Letter

Please provide an introduction to your company and proposal via a cover letter. All bids submitted to the State are considered public records. Please note in your cover letter if any information in your proposal is considered proprietary and confidential.

a. Confidentiality. To the extent your bid contains information you consider to be proprietary and confidential, you must comply with the following requirements concerning the contents of your cover letter and the submission of a redacted copy of your bid (or affected portions thereof).

b. The successful response will become part of the contract file and will become a matter of public record, as will all other responses received. If the response includes material that is considered by the bidder to be proprietary and confidential under the State's Public Records Act, 1 V.S.A. § 315 et seq., the bidder shall submit a cover letter that clearly identifies each page or section of the response that it believes is proprietary and confidential. The bidder shall also provide in their cover letter a written explanation *for each marked section* explaining why such material should be considered exempt from public disclosure in the event of a public records request, pursuant to 1 V.S.A. § 317(c), including the prospective harm to the competitive position of the bidder if the identified material were to be released. Additionally, the bidder must include a redacted copy of its response for portions that are considered proprietary and confidential. Redactions must be limited so that the reviewer may understand the nature of the information being withheld. It is typically inappropriate to redact entire pages, or to redact the

titles/captions of tables and figures. Under no circumstances can the entire response be marked confidential, and the State reserves the right to disqualify responses so marked.

3.4.3 Certificate of Compliance (Exhibit A)

This form must be completed and submitted as part of the response for the proposal to be considered valid.

3.4.4 State of Vermont Bidder Response Form (Exhibit C)

This form must be completed and submitted as part of the response for the proposal to be considered valid. The State of Vermont Bidder Response Form provides a standard format and content for vendor proposals. The Bidder Response Form includes questions and requests for information on the following:

- Your Vendor Profile, which includes three (3) references;
- The Proposed Solution;
- The ability of your Proposed Solution to meet the State's Functional and Non-Functional Requirements, which are listed within the Bidder Response Form;
- Your Implementation and Project Management approach and deliverables;
- The Technical Services and deliverables included in your proposal;
- Your Maintenance and Support services and service levels;
- Your Pricing for Implementation plus five (5) years of Maintenance and Support costs; and
- Any exceptions your company may have to the Terms and Conditions outlined in the RFP and/or any of the RFP attachments. Note that exceptions to contract terms may cause rejection of the proposal.

3.4.5 Conversion of Loans and Grants Tracking System to a Cloud-Based Platform Requirements Workbook (Exhibit E)

See instructions in attached workbook. Completion of this workbook is a requirement of this RFP (see above).

3.4.6 Other Attachments

In addition to completing the State of Vermont Bidder Response Form (Exhibit C) and the Requirements Workbook (Exhibit E), the State requires vendors responding to this RFP to provide the following eight (8) attachments that are described within the Bidder Response Form:

- 1) A Financial Statement (and a confidentiality statement if, the financial information is considered non-public). Label it Attachment #1.
- 2) A Road Map that outlines the company's short and long term goals for the proposed solution/software/system. Label it Attachment #2.
- 3) A PowerPoint that provides an Executive level summary of your proposal. Label it Attachment #3.
- 4) A proposed list of project phases, tasks and an implementation time-line. Label it Attachment #4.
- 5) A resume for the Project Manager you would offer for this engagement. Label it Attachment #5.
- 6) Your typical implementation plan. Label it Attachment #6.

- 7) Resumes for any technical resources that you would offer for this engagement. Label it Attachment #7.
- 8) A copy of your Service Level Agreement (SLA). Label it Attachment #8.

4 BID SUBMISSION

- 4.1 Closing Date:** Bids must be received by the due date and at the location specified on the front page of this RFP.
- 4.2** The bid opening will be held at 109 State Street, 3rd Floor, Montpelier, VT and is open to the public.
- 4.3 Security Procedures:** Please be advised extra time will be needed when visiting and/or delivering information to 109 State Street. All individuals visiting 109 State Street must present a valid government issued photo ID when entering the facility.
- 4.4 Sealed Bid Instructions:** All bids must be sealed and must be addressed to the State of Vermont, Office of Purchasing & Contracting, 109 State Street – 3rd Floor, Montpelier, VT 05609-3001. BID ENVELOPES MUST BE CLEARLY MARKED ‘SEALED BID’ AND SHOW THE REQUISITION NUMBER AND/OR PROPOSAL TITLE, OPENING DATE AND NAME OF BIDDER.
- 4.4.1** All bidders are hereby notified that sealed bids must be received and time stamped by the Office of Purchasing & Contracting located at 109 State Street – 3rd Floor, Montpelier, VT 05609-3001 - by the time of the bid opening. Bids not in possession of the Office of Purchasing & Contracting at the time of the bid opening will be returned to the vendor, and will not be considered. Any delay deemed caused by Security Procedures will be at the bidder’s own risk.
- 4.4.2** Office of Purchasing & Contracting may, for cause, change the date and/or time of bid openings or issue an addendum. If a change is made, the State will make a reasonable effort to inform all bidders by posting at: <http://www.bgs.state.vt.us/pca/bids/bids.php> .
- 4.4.3** All bids will be publicly opened. Typically, the Office of Purchasing & Contracting will open the bid, read the name and address of the bidder, and read the bid amount. However, the Office of Purchasing & Contracting reserves the right to limit the information disclosed at the bid opening to the name and address of the bidder when, in its sole discretion, the Office of Purchasing & Contracting determines that the nature, type, or size of the bid is such that the Office of Purchasing & Contracting cannot immediately (at the opening) determine that the bids are in compliance with the RFP. As such, there will be cases in which the bid amount will not be read at the bid opening. Bid openings are open to members of the public. Bid results are a public record however, the bid results are exempt from disclosure to the public until the award has been made and the contract is executed.
- 4.5 Delivery Methods:**
- 4.5.1 Security Procedures:** Note that security procedures concerning delivery of any mail or parcels to 109 State Street may delay receipt of mail/parcel pieces by one business day.
- 4.5.2 U.S. Mail:** Bidders are cautioned that it is their responsibility to originate the mailing of bids in sufficient time to ensure bids are received and time stamped by the Office of Purchasing & Contracting prior to the time of the bid opening.
- 4.5.3 Express Delivery:** If bids are being sent via an express delivery service, be certain that the RFP designation is clearly shown on the outside of the delivery envelope or box. Express delivery

packages will not be considered received by the State until the express delivery package has been received and time stamped by the Office of Purchasing & Contracting. Due to security procedures express deliveries must be received by 10:30 AM in order to be received by the Office of Purchasing & Contracting that same day.

4.5.4 Hand Delivery: Hand carried bids shall be delivered to a representative of the Office of Purchasing & Contracting prior to the bid opening.

4.5.5 Electronic: Electronic bids will not be accepted.

4.5.6 Fax Bids: Faxed bids will not be accepted.

4.6 Bid Submission Checklist

- ✓ Required Number of Copies
- ✓ Cover Letter
- ✓ Signed Certificate of Compliance (Exhibit A)
- ✓ State of Vermont Bidder Response Form and Attachments (Exhibit C)
 - A Financial Statement (and a confidentiality statement if, the financial information is considered non-public) labeled Attachment #1.
 - A Road Map labeled Attachment #2.
 - Executive PowerPoint labeled Attachment #3.
 - A proposed list of project phases, tasks and an implementation time-line labeled Attachment #4.
 - Project Manager resume labeled Attachment #5.
 - An Implementation plan labeled Attachment #6.
 - Technical Resource Resumes labeled Attachment #7.
 - Your Service Level Agreement (SLA) labeled Attachment #8.
- ✓ Requirements Workbook (Exhibit E)

5 BID EVALUATION AND SELECTION

5.1 Worker Classification Compliance Requirements: In accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54), Bidders must comply with the following provisions and requirements.

5.1.1 Self Reporting: For bid amounts exceeding \$250,000.00, Bidder shall complete the appropriate section in the attached Certificate of Compliance for purposes of self-reporting information relating to past violations, convictions, suspensions, and any other information related to past performance relative to coding and classification of workers. The State is requiring information on any violations that occurred in the previous 12 months.

5.1.2 Subcontractor Reporting: For bid amounts exceeding \$250,000.00, Bidders are hereby notified that upon award of contract, and prior to contract execution, the State shall be provided with a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54). This requirement does not apply to subcontractors providing supplies only and no labor to the overall contract or project. This list MUST be updated and provided to the State as additional subcontractors are hired. A sample form is available online Section – Standard RFP Attachments - <http://bgs.vermont.gov/purchasing-contracting/forms> . The subcontractor reporting form is not required to be submitted with the bid response (Reference Exhibit B).

5.2 Executive Order 05-16: Climate Change Considerations in State Procurements

For bid amounts exceeding \$25,000.00 Bidders are requested to complete the Climate Change Considerations in State Procurements Certification, which is included in the Certificate of Compliance for this RFP.

After consideration of all relevant factors, a bidder that demonstrates business practices that promote clean energy and address climate change as identified in the Certification, shall be given favorable consideration in the competitive bidding process. Such favorable consideration shall be consistent with and not supersede any preference given to resident bidders of the State and/or products raised or manufactured in the State, as explained in the Method of Award section. But, such favorable consideration shall not be employed if prohibited by law or other relevant authority or agreement.

5.3 Method of Award

Awards will be made in the best interest of the State. The State may award one or more contracts and reserves the right to make additional awards to other compliant bidders at any time if such award is deemed to be in the best interest of the State. All other considerations being equal,

preference will be given first to resident bidders of the state and/or to products raised or manufactured in the state, and then to bidders who have practices that promote clean energy and address climate change, as identified in the applicable Certificate of Compliance.

5.3.1 Evaluation Criteria

The State shall have the authority to evaluate Responses and select the Bidder(s) determined to be in the best interest of the State and consistent with the goals and performance requirements outlined in this RFP.

Consideration shall be given to the Bidder’s project approach and methodology, qualifications and experience, ability to provide the services within the defined timeline, cost, and/or success in completing similar projects, as applicable, and to the extent specified below. In general, bids are awarded based on “the best interest of the State of Vermont”.

Evaluation Factors	Total Points for This Factor
Vendor Profile: Experience, Financial Strength	10%
Vendor Proposal/Solution and ability to meet the State’s Functional and Non-Functional Requirements (Bidder Response Form – Attachment C, Parts 2, 3 and 4, incorporating by reference Attachment E)	25%
References, (Bidder Response Form Part 1)	10%
Professional Implementation Services: Project Management and Technical services (Bidder Response Form Part 5 and 6)	10%
Maintenance and Support Services (Bidder Response Form Part 7)	10%
Pricing, includes licensing, maintenance and warranty (Bidder Response Form Part 8)	20%
Vendor Demonstration	10%
DBE Fair Share	5%
Acceptance of State Terms and Conditions	Pass/Fail
Adherence to Mandatory Bidding Requirements	Pass/Fail

- If the RFP required a minimum amount of experience or qualifications, the State will award no points for meeting the minimum. The State will award points for experience and qualifications that exceed the stated minimums.
- The State will not consider any prompt payment discounts terms proposed by the offeror in evaluating cost. The lowest cost proposal will receive the maximum number of points allocated to cost. The State will evaluate the point allocations for cost according to the method set forth in the RFP.

5.4 Demonstration

An in-person or webinar demonstration by the Vendor may be required by the State if it will help the State's evaluation process. The State will factor information presented during demonstrations into the evaluation. Vendors will be responsible for all costs associated with the providing the demonstration.

5.5 Best and Final Offer

5.5.1 Best and Final Offer (BAFO). At any time after submission of Responses and prior to the final selection of Bidder(s) for Contract negotiation or execution, the State may invite Bidder(s) to provide a BAFO.

5.5.2 The state reserves the right to request BAFOs from only those Bidders that meet the minimum qualification requirements and/or have not been eliminated from consideration during the evaluation process.

5.5.3 Evaluation of Responses and Selection of Bidder(s). The State shall have the authority to evaluate Responses and select the Bidder(s) as may be determined to be in the best interest of the State and consistent with the goals and performance requirements outlined in this RFP.

5.6 Contract Negotiation

Upon completion of the evaluation process, the State may select one or more Vendors with which to negotiate a contract, based on the evaluation findings and other criteria deemed relevant for ensuring that the decision made is in the best interest of the State. In the event the State is successful in negotiating with a Vendor, the State will issue a notice of award. In the event State is not successful in negotiating a contract with a selected Vendor, the State reserves the option of negotiating with another Vendor, or to end the proposal process entirely.

5.7 Independent Review

Per Vermont statute 3 V.S.A. 2222, The Secretary of Administration shall obtain independent expert review of any recommendation for any information technology initiated after July 1, 1996, as information technology activity is defined by subdivision (a)(10), when its total cost is \$1,000,000 or greater or when required by the State Chief Information Officer. Documentation of this independent review shall be included when plans are submitted for review pursuant to subdivisions (a)(9) and (10) of this section. The independent review shall include:

- An acquisition cost assessment
- A technology architecture review
- An implementation plan assessment
- A cost analysis and model for benefit analysis
- A procurement negotiation advisory services contract
- An impact analysis on net operating costs for the agency carrying out the activity

6 GENERAL TERMS AND CONDITIONS

- 6.1 STATEMENT OF RIGHTS:** The State of Vermont reserves the right to obtain clarification or additional information necessary to properly evaluate a proposal. Vendors may be asked to give a verbal presentation of their proposal after submission. Failure of vendor to respond to a request for additional information or clarification could result in rejection of that vendor's proposal. To secure a project that is deemed to be in the best interest of the State, the State reserves the right to accept or reject any and all bids, in whole or in part, with or without cause, and to waive technicalities in submissions. The State also reserves the right to make purchases outside of the awarded contracts where it is deemed in the best interest of the State.
- 6.2 Pricing:** Bidders must price the terms of this solicitation at their best pricing. Any and all costs that Bidder wishes the State to consider must be submitted for consideration. If applicable, all equipment pricing is to include F.O.B. delivery to the ordering facility. No request for extra delivery cost will be honored. All equipment shall be delivered assembled, serviced, and ready for immediate use, unless otherwise requested by the State.
- 6.2.1** The proposal must be fixed cost, inclusive of expenses, for specific deliverables. The State generally doesn't enter into time and material contracts.
 - 6.2.2** Prices and/or rates shall remain firm for the initial term of the contract. The pricing policy submitted by Bidder must (i) be clearly structured, accountable, and auditable and (ii) cover the full spectrum of materials and/or services required. If the project contemplates doing additional work with the vendor for additions to the system or addition of new users, state the hourly rates for future work for key types of positions, i.e., Data Base Programmer, Systems Developer, Trainer, etc.
 - 6.2.3** Cooperative Agreements. Bidders that have been awarded similar contracts through a competitive bidding process with another state and/or cooperative are welcome to submit the pricing in response to this solicitation.
- 6.3 CONTRACTING WITH THE STATE OF VERMONT:** The selected bidder(s) will be expected to sign a contract with the State according to the form prescribed by the Standard State Contract Form and its associated Attachments which is attached to this RFP as Exhibit D. The contract will obligate the bidder to provide the services and/or products identified in its bid, at the prices listed.
- 6.3.1 Invoicing:** The bidder's proposal must clearly specify the address for submitting payments. All payments are to be based on State of Vermont's acceptance of agreed to, fixed price deliverables or time and materials terms, as the case may be.
 - 6.3.2 Vendors planning to submit a bid are advised of the following:**
 1. The State expects the Vendor and its legal counsel to carefully review and be prepared to be bound by the ***Attachment C: Standard State Provisions for Contracts and Grants*** outlined in Exhibit D.

2. The contract is subject to review and approval by the Attorney General, the Department of Information and Innovation and the Secretary of Administration. The terms and conditions of a Vendor's software license, maintenance support agreement and service level agreement, if applicable, will be required for purposes of contract negotiations for this project. Failure to provide the applicable Vendor terms as part of the RFP response may result in rejection of the Vendor's proposal.
3. The State has no legal authority to indemnify a vendor and this condition is not negotiable. Further, all contract terms and conditions, including a Vendor license will be subject to the laws of the State of Vermont and any action or proceeding brought by either the State or a Contractor in connection with a Contract shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. Vendors who are not able to enter into a contract under these conditions should not submit a bid.
4. Contractors will be expected to make the representations and warranties set forth in the State Contract Terms.

6.4 Non-Disclosure Agreement

The successful bidder may be required to complete a non-disclosure agreement in a form acceptable to the State.

6.5 Performance Measures

In accordance with current State of Vermont policy and procedures, the contract may include Vendor performance measures. The specific performance measures will be determined during the contract negotiation process.

6.6 Contract Term

Contract Period: Contracts arising from this RFP will be for a period of 24 MONTHS with an option to renew for up to two additional twelve-month periods. The State anticipates the start date will be July 1, 2018.

The vendor should guarantee its rate offerings, over the term of the contract, are comparable to other customers of similar size and requirements. If offerings are rendered to a comparable customer which improve the pricing agreed to in the contract, the vendor agrees to apply those same discounts and offerings to the State of Vermont.

6.7 Specification Change

Any changes or variations in the requirements or specifications set forth in this RFP will result in the issuance of an Addendum to this RFP in writing from the Office of Purchasing & Contracting. Verbal instructions or written instructions from any other source are not to be considered.

6.8 Business Registration

To be awarded a contract by the State of Vermont a Vendor (except an individual doing business in his/her own name) must be registered with the Vermont Secretary of State's office

<http://www.sec.state.vt.us/tutor/dobiz/forms/fcregist.htm> and must obtain a Contractor's Business Account Number issued by the Vermont Department of Taxes <http://tax.vermont.gov/> .

6.9 Quality

If applicable, all products provided under a contract with the State will be new and unused, unless otherwise stated. Factory seconds or remanufactured products will not be accepted unless specifically requested by the purchasing agency. All products provided by the contractor must meet all federal, state, and local standards for quality and safety requirements. Products not meeting these standards will be deemed unacceptable and returned to the contractor for credit at no charge to the State.

6.10 Costs of Preparation

The Vendor shall be solely responsible for all expenses incurred in the preparation of a response to this RFP and shall be responsible for all expenses associated with any presentations or demonstrations associated with this request and/or any proposals made.

6.11 Exhibits included with this RFP:

Exhibit A: Certificate of Compliance

Exhibit B: Subcontractor Reporting Form

Exhibit C: State of Vermont Bidder Response Form

Exhibit D: State of Vermont Standard Contract For Information Technology Services and its associated Attachments

- Attachment C: Standard State Provisions for Contracts and Grants
- Attachment D: Other Terms and Conditions for Information Technology Contracts

Exhibit E: Requirements Workbook

Exhibit F: Disadvantaged Business Enterprises indicating interest in Subcontracting Opportunities

Approval for Approval to Subgrant

EXHIBIT A

CERTIFICATE OF COMPLIANCE

For a bid to be considered valid, this form must be completed in its entirety, executed by a duly authorized representative of the bidder, and submitted as part of the response to the proposal.

- A. **NON COLLUSION:** Bidder hereby certifies that the prices quoted have been arrived at without collusion and that no prior information concerning these prices has been received from or given to a competitive company. If there is sufficient evidence to warrant investigation of the bid/contract process by the Office of the Attorney General, bidder understands that this paragraph might be used as a basis for litigation.
- B. **CONTRACT TERMS:** Bidder hereby acknowledges that is has read, understands and agrees to the terms of this RFP, including Attachment C: Standard State Provisions for Contracts and Grants, and any other contract attachments included with this RFP.
- C. **FORM OF PAYMENT:** Does Bidder accept the Visa Purchasing Card as a form of payment?

___ Yes ___ No

- D. **WORKER CLASSIFICATION COMPLIANCE REQUIREMENT:** In accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54), the following provisions and requirements apply to Bidder when the amount of its bid exceeds \$250,000.00.

Self-Reporting. Bidder hereby self-reports the following information relating to past violations, convictions, suspensions, and any other information related to past performance relative to coding and classification of workers, that occurred in the previous 12 months.

Summary of Detailed Information	Date of Notification	Outcome

Subcontractor Reporting. Bidder hereby acknowledges and agrees that if it is a successful bidder, prior to execution of any contract resulting from this RFP, Bidder will provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54), and Bidder will provide any update of such list to the State as additional subcontractors are hired. Bidder further acknowledges and agrees that the failure to submit subcontractor reporting in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54) will constitute non-compliance and may result in cancellation of contract and/or restriction from bidding on future state contracts.

E. Executive Order 05 – 16: Climate Change Considerations in State Procurements Certification

Bidder certifies to the following (Bidder may attach any desired explanation or substantiation. Please also note that Bidder may be asked to provide documentation for any applicable claims):

1. Bidder owns, leases or utilizes, for business purposes, space that has received:

- Energy Star® Certification
- LEED®, Green Globes®, or Living Buildings ChallengeSM Certification
- Other internationally recognized building certification:

2. Bidder has received incentives or rebates from an Energy Efficiency Utility or Energy Efficiency Program in the last five years for energy efficient improvements made at bidder’s place of business. Please explain:

3. Please Check all that apply:

- Bidder can claim on-site renewable power or anaerobic-digester power (“cow-power”). Or bidder consumes renewable electricity through voluntary purchase or offset, provided no such claimed power can be double-claimed by another party.
- Bidder uses renewable biomass or bio-fuel for the purposes of thermal (heat) energy at its place of business.
- Bidder’s heating system has modern, high-efficiency units (boilers, furnaces, stoves, etc.), having reduced emissions of particulate matter and other air pollutants.
- Bidder tracks its energy consumption and harmful greenhouse gas emissions. What tool is used to do this?

- Bidder promotes the use of plug-in electric vehicles by providing electric vehicle charging, electric fleet vehicles, preferred parking, designated parking, purchase or lease incentives, etc..
- Bidder offers employees an option for a fossil fuel divestment retirement account.
- Bidder offers products or services that reduce waste, conserve water, or promote energy efficiency and conservation. Please explain:

4. Please list any additional practices that promote clean energy and take action to address climate change:

F. Acknowledge receipt of the following Addenda:

Addendum No.: _____ Dated: _____

Addendum No.: _____ Dated: _____

Addendum No.: _____ Dated: _____

Bidder Name: _____ Contact Name: _____

Address: _____ Fax Number: _____

_____ Telephone: _____

_____ E-Mail: _____

By: _____ Name: _____
Signature of Bidder (or Representative) (Type or Print)

END OF CERTIFICATE OF COMPLIANCE

EXHIBIT B

SUBCONTRACTOR REPORTING FORM

This form must be completed in its entirety and submitted prior to contract execution and updated as necessary and provided to the State as additional subcontractors are hired.

The Department of Buildings and General Services in accordance with Act 54, Section 32 of the Acts of 2009 and for total project costs exceeding \$250,000.00 requires bidders to comply with the following provisions and requirements.

Contractor is required to provide a list of subcontractors on the job along with lists of subcontractor's subcontractors and by whom those subcontractors are insured for workers' compensation purposes. Include additional pages if necessary. This is not a requirement for subcontractor's providing supplies only and no labor to the overall contract or project.

Subcontractor	Insured By		Subcontractor's Sub	Insured By

Date: _____

Name of Company: _____

Contact Name: _____

Address: _____

Title: _____

Phone Number: _____

E-mail: _____

Fax Number: _____

By: _____

Name: _____

Failure to adhere to Act 54, Section 32 of the Acts of 2009 and submit Subcontractor Reporting: Worker Classification Compliance Requirement will constitute non-compliance and may result in cancellation of contract and/or forfeiture of future bidding privileges until resolved.

Send Completed Form to: Office of Purchasing & Contracting
109 State Street
Montpelier, VT 05609-3001
Attention: Contract Administration

EXHIBIT C
Bidders Response Form

See accompanying word document titled: Bidders Response Form, which is incorporated herein by reference.

EXHIBIT D

State of Vermont Standard Contract For Information Technology Services and its associated Attachments

[USE OF THIS TEMPLATE: ALL HIGHLIGHTED LANGUAGE MAY BE DELETED OR MODIFIED, AS APPLICABLE]

1. **Parties.** This is a contract for services between the State of Vermont, _____ (hereinafter called "State"), and _____, with a principal place of business in _____, (hereinafter called "Contractor"). Contractor's form of business organization is _____. 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 _____. 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 \$_____.00.

4. **Contract Term.** The period of Contractor's performance shall begin on _____, 20____ and end on _____, 20____.

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

Attachment A – Statement of Work

- Exhibit 1 – State Technical and Functional Requirements

- Exhibit 2 – Preliminary Implementation Master Schedule
- Exhibit 3 – State Third Party Software
- Exhibit 4 – Contractor Software

Attachment B – Payment Provisions

Attachment C – “Standard State Provisions for Contracts and Grants” a preprinted form (revision date 07/01/2016)

Attachment D – Other Terms and Conditions for Information Technology Contracts

Attachment __ – [OTHER DEPARTMENT ATTACHMENTS, AS APPLICABLE]

Attachment __ – Contractor’s [License] Agreement

Attachment __ – [Maintenance and Support/Service Level Terms]

9. **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 Other Terms and Conditions for Information Technology Contracts
- 3) Attachment C (Standard State Provisions for Contracts and Grants)
- 4) Attachment A with Exhibits
- 5) Attachment B
- 6) List other attachments as applicable

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT

By the State of Vermont:

By the Contractor:

Date: _____

Date: _____

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

**ATTACHMENT A
SPECIFICATIONS OF WORK TO BE PERFORMED**

1. PURPOSE

This Contract sets forth the terms and conditions under which Contractor agrees to provide to the State with a [web-based,] Contractor-supported _____ (the “Solution”). The Solution shall _____.

The Contractor shall provide [development and design services, project and operations management, support and maintenance, consulting, training, engineering and application development , monitoring, support, backup and recovery, change management, technology updates and upgrades and other professional services as described herein] (individually and collectively referred to herein as the “Services”), as necessary for the State’s productive use of the Solution as further set forth in this Contract. This Contract specifies the obligations of each party with additional provisions detailed in the attached Attachments and Exhibits.

2. EXISTING SYSTEMS.

[DESCRIBE]

3. OBJECTIVE

This Contract identifies the tasks required by each party to implement and support the Solution through the following major activities: [development of project management planning documentation; requirements collection and validation, Solution design, data migration, configuration, integration and testing; deployment and training; operations, support, and maintenance services], all as detailed herein.

The project will be executed in phases as described herein.

The successful outcome of the project is defined by the following:

- completed in accordance with this Contract and applicable project management planning documentation;
- Resolution of all material functional and operational deficiencies prior to deployment in the production environment;
- completed within budget;
- configured to meet all specified requirements and needs of the State;
- the Solution meets and adheres to all requirements and timeframes set forth in service level terms set forth herein;
- the Solution is fully documented, including but not limited to requirements specifications, architecture, design, configuration, operational environment and user manuals; and

- trained State staff and stakeholders.

2.3. PERIOD OF INSTALLATION AND IMPLEMENTATION AND TRAINING

The period of installation and implementation and training shall not exceed _____ months from the date of this Contract. Support and maintenance shall begin [upon Solution deployment] and shall continue through the Contract Term as the same may be extended by the parties.

3. DEFINITIONS. Capitalized terms used in this Contract not specifically defined in the text shall have the following meanings:

- (a) **“Certificate of Acceptance”** means written certification, delivered to Contractor and signed by an authorized representative of the State, stating that any Defects in a particular Phase or the Solution discovered after implementation and testing have been corrected as required under this Contract, and that the Phase complies in all material respects with all of the applicable Requirements.
- (b) **“Certificate of Completion”** means written certification, delivered to the State and signed by an authorized representative of Contractor, stating that any Defects in a particular Phase or the Solution discovered after implementation, testing and Acceptance have been corrected as required under this Contract, and that the Phase or Solution complies in all material respects with all of the applicable Solution Requirements. The State must provide written acceptance to Contractor of any and all Certificates of Completion for them to become effective.
- (c) **“Contractor Personnel”** means and refers to Contractor’s employees and employees of Contractor’s permitted subcontractors or permitted agents assigned by Contractor to perform Services under this Contract.
- (d) **“Defect”** means any failure by the Solution or any Phase or component thereof to conform in any material respect with applicable Requirements.
- (e) **“Defect Correction”** means either a modification or addition that, when made or added to the Solution, establishes material conformity of the Solution to the applicable Requirements, or a procedure or routine that, when observed in the regular operation of the Solution, eliminates the practical adverse effect on the State of such nonconformity.
- (f) **“Documentation”** means any and all descriptions and specifications of the Requirements included herein or created or developed hereunder, operational, functional and supervisory reference guides, manuals and instructive materials, in whatever form and regardless of the media on which it may be contained,

stored or transmitted, which is developed, prepared, used or otherwise available from Contractor and/or Contractor's suppliers, in connection with and applicable to the provision, use, operation and support of the Services hereunder. Documentation shall be sufficient to enable State personnel to understand, operate, use, access, support, maintain, update and modify Services, notwithstanding that Contractor is or may be responsible for any or all of the foregoing obligations. Documentation shall also include all standards applicable to the Services, including those applicable to: (i) Contractor for its own comparable items or services; (ii) the State for its own comparable items or services; and (iii) such standards and guidelines as the parties mutually agree apply to the Services involved.

- (g) **"Final Acceptance"** means the issuance of Certificate of Acceptance executed by the State which specifies the mutually agreed upon Go Live Date for the Solution.
- (h) **"Facilities"** means the physical premises, locations and operations owned or leased by the State (a "State Facility") or the Contractor (a "Contractor Facility"), and from or through which the Contractor and/or its permitted contractors will provide any Services.
- (i) **"Go Live Date."** The date that the all or any part of the entire Solution is first available for use by the State in an operational, non-test environment, utilizing actual production data.
- (j) **"Phases."** A particular portion of the Solution, as set forth in the Implementation Master Schedule or as may be modified in accordance with this Contract. Unless modified by written agreement of the parties, the five project Phases are [Solution Definition and Design, Requirements Gathering, Customization, Deployment, Training and Maintenance and Support].
- (k) **"Requirements"** means the State's baseline Functional and Technical Requirements attached as Exhibit 1 to Attachment A of this Contract.
- (l) **"Service Level"** means the specific level of performance Contractor is required to comply with and adhere to in providing the Services in conformity with the Requirements, consistent with the criteria and parameters specified in this Contract. Service Level Terms are set forth in Attachment [redacted] to this Contract.

4. PROJECT MANAGEMENT

The scope of work as detailed below describes the services, deliverables and key assumptions. Contractor will develop an overall project schedule that details the tasks, timelines, and deliverables for the fully integrated solution.

4.1. CONTRACTOR PROJECT MANAGEMENT AND SUPPORT

4.1.1 CONTRACTOR’S PROJECT MANAGER

Contractor will designate an individual to serve as the “**Contractor Project Manager**” who will: (i) be a senior employee within Contractor’s organization, with the information, authority and resources available to properly discharge the responsibilities required hereunder; (ii) serve as primary point of contact and the single-point of accountability and responsibility for all Contract-related questions and issues and the provision of Services by Contractor; (iii) have day-to-day responsibility for, and authority to manage, State customer satisfaction; (iv) devote full time and dedicated efforts to managing and coordinating the Services; and (v) be located at State Facilities or such other appropriate location as Contractor and the State may mutually agree.

Contractor’s Project Manager shall be responsible for all tasks necessary to manage, oversee, and ensure success of the project. These tasks include documenting requirements, developing and updating project plans, assigning staff, scheduling meetings, developing and publishing status reports, addressing project issues, risks, and change orders, and preparing presentations for the State.

Contractor’s project manager shall be responsible for the successful delivery of all Contractor tasks and subtasks defined in the Project Management Plan (as defined herein). Progress will be monitored and plans adjusted, as necessary, in project status meetings. The Project Management Plan deliverables (for both State and Contractor tasks) shall be updated by the Contractor, subject to review and approval of the State, and reports printed for each status meeting.

Contractor’s project manager shall be responsible for developing and implementing the following project management documentation:

Deliverable	Description	Update Frequency
Project Charter	The Project Charter provides basic information about the project. It includes a: Scope Statement (what’s in and out of scope); list of Project Deliverables; high level Project Timeline; Key Roles & Responsibilities; known Risks, Assumptions and/or Constraints. It should be signed off on by the State.	Once unless there are changes
Project Management Plan	The Project Management Plan will dictate specifics on how the Contractor Project Manager will administer the project and will include the following documentation: 1. Change Management Plan (will dictate how changes will be handled including	

	<p>any Service level terms on over/under estimates)</p> <ol style="list-style-type: none"> 2. Communication Management Plan (will dictate what will be communicated, to who, and how often) 3. Requirements Management Plan (will dictate the approach that the requirements will be gathered, approved, and maintained) 4. Human Resources Management Plan (will dictate what resources will be assigned to the project, for how long, under what allocation, who they report to, and how to handle changes to the resource plan) 5. Procurement Management Plan (will dictate how the vendor(s) will interact with the project and expectations regarding vendor relations with State resources) 6. Quality Management Plan (will dictate the quality controls over the work being done on the project as well as determine Key Performance Indicators – this document is not limited to deliverables) 7. Risk and Issues Management Plan (will dictate how risks and issues will be managed over the course of the project) 8. Scope Management Plan (will dictate how the scope will be maintained to prevent “scope creep”) 	
Formal Acceptance Criteria	Criteria that establishes what the acceptance and rejection criteria of each document on this list.	
Formal Acceptance Sign Off	Obtain sign-off at the completion of each project deliverable as defined by the formal acceptance criteria.	
Change Requests	Formal document which outlines any changes to the Contract scope, schedule, budget, and resources.	
Change Requests Log	Tracks the specific change requests approved and their impact to the project scope, budget	

	and schedule.	
Budget Log	Outlines original Contract costs by deliverable with billed and paid-to-date information.	
Risk Log	A log of all risks (opened or closed) that could impact the project. Risks should be outlined by their impact and their potential to occur. All risks should have an owner.	
Issue/Action Items/Decision Log	A Log of open and resolved/completed Issues. Issues should be outlined by their impact, owner, date of occurrence, and remediation strategy.	
Decision Log	A log of all decisions made over the course of the project. Decisions should have a date and name of decider.	
Requirements Documents	Finalized list of the project requirements to be approved by the State. The approach is dictated by the Requirements Management Plan (see Project Management Plan), and can include: <ul style="list-style-type: none"> • Stated requirements document (SRD): The SRD contains current state process flows, user stories, and business rules and states the business need at a high level. • Business requirements document (BRD): The BRD contains a medium level of requirements as well as required metrics of project success. • Functional requirements document (FRD): The FRD contains detailed requirements that can be handed off to the Contractor for execution. 	
Test Plans	A description of the testing approach, participants, sequence of testing and testing preparations	Once
Test Cases & Results	The specific test cases to be tested and the testing results. Test Cases tie back to the project requirements (to ensure each one has been met).	Create once then update with Results
Implementation Master Schedule	The IMS outlines how the project will go-live and will include a mini-project plan for the exact events that need to occur assigned to the resources that need to do them and the	Once per implementation

	timeframe for when they need to get done. (See Section 4.4 for more detail.)	
Project Status Reports	Provides an update on the project health, accomplishments, upcoming tasks, risks and significant issues. The Status Report and the project color being report shall be developed in consultation with the State business lead and State project manager, as set forth in greater detail in Section 4.2.2.	Weekly
Project Phase Audit/Gate Check	At the end of each Phase, the Contractor Project Manager shall submit an audit of all deliverables and milestones achieved during the Phase to the State Project manager for review.	Once per phase.
Meeting Agenda/Minutes	All scheduled meetings will have an agenda and minutes. The minutes shall contain risk issues, action items, and decision logs. Minutes shall be transcribed over to the main logs.	Per occurrence
End of Project Metrics	These are metrics that reflect how well the project was performed. Metrics will be outlined in the Quality Management Plan	
Lessons Learned	A compilation of the lessons learned having 20/20 hindsight. Lessons learned shall be delivered in an Excel template and collected from each of the State and Contractor project team members to get a full 360 degree view of the project in retrospect.	Once
Closeout Report	This report will include all the lessons learned, project metrics, and a summary of the project's implementation and outcome in operation.	Once

Contractor shall use State templates for the foregoing, unless otherwise approved by the State. The State Project Manager shall be responsible for the review and acceptance of project management documentation.

Contractor's project manager shall assist the State's project manager (upon request) in creating materials for periodic presentations to State project sponsors and key stakeholders. Contractor's project manager may be required to present information to, and answer questions from, State stakeholders at these presentations.

4.1.2 PROJECT MANAGEMENT AND SUPPORT

The Contractor will apply PMI (Project Management Institute's PMBOK) principles to ensure on-time and within-budget delivery of the Solution, while meeting all of the Requirements in this Contract. The State will approve all project management methods and tools used during the project. These project management methods and tools are considered project deliverables.

4.1.3 KEY PROJECT STAFF

Contractor will perform and support the Services consistent with this Contract and the Solution Requirements. Contractor Personnel will be properly educated, trained and qualified for the Services they are to perform and Contractor will put appropriate training in place to meet initial and ongoing training requirements of Contractor Personnel assigned to perform Services.

- (a) Contractor shall be responsible, at its own cost and expense, for any and all recruitment, hiring, Contractor-specific training, education and orientation for all Contractor Personnel assigned or to be assigned to perform Services or support the Requirements.
- (b) All Contractor Personnel, in addition to any Contractor security policies and procedures, shall be required to comply with the security requirements in this Contract
- (c) Contractor shall conduct its hiring process in compliance with all applicable Federal and State laws to include, but not be limited to, anti-discrimination laws.
 - (i) **Eligibility for Employment:** Contractor shall verify that all prospective employees are eligible for employment in the United States.
 - (ii) **Criminal Records:** Contractor or an agent of Contractor shall perform criminal background checks on all prospective employees utilizing a national criminal database acceptable to the State. Before any Contractor Personnel begin work on the Services x) such background check shall have returned a "no record" result or, y) to the extent that the result revealed that a felony record or records exist for a given individual, the associated conviction(s) shall be unrelated to the work to be performed as specified under the Equal Employment Opportunities Commission's EEOC Enforcement Guidance regarding the employment of convicted felons issued April 25, 2012. Contractor shall provide the State with notice of proposed Contractor Personnel with felony or misdemeanor convictions that involve a crime against a person; a crime involving the use or misuse of computer network; a crime involving weapons, explosives or arson; a crime involving trade secret/proprietary information; a crime involving theft, dishonesty, embezzlement, breach of fiduciary duty, identity theft, or other financial-related crimes; a felony conviction for drug possession; or a crime involving the distribution or trafficking of illegal drugs and/or controlled substances.
- (d) All Contractor Personnel providing or assigned to provide Services or otherwise in a position to obtain or have access to State Information, shall execute a non-disclosure agreement in a form acceptable to the State.

- (e) The timing for transfer, reassignment or replacement of Contractor Personnel will be coordinated with requirements for timing and other elements of the Services so as to maintain continuity in the performance of the Services and avoid interruption or disruption to the Services or any failures to maintain Service Levels.

Contractor shall assign the following Contractor staff (“Key Project Staff”), to meet the Requirements of this Contract:

[INSERT]

Contractor will cause the Contractor Personnel filling the Key Project Staff positions to devote full time and dedicated effort to the provision of the Services and the achievement of Service Levels required for the Services, unless a lesser allocation during certain Project Phases may be agreed in writing.

4.1.4 KEY PROJECT STAFF CHANGES

Contractor shall not change the project assignment of _____, _____, and _____ for the period of project implementation. Contractor shall not change other members of Key Project Staff without providing the State written justification, a comprehensive transition plan and obtaining prior written approval of the State. State approvals for replacement of Key Project Staff will not be unreasonably withheld.

The replacement of Key Project Staff 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 Project Staff for any reason without the State’s approval, Contractor agrees to replace the new Key Project Staff member if performance is unacceptable to State and provide the first thirty (30) days of a replacement resource with equivalent skill at no charge.

Notwithstanding the foregoing, the State acknowledges that Key Project Staff 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 State in writing of the impending or actual departure of any Key Personnel and of the qualifications and identity of proposed replacement Key Project Staff. The State has the right to reasonably disapprove of any replacement Key Project Staff.

4.1.5 CONTROL OF CONTRACTOR PERSONNEL. Contractor shall be fully responsible for the management, compensation, and performance of all Contractor Personnel, and the filing of any and all returns and reports and the withholding and/or payment of all applicable federal, State, and local wage tax, or employment-related taxes, including,

but not limited to, income taxes, gross receipt taxes, taxes measured by income, social security taxes, and unemployment taxes for Contractor and Contractor's employees. Notwithstanding the foregoing, Contractor's employees shall adhere to the State's policies and procedures, of which Contractor is made aware while on State Premises, and shall behave and perform in a professional manner. The State, may, in its reasonable discretion, require Contractor to replace any Contractor Personnel, including but not limited to Key Project Staff, working hereunder who does not adhere to, behave, and perform consistent with the State's policies and procedures, or otherwise engages in unprofessional or unethical conduct, or abuses any illegal substance or alcohol, or engages in illegal activities or consistently underperforms. The State shall provide written notice to Contractor of the requirement of replacement, or with whom there are irresolvable personality conflicts. Contractor shall use reasonable efforts to promptly and expeditiously replace Key Project Staff and replace all other personnel within fifteen (15) business days of receipt of the written notice unless otherwise mutually agreed. The State's right to request replacement of Contractor personnel hereunder relates solely to the removal of individuals from work on this Contract with the State and does not create an employment relationship. Nothing in this Contract authorizes the State to direct the Contractor's termination of the employment of any individual.

4.1.6 CONTRACTOR THIRD PARTY CONTRACTS. The State acknowledges and understands that Contractor will enter into third party contracts with the following Contractor subcontractors: (i) _____ for _____; (ii) _____ for _____; and (iii) _____ for the performance of Services hereunder. Contractor shall deliver a copy of all such third party contracts to the State for review upon request. The State hereby consents to the use by Contractor of these subcontractors, provided however that any such consent is not deemed acceptance of the terms of any subcontracts by the State.

4.2. PROJECT PLANNING

The State and Contractor Project Managers will arrange for kick-off dates and procedures for managing the project – such as reporting status and resolving issues. This will provide an opportunity to introduce all key members of the project teams and walk through the project management plan and key milestones.

4.2.1. MEETING PROTOCOLS

For regular weekly project status meetings, Contractor's Project Manager shall provide a meeting agenda and any handouts at least one business day in advance of the scheduled meeting.

4.2.2. PROJECT DOCUMENT STORAGE

The Contractor will establish a SharePoint site, or some other collaboration mechanism, that is accessible to the Contractor and the State. This will provide a common area for Contractor's project documents, artifacts, and deliverables. Access to all SharePoint

sites (or other medium of collaboration) and all project material contained therein shall be delivered to the State upon completion of the project.

4.2.3. STATUS REPORTS

Contractor's Project Manager shall provide project documentation and collaboration to meet the State's vendor reporting requirements. If requested, the Contractor shall use the State's Status Report template. If no template is provided to the Contractor, the status information shall include, at a minimum: all planned tasks accomplished for the reporting period; planned tasks that are incomplete, or behind schedule in the previous week (with reasons given for those behind schedule); all tasks planned for the upcoming two weeks; an updated status of tasks (entered into the Master Project Work Plan and attached to the status report – e.g., percent completed, resources assigned to tasks, etc.); and the status of any corrective actions undertaken. The report will also contain items such as the current status of the project's technical progress and contractual obligations; achievements to date; risk management activities; unresolved issues; requirements to resolve unresolved issues; action items; problems; installation and maintenance results; and significant changes to Contractor's organization or method of operation, to the project management team, or to the deliverable schedule, where applicable. For all project services performed on a time and materials basis, as provided herein, the Contractor shall also provide details on staff hours, cost per activity, all expenditures and a summary of services performed for the reporting period.

The State Project Manager and Contractor's Project Manager will come to agreement on the exact format of the project documentation and collaboration reports, at or before the project kick-off meeting.

Each report shall include a project dashboard at the top outlining the overall status of the project in terms of the standard triple constraint: cost, time, resources (using a legend or icon of green, yellow, and red based upon the following definitions):

- Green – on track to deliver committed scope by committed deadline with committed resources/funding.
- Yellow – not on track to deliver committed scope by committed deadline with committed resources/funding, but have a plan to get back to green.
- Red – not on track and currently do not have a plan to get back to green. Need project management intervention or assistance.

In the event of yellow or red overall project status, there should be a specific task(s) and/or issue(s) identified as yellow or red which are the root cause of the overall project status being yellow or red. These items shall be presented in sufficient detail to determine the root-cause. The Status Report shall provide a link to the Risks and Issues Log for more detail.

The report shall include a budget section outlining original contract costs by deliverable with billed and paid-to-date information by deliverable and in total.

4.3 IMPLEMENTATION MASTER SCHEDULE

The Contractor has compiled a preliminary “baseline” implementation master schedule (“IMS”) using the best available knowledge at the time of Contract signing which is attached to this Attachment A as Exhibit 2. The Contractor shall update the IMS after execution of this Contract during the Project Development as required pursuant to the terms herein (e.g., updated tasks and task descriptions, updated meeting dates, updated resource assignments, updated milestone dates). Any such changes shall be communicated in writing by the Contractor to the State Contract Manager by executing a new or revised IMS or other documentation acceptable to the State. Such changes are subject to State review and approval. The parties shall work together to implement the IMS changes in accordance with the terms of this Contract; provided, however, in no event shall revisions to the IMS be deemed to amend this Contract. Changes to project scope, term or maximum amount shall require a Contract amendment.

The IMS is an ongoing tool for anticipating and tracking changes to expectations for all project tasks, deliverables and milestones. The complete IMS is an integrated plan – that is, it includes actions and deliverables from all project areas – both Contractor and State. The complete IMS, which includes the detailed tasks and milestones, shall reside in [Microsoft Project (.mpp) format (Version 2007 or higher)] and will be shared in the ongoing communication meetings to discuss changes. State shall sign off on all deliverables from each Phase of the IMS before subsequent phase work is initiated. Once sign off is complete, Contractor and State will assess readiness to proceed with next phase.

5. SCOPE OF SERVICES.

5.1 DESCRIPTION OF SERVICES. Contractor agrees to provide and shall perform the Services described herein in accordance with and subject to the terms and conditions set forth in this Contract.

5.2 Project Major Phases, Warranty and Options. [DESCRIBE PROJECT PHASES AND DELIVERABLES FOR EACH PHASE; THIS SECTION SHOULD INCLUDE PAYMENT MILESTONES WHICH ARE THEN REITERATED IN ATTACHMENT B WITH PAYMENT AMOUNTS]

The Contractor shall, at a minimum, provide State access to a [web-based] Solution that meets the tools and functionality requirements of the State set forth in Exhibit 1 to this Attachment A. Contractor shall use system development and configuration control methodologies and the desirable sequence of project major Phases as described herein.

Estimated dates in the following table shall be finalized in the IMS as described in Section 4.4, "Implementation Project Schedule."

PHASE	ESTIMATED DATES	PHASE DESCRIPTION
[Initiation]		Kick-off meeting, Planning and preparation of project management planning documentation.
[Requirements Gathering]		Contractor performs necessary requirements gathering to finalize functional and technical requirements and identify gaps between State requirements and Solution capabilities.
[Implementation]		Contractor installs and configures the Solution in a Test environment.
[Testing]		State subject matter experts perform Solution testing in a test (not live) environment accordance with Contractor-developed Test plans.
[Training]		Contractor performs training of State personnel (train the trainer or train the user).
[Legacy Data Migration]		Contractor shall perform all necessary legacy data migrations using State-approved migration plan and data mapping templates.
[Deployment]		Contractor implements the tested and State-approved Solution in the production environment for additional State testing and Go-Live.
[Post-Implementation Support/Warranty]		Contractor shall be responsible for fixing all Defects found during the Warranty Period. All Defects found within the Warranty Period, shall be corrected by Contractor at no additional cost to the State.

5.3. State-Caused Delays. Contractor acknowledges that the State may not be able to meet the time frames specified in an IMS or that the State may determine that it is necessary to delay and/or modify the timing and sequencing of the implementation as provided in the IMS. While the State is committed to the project and shall use reasonable efforts to provide staff and resources necessary to satisfy all such time frames, the State shall not be held responsible or deemed in default for any delays in Solution implementation provided the State uses its reasonable efforts to accomplish its designated responsibilities and obligations as set forth in the IMS. In addition, the State may, at its option, delay implementation and installation of the Solution, or any part

thereof. Notwithstanding any provision to the contrary, if the State Significantly Delays implementation of the Solution, either party may make a Change Request in accordance with Section 8, "Change Order Process," and, if required, an amendment to this Contract. Contractor agrees to adjust the IMS and Payment Milestones deadlines to take into account any State-caused delays; provided, however, that Contractor shall continue to perform any and all activities not affected by such State-caused delay. In the event the State's adjustment to the IMS causes Contractor scheduling conflicts or personnel unavailability, the State and Contractor shall prepare a revised mutually agreeable IMS which may delay the commencement and completion dates of the project and shall take into consideration the readjusted time frames and any necessary resequencing of the activities. Such readjustment, rescheduling or modification of the Project shall be at no additional cost to the State if the delays are less than or equal to thirty (30) days.

For purposes of this Section, a "Significant Delay" shall mean any delay that in itself will cause a slippage of thirty (30) calendar days or more in a Go Live date.

5.4 Third Party Resources. From time to time State may request that Contractor obtain and provide to the State, at the State's expense, third party Resources related to the Services but outside the scope of what Contractor is then obligated to provide hereunder, including the benefit of any volume purchasing discounts, pricing or terms available to the State or its supplier. Contractor shall notify the State at the time of any such request of any relationships Contractor may have with such suppliers that may be of benefit to the State in this respect. To the extent that State may have a more favorable relationship with any third party supplier, upon notice from State, Contractor agrees to consider such Resources from State's designated supplier. Contractor will not add an administrative fee or other markup to any third party Resources it procures on behalf of or for the benefit of State and the Services provided hereunder.

5.5 State Third Party Software. A list of all Third Party Software licensed by the State for purposes of Contractor's performance of the Services is attached to this Attachment A as Exhibit 3. Contractor will assume operational and financial responsibility for such Third Party Software and any related maintenance obligations to the same extent as if Contractor were the licensee of such Third Party Software. Contractor will cease use of such Third Party Software upon expiration or termination of this Contract.

6. ACCEPTANCE

6.1. Acceptance Testing by the State Following Implementation. After Contractor provides written notice to the State that it has completed a Phase of the Solution, the State shall, in accordance with the Formal Acceptance Criteria agreed by the parties, and with full cooperation and assistance from Contractor, conduct all such inspections and

tests of the Phase as the State may deem necessary or appropriate to determine whether any Defects exist in the Phase as implemented and whether the Phase as installed materially complies with all of the Installation Test Specifications and Phase specifications as set forth in the Requirements and detailed IMS. Such inspections and tests shall be over a duration mutually agreed upon by the State and Contractor, per Phase, from the date a notice of completion is issued (the "Acceptance Period"). Contractor shall correct all Defects during the Acceptance Period, demonstrate to the State that correction of such Defects has been made, and after so demonstrating correction, shall issue to the State a written Certificate of Completion indicating that no Defects are known to exist in the Phase and/or Solution. The State shall be deemed to have accepted and approved the particular Phase or Solution only upon the State's delivery to Contractor of a signed, written Certificate of Acceptance indicating that the Phase or the Solution, as the case may be, as completed, materially performs in accordance with the Requirements.

If at the end of the Acceptance Period, the State has not issued a signed Certificate of Acceptance to Contractor for that Phase or the Solution, the State may, in its sole discretion, extend the Acceptance Period; provided, however, that the State shall respond within five (5) business days of a written request by Contractor issued after the end of the original Acceptance Period to provide Contractor with the State's status of approval or disapproval for that Phase or the Solution. Any rejection must be in writing and specify the reason for the rejection and must be based upon the continued existence of a Defect in the Phase or Solution or failure of the Phase or Solution to materially perform in accordance with the Requirements. The Certificate of Acceptance shall not be unreasonably withheld by the State. If a Certificate of Acceptance for a Phase or the Solution is signed and delivered by the State, Contractor shall sign said Certificate, with both parties receiving a copy thereof.

7. THIRD PARTY COOPERATION

The State may hire other independent contractors as it may require to assist with the project. Contractor will cooperate with the State and the third party, including provision of: (i) written Documentation requested by the State; (ii) commercially reasonable assistance and support services to such third party; and (iii) reasonable access to Contractor as necessary for such third parties to perform their work. The State shall use reasonable efforts to require such third parties to comply with Contractor's reasonable requirements regarding confidentiality, operations, standards, and security. Contractor shall support and maintain such third party work product, provided the service provider complies with any Documentation applicable to Contractor in respect of the Services involved.

8. CONTRACT/PROJECT CHANGE ORDER PROCESS

[NOTE: AS EXPLAINED HEREIN, THIS SECTION IS NOT APPLICABLE FOR ANY AND EVERY

RFP AND SHOULD BE DELETED AS APPROPRIATE]

For projects involving IT Implementation services, where frequent and/or multiple minor changes to the project schedule or deliverables are anticipated, the following process may be utilized to effectuate such minor changes without undue project delays (“Change Orders”).

Changes to a Contract during its term may incur additional costs and possible delays relative to the project schedule, or may result in less cost to the State (for example, the State decides it no longer needs a deliverable in whole or part) or less effort on the part of a selected vendor. A Change Order shall define the effort involved in implementing the change, the total cost or associated savings to the State, of implementing the change, and the effect, if any, of implementing the change on the project schedule.

Any change that alters the essential terms of the original contract, including any change that expands or decreases the statement of work, the contract duration, the payment terms and/or the contract maximum amount, shall require a Contract Amendment in accordance with State contracting policies and procedures. Under no circumstances may a Change Order be used where a Contract Amendment is otherwise required pursuant to the Contract Amendments, Approval and Execution process set forth in State Administrative Bulletin 3.5.

Change Orders will be developed jointly and every effort will be made to adhere to the approved Project Plan. The Project Manager for the State and the Project Manager for a Contractor will decide whether a Change Order is necessary. If a Change Order is necessary, the Project Manager for requesting party will prepare a Change Order Request detailing the impacts on scope, schedule, deliverables, resources, and cost. The Change Order Request must be submitted to the non-requesting party for review. The non-requesting party will make its best efforts to either approve or deny the Change Order in writing within (10) business days. In no event shall any delay in the approval or denial of a Change Request constitute a deemed approval by the State.

The State will not pay for the effort involved in developing a Change Order. The Contractor shall bear the cost of estimating the cost or savings, time, and Contractor resources required to implement all Change Order Requests forthcoming from the State during the course of the Project.

All Change Orders that are mutually agreed upon must:

- a. be in writing and describe, with specific reference to the applicable section(s) of the contract, what is being added, deleted or otherwise modified;
- b. be signed by both the State and the Contractor;
- c. include the original contract number and a sequential Change Order number;
- d. include Contractor certifications regarding Taxes, Debarment, and Child Support, as detailed in State Administrative Bulletin 3.5, Section XIII(A)(c); and

e. be consolidated into a formal Contract Amendment whenever an amendment would otherwise be required by State Administrative Bulletin 3.5.

acceptance in accordance with the terms and conditions of the contract. **IF AGENCY/DEPT KNOWS AT THE TIME OF RFP THAT IT WILL REQUIRE PARTICULAR RETAINAGE PROVISIONS, IT SHOULD SPECIFY THOSE DETAILS IN ATTACHMENT B OF THE STANDARD CONTRACT FORM THAT WILL BE ATTACHED TO THIS RFP.**

**ATTACHMENT C: STANDARD STATE PROVISIONS
FOR CONTRACTS AND GRANTS
REVISED JULY 1, 2016**

1. Definitions: For purposes of this Attachment, “Party” shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. “Agreement” shall mean the specific contract or grant to which this form is attached.

2. Entire Agreement: This Agreement, whether in the form of a Contract, State Funded Grant, or Federally Funded Grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.

3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial: This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under the Agreement.

Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

4. Sovereign Immunity: The State reserves all immunities, defenses, rights or actions arising out of the State’s sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State’s immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State’s entry into this Agreement.

5. No Employee Benefits For Party: The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the state withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.

6. Independence: The Party will act in an independent capacity and not as officers or employees of the State.

7. Defense and Indemnity: The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits. In the event the State withholds approval to settle any such claim, then the Party shall proceed with the defense of the claim but under those circumstances, the Party's indemnification obligations shall be limited to the amount of the proposed settlement initially rejected by the State.

After a final judgment or settlement the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.

The Party shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.

The Party agrees that in no event shall the terms of this Agreement nor any document required by the Party in connection with its performance under this Agreement obligate the State to defend or indemnify the Party or otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party except to the extent awarded by a court of competent jurisdiction.

8. Insurance: Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of the Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

General Liability and Property Damage: With respect to all operations performed under this Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate

\$1,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal & Advertising Injury

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

Additional Insured. The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Notice of Cancellation or Change. There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior written notice to the State.

9. Reliance by the State on Representations: All payments by the State under this Agreement will be made in reliance upon the accuracy of all representations made by the Party in accordance with the Contract, including but not limited to bills, invoices, progress reports and other proofs of work.

10. False Claims Act: The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to

the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

11. Whistleblower Protections: The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

12. Federal Requirements Pertaining to Grants and Subrecipient Agreements:

A. Requirement to Have a Single Audit: In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, the Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

B. Internal Controls: In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, in accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

C. Mandatory Disclosures: In the case that this Agreement is a Grant funded in whole or in part by Federal funds, in accordance with 2CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in

the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

13. Records Available for Audit: The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

14. Fair Employment Practices and Americans with Disabilities Act: Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.

15. Set Off: The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

16. Taxes Due to the State:

- A. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- B. Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- C. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.

- D. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

17. Taxation of Purchases: All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

18. Child Support: (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date the Agreement is signed, he/she:

- A. is not under any obligation to pay child support; or
- B. is under such an obligation and is in good standing with respect to that obligation; or
- C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

19. Sub-Agreements: Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 14 ("Fair Employment Practices and Americans with Disabilities Act"); Section 16 ("Taxes Due the State"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 23 ("Certification Regarding Use of State Funds"); Section 31 ("State Facilities"); and Section 32 ("Location of State Data").

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

21. Copies: Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.

22. Certification Regarding Debarment: Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

23. Certification Regarding Use of State Funds: In the case that Party is an employer and this Agreement is a State Funded Grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.

24. Conflict of Interest: Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.

25. Confidentiality: Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.

26. Force Majeure: Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) ("Force Majeure"). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

27. Marketing: Party shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.

28. Termination: In addition to any right of the State to terminate for convenience, the State may terminate this Agreement as follows:

- A. Non-Appropriation:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and in the event federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
- B. Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party's notice or such longer time as the non-breaching party may specify in the notice.
- C. No Implied Waiver of Remedies:** A party's delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

29. Continuity of Performance: In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.

30. Termination Assistance: Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

31. State Facilities: If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party's performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

32. Location of State Data: No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside continental United States, except with the express written permission of the State.

(End of Standard Provisions)

ATTACHMENT D

OTHER TERMS AND CONDITIONS FOR INFORMATION TECHNOLOGY CONTRACTS

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 (one million dollars) per claim, \$1,000,000.00 (one million dollars) 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 \$250,000.00 (two hundred and fifty thousand dollars).

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

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

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

7. TERMINATION

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

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

7.2 Return of Property. Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to State all State Intellectual Property and State Data (including without limitation any Deliverables for which State has made payment in whole or in part), that are in the possession or under the control of

Contractor in whatever stage of development and form of recordation such State property is expressed or embodied at that time.

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

EXHIBIT E: Requirements Workbook

See attached excel file, incorporated herein by reference.

**ATTACHMENT F: DISADVANTAGED BUSINESS ENTERPRISES INDICATING
INTEREST IN SUBCONTRACTING OPPORTUNITIES**

**Department of Environmental Conservation
Request for Approval to Subgrant/Subcontract**

Date of Request:	
Original Grantee/Contractor:	
Address:	
Phone Number:	
Agreement #:	

Subcontractor Name:	
Address:	
Phone Number:	
Contact Person:	
Scope of Services:	
Maximum Amount::	\$

Original Grantee/Contractor Signature:	
By signing above, the Grantee/Contractor certifies that the subcontractor has been selected using their procurement policy, as required by the original agreement, and certifies that any conflict of interest has been disclosed in writing as required by the original agreement (Attachment C, Section 24).	

DEC Business Office Review

Approval: _____ **Date:** _____

On the reverse side of this form there is guidance about language that must be included by the contractor in subcontracting agreements.

Per Attachment C, subcontractors must include standard language from Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont

Sub-Agreements: Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 14 ("Fair Employment Practices and Americans with Disabilities Act"); Section 16 ("Taxes Due the State"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 23 ("Certification Regarding Use of State Funds"); Section 31 ("State Facilities"); and Section 32 ("Location of State Data").