

STANDARD CONTRACT FOR TECHNOLOGY SERVICES

1. **Parties.** This is a contract for services between the State of Vermont, Department of Corrections (hereinafter called “State”), and **VENDOR**, with a principal place of business in **LOCATION**, (hereinafter called “Contractor”). Contractor’s form of business organization is a Corporation. It is Contractor’s responsibility to contact the Vermont Department of Taxes to determine if, by law, Contractor is required to have a Vermont Department of Taxes Business Account Number.
2. **Subject Matter.** The subject matter of this contract is services generally on the subject of automated victim notification. Detailed services to be provided by Contractor are described in Section 5. Scope of Services within 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 \$ 414,827.00.
4. **Contract Term.** This contract is for a period of 60 months/five-years with an option to renew up to two additional 12-month periods. The period of Contractor’s performance shall begin on **August 1, 2022** and end on **December 31, 2026**.
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 **36** pages including the following attachments which are incorporated herein:
 - Attachment A – Statement of Work
 - Attachment B – Payment Provisions
 - Attachment C – Standard State Provisions for Contracts and Grants- a preprinted form (rev.12/15/2017)
 - Attachment D – Information Technology System Implementation Terms and Conditions (rev. 3/8/19)
 - Attachment D – Modification of Customary Provision of Attachment C or Attachment F**
 - Attachment E – Business Associate Agreement
 - Attachment F -- Agency of Human Services Customary Contract/Grant Provisions
 - Attachment G – 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 Information Technology System Implementation Terms and Conditions
- 3) Attachment D Modification of Customary Provisions of Attachment C or Attachment F
- 4) Attachment C Standard State Provisions for Contracts and Grants
- 5) Attachment A Statement of Work
- 6) Attachment B Payment Provisions
- 7) Attachment E Business Associate Agreement
- 8) Attachment F Agency of Human Services Customary Contract/Grant Provisions
- 9) Attachment G Maintenance and Support/Service Level Terms

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: Commissioner_____

Title: Vendor 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 vendor supported video management system in conjunction with body worn cameras for all Vermont Department of Corrections.

1.1. The Solution shall:

- 1.1.1. Provide a vendor-operated video management solution for the Vermont Department of Corrections (DOC), utilizing a secure cloud based hosted server supporting active directory for the purposes of uploading and managing of video. Pursuant to Act 74 of 2021, DOC is required to deploy body-worn cameras for correctional officers.
- 1.1.2. Provide secure, password protected information and timely automated notifications from the Contractors solution in accordance with State Policy and Practices.
- 1.1.3. Provide Body Worn Cameras (BWCs) that are compliant with the vendor's video management solution to capture video and audio recordings from the perspective of DOC staff and store the recordings in a secure storage solution.
- 1.1.4. Provide support and maintenance, consulting, training, network engineering, 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.
- 1.1.5. Contractor must be responsive to equipment orders, requests for technical support, and other inquiries. Contractor must ensure that employees who have access to DOC recordings are not under the supervision of the DOC. Contractor must have sufficient staffing to fulfill the requirements of the contract. Contractor will provide a single point-of contact, or an designated team assigned specifically to DOC, for service outage or maintenance issues 24 hours per day, 7 days per week, 365 days per year

2. EXISTING SYSTEMS.

Contractor will be compliant with the State's technology standards and existing hardware.

3. OBJECTIVE

This Contract identifies the tasks required by each party to support the Solution through operations, support, and maintenance services, as detailed herein.

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

- 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.

4. 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 project Phases are Training, and Maintenance and Support.
- (k) **"Requirements"** means the State's baseline Functional and Technical Requirements as outlined in Section 5. Scope of Services as identified herein.
- (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 G to this Contract.

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.

5.1.1 Functional Requirements: (Please see Bidder's Response form Part 3 for requirements to be added)

5.1.2 Non-Functional Requirements: (Please see Bidder's Response form Part 4 for requirements to be added)

5.2 PROJECT MAJOR PHASES, WARRANTY AND OPTIONS. The Contractor will, at a minimum, provide State access to a web-based Solution that meets the tools and functionality requirements of the State set forth in Attachment A.

5.2.1 Training, Maintenance and Support Services. Contractor will provide and shall perform the following maintenance and support services described herein in accordance with and subject to the terms and conditions set forth in this Contract.

Service: Customer Phone &/or Email Support	
Contact method for technical support	Registrant support and assistance with the use of Vendor Support is available at: Phone: Email: Technical support for the purposes of the transmission or receipt of bulk data:

	Phone: Email:
Hours of operation for support	All customer support via the methods above is available 24x7x365
Response turnaround time	All responses are subject to current volume and are measured and published within the monthly SLS report.
Identified escalation process for support issues	For support issues, customers should contact their respective Client Relationship Manager (CRM) .
Support team structure and qualifications	The Vendor support team is comprised of a diverse group of highly skilled individuals and is fully experienced in supporting client networks.
Response resolution metrics and method of capture and reporting	All relevant metrics are published in the monthly SLS report which is distributed by the Client Relations team .

Service: Incident/Security Breach Notification and Process

Contractor’s identification and notification process for security breaches.	SAMPLE LANGUAGE Contractor maintains... Contractor stores, processes, or transmits... Contractor implements... Should Contractor or Contractor partners, affiliates, and/or subcontractors suffer a system or data breach, notification will be carried out in compliance with Federal and state notification laws. In the case of a breach, Contractor will notify all affected customers within 2 business days or as customer contract stipulates.
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Service: Data Management

Data is storage, retention and back-up (including Frequency)	(insert information here)
Method, frequency, and content of communications related to routine system maintenance and usage	(insert information here)
Data reporting capabilities of the Solution	(insert information here)

Service: Hosting

Contractor hosting service and associated service levels.	(insert information here)
Contractor data hosts and associated locations	(insert information here)

Service: Scheduled Maintenance/Downtime

Frequency of scheduled maintenance and downtime	(insert information here)
Notification process for scheduled maintenance and downtime	(insert information here)
Process for maintenance update testing with customers	(insert information here)

prior to installing them in their live environments.	
Information provided to Program Managers (or other designees as identified by the State) following periods of routine maintenance	The State will receive a notification once maintenance has been completed provided, they have signed up at website .
Information provided to system users (the public) who attempt to access the system while it is experiencing maintenance or is not fully operational	Solution users will receive a notification once maintenance has been completed provided, they have signed up at website . “Maintenance in progress” pages may be utilized in certain cases of planned maintenance on public websites.
Service: System Upgrades	
Software upgrades provided as part of the software support contract	The Contractor will make updates to the software names application when needed to ensure any issues are resolved or make necessary updates to ensure the continued reliability of the service in keeping with service level agreements.
Process for software upgrade	Application maintenance is performed (insert information here)
Frequency of new version releases	New versions are deployed (insert information here)
Documentation and training provided for system upgrades	Appropriate training and communication (insert information here)
Additional costs for upgrades and/or new releases	All upgrades and new releases are made available as part of the annual service fee.
How and when the State will have an opportunity to test system upgrades/releases prior to live installation.	The Contractor coordinates the testing of upgrades/releases with key stakeholder States prior to rolling them out to the entire customer base.
Process for the State to validate post installation and how changes will be backed out in the event that a problem is encountered.	Any change made to the platform that causes an issue can be reverted in near real time following our software development processes and procedures.
Service: Bug Fixes and Minor Enhancements	
Frequency and process for providing, testing, and installing bug fixes and minor enhancements.	The Contractor will continue to resolve software bugs, maintain software performance, and keep the Network in good operating order. (insert information here)
Service: Disaster Recovery	
Description of the disaster recovery services included for any non-state hosted services.	The Contractor’s Contingency Plan (insert information here)
Standard RPO and RTO	RPO is XX minutes. RTO is XX hours.
The Contractor’s plan for its own disaster recovery of any sites that may be involved in support of the Solution.	(insert information here)

Level of support and messaging made available to Program Managers in support of system users and registrants	
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In addition to the support and maintenance described above, the Contractor will work with the State to provide technical services, resources and expertise when implementing changes requested. Any specific changes requested by the State will be handled through a change order process, which will include appropriate business and data analysis, configuration, testing and implementation.

5.2.2 Performance of Additional Services. Performance of Additional Services via a change order request is not included in the annual support fee. The parties agree that should the Contractor choose to perform, at the State's request, any services not covered by this Agreement, the State shall compensate the Contractor for its direct labor, parts and subcontracted work at the **Standard Rate of \$XX.00/hour**. Additional Change Order Process details are outlined in Section 8. "Contract/Project Change Order Process."

5.2.3 OTHER

6. CONTRACT/PROJECT CHANGE ORDER PROCESS

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:

- (i) be in writing and describe, with specific reference to the applicable section(s) of the contract, what is being added, deleted or otherwise modified;
- (ii) be signed by both the State and the Contractor;
- (iii) include the original contract number and a sequential Change Order number;
- (iv) include Contractor certifications regarding Taxes, Debarment, and Child Support, as detailed in State Administrative Bulletin 3.5, Section XIII(A)(c); and
- (v) be consolidated into a formal Contract Amendment whenever an amendment would otherwise be required by State Administrative Bulletin 3.5.

ATTACHMENT B PAYMENT PROVISIONS

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

1. Prior to commencement of work and release of any payments, Contractor shall submit to the State:
 - a. a certificate of insurance consistent with the requirements set forth in Attachment C, Section 8 (Insurance), and with any additional requirements for insurance as may be set forth elsewhere in this contract; and
 - b. a current IRS Form W-9 (signed within the last six months).
2. Payment terms are **Net 30** days from the date the State receives an error-free invoice with all necessary and complete supporting documentation.
3. Contractor shall submit detailed invoices itemizing all work performed during the invoice period, including the dates of service, rates of pay, hours of work performed, and any other information and/or documentation appropriate and sufficient to substantiate the amount invoiced for payment by the State. All invoices must include the Contract # for this contract.
4. Invoices shall be submitted to the State at the following address: AHS/DOC Community High School of Vermont 280 State Dr, NOB 2 South, Waterbury, VT 05671-2000
5. Contractor shall submit invoices to the State upon State Acceptance of a deliverable in accordance with the schedule for delivered products, or rates for services performed set forth below:
6. **EXPENSES:** The fee for services shall be inclusive of Contractor expenses.

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

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 this 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.

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 if 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.

Notwithstanding any contrary language anywhere, in no event shall the terms of this Agreement or any document furnished by the Party in connection with its performance under this Agreement obligate the State to (1) defend or indemnify the Party or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party or any third party.

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 this 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 this Agreement, 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. 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 the continental United States, except with the express written permission of the State.

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 this 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 this 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 12 ("Location of State Data"); 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 30 ("State Facilities"); and Section 32.A ("Certification Regarding Use of State Funds").

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

24. 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.

25. 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.

26. 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.

27. Termination:

- 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. 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.

28. 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.

29. No Implied Waiver of Remedies: Either 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.

30. 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.

31. Requirements Pertaining Only to Federal Grants and Subrecipient Agreements: If this Agreement is a grant that is funded in whole or in part by Federal funds:

A. Requirement to Have a Single Audit: 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 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 accordance with 2 CFR 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.

32. Requirements Pertaining Only to State-Funded Grants:

A. Certification Regarding Use of State Funds: If 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.

B. Good Standing Certification (Act 154 of 2016): If this Agreement is a State-funded grant, Party hereby represents: (i) that it has signed and provided to the State the form prescribed by the Secretary of Administration for purposes of certifying that it is in good standing (as provided in Section 13(a)(2) of Act 154) with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets, or otherwise explaining the circumstances surrounding the inability to so certify, and (ii) that it will comply with the requirements stated therein.

(End of Standard Provisions)

ATTACHMENT D
INFORMATION TECHNOLOGY SYSTEM IMPLEMENTATION
TERMS AND CONDITIONS (rev. 3/08/19)

1. MODIFICATIONS TO CONTRACTOR DOCUMENTS

The parties specifically agree that the Contractor Documents are hereby modified and superseded by Attachment C and this Attachment D.

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

2. NO SUBSEQUENT, UNILATERAL MODIFICATION OF TERMS BY CONTRACTOR

Notwithstanding any other provision or other unilateral license terms which may be issued by Contractor during the Term of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of an order for the products and services being purchased by the State, as applicable, the components of which are licensed under the Contractor Documents, or the fact that such other agreement may be affixed to or accompany the products and services being purchased by the State, as applicable, upon delivery, the terms and conditions set forth herein shall supersede and govern licensing and delivery of all products and services hereunder.

3. TERM OF CONTRACTOR’S DOCUMENTS; PAYMENT TERMS

Contractor acknowledges and agrees that, to the extent a Contractor Document provides for alternate term or termination provisions, including automatic renewals, such sections shall be waived and shall have no force and effect. All Contractor Documents shall run concurrently with the term of this Contract; provided, however, to the extent the State has purchased a perpetual license to use the Contractor’s software, hardware or other services, such license shall remain in place unless expressly terminated in accordance with the terms of this Contract. Contractor acknowledges and agrees that, to the extent a Contractor Document provides for payment terms which differ from the payment terms set forth in Attachment B, such sections shall be waived and shall have no force and effect and the terms in Attachment B shall govern.

4. OWNERSHIP AND LICENSE IN DELIVERABLES

4.1 Contractor Intellectual Property.

As between the parties, and subject to the terms and conditions of this Contract, Contractor and its third-party suppliers will retain ownership of all intellectual property rights in the [System], and any and all derivative works made to the [System] or any part thereof, as well as all Work Product provided to the State (“**Contractor Proprietary Technology**”). The State acquires no rights to Contractor Proprietary Technology except for the licensed interests granted under this Contract. The term “**Work Product**” means all other materials, reports,

manuals, visual aids, documentation, ideas, concepts, techniques, inventions, processes, or works of authorship developed, provided or created by Contractor or its employees or contractors during the course of performing work for the State (excluding any State Data or derivative works thereof and excluding any output from the [System] generated by the State's use of the [System], including without limitation, reports, graphs, charts and modified State Data, but expressly including any form templates of such reports, graphs or charts by themselves that do not include the State Data).

Title, ownership rights, and all Intellectual Property Rights in and to the [System] will remain the sole property of Contractor or its suppliers. The State acknowledges that the source code is not covered by any license hereunder and will not be provided by Contractor. Except as set forth in this Contract, no right or implied license or right of any kind is granted to the State regarding the [System] or any part thereof. Nothing in this Contract confers upon either party any right to use the other party's trade names and trademarks, except for permitted license use in accordance with this Contract. All use of such marks by either party will inure to the benefit of the owner of such marks, use of which will be subject to specifications controlled by the owner.

4.2 State Intellectual Property; User Name

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 collect, access or 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, unless otherwise expressly stated herein.. In no event shall the Contractor claim any security interest in State Intellectual Property.

Contractor builds and maintains databases and solutions utilizing data from disparate incarceration systems. The hygiene, maintenance and storage of this incarceration data ("Data") improves data quality and solutions for all clients seeking to manage risk, security and fraud (collectively "Risk Solutions"). A network effect is created whereby benefits increase with each participating organization.

Notwithstanding the foregoing, State permits Contractor to access the Data for development and improvement of Contractor's Risk Solutions and the usage of the Data by Criminal Justice Agencies in the administration of criminal justice. "Criminal Justice Agency" means a

government agency, or any subunit thereof, which is authorized by law to perform the administration of criminal justice.

Notwithstanding the foregoing, Contractor may utilize Data made publicly available.

- 4.2 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."

5. CONFIDENTIALITY AND NON-DISCLOSURE; SECURITY BREACH REPORTING

- 5.1** 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.

- 5.2 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.

5.3 Confidentiality of State Information. In performance of this Contract, and any exhibit or schedule hereunder, the Contractor 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").

State Data shall not be stored, accessed from, or transferred to any location outside the United States.

Unless otherwise instructed by the State, Contractor agrees to keep confidential all State Data. 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.

6. SECURITY OF STATE INFORMATION

6.1 Security Standards. To the extent the Contractor or its subcontractors, affiliates or agents handles, collects, stores, disseminates 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, but not be limited to, encryption at rest and 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.

6.2 Security Breach Notice and Reporting. The Contractor shall have policies and procedures in place for the effective management of Security Breaches, as defined below, which shall be made available to the State upon request.

In the event of any actual security breach or reasonable belief of an actual security breach the Contractor either suffers or learns of that either compromises or could compromise State Data (a “Security Breach”), the Contractor shall notify the State within 48 hours of its discovery. Contractor shall immediately or promptly work to mitigate and 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 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.

6.3 Security Policies. To the extent the Contractor or its subcontractors, affiliates or agents handles, collects, stores, disseminates or otherwise deals with 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 the Table of Contents of such policy to the State.

The Contractor shall provide the State with not less than thirty (30) days advance written notice of any material amendment or modification of such policies. Vendor will allow Vermont DOC to view confidential policies and procedures electronically on a mutually agreed upon date and time.

6.4 Operations Security. To the extent the Contractor or its subcontractors, affiliates or agents handles, collects, stores, disseminates, or otherwise deals with State Data, the Contractor shall cause an SSAE 18 SOC 2 Type 2 audit report to be conducted annually. An executive summary of the audit results and the Contractor's plan for addressing or resolution of the audit results shall be shared with the State within sixty (60) days of the Contractor's receipt of the audit results. Further, on an annual basis, within 90 days of the end of the Contractor's fiscal year, the Contractor shall transmit its annual audited financial statements to the State upon request. Vendor will allow Vermont DOC to view confidential audit report electronically on a mutually agreed upon date and time.

6.5 Redundant Back-Up. The Contractor shall maintain a fully redundant backup data center geographically separated from its main data center that maintains near real time replication of data from the main data center. The Table of Contents related to Contractor's back-up policies shall be made available to the State upon request. The Contractor shall provide the State with not less than thirty (30) days advance written notice of any material amendment or modification of such policies. Vendor will allow Vermont DOC to view confidential policies and procedures electronically on a mutually agreed upon date and time.

6.6 Vulnerability Testing. The Contractor shall run quarterly vulnerability assessments and shall provide an executive summary of the report, upon request, to the State. Contractor shall remediate all critical issues within 90 days, all medium issues within 120 days and low issues within 180 days. Contractor shall obtain written State approval for any exceptions. Once remediation is complete, Contractor shall re-perform the test. Vendor will allow Vermont DOC to view confidential vulnerability report electronically on a mutually agreed upon date and time.

7. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

7.1 General Representations and Warranties. The Contractor represents, warrants, and covenants that:

- (vi) 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.
- (vii) There is no outstanding 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.

- (viii) 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.
- (ix) 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 Deliverables 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 Deliverables 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.
- (x) The Contractor has adequate resources to fulfill its obligations under this Contract.
- (xi) 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.

7.2 Contractor's Performance Warranties. Contractor represents and warrants to the State that:

- (i) All Deliverables will be free from material errors and shall perform in accordance with the specifications therefor for a period of at least one year.
- (ii) Contractor will provide to the State commercially reasonable continuous and uninterrupted access to the Service and will not interfere with the State's access to and use of the Service during the term of this Contract.
- (iii) The Service is compatible with and will operate successfully with any environment (including web browser and operating system) specified by the Contractor in its documentation.
- (iv) 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.
- (v) All Deliverables supplied by the Contractor to the State shall be transferred free and clear of any and all restrictions on the conditions of transfer, modification, licensing, sublicensing and free and clear of any and all liens, claims, mortgages, security interests, liabilities and encumbrances or any kind.
- (vi) 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.

- (vii) 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.

7.3 Limitation on Disclaimer. The express warranties set forth in this Contract shall be in lieu of all other warranties, express or implied.

7.4 Effect of Breach of Warranty. If, at any time during the term of this Contract, software or the results of Contractor's work fail to perform according to any warranty of Contractor under this Contract, the State shall promptly notify Contractor in writing of such alleged nonconformance, and Contractor shall, at its own expense and without limiting any other rights or remedies of the State hereunder, re-perform or replace any services that the State has determined to be unsatisfactory in its reasonable discretion.

8. 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 per claim, \$2,000,000 aggregate; and (b) first party Breach Notification Coverage of not less than \$500,000.

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.

9. TRADE SECRET, PATENT AND COPYRIGHT INFRINGEMENT

The State shall not be deemed to waive any of its rights or remedies at law or in equity in the event of Contractor's trade secret, patent and/or copyright infringement.

12 REMEDIES FOR DEFAULT; NO WAIVER OF REMEDIES

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.

No delay or failure to exercise any right, power or remedy accruing to either party upon breach or default by the other under this Contract shall impair any such right, power or remedy, or shall be construed as a waiver of any such right, power or remedy, nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing.

13 NO ASSUMPTION OF COSTS

Any requirement that the State defend or indemnify Contractor or otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or license verification costs of Contractor, is hereby deleted from the Contractor Documents.

14 TERMINATION

Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to the State all State information, State Intellectual Property or State Data (including without limitation any Deliverables for which State has made payment in whole or in part) ("State Materials"), that are in the possession or under the control of Contractor in a mutually agreed upon format between the parties.

In the event the Contractor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, the Contractor shall immediately return all State Materials to State control; including, but not limited to, making all necessary access to applicable remote systems available to the State for purposes of downloading all State Materials.

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 Materials are to be transferred in connection with termination. Contractor shall assist the State in exporting and extracting the State Materials, in a format usable without the use of the Services and as agreed to by the parties, 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.

15. ACCESS TO STATE DATA:

Contractor agrees to immediately deliver to the Department with 30 days written notice a complete and

current snapshot of all offender incarceration data and associated registrations in tab-separated values (TSV) or a comma-separated vales (CSV) format. These files must include a specification defining each .TSV or .CSV document by name, worksheet, and column.

16. AUDIT RIGHTS

Contractor will maintain and cause its permitted contractors to maintain a complete audit trail of all transactions and activities, financial and non-financial, in connection with this Contract. Contractor will provide to the State, its internal or external auditors, clients, inspectors, regulators and other designated representatives, at reasonable times (and in the case of State or federal regulators, at any time required by such regulators) access to Contractor personnel and to Contractor's corporate office where the required information, data and records are maintained, for the purpose of performing audits and inspections) of Contractor and/or Contractor personnel and/or any or all of the records, data and information applicable to this Contract.

At a minimum, such audits, inspections and access shall be conducted to the extent permitted or required by any laws applicable to the State or Contractor (or such higher or more rigorous standards, if any, as State or Contractor applies to its own similar businesses, operations or activities), to (i) verify the accuracy of charges and invoices; (ii) verify the integrity of State Data and examine the security of systems that process, store, maintain, support and transmit that data; (iii) examine and verify Contractor's and/or its permitted contractors' operations and security procedures and controls; (iv) examine and verify Contractor's and/or its permitted contractors' disaster recovery and testing plan , business resumption and continuity planning and testing, contingency arrangements and insurance coverage in a manner determined by Contractor; and (v) examine Contractor's and/or its permitted contractors' performance of the Services including audits of: (1) practices and procedures; (2) systems, communications and information technology; (3) general controls and physical and data/information security practices and procedures directly related to the Service provided herein; (4) quality initiatives and quality assurance, (5) contingency and continuity planning, disaster recovery and back-up procedures for processes, resources and data; (6) Contractor's and/or its permitted contractors' efficiency and costs in performing Services; (7) compliance with the terms of this Contract and applicable laws, and (9) any other matters reasonably requested by the State directly related to the Services provided herein. Such audits shall take place upon reasonable notice to Contractor and at a mutually agreed upon date and time and shall not interfere with Contractor's business operations.

17. DESTRUCTION OF STATE DATA

At any time during the term of this Contract within (i) thirty days of the State's written request or (ii) [three (3) months] of termination or expiration of this Contract for any reason, and in any event after the State has had an opportunity to export and recover the State Materials, Contractor shall at its own expense securely destroy and erase from all systems it directly or indirectly uses or controls all tangible or intangible forms of the State Materials, in whole or in part, and all copies thereof except such records as are required by law. The destruction of State Data and State Intellectual Property shall be performed according to National Institute of Standards and Technology (NIST) approved methods. Contractor shall certify in writing to the State that such State Data has been disposed of securely. To the extent that any applicable law prevents Contractor from destroying or erasing State Materials as set forth herein, Contractor shall retain, in its then current state, all such State Materials then within its right of control or possession in accordance

with the confidentiality, security and other requirements of this Contract, and perform its obligations under this section as soon as such law no longer prevents it from doing so.

Further, upon the relocation of State Data, Contractor shall securely dispose of such copies from the former data location 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.

18 CONTRACTOR BANKRUPTCY.

Contractor acknowledges that if Contractor, as a debtor in possession, or a trustee in bankruptcy in a case under Section 365(n) of Title 11, United States Code (the "Bankruptcy Code"), rejects this Contract, the State may elect to retain its rights under this Contract as provided in Section 365(n) of the Bankruptcy Code. Upon written request of the State to Contractor or the Bankruptcy Trustee, Contractor or such Bankruptcy Trustee shall not interfere with the rights of the State as provided in this Contract, including the right to obtain the State Intellectual Property.

19 SOFTWARE LICENSEE COMPLIANCE REPORT.

In lieu of any requirement that may be in a Contractor Document that the State provide the Contractor with access to its System for the purpose of determining State compliance with the terms of the Contractor Document, upon request and not more frequently than annually, the State will provide Contractor with a certified report concerning the State's use of any software licensed for State use pursuant this Contract.

20 SOV CYBERSECURITY STANDARD 19-01

All products and service provided to or for the use of the State under this Contract shall be in compliance with State of Vermont Cybersecurity Standard 19-01, which Contractor acknowledges has been provided to it, and is available on-line at the following URL:<https://digitalservices.vermont.gov/cybersecurity/cybersecurity-standards-and-directives>

**ATTACHMENT E
BUSINESS ASSOCIATE AGREEMENT**

SOV CONTRACTOR/GRANTEE/BUSINESS ASSOCIATE: _____

SOV CONTRACT No. _____ **CONTRACT Effective DATE:** _____

This Business Associate Agreement (“Agreement”) is entered into by and between the State of Vermont Agency of Human Services, operating by and through its **Vermont Department of Corrections** (“Covered Entity”) and Party identified in this Agreement as Contractor or Grantee above (“Business Associate”). This Agreement supplements and is made a part of the contract or grant (“Contract or Grant”) to which it is attached.

Covered Entity and Business Associate enter into this Agreement to comply with the standards promulgated under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), including the Standards for the Privacy of Individually Identifiable Health Information, at 45 CFR Parts 160 and 164 (“Privacy Rule”), and the Security Standards, at 45 CFR Parts 160 and 164 (“Security Rule”), as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (HITECH), and any associated federal rules and regulations.

The parties agree as follows:

1. Definitions. All capitalized terms used but not otherwise defined in this Agreement have the meanings set forth in 45 CFR Parts 160 and 164 as amended by HITECH and associated federal rules and regulations. Terms defined in this Agreement are italicized. Unless otherwise specified, when used in this Agreement, defined terms used in the singular shall be understood if appropriate in their context to include the plural when applicable.

“*Agent*” means an *Individual* acting within the scope of the agency of the *Business Associate*, in accordance with the Federal common law of agency, as referenced in 45 CFR § 160.402(c) and includes Workforce members and *Subcontractors*.

“*Breach*” means the acquisition, Access, Use or Disclosure of *Protected Health Information (PHI)* which compromises the Security or privacy of the *PHI*, except as excluded in the definition of *Breach* in 45 CFR § 164.402.

“*Business Associate*” shall have the meaning given for “Business Associate” in 45 CFR § 160.103 and means Contractor or Grantee and includes its Workforce, *Agents* and *Subcontractors*.

“*Electronic PHI*” shall mean *PHI* created, received, maintained or transmitted electronically in accordance with 45 CFR § 160.103.

“*Individual*” includes a Person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

“*Protected Health Information*” (“*PHI*”) shall have the meaning given in 45 CFR § 160.103, limited to the *PHI* created or received by *Business Associate* from or on behalf of Covered Entity.

“*Required by Law*” means a mandate contained in law that compels an entity to make a use or disclosure of *PHI* and that is enforceable in a court of law and shall have the meaning given in 45 CFR § 164.103.

“*Report*” means submissions required by this Agreement as provided in section 2.3.

“*Security Incident*” means the attempted or successful unauthorized Access, Use, Disclosure, modification, or destruction of Information or interference with system operations in an Information System relating to *PHI* in accordance with 45 CFR § 164.304.

“*Services*” includes all work performed by the *Business Associate* for or on behalf of Covered Entity that requires the Use and/or Disclosure of *PHI* to perform a *Business Associate* function described in 45 CFR § 160.103.

“*Subcontractor*” means a Person to whom *Business Associate* delegates a function, activity, or service, other than in the capacity of a member of the workforce of such *Business Associate*.

“*Successful Security Incident*” shall mean a *Security Incident* that results in the unauthorized Access, Use, Disclosure, modification, or destruction of information or interference with system operations in an Information System.

“*Unsuccessful Security Incident*” shall mean a *Security Incident* such as routine occurrences that do not result in unauthorized Access, Use, Disclosure, modification, or destruction of information or interference with system operations in an Information System, such as: (i) unsuccessful attempts to penetrate computer networks or services maintained by *Business Associate*; and (ii) immaterial incidents such as pings and other broadcast attacks on *Business Associate's* firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above with respect to *Business Associate's* Information System.

“*Targeted Unsuccessful Security Incident*” means an *Unsuccessful Security Incident* that appears to be an attempt to obtain unauthorized Access, Use, Disclosure, modification or destruction of the Covered Entity’s *Electronic PHI*.

2. Contact Information for Privacy and Security Officers and Reports.

2.1 *Business Associate* shall provide, within ten (10) days of the execution of this Agreement, written notice to the Contract or Grant manager the names and contact information of both the HIPAA Privacy Officer and HIPAA Security Officer of the *Business Associate*. This information must be updated by *Business Associate* any time these contacts change.

2.2 Covered Entity's HIPAA Privacy Officer and HIPAA Security Officer contact information is posted at: <https://humanservices.vermont.gov/rules-policies/health-insurance-portability-and-accountability-act-hipaa>

2.3 *Business Associate* shall submit all *Reports* required by this Agreement to the following email address: AHS.PrivacyAndSecurity@vermont.gov

3. Permitted and Required Uses/Disclosures of PHI.

3.1 Subject to the terms in this Agreement, *Business Associate* may Use or Disclose *PHI* to perform *Services*, as specified in the Contract or Grant. Such Uses and Disclosures are limited to the minimum necessary to provide the *Services*. *Business Associate* shall not Use or Disclose *PHI* in any manner that would constitute a violation of the Privacy Rule if Used or Disclosed by Covered Entity in that manner. *Business Associate* may not Use or Disclose *PHI* other than as permitted or required by this Agreement or as *Required by Law* and only in compliance with applicable laws and regulations.

3.2 *Business Associate* may make *PHI* available to its Workforce, *Agent* and *Subcontractor* who need Access to perform *Services* as permitted by this Agreement, provided that *Business Associate* makes them aware of the Use and Disclosure restrictions in this Agreement and binds them to comply with such restrictions.

3.3 *Business Associate* shall be directly liable under HIPAA for impermissible Uses and Disclosures of *PHI*.

4. Business Activities. *Business Associate* may Use *PHI* if necessary for *Business Associate's* proper management and administration or to carry out its legal responsibilities. *Business Associate* may Disclose *PHI* for *Business Associate's* proper management and administration or to carry out its legal responsibilities if a Disclosure is *Required by Law* or if *Business Associate* obtains reasonable written assurances via a written agreement from the Person to whom the information is to be Disclosed that such *PHI* shall remain confidential and be Used or further Disclosed only as *Required by Law* or for the purpose for which it was Disclosed to the Person, and the Agreement requires the Person to notify *Business Associate*, within five (5) business days, in writing of any *Breach* of Unsecured *PHI* of which it is aware. Such Uses and Disclosures of *PHI* must be of the minimum amount necessary to accomplish such purposes.

5. Electronic PHI Security Rule Obligations.

5.1 With respect to *Electronic PHI*, *Business Associate* shall:

a) Implement and use Administrative, Physical, and Technical Safeguards in compliance with 45 CFR sections 164.308, 164.310, and 164.312;

b) Identify in writing upon request from Covered Entity all the safeguards that it uses to protect such *Electronic PHI*;

c) Prior to any Use or Disclosure of *Electronic PHI* by an *Agent* or *Subcontractor*, ensure that any *Agent* or *Subcontractor* to whom it provides *Electronic PHI* agrees in writing to implement and use Administrative, Physical, and Technical Safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of *Electronic PHI*. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the Use or Disclosure of *Electronic PHI*, and be provided to Covered Entity upon request;

d) Report in writing to Covered Entity any *Successful Security Incident* or *Targeted Unsuccessful Security Incident* as soon as it becomes aware of such incident and in no event later than five (5) business days after such awareness. Such *Report* shall be timely made notwithstanding the fact that little information may be known at the time of the *Report* and need only include such information then available;

e) Following such *Report*, provide Covered Entity with the information necessary for Covered Entity to investigate any such incident; and

f) Continue to provide to Covered Entity information concerning the incident as it becomes available to it.

5.2 Reporting *Unsuccessful Security Incidents*. *Business Associate* shall provide Covered Entity upon written request a *Report* that: (a) identifies the categories of Unsuccessful Security Incidents; (b) indicates whether *Business Associate* believes its current defensive security measures are adequate to address all *Unsuccessful Security Incidents*, given the scope and nature of such attempts; and (c) if the security measures are not adequate, the measures *Business Associate* will implement to address the security inadequacies.

5.3 *Business Associate* shall comply with any reasonable policies and procedures Covered Entity implements to obtain compliance under the Security Rule.

6. **Reporting and Documenting Breaches.**

6.1 *Business Associate* shall *Report* to Covered Entity any *Breach* of Unsecured *PHI* as soon as it, or any Person to whom *PHI* is disclosed under this Agreement, becomes aware of any such *Breach*, and in no event later than five (5) business days after such awareness, except when a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. Such *Report* shall be timely made notwithstanding the fact that little information may be known at the time of the *Report* and need only include such information then available.

6.2 Following the *Report* described in 6.1, *Business Associate* shall conduct a risk assessment and provide it to Covered Entity with a summary of the event. *Business Associate* shall provide Covered Entity with the names of any *Individual* whose Unsecured *PHI* has been, or is reasonably believed to have been, the subject of the *Breach* and any

other available information that is required to be given to the affected *Individual*, as set forth in 45 CFR § 164.404(c). Upon request by Covered Entity, *Business Associate* shall provide information necessary for Covered Entity to investigate the impermissible Use or Disclosure. *Business Associate* shall continue to provide to Covered Entity information concerning the *Breach* as it becomes available.

6.3 When *Business Associate* determines that an impermissible acquisition, Access, Use or Disclosure of *PHI* for which it is responsible is not a *Breach*, and therefore does not necessitate notice to the impacted *Individual*, it shall document its assessment of risk, conducted as set forth in 45 CFR § 402(2). *Business Associate* shall make its risk assessment available to Covered Entity upon request. It shall include 1) the name of the person making the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons supporting the determination of low probability that the *PHI* had been compromised.

7. **Mitigation and Corrective Action.** *Business Associate* shall mitigate, to the extent practicable, any harmful effect that is known to it of an impermissible Use or Disclosure of *PHI*, even if the impermissible Use or Disclosure does not constitute a *Breach*. *Business Associate* shall draft and carry out a plan of corrective action to address any incident of impermissible Use or Disclosure of *PHI*. *Business Associate* shall make its mitigation and corrective action plans available to Covered Entity upon request.

8. **Providing Notice of Breaches.**

8.1 If Covered Entity determines that a *Breach* of *PHI* for which *Business Associate* was responsible, and if requested by Covered Entity, *Business Associate* shall provide notice to the *Individual* whose *PHI* has been the subject of the *Breach*. When so requested, *Business Associate* shall consult with Covered Entity about the timeliness, content and method of notice, and shall receive Covered Entity's approval concerning these elements. *Business Associate* shall be responsible for the cost of notice and related remedies.

8.2 The notice to affected *Individuals* shall be provided as soon as reasonably possible and in no case later than sixty (60) calendar days after *Business Associate* reported the *Breach* to Covered Entity.

8.3 The notice to affected *Individuals* shall be written in plain language and shall include, to the extent possible: 1) a brief description of what happened; 2) a description of the types of Unsecured *PHI* that were involved in the *Breach*; 3) any steps *Individuals* can take to protect themselves from potential harm resulting from the *Breach*; 4) a brief description of what the *Business Associate* is doing to investigate the *Breach* to mitigate harm to *Individuals* and to protect against further *Breaches*; and 5) contact procedures for *Individuals* to ask questions or obtain additional information, as set forth in 45 CFR § 164.404(c).

8.4 *Business Associate* shall notify *Individuals* of *Breaches* as specified in 45 CFR § 164.404(d) (methods of *Individual* notice). In addition, when a *Breach* involves more than

500 residents of Vermont, *Business Associate* shall, if requested by Covered Entity, notify prominent media outlets serving Vermont, following the requirements set forth in 45 CFR § 164.406.

9. Agreements with Subcontractors. *Business Associate* shall enter into a Business Associate Agreement with any *Subcontractor* to whom it provides *PHI* to require compliance with HIPAA and to ensure *Business Associate* and *Subcontractor* comply with the terms and conditions of this Agreement. *Business Associate* must enter into such written agreement before any Use by or Disclosure of *PHI* to such *Subcontractor*. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the Use or Disclosure of *PHI*. *Business Associate* shall provide a copy of the written agreement it enters into with a *Subcontractor* to Covered Entity upon request. *Business Associate* may not make any Disclosure of *PHI* to any *Subcontractor* without prior written consent of Covered Entity.

10. Access to PHI. *Business Associate* shall provide access to *PHI* in a Designated Record Set to Covered Entity or as directed by Covered Entity to an *Individual* to meet the requirements under 45 CFR § 164.524. *Business Associate* shall provide such access in the time and manner reasonably designated by Covered Entity. Within five (5) business days, *Business Associate* shall forward to Covered Entity for handling any request for Access to *PHI* that *Business Associate* directly receives from an *Individual*.

11. Amendment of PHI. *Business Associate* shall make any amendments to *PHI* in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR § 164.526, whether at the request of Covered Entity or an *Individual*. *Business Associate* shall make such amendments in the time and manner reasonably designated by Covered Entity. Within five (5) business days, *Business Associate* shall forward to Covered Entity for handling any request for amendment to *PHI* that *Business Associate* directly receives from an *Individual*.

12. Accounting of Disclosures. *Business Associate* shall document Disclosures of *PHI* and all information related to such Disclosures as would be required for Covered Entity to respond to a request by an *Individual* for an accounting of disclosures of *PHI* in accordance with 45 CFR § 164.528. *Business Associate* shall provide such information to Covered Entity or as directed by Covered Entity to an *Individual*, to permit Covered Entity to respond to an accounting request. *Business Associate* shall provide such information in the time and manner reasonably designated by Covered Entity. Within five (5) business days, *Business Associate* shall forward to Covered Entity for handling any accounting request that *Business Associate* directly receives from an *Individual*.

13. Books and Records. Subject to the attorney-client and other applicable legal privileges, *Business Associate* shall make its internal practices, books, and records (including policies and procedures and *PHI*) relating to the Use and Disclosure of *PHI* available to the Secretary of Health and Human Services (HHS) in the time and manner designated by the Secretary. *Business Associate* shall make the same information available to Covered Entity, upon Covered Entity's request, in the time and manner reasonably designated by Covered Entity so that Covered Entity may determine whether *Business Associate* is in compliance with this Agreement.

14. Termination.

14.1 This Agreement commences on the Effective Date and shall remain in effect until terminated by Covered Entity or until all the *PHI* is destroyed or returned to Covered Entity subject to Section 18.8.

14.2 If *Business Associate* fails to comply with any material term of this Agreement, Covered Entity may provide an opportunity for *Business Associate* to cure. If *Business Associate* does not cure within the time specified by Covered Entity or if Covered Entity believes that cure is not reasonably possible, Covered Entity may immediately terminate the Contract or Grant without incurring liability or penalty for such termination. If neither termination nor cure are feasible, Covered Entity shall report the breach to the Secretary of HHS. Covered Entity has the right to seek to cure such failure by *Business Associate*. Regardless of whether Covered Entity cures, it retains any right or remedy available at law, in equity, or under the Contract or Grant and *Business Associate* retains its responsibility for such failure.

15. Return/Destruction of PHI.

15.1 *Business Associate* in connection with the expiration or termination of the Contract or Grant shall return or destroy, at the discretion of the Covered Entity, *PHI* that *Business Associate* still maintains in any form or medium (including electronic) within thirty (30) days after such expiration or termination. *Business Associate* shall not retain any copies of *PHI*. *Business Associate* shall certify in writing and report to Covered Entity (1) when all *PHI* has been returned or destroyed and (2) that *Business Associate* does not continue to maintain any *PHI*. *Business Associate* is to provide this certification during this thirty (30) day period.

15.2 *Business Associate* shall report to Covered Entity any conditions that *Business Associate* believes make the return or destruction of *PHI* infeasible. *Business Associate* shall extend the protections of this Agreement to such *PHI* and limit further Uses and Disclosures to those purposes that make the return or destruction infeasible for so long as *Business Associate* maintains such *PHI*.

16. Penalties. *Business Associate* understands that: (a) there may be civil or criminal penalties for misuse or misappropriation of *PHI* and (b) violations of this Agreement may result in notification by Covered Entity to law enforcement officials and regulatory, accreditation, and licensure organizations.

17. Training. *Business Associate* understands its obligation to comply with the law and shall provide appropriate training and education to ensure compliance with this Agreement. If requested by Covered Entity, *Business Associate* shall participate in Covered Entity's training regarding the Use, Confidentiality, and Security of *PHI*; however, participation in such training shall not supplant nor relieve *Business Associate* of its obligations under this Agreement to independently assure compliance with the law and this Agreement.

18. Miscellaneous.

18.1 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Contract or Grant, the terms of this Agreement shall govern with respect to its subject matter. Otherwise, the terms of the Contract or Grant continue in effect.

18.2 Each party shall cooperate with the other party to amend this Agreement from time to time as is necessary for such party to comply with the Privacy Rule, the Security Rule, or any other standards promulgated under HIPAA. This Agreement may not be amended, except by a writing signed by all parties hereto.

18.3 Any ambiguity in this Agreement shall be resolved to permit the parties to comply with the Privacy Rule, Security Rule, or any other standards promulgated under HIPAA.

18.4 In addition to applicable Vermont law, the parties shall rely on applicable federal law (e.g., HIPAA, the Privacy Rule, Security Rule, and HITECH) in construing the meaning and effect of this Agreement.

18.5 *Business Associate* shall not have or claim any ownership of *PHI*.

18.6 *Business Associate* shall abide by the terms and conditions of this Agreement with respect to all *PHI* even if some of that information relates to specific services for which *Business Associate* may not be a “*Business Associate*” of Covered Entity under the Privacy Rule.

18.7 *Business Associate* is prohibited from directly or indirectly receiving any remuneration in exchange for an *Individual’s PHI*. *Business Associate* will refrain from marketing activities that would violate HIPAA, including specifically Section 13406 of the HITECH Act. *Reports* or data containing *PHI* may not be sold without Covered Entity’s or the affected *Individual’s* written consent.

18.8 The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the expiration or termination of this Agreement. For example: (a) the provisions of this Agreement shall continue to apply if Covered Entity determines that it would be infeasible for *Business Associate* to return or destroy *PHI* as provided in Section 14.2 and (b) the obligation of *Business Associate* to provide an accounting of disclosures as set forth in Section 12 survives the expiration or termination of this Agreement with respect to accounting requests, if any, made after such expiration or termination.

ATTACHMENT F
AGENCY OF HUMAN SERVICES' CUSTOMARY CONTRACT/GRANT PROVISIONS

1. **Definitions:** For purposes of this Attachment F, the term “Agreement” shall mean the form of the contract or grant, with all of its parts, into which this Attachment F is incorporated. The meaning of the term “Party” when used in this Attachment F shall mean any named party to this Agreement *other than* the State of Vermont, the Agency of Human Services (AHS) and any of the departments, boards, offices and business units named in this Agreement. As such, the term “Party” shall mean, when used in this Attachment F, the Contractor or Grantee with whom the State of Vermont is executing this Agreement. If Party, when permitted to do so under this Agreement, seeks by way of any subcontract, sub-grant or other form of provider agreement to employ any other person or entity to perform any of the obligations of Party under this Agreement, Party shall be obligated to ensure that all terms of this Attachment F are followed. As such, the term “Party” as used herein shall also be construed as applicable to, and describing the obligations of, any subcontractor, sub-recipient or sub-grantee of this Agreement. Any such use or construction of the term “Party” shall not, however, give any subcontractor, sub-recipient or sub-grantee any substantive right in this Agreement without an express written agreement to that effect by the State of Vermont.
2. **Agency of Human Services:** The Agency of Human Services is responsible for overseeing all contracts and grants entered by any of its departments, boards, offices and business units, however denominated. The Agency of Human Services, through the business office of the Office of the Secretary, and through its Field Services Directors, will share with any named AHS-associated party to this Agreement oversight, monitoring and enforcement responsibilities. Party agrees to cooperate with both the named AHS-associated party to this contract and with the Agency of Human Services itself with respect to the resolution of any issues relating to the performance and interpretation of this Agreement, payment matters and legal compliance.
3. **Medicaid Program Parties** (*applicable to any Party providing services and supports paid for under Vermont’s Medicaid program and Vermont’s Global Commitment to Health Waiver*):

Inspection and Retention of Records: In addition to any other requirement under this Agreement or at law, Party must fulfill all state and federal legal requirements, and will comply with all requests appropriate to enable the Agency of Human Services, the U.S. Department of Health and Human Services (along with its Inspector General and the Centers for Medicare and Medicaid Services), the Comptroller General, the Government Accounting Office, or any of their designees: (i) to evaluate through inspection or other means the quality, appropriateness, and timeliness of services performed under this Agreement; and (ii) to inspect and audit any records, financial data, contracts, computer or other electronic systems of Party relating to the performance of services under Vermont’s Medicaid program and Vermont’s Global Commitment to Health Waiver. Party will retain for ten years all documents required to be retained pursuant to 42 CFR 438.3(u).

Subcontracting for Medicaid Services: Notwithstanding any permitted subcontracting of services to be performed under this Agreement, Party shall remain responsible for ensuring that this Agreement is fully performed according to its terms, that subcontractor remains in compliance with the terms hereof, and that subcontractor complies with all state and federal laws and regulations relating to the Medicaid program in Vermont. Subcontracts, and any service provider agreements entered into by Party in connection with the performance of this Agreement, must clearly specify in writing the responsibilities of the subcontractor or other service provider and Party must retain the authority to revoke its subcontract or service provider agreement or to impose other sanctions if the performance of the subcontractor or service provider is inadequate or if its performance deviates from any

requirement of this Agreement. Party shall make available on request all contracts, subcontracts and service provider agreements between the Party, subcontractors, and other service providers to the Agency of Human Services and any of its departments as well as to the Center for Medicare and Medicaid Services.

Medicaid Notification of Termination Requirements: Party shall follow the Department of Vermont Health Access Managed-Care-Organization enrollee-notification requirements, to include the requirement that Party provide timely notice of any termination of its practice.

Encounter Data: Party shall provide encounter data to the Agency of Human Services and/or its departments and ensure further that the data and services provided can be linked to and supported by enrollee eligibility files maintained by the State.

Federal Medicaid System Security Requirements Compliance: Party shall provide a security plan, risk assessment, and security controls review document within three months of the start date of this Agreement (and update it annually thereafter) in order to support audit compliance with 45 CFR 95.621 subpart F, *ADP System Security Requirements and Review Process*.

4. **Workplace Violence Prevention and Crisis Response** (*applicable to any Party and any subcontractors and sub-grantees whose employees or other service providers deliver social or mental health services directly to individual recipients of such services*):

Party shall establish a written workplace violence prevention and crisis response policy meeting the requirements of Act 109 (2016), 33 VSA §8201(b), for the benefit of employees delivering direct social or mental health services. Party shall, in preparing its policy, consult with the guidelines promulgated by the U.S. Occupational Safety and Health Administration for *Preventing Workplace Violence for Healthcare and Social Services Workers*, as those guidelines may from time to time be amended.

Party, through its violence protection and crisis response committee, shall evaluate the efficacy of its policy, and update the policy as appropriate, at least annually. The policy and any written evaluations thereof shall be provided to employees delivering direct social or mental health services.

Party will ensure that any subcontractor and sub-grantee who hires employees (or contracts with service providers) who deliver social or mental health services directly to individual recipients of such services, complies with all requirements of this Section.

5. **Non-Discrimination:**

Party shall not discriminate, and will prohibit its employees, agents, subcontractors, sub-grantees and other service providers from discrimination, on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under Title IX of the Education Amendments of 1972, and on the basis of race, color or national origin under Title VI of the Civil Rights Act of 1964. Party shall not refuse, withhold from or deny to any person the benefit of services, facilities, goods, privileges, advantages, or benefits of public accommodation on the basis of disability, race, creed, color, national origin, marital status, sex, sexual orientation or gender identity as provided by Title 9 V.S.A. Chapter 139.

No person shall on the grounds of religion or on the grounds of sex (including, on the grounds that a woman is pregnant), be excluded from participation in, be denied the benefits of, or be subjected to

discrimination, to include sexual harassment, under any program or activity supported by State of Vermont and/or federal funds.

Party further shall comply with the non-discrimination requirements of Title VI of the Civil Rights Act of 1964, 42 USC Section 2000d, et seq., and with the federal guidelines promulgated pursuant to Executive Order 13166 of 2000, requiring that contractors and subcontractors receiving federal funds assure that persons with limited English proficiency can meaningfully access services. To the extent Party provides assistance to individuals with limited English proficiency through the use of oral or written translation or interpretive services, such individuals cannot be required to pay for such services.

6. **Employees and Independent Contractors:**

Party agrees that it shall comply with the laws of the State of Vermont with respect to the appropriate classification of its workers and service providers as “employees” and “independent contractors” for all purposes, to include for purposes related to unemployment compensation insurance and workers compensation coverage, and proper payment and reporting of wages. Party agrees to ensure that all of its subcontractors or sub-grantees also remain in legal compliance as to the appropriate classification of “workers” and “independent contractors” relating to unemployment compensation insurance and workers compensation coverage, and proper payment and reporting of wages. Party will on request provide to the Agency of Human Services information pertaining to the classification of its employees to include the basis for the classification. Failure to comply with these obligations may result in termination of this Agreement.

7. **Data Protection and Privacy:**

Protected Health Information: Party shall maintain the privacy and security of all individually identifiable health information acquired by or provided to it as a part of the performance of this Agreement. Party shall follow federal and state law relating to privacy and security of individually identifiable health information as applicable, including the Health Insurance Portability and Accountability Act (HIPAA) and its federal regulations.

Substance Abuse Treatment Information: Substance abuse treatment information shall be maintained in compliance with 42 C.F.R. Part 2 if the Party or subcontractor(s) are Part 2 covered programs, or if substance abuse treatment information is received from a Part 2 covered program by the Party or subcontractor(s).

Protection of Personal Information: Party agrees to comply with all applicable state and federal statutes to assure protection and security of personal information, or of any personally identifiable information (PII), including the Security Breach Notice Act, 9 V.S.A. § 2435, the Social Security Number Protection Act, 9 V.S.A. § 2440, the Document Safe Destruction Act, 9 V.S.A. § 2445 and 45 CFR 155.260. As used here, PII shall include any information, in any medium, including electronic, which can be used to distinguish or trace an individual’s identity, such as his/her name, social security number, biometric records, etc., either alone or when combined with any other personal or identifiable information that is linked or linkable to a specific person, such as date and place or birth, mother’s maiden name, etc.

Other Confidential Consumer Information: Party agrees to comply with the requirements of AHS Rule No. 08-048 concerning access to and uses of personal information relating to any beneficiary or recipient of goods, services, or other forms of support. Party further agrees to comply with any applicable Vermont State Statute and other regulations respecting the right to individual privacy. Party shall ensure that all of its employees, subcontractors and other service providers performing services under this agreement understand and preserve the sensitive, confidential, and non-public

nature of information to which they may have access.

Data Breaches: Party shall report to AHS, through its Chief Information Officer (CIO), any impermissible use or disclosure that compromises the security, confidentiality or privacy of any form of protected personal information identified above within 24 hours of the discovery of the breach. Party shall in addition comply with any other data breach notification requirements required under federal or state law.

8. **Abuse and Neglect of Children and Vulnerable Adults:**

Abuse Registry. Party agrees not to employ any individual, to use any volunteer or other service provider, or to otherwise provide reimbursement to any individual who in the performance of services connected with this agreement provides care, custody, treatment, transportation, or supervision to children or to vulnerable adults if there has been a substantiation of abuse or neglect or exploitation involving that individual. Party is responsible for confirming as to each individual having such contact with children or vulnerable adults the non-existence of a substantiated allegation of abuse, neglect or exploitation by verifying that fact through (a) as to vulnerable adults, the Adult Abuse Registry maintained by the Department of Disabilities, Aging and Independent Living and (b) as to children, the Central Child Protection Registry (unless the Party holds a valid child care license or registration from the Division of Child Development, Department for Children and Families). See 33 V.S.A. §4919(a)(3) and 33 V.S.A. §6911(c)(3).

Reporting of Abuse, Neglect, or Exploitation. Consistent with provisions of 33 V.S.A. §4913(a) and §6903, Party and any of its agents or employees who, in the performance of services connected with this agreement, (a) is a caregiver or has any other contact with clients and (b) has reasonable cause to believe that a child or vulnerable adult has been abused or neglected as defined in Chapter 49 or abused, neglected, or exploited as defined in Chapter 69 of Title 33 V.S.A. shall: as to children, make a report containing the information required by 33 V.S.A. §4914 to the Commissioner of the Department for Children and Families within 24 hours; or, as to a vulnerable adult, make a report containing the information required by 33 V.S.A. §6904 to the Division of Licensing and Protection at the Department of Disabilities, Aging, and Independent Living within 48 hours. Party will ensure that its agents or employees receive training on the reporting of abuse or neglect to children and abuse, neglect or exploitation of vulnerable adults.

9. **Information Technology Systems:**

Computing and Communication: Party shall select, in consultation with the Agency of Human Services' Information Technology unit, one of the approved methods for secure access to the State's systems and data, if required. Approved methods are based on the type of work performed by the Party as part of this agreement. Options include, but are not limited to:

1) Party's provision of certified computing equipment, peripherals and mobile devices, on a separate Party's network with separate internet access. The Agency of Human Services' accounts may or may not be provided.

2) State supplied and managed equipment and accounts to access state applications and data, including State issued active directory accounts and application specific accounts, which follow the National Institutes of Standards and Technology (NIST) security.

Intellectual Property/Work Product Ownership:

If Party is operating a system or application on behalf of the State of Vermont, Party 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 Party's materials.

Security and Data Transfers: Party shall comply with all applicable State and Agency of Human Services' policies and standards, especially those related to privacy and security. The State will advise the Party of any new policies, procedures, or protocols developed during the term of this agreement as they are issued and will work with the Party to implement any required.

Party will ensure the physical and data security associated with computer equipment, including desktops, notebooks, and other portable devices, used in connection with this Agreement. Party will also assure that any media or mechanism used to store or transfer data to or from the State includes industry standard security mechanisms such as continually up-to-date malware protection and encryption. Party will make every reasonable effort to ensure media or data files transferred to the State are virus and spyware free. At the conclusion of this agreement and after successful delivery of the data to the State, Party shall securely delete data (including archival backups) from Party's equipment that contains individually identifiable records, in accordance with standards adopted by the Agency of Human Services.

Party, in the event of a data breach, shall comply with the terms of Section 7 above.

10. Other Provisions:

Environmental Tobacco Smoke. Public Law 103-227 (also known as the Pro-Children Act of 1994) and Vermont's Act 135 (2014) (An act relating to smoking in lodging establishments, hospitals, and child care facilities, and on State lands) restrict the use of tobacco products in certain settings. Party shall ensure that no person is permitted: (i) to use tobacco products or tobacco substitutes as defined in 7 V.S.A. § 1001 on the premises, both indoor and outdoor, of any licensed child care center or afterschool program at any time; (ii) to use tobacco products or tobacco substitutes on the premises, both indoor and in any outdoor area designated for child care, health or day care services, kindergarten, pre-kindergarten, elementary, or secondary education or library services; and (iii) to use tobacco products or tobacco substitutes on the premises of a licensed or registered family child care home while children are present and in care. Party will refrain from promoting the use of tobacco products for all clients and from making tobacco products available to minors.

Failure to comply with the provisions of the federal law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity. The federal Pro-Children Act of 1994, however, does not apply to portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where Women, Infants, & Children (WIC) coupons are redeemed.

2-1-1 Database: If Party provides health or human services within Vermont, or if Party provides such services near the Vermont border readily accessible to residents of Vermont, Party shall adhere to the "Inclusion/Exclusion" policy of Vermont's United Way/Vermont 211 (Vermont 211), and will

provide to Vermont 211 relevant descriptive information regarding its agency, programs and/or contact information as well as accurate and up to date information to its database as requested. The “Inclusion/Exclusion” policy can be found at www.vermont211.org.

Voter Registration: When designated by the Secretary of State, Party agrees to become a voter registration agency as defined by 17 V.S.A. §2103 (41), and to comply with the requirements of state and federal law pertaining to such agencies.

Drug Free Workplace Act: Party will assure a drug-free workplace in accordance with 45 CFR Part 76.

Lobbying: No federal funds under this agreement may be used to influence or attempt to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendments other than federal appropriated funds.

**ATTACHMENT G
MAINTENANCE & SUPPORT/SERVICE LEVEL TERMS**

SERVICE LEVELS

This Appendix describes the performance standards and service levels to be achieved by Service Provider in providing the Services:

1. Definitions. Except as provided in this Exhibit, capitalized terms shall have the meanings set forth in the Agreement. The following terms, when used in this Exhibit, shall have the following meanings:

“Agency” means

“Application Services Response Time” means

“Available” means

“System Change or Upgrade” means

“Customer” means

“Outage” means

“Platform” means

“Resolution Time” means the time from when the Vendor receives the Support Inquiry until the time the Vendor has researched, evaluated, and/or resolved Support Inquiry.

“Response Time” shall be measured from the time the Vendor receives the Support Inquiry until the time Vendor has acknowledged receipt of the Support Inquiry and begins working to diagnose issue(s) assuming the Customer or Agency has utilized the Vendor designated support email address or phone number.

“Responsible Person” means the designated IT staff at the Agency or designated staff person involved with this contract.

“Scheduled Downtime” means

“Server” shall mean the server(s) on which the Services will be hosted.

“Support Inquiry” means a request for assistance either through an incident or support request.

“Unscheduled Downtime” means an Outage that is not Scheduled Downtime.

“Users” shall mean

“Vendor/Service Provider” means Vendor Name.

2. General Hosting Obligations. In addition to the other obligations set forth in the Agreement and this Exhibit, Vendor shall do the following:

3. Service Monitoring & Management. Vendor will perform continuous monitoring and management of the Services to optimize availability of the Services. Included within the scope of

this section is the proactive monitoring of the Platform and all service components 24 hours a day, 7 days a week, 365 days a year, and the expedient restoration of components when failures occur. Vendor shall maintain redundancy in all key components such that service outages are less likely to occur due to individual component failures.

- 4. Backups.** Vendor shall provide for both the regular back-up of standard file systems relating to the Server and Services, and the timely restoration of such data as determined by Vendor Engineering in case of failure or outage. Vendor shall:
- 5. Service Levels.** Vendor shall Respond to and resolve as set forth below:
- 6. Service Outages.**
- 7. Security Breaches.** In the event of an attack or threatened or suspected breach of security against the Services and/or Server, Vendor will take whatever reasonable steps that are necessary to halt such action, including taking the Services down. Down time due to external attacks shall not count against Availability requirement set forth above. Vendor will immediately contact the person designated by the Customer to discuss what measure to take. However, if time is critical, action may be required before the contact can be reached. Vendor's actions will include, as appropriate: