

STATE OF VERMONT
DEPARTMENT OF VERMONT HEALTH ACCESS

It is hereby agreed by the State of Vermont, Department of Vermont Health Access (hereafter called "State"), and Archetype Consulting, Inc., with a principal place of business at 75 Arlington Street, Boston, MA 02114 (hereafter called "Contractor"), that the contract dated May 13, 2013 between Contractor and CGI Technologies and Solutions Inc. ("CGI") (the "Assigned Contract"), and assigned by CGI to the State and assumed by the State on September 26, 2014, is hereby amended as follows:

- I. The Contractor hereby consents to the assignment of the Assigned Contract, subject to the modifications set forth herein. Further, and for the sake of clarity, the parties acknowledge and agree that the Statement of Work No. 1 dated May 13, 2013 between the Contractor and CGI has also been assigned by CGI and assumed by the State and such assignment and assumption is consented to by the Contractor. Said Statement of Work No. 1 shall be deemed to be Exhibit C to the Assigned Contract, the terms of which are incorporated therein.
- II. All references to CGI in the Assigned Contract shall be deemed to read "the State," and all references to "Subcontractor" shall be deemed to read "Contractor," as appropriate. References to "Client" are hereby deleted.
- III. The first paragraph in the recitals of the Assigned Contract shall be deleted in its entirety.
- IV. Section 3, Subsection D (Payment Terms) and Subsection E (Taxes), of the Assigned Contract shall be deleted in their entirety and replaced as follows:

Taxes. Most State purchases are not subject to federal or state sales or excise taxes and must be invoiced tax free. An exemption certificate will be furnished upon request covering taxable items. The Contractor agrees to pay all Vermont taxes which may be due as a result of this Contract.

- V. Section 7 (Nondisclosure), is hereby deleted in its entirety and replaced as follows:

7. CONFIDENTIALITY AND NON-DISCLOSURE; SECURITY BREACH REPORTING

7.1 Confidentiality of Contractor Information. Notwithstanding anything to the contrary in a Contractor Document, 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.

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.

7.2 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. In addition to the provisions of this Section, the Contractor shall execute the HIPAA Business Associate Agreement attached as Exhibit D. Before receiving or controlling State Data, the Contractor will have an information security policy that protects its systems and processes and media that may contain State Data from internal and external security threats and State Data from unauthorized disclosure, and will have provided a copy of such policy to the State. State Data shall not be stored, accessed from, or transferred to any location outside the United States.

Unless otherwise instructed by the State, Contractor agrees to keep confidential all information received and collected by Contractor in connection with this Contract ("State Data"). The Contractor agrees not to publish, reproduce, or otherwise divulge any State Data in whole or in part, in any manner or form or authorize or permit others to do so. 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 use State Data only for the purposes of and in accordance with this Contract. The Contractor shall 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.

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.

7.3 Security of State Information. 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 3 or higher) and *Federal Information Processing Standards Publication 200* and designed to (i) ensure the security and confidentiality of State Data; (ii) protect against any anticipated security threats or hazards to the security or integrity of the State Data; and (iii) protect against unauthorized access to or use of State Data. Such measures shall include at a minimum: (1) access controls on information systems, including controls to authenticate and permit access to State Data only to authorized individuals and controls to prevent the Contractor employees from providing State Data to unauthorized individuals who may seek to obtain this information (whether through fraudulent means or otherwise); (2) industry-standard firewall protection; (3) encryption of electronic State Data while in transit from the Contractor networks to external networks; (4) measures to store in a secure fashion all State Data which shall include multiple levels of authentication; (5) dual control procedures, segregation of duties, and pre-employment criminal background checks for employees with responsibilities for or access to State Data; (6) measures to ensure that the State Data shall not be altered or corrupted without the prior written consent of the State; (7) measures to protect against destruction, loss or damage of State Data due to potential environmental hazards, such as fire and water damage; (8) staff training to implement the information security measures; and (9) monitoring of the security of any portions of the Contractor systems that are used in the provision of the services against intrusion on a twenty-four (24) hour a day basis.

7.4 Back-Up Policies: The Contractor’s back-up policies have been made available to the State upon execution of this Contract under separate cover. 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.

7.5 Security Breach Reporting. The Contractor acknowledges that in the performance of its obligations under this Contract, it may be a “data collector” pursuant to Chapter 62 of Title 9 of the Vermont Statutes (9 V.S.A. §2430(3)). In addition to the requirements set forth in any Business Associate Agreement as may be attached to this Contract, in the event of any actual or suspected security breach the Contractor either suffers or learns of that either compromises or could compromise State Data (including PII, PHI or ePHI) in any format or media, whether encrypted or unencrypted (for example, but not limited to: physical trespass on a secure facility; intrusion or hacking or other brute force attack on any State environment; loss or

theft of a PC, laptop, desktop, tablet, smartphone, removable data storage device or other portable device (; loss or theft of printed materials; or failure of security policies) (collectively, a “Security Breach”), and in accordance with 9 V.S.A. § 2435(b)(2), the Contractor shall immediately notify appropriate State personnel of such Security Breach.

The Contractor’s report shall identify: (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.

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, HIPAA and/or HITECH) that require notification in the event of unauthorized release of personally-identifiable information or other event requiring notification. In the event of a breach of any of the Contractor’s security obligations or other event requiring notification under applicable law (“Notification Event”), the Contractor agrees to fully cooperate with the State, assume responsibility for such notice if the State determines it to be appropriate under the circumstances of any particular Security Breach, and assume all costs associated with a Security Breach and Notification Event, including but not limited to, notice, outside investigation and services (including mailing, call center, forensics, counsel and/or crisis management), and/or credit monitoring, in the sole determination of the State.

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.

- VI. Section 9 (Indemnification and Insurance), is hereby deleted in its entirety and replaced as follows:

Independence, Liability: The Contractor will act in an independent capacity and not as officers or employees of the State.

The Contractor shall defend the State and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Contractor or of any agent of the Contractor. The State shall notify the Contractor in the event of any such claim or suit, and the Contractor shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit.

After a final judgment or settlement the Contractor may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Contractor 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 Contractor.

The Contractor shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Contractor.

Insurance: Before commencing work on this Agreement the Contractor must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Contractor to maintain current certificates of insurance on file with the state through the term of the Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Contractor for the Contractor'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 Contractor shall carry workers' compensation insurance in accordance with the laws of the State of Vermont.

General Liability and Property Damage: With respect to all operations performed under the contract, the Contractor 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 Per Occurrence
\$1,000,000 General Aggregate
\$1,000,000 Products/Completed Operations Aggregate
\$ 50,000 Fire/ Legal/Liability

Contractor shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

Automotive Liability: The Contractor 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:
\$1,000,000 combined single limit.

Contractor shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

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 Technology Professional Liability insurance for any and all services performed under this Contract, with minimum third party coverage of \$7,000,000 per claim/aggregate coverage, and first party Breach Notification Coverage of not less than \$2,000,000.

- VII. Section 10 (Term and Termination), Subsection A (Term) is hereby deleted in its entirety and shall be replaced as follows:

Contract Term. The period of Contractor's performance shall begin as of September 26, 2014, and end on the earlier of (i) the date the parties enter into a replacement contract and (ii) January 2, 2015.

- VIII. Section 10 (Term and Termination), Subsection B (Termination of a Statement of Work for Convenience) is hereby deleted in its entirety and shall be replaced as follows:

Cancellation. This Contract may be canceled by either party by giving written notice at least 30 days in advance.

- IX. Section 11 (Limitation of Liability and Remedies) is hereby deleted in its entirety and replaced as follows:

NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL OR SPECIAL DAMAGES, DAMAGES WHICH ARE UNFORESEEABLE TO THE PARTIES AT THE TIME OF CONTRACTING, DAMAGES WHICH ARE NOT PROXIMATELY CAUSED BY A PARTY, SUCH AS LOSS OF ANTICIPATED BUSINESS, OR LOST PROFITS, INCOME, GOODWILL, OR REVENUE IN CONNECTION WITH OR ARISING OUT OF THE SUBJECT MATTER OF THIS CONTRACT.

THIS LIMITATION SHALL NOT APPLY TO STATE CLAIMS ARISING OUT OF: (A) CONTRACTOR'S OBLIGATION TO INDEMNIFY THE STATE; (B) CONTRACTOR'S CONFIDENTIALITY OBLIGATIONS TO THE STATE; (C) PERSONAL INJURY OR DAMAGE TO REAL OR PERSONAL PROPERTY; OR (D) CONTRACTOR'S GROSS NEGLIGENCE, FRAUD OR INTENTIONAL MISCONDUCT.

- X. Section 12 (Law and Disputes) is hereby deleted in its entirety and replaced with the following:

the Contractor agrees that this Contract, including any Contractor Document, shall be governed by and construed in accordance with the laws of the State of Vermont and that any action or proceeding brought by either the State or the Contractor in connection with this Contract shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Contractor irrevocably submits to the jurisdiction of such court in respect of any such action or proceeding. The State shall not be liable for attorneys' fees in any proceeding.

- XI. Section 13, Subsection A (Notices), is hereby amended to delete all information relating to CGI and inserting the appropriate State contact information as follows:

	<u>State Contract Administrator</u>	<u>State Contract Manager</u>
Name:	Emily Trantum	Robert Skowronski
Phone #:	(802) 585 - 5328	(802) 324-5604
E-mail:	Emily.Trantum@state.vt.us	Robert.Skowronski@state.vt.us

- XII. Section 13, Subsection C (Records/Access), is hereby deleted in its entirety and replaced as follows:

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

Records Available for Audit: The Contractor 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 Contractor 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.

- XIII. Section 13, Subsection F(Subcontracting/Assignment) is hereby deleted in its entirety and replaced as follows:

Sub-Agreements: Contractor shall not assign, subcontract or subgrant the performance of his Agreement or any portion thereof to any other party without the prior written approval of the State.

- XIV. Section 13, Subsection G (Integration), is hereby amended by the deletion of the last sentence thereof. The parties agree that in no event shall a Statement of Work conflict with or amend the Contract.

- XV. Section 13, Subsection I (Order of Precedence), is hereby amended by deleting in its entirety the parenthetical which begins "(except as to terms specifically identified in a particular Statement of Work..."

- XVI. For the sake of clarity and mutual understanding of the parties, Exhibit B, Prime Contract Terms, is attached to this Amendment.

XVII. Exhibit C, Statement of Work No. 1 is hereby amended as follows:

A. Section 1 (Effective Date of this Work Order), is hereby amended to read as follows:

This Statement of Work is effective as of May 13, 2013 and will terminate on the earlier of (i) the date the State and the Contractor enter into a replacement contract and (ii) January 2, 2015.

B. Section 2 (Services to be Performed), is hereby amended to read as follows:

DETAILED DESCRIPTION OF PRODUCTS AND SERVICES:

A) New Development Activities

- IRS Reporting: Continue to lead this effort and coordinate with Optum resources on delivery mechanisms and notice needs
- CMS Integration: Provide reports and analysis that help to identify current issues and improvement areas
 - Financial Reporting
 - Operational Dashboards
 - Financial Reconciliation
 - Carrier Reconciliation
- Notices: Participate in technical design and specs for notices in order to support the data extract and identification of population criteria

B) Maintenance and Operations (M&O) – Ongoing application support for OBIEE

- M&O Defects: Troubleshoot defects that result from user changes or system changes made in Siebel, OPA, WebCenter, etc.
- End User Support: Support daily SoV activities including report development, data validation, and subject matter experts on use of data to answer business decisions

2. WORK PRODUCT/DELIVERABLES:

Contractor will provide staffing to support the following work being performed by the State or a third party contractor of the State:

a. Renewals Reporting – As the renewal process and system functionality is defined, new OBIEEs reporting will be developed to provide additional insight into renewal activity and highlight the volume of applicants who have been successfully renewed and those who need renewals to be processed. This will impact Vermont Health Connect (VHC (formerly referred to as “Exchange”)) operations, staffing, and press release information.

b. Operational Reporting for workarounds related to system issues and limitations – As the operations surrounding open enrollment are defined, new workaround and outreach reporting related to renewals, notices, invoices, etc. will be needed. Contractor will support this effort on an ad-hoc basis

c. IRS Reporting – Federally mandated monthly and annual reporting is currently in development. Monthly submission is due in October and the annual 1095A report must be submitted in January. Contractor will create the XML files per IRS specifications and will be made available for delivery.

- d. Financial Reporting (assuming new data fields are made available) – As new data fields are available (Payment Type, Remitted information, etc.), Contractor will support the Financial reporting requirements and their associated development, testing, and training.
 - e. Ad-hoc reporting requests – State leadership and functional teams require frequent data exports and reports from the system to support issue investigation, outreach, and operational decisions. Contractor will continue to be a support resource on an ongoing basis in an M&O capacity.
 - f. Data Integrity reporting and leadership – Data Integrity knowledge transfer, reporting, and issue resolution has a large impact on IRS reporting, renewals, and enrolments. Contractor will participate in issue investigation and reporting
 - g. ICP Support – Continue to support the ICP effort in an oversight and/or hands-on capacity as needed
 - h. Change of Circumstance Reporting (as needed): As new Change of Circumstances (CoC) functionality is tested in test environments and implemented in the live environment, Contractor will enable CoC functionality in OBIEE for dashboards and operational reporting.
- C. The first sentence of Section 4 (Compensation) is hereby amended to read as follows:
D. Time and materials not to exceed \$800,680 at the blended average hourly rate of \$ 165.00 USD per hour plus travel expenses as incurred, payable after receipt and approval of invoice detailing time worked and services provided. The Table in Section 4, Subsection (a) is hereby deleted in its entirety and replaced as follow

**STATE OF VERMONT
AMENDMENT TO PERSONAL SERVICES CONTRACT
ARCHETYPE CONSULTING, INC.**

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CONTRACT #28115
AMENDMENT #1**

Role	29-Sep	6-Oct	13-Oct	20-Oct	27-Oct	4-Nov	10-Nov	17-Nov	24-Nov	1-Dec	8-Dec	15-Dec	22-Dec	29-Dec
Engagement Manager	8	8	8	8	8	8	8	8	8	8	8	8	8	8
Solutions Architect	40	40	40	40	40	40	40	40	40	40	40	40	40	40
Reporting Functional Lead	40	40	40	40	40	40	40	40	40	40	40	40	40	40
ETL Dev Lead	40	40	40	40	40	40	40	40	40	40	40	40	40	40
ETL Dev	40	40	40	40	40	40	40	40	40	40	40	40	40	40
Report Dev	40	40	40	40	40	40	40	40	40	40	40	40	40	40
Report Dev 2	40	40	40	40	40	40	40	40	40	40	40	40	40	40
Senior BA	40	40	40	40	40	40	40	40	40	40	40	40	40	40
Systems Analyst	40	40	40	40	40	40	40	40	40	40	40	40	40	40
FTE Equivalent	8.2	8.2	8.2	8.2	8.2	8.2	8.2	8.2	8.2	8.2	8.2	8.2	8.2	8.2

Role	29-Sep	6-Oct	13-Oct	20-Oct	27-Oct	4-Nov	10-Nov	17-Nov	24-Nov	1-Dec	8-Dec	15-Dec	22-Dec	29-Dec
Engagement Manager	\$ 1,320	\$ 1,320	\$ 1,320	\$ 1,320	\$ 1,320	\$ 1,320	\$ 1,320	\$ 1,320	\$ 1,320	\$ 1,320	\$ 1,320	\$ 1,320	\$ 1,320	\$ 1,320
Solutions Architect	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600
Reporting Functional Lead	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600
ETL Dev Lead	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600
ETL Dev	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600
Report Dev	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600
Report Dev 2	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600
Senior BA	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600
Systems Analyst	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600	\$ 6,600
FTE Equivalent	\$ 54,120	\$54,120	\$54,120	\$54,120	\$54,120	\$54,120	\$54,120	\$54,120	\$54,120	\$54,120	\$54,120	\$54,120	\$54,120	\$54,120

Travel	
Expenses reimbursed based on actuals.	\$43,000
TOTAL	\$800,680

E. Section 4, Subsection B is hereby deleted in its entirety and replaced as follows:
The Contractor shall issue to the State, approximately sixty days in arrears, a separate invoice in U.S. Dollars for the amounts due for work completed in accordance with this Contract. Each invoice shall include detail and categories of information mutually agreed upon by the parties on which charges are based and include calculations used to establish charges. All periodic charges under this Contract (excluding charges based upon actual usage or consumption of Services) shall be computed on a calendar month basis and shall be prorated for any partial month. Invoices must be submitted to:

Emily.Trantum@state.vt.us

The Contractor is responsible for holding receipts and documentation on file for all contract expenditures and shall make documentation available upon request by the State. Mileage expense for use of personal vehicles and meal expense will be reimbursed at the current State rate. All travel expenses must be in compliance with State of Vermont Administrative Bulletin 3.4.

F. Section 7 is hereby deleted in its entirety.

XVIII. Contractor acknowledges and agrees that this amendment is subject to prior approval by the Attorney General's Office, the CIO/Commissioner DII and the Secretary of Administration and shall not be binding until it has been approved by all such persons.

XIX. Entire Agreement. The Contract, as amended by this first amendment, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.

XX. The Contractor 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 Contractor, 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.

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

XXII. Taxes Due to the State. Contractor certifies under the pains and penalties of perjury that, as of the date this contract amendment is signed, the Contractor 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.

XXIII. Certification Regarding Suspension or Disbarment. Contractor certifies under the pains and penalties of perjury that, as of the date this contract amendment is signed, neither Contractor nor Contractor'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.

XXIV. The Contract is hereby amended by the addition of a HIPAA Business Associate Agreement as Exhibit D, and attached to this Amendment.

Except as modified by this Amendment No. 1, all provisions of the original contract remain in full force and effect.

The signatures of the undersigned indicate that each has read this amendment to Contract # 28115 in its entirety and agrees to be bound by the provisions enumerated therein.

BY THE STATE OF VERMONT:

BY THE CONTRACTOR:

ROBERT SKOWRONSKI DATE
312 Hurricane Lane, Suite 201
Williston, VT 05495-2087
Phone: 802-879-5901
Email: Robert.Skowronski@state.vt.us

JASON WEBSTER, PRESIDENT/CEO Date
75 Arlington Street
Boston, MA 02114
Phone: (617) 301-8366
Email: Jwebster@archetypeconsulting.com

Exhibit B

Prime Contract Terms

The following provisions are excerpted from the contract between CGI and the State of Vermont, Vermont Department of Health Access (the "Prime Contract") and shall apply to any Statement of Work entered into pursuant to the Subcontract Agreement between CGI and COCO Development, LLC d/b/a Benaissance (the "Agreement"). References below to "MSA" shall mean this Prime Contract Terms document; "Supplier" shall be read so as to mean the Subcontractor as CGI's subcontractor under the Prime Contract, and all assignments, indemnifications, insurance, warranties, etc. shall be to CGI's benefit as prime contractor. References to SOV shall be read to mean CGI unless given the context of the provision it should be read to mean The State of Vermont. Subcontractor shall comply with all provisions in the Prime Contract Flow Downs set forth below as applicable to Subcontractor's scope of work as defined in the Statement of Work.

1. BACKGROUND.

1.1 Deleted.

1.2 Deleted.

1.3 Deleted.

1.4 Interpretation. For ease of reference, the terms of this MSA are to be interpreted and construed in accordance with the following rules of construction:

(a) References to this MSA shall be construed and deemed to include any and all Statements of Work, Exhibits and other attachments and documents referred to in any of the foregoing, unless otherwise specifically noted or the context clearly and unambiguously requires otherwise.

(b) The term "**including**" and its derivatives (such as "**include**" and "**includes**") shall be construed as meaning "including, but not limited to" or "including, without limitation" and not as limiting or limited. The terms "**shall**" and "**will**" have the same meaning and indicate mandatory obligations. Words importing the singular include the plural and vice versa and words importing gender include all genders.

(c) The word "**entity**," subject to the context in which such term is used shall and shall be construed to mean and include individuals (*i.e.*, natural persons), partnerships, agents, associations, corporations, firms or other forms of business enterprises, trustees, executors, administrators, successors, permitted assigns, legal representatives and/or other recognized legal entities.

(d) The words "**contractor**", "**subcontractor**" (whether "**independent**" or not), "**supplier**", "**agent**" and/or "**representative**", refer to any entity contracted, engaged or otherwise retained by one party, directly or indirectly, to perform or provide goods or services, directly or indirectly, in connection with this MSA. When used in this MSA in relation to responsibilities, performance, the provision of Services, Work Product and/or any other obligation or requirement for which Supplier is responsible hereunder, unless specifically indicated to the contrary, the term

“**Supplier**” shall be construed to include each and every contractor, subcontractor, supplier, agent, representative, supplier or other similar entity.

(e) References to an Article, Section, subsection, paragraph, clause or other subdivision shall be construed as references to that specified Article, Section, subsection, paragraph, clause and/or all other subdivisions and associated or referenced Exhibits and other attachments, unless noted otherwise or the context clearly and unambiguously requires otherwise. Notwithstanding the foregoing, the division of this MSA into Articles, Sections, subsections and/or other subdivisions, the insertion of any captions or headings and any and all references to these are for convenience only and are not part of this MSA, nor shall they affect its meaning, construction or interpretation.

(f) References to “**days**” means calendar days unless “business days” are specified and when computing a period of time from a specified date to a later specified date, the word “**from**” means “from and including” and the words “**to**” and “**until**” each mean “to but excluding.”

(g) The word “**dollar**” and the symbol “**\$**” refer to United States dollars and all references to payments, compensation, monetary amounts or currency shall be in United States dollars unless otherwise expressly stated.

(h) Defined terms in this MSA shall be deemed to include their respective derivatives, contractions, conjugations, tenses and other forms so as to give due and proper intended meaning within the context of their usage.

(i) Whenever approvals, consents or other forms of assent are required, permitted or intended, such approvals, consents and assent shall be determined in good faith and shall not be unreasonably withheld or delayed; provided, however, that any words or terms such as “**sole discretion**,” “**sole judgment**,” “**sole and exclusive**,” “**arbitrary**” and the like when used in conjunction with any such discretion, judgment, approvals, consents or other assent or action shall, with respect to that particular provision, be construed and interpreted to mean that the party whose approval, consent, assent or action is required may withhold or refrain from giving same, at any time and for any reason, which decision and determination shall be conclusive and binding for all purposes.

(j) Unless otherwise expressly provided in this MSA, rights and remedies hereunder are cumulatively reserved by each party and are in addition to and not in lieu of any and all other remedies available to either party at law, in equity or otherwise as provided hereunder.

1.5 Deleted.

2. DEFINITIONS. Capitalized terms used in this MSA not specifically defined in the text of the MSA or in its Exhibits or Statements of Work have the following meanings:

(a) “**Affiliate**” means any Supplier entity or entities Controlling, Controlled by or under common Control with the Supplier.

(b) “**BP Services**” means any and all business process services set forth on a Statement of Work, which may include finance and accounting, support and administration,

reconciliation and processing, treasury management, account and transaction processing, records management, accounts payable, human resources, benefits administration, customer relationship management, supply chain logistics, inventory management, procurement, distribution, facilities management and any other service involving, related to or designated by SOV as a business process service, and all materials, information and/or deliverables related to or in support of any of the foregoing.

(c) “**CC Services**” means any and all call center services set forth on a Statement of Work, which may include call center facilities, communications, telecommunications, devices and resources, equipment, software, switching, routing and other systems, customer, client and operational call center support services, management, consulting, training, help desk and any other call center services involving, related to or designated by SOV as a call center service, and all materials, information and/or deliverables related to or in support of any of the foregoing.

(d) Reserved.

(e) “**Control**” with regard to an entity means the legal, beneficial or equitable ownership, directly or indirectly, of fifty percent (50%) or more of the capital stock (or other ownership interest, if not a corporation) of such entity ordinarily having voting rights, or effective control of the activities of such entity regardless of the percentage of ownership.

(f) “**Customer Data**” means the following data, whether provided or produced before, on, or after the Effective Date, and whether owned by SOV or by others, including data owned by SOV's Clientele: (1) all data that is provided by or on behalf of SOV, or any SOV Clientele, to Supplier in order for Supplier to provide the Services, including keyed input and electronic capture of information by Supplier; (2) all data that is provided by or on behalf of Supplier to SOV by means of the Services; (3) all data that is produced by means of Services as an intermediate step in using or producing any of the other Customer Data, including databases and files containing other Customer Data; and (4) all other data related to the performance of the Services, including resource volumes, asset lists, configurations, service levels, scripts, job schedules, and any Statements of Work or other Exhibits. Without limiting the generality of the foregoing, Customer Data specifically includes “Personal Information” as defined in Section 21.1 and “Protected Health Information” as defined 45 CFR 160.103.

(g) “**Customer Data Laws**” means the laws and regulations applicable at any time and from time to time during the Term to the proper handling of Customer Data, including data privacy, handling of personal data, trans-border data flow and data protection, including, but not limited to the rules and regulations promulgated under HIPAA and HITECH and Chapter 62 of Title 9 of the Vermont Statutes.

(h) “**Data Security Standards**” means the highest industry standard administrative, technical, and physical safeguards and controls consistent with *NIST Special Publication 800-53* and *Federal Information Processing Standards 200* and including, but not limited to, those promulgated under HIPAA and HITECH, as well as the specific provisions specified in Exhibit F [Security Policies], and such other

applicable SOV policies as may be implemented during the Term of the MSA, including policies, procedures and practices agreed upon between SOV and Supplier.

- (i) **“Documentation”** means any and all descriptions and specifications of the Requirements for each Statement of Work, included therein or created or developed thereunder, 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 Supplier and/or Supplier’s suppliers, in connection with and applicable to the provision, use, operation and support of the Services hereunder. Documentation shall be sufficient to enable SOV personnel to understand, operate, use, access, support, maintain, update and modify Services, notwithstanding that Supplier 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) Supplier for its own comparable items or services; (ii) SOV for its own comparable items or services; and (iii) such standards and guidelines as the parties mutually agree apply to the Services involved.
- (j) **“Equipment”** means all hardware and tangible equipment, including computers, information processing units, servers, network facilities, controllers, routers, modems, communications and telecommunications equipment (voice, data, audio and video), cables, storage devices and media, printers, terminals, peripherals, input, output and transmission devices, and other tangible fixtures, mechanical and electronic equipment, whether owned or leased by or for the benefit of Supplier or SOV in connection with the Services or used by or for the benefit of Supplier to provide or support the provision of Services. Absent any specific reference to the contrary, the term “Equipment” shall refer to: (i) all or any portion of Equipment owned by SOV (**“SOV Equipment”**); and (ii) Equipment leased, rented or otherwise contracted from a third party (**“Third Party Equipment”**); and/or (iii) Equipment that is owned or controlled by Supplier (**“Supplier Equipment”**).
- (k) **“Exhibit”** means any exhibit, schedule, attachment or other document attached to this MSA or executed by the parties at any time hereafter, including each Statement of Work hereunder, if such document states that it is an attachment or otherwise part of this MSA.
- (l) **“Final Acceptance”** will be defined in each applicable Statement of Work.
- (m) **“Facilities”** means the physical premises, locations and operations owned or leased by a party and from or through which the Supplier and/or its permitted contractors will provide any Services, whether or not specifically identified in a Statement of Work.
- (n) **“Information”** means all information, in any form and on any medium, now known or hereafter discovered or developed, furnished or made available directly or indirectly by or on behalf of one party to the other or otherwise obtained by or available to a party from any source as a result of or in connection with this MSA, including: (i) all information of a party to which the other and/or its permitted contractors has had or will have access, whether in oral, written, graphic or machine-readable form, including business or financial information, plans, strategies, forecasts, forecast assumptions, business practices and methods, marketing

information and material, customer, supplier, and employee information, and all information concerning relationships with customers, suppliers and employees, proprietary ideas, concepts, know-how, methodologies, specifications, operations, processes and systems manuals, profiles, system and management architectures, diagrams, graphs, models, sketches, technical data, research and all other information related to a party's past, present or future business activities or operations; (ii) all Work Product; (iii) all information of a third party, including customers and suppliers, and all notes, analyses, reports and studies prepared by or on behalf of either party, during the Term or anytime thereafter; and (iv) all information entered or to be entered into Software or Equipment by or on behalf of or in respect of a party, as well as information obtained or derived from this information, including any such information as stored in, accessed or transmitted through or processed by Equipment or Software.

- (o) **“Insurance Industry Regulations”** means the statutes, rules and regulations governing the business of Vermont’s Exchange and any of the Services to be provided by Supplier under this MSA, including, but not limited to the Affordable Care Act, which consists of The Patient Protection and Affordable Care Act, as amended by the federal Health Care and Education Reconciliation Act of 2010, pertaining to the federal mandate to render health insurance coverage widely available to the public, (as any of these or existing acts or future acts may be amended from time to time), 33 V.S.A. Chapter 18, subchapter 1, 8 V.S.A. Chapter 107, and such other statutes, rules and regulations that otherwise govern the sale of insurance, the business of the Exchange, and the Services to be provided by Supplier hereunder, including, but not limited to, the statutes, rules and regulations of any compliance regulations promulgated under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“**HIPAA**”), the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (“**HITECH**”), any regulations and guidance issued pursuant to HIPAA and/or HITECH, and such guidance that may be provided by the Centers for Medicare & Medicaid Services (“**CMS**”) from time to time.
- (p) **“IT Services”** means the information technology services set forth in a Statement of Work, which may include information or technology systems, Information, Equipment, Software, design, development, application support, web hosting, cloud hosting, application services, data and application engineering, data and database management or processing, data center Resources and Facilities, management information systems, operational, data processing, maintenance and support, consulting, monitoring, reporting, training, installation, help desk and any other services involving, related to or designated by SOV as an information technology service, and all materials, information and/or deliverables related to or in support of any of the foregoing.
- (q) **“Laws”** means any and all federal (national), state, provincial, municipal and/or local laws, regulations, rules, judicial decrees, decisions and judgments, executive and government orders and ordinances, including any and all directives of legislative and regulatory bodies, as well as rules and regulations of any self-regulatory organization by which a party may be bound, and unless the context clearly requires otherwise, shall include the Laws of each and every jurisdiction applicable to SOV, Supplier,

this MSA and the performance of Services. Specifically, Laws shall include the Insurance Industry Regulations.

- (r) “**Losses**” means all losses, liabilities, damages, demands and claims, and all related costs and expenses (including reasonable legal fees and costs of investigation, litigation, settlement, judgment, appeal, regulatory fines, interest and penalties) incurred in connection with, arising from or caused by this MSA or the performance or failure of performance of any of the obligations or requirements of this MSA.
- (s) “**Out-of-Pocket Expenses**” means reasonable and actual out-of-pocket expenses necessarily incurred by Supplier for Equipment, materials, supplies or Services provided to SOV, but not including Supplier’s overhead costs, administrative expenses or other mark-ups.
- (t) “**Requirements**” means any and all Documentation, conditions, considerations and other criteria, terms and/or conditions that Supplier has agreed to provide, arrange or comply with in providing Services and otherwise performing Supplier’s obligations as they relate to any Statement of Work, including all representations, warranties, Service Levels and other specifically identified requirements applicable to the Statement of Work, as well as all Documentation arising during the course of developing, implementing and performing Services and obligations in accordance with and as contemplated by the specific terms and conditions of this MSA, including but not limited to the Scope Assumptions as set forth in Exhibit E and the Appendix thereto.
- (u) “**Resources**” means any and all Facilities, Software, Equipment, personnel, Information and all other goods, services, materials, fixtures, tangible and intangible items, intellectual property, assets, licenses, rights and capabilities of either Supplier or SOV, regardless of the nature of the ownership, leasehold, licensing or the basis upon which any of the foregoing or the foregoing capabilities are available to such party.
- (v) “**Service Level**” means the specific level of performance Supplier is required to comply with and adhere to in providing the Services in conformity with the Requirements as set forth in each Statement of Work, consistent with the criteria and parameters specified in the Statement of Work.
- (w) “**Services**” means, individually and collectively, the BP Services, CC Services, IT Services, as well as any and all other services, materials and items, tangible or intangible, now known or hereinafter developed or discovered, and which the parties include in Statements of Work, including development and design services, project and operations management, support and maintenance, consulting, training, facilities and resource management, engineering and application development and such other functions, processes and responsibilities as the parties agree upon and set forth in Statements of Work, all in furtherance of the delivery of the Exchange.
- (x) “**Software**” means the object code (and to the extent explicitly specified in a Statement of Work, source code) versions of applications programs, operating system software, licensing keys, network protocols and operating programs, computer software languages, utilities, other computer programs and related documentation, in

whatever form or media, including the tangible media on which any of the foregoing are recorded, stored, transmitted and/or printed, together with all corrections, improvements, updates, derivative works, adaptations, versions, translations and releases thereof, which are used to provide or otherwise in support of the provision of the Services. Absent any specific reference to the contrary, the term “Software” shall refer to: (i) all or any portion of Software owned by SOV (“**SOV Software**”); (ii) Software used under license from a third party (“**Third Party Software**”); and/or (iii) Software that is owned or for which Supplier has an exclusive license (“**Supplier Software**”). References to Software shall be deemed to include the Documentation for such Software unless otherwise specifically indicated.

(y) “**SOV Clientele**” means any of the clientele of SOV, including, but not limited to, individuals and small businesses, that use the Exchange to assist with their decision-making processes regarding the type and manner of insurance that they obtain, and any other issues or concerns that may arise regarding their insurance coverage.

(z) “**SOV Facility**” means any Facility owned, operated or managed by or on behalf of SOV.

(aa) “**Supplier IP**” and COCO IP means all of the intellectual property utilized by Supplier in its efforts to provide the Services and operate Supplier’s business including, but not limited to, all patent applications, as well as any and all divisions, continuations, continuations-in-part, reissues, renewals, extensions, reexaminations, foreign counterpart applications and issued patents which relate to or claim the priority of same, including the right to file any and all such applications and receive letters patent thereon worldwide, including, without limitation, work done, independently or with other parties, and all other technology and intellectual property rights throughout the world of Supplier (including all derivatives thereof), including, but not limited to, trade secrets, trademarks, trademark applications and registrations (together with all goodwill of the business symbolized by such trademarks and the portion of the business of Supplier to which such trademarks pertain), domain names and copyrights, provided that no trademark, trademark application or registration, domain name or copyright contains any SOV Information. COCO IP shall have the meaning set forth in Section 15.7. Supplier IP or COCO IP shall not contain any trademark, trademark application or registration, domain name or copyright of SOV or any other SOV Information.

(bb) “**Supplier Personnel**” means and refers to Supplier’s employees and employees of Supplier’s permitted contractors or permitted agents assigned by Supplier to perform Services under this MSA or a Statement of Work.

(cc) “**Term**” means the period of period of performance of the Statement of Work or such earlier date as this MSA may expire or be terminated, as provided and permitted by the terms and conditions hereof.

(dd) Deleted.

(ee) “**Work Product**” means any tangible or intangible work product, creation, material, item or deliverable, documentation, information and/or other items created by Supplier, either solely or jointly with others, including by Supplier Personnel that are specifically commissioned by SOV pursuant to a Statement of Work or the Change Control Procedures under an existing Statement of Work, and which are developed, conceived of, prepared, procured, generated or produced by Supplier in connection

with the delivery of Services. For purposes of clarification and the avoidance of doubt, Work Product does not include Supplier IP, provided SOV shall be granted a license to any such Supplier IP that is incorporated into Work Product as set forth in Section 15.7 below.

- (ff) **Other Definitions.** Any other terms not defined above are defined in the text of this MSA below, generally when the term is first referred to or used. Specific terms applicable to a particular Statement of Work and not defined in this MSA may be defined in the Statement of Work involved.

3. MASTER SERVICES AGREEMENT

3.1 Deleted.

3.2 Interpretation and Precedence. This MSA is to be interpreted so that all of its provisions are given as full effect as possible.

3.3 No Implied Agreement; Non-Exclusivity.

- (a) Nothing in this MSA obligates the State of Vermont to direct SOV to enter into any Statement of Work with Supplier or requires Supplier to perform or provide any Services to SOV except to the extent that Supplier hereby commits to prepare good faith proposals for and offers to perform work as requested by SOV as requested by the State of Vermont, at rates and on terms no less favorable than those set out herein.
- (b) The State of Vermont may request information, proposals, offers or competitive bids from third parties on any terms and conditions, determined by the State of Vermont in its sole discretion, whether the same, similar or different than the terms in this MSA.
- (c) The State of Vermont may obtain, or direct SOV to obtain, services similar to, identical to, or in addition to or outside the scope of the Services at any time during the Term from a third party or provide them internally. The State of Vermont shall have no obligation to obtain from Supplier any services, whether or not included within the definition of Services hereunder and SOV shall only be obligated to pay for Services, in such amounts, to the extent, at such locations and in such other manner as is specifically set forth in a Statement of Work mutually agreed upon and executed by the parties.

4. STATEMENTS OF WORK.

4.1 Deleted

4.2 Changes to Statements of Work. Any and all changes to a Statement of Work and the Services to be performed thereunder, except for specific changes identified and provided within the framework of procedures and terms and conditions specifically identified and provided for in Exhibit B or the Statement of Work itself, shall only be made in accordance with the change control criteria and procedures applicable to any particular Services or any aspect of any Services as described and specified in Exhibit H attached to Exhibit B (“Change Control Procedures”) and,

if applicable, any supplementary procedures set forth in the applicable Statement of Work as permitted by such Change Control Procedures. Each change to any Services made by the parties properly in accordance with the Change Control Procedures shall form part of the Services for all purposes thereafter, as that term is defined and used in this MSA, for any and/or all Statements of Work involved and affected thereby

5. DELETED.

6. SERVICES.

6.1 Description of Services. Supplier agrees to provide and shall perform the Services described in the applicable Statement(s) of Work in accordance with and subject to the terms and conditions set forth in this MSA, including in compliance with all applicable Laws, Data Security Standards and Insurance Industry Regulations. If any services, functions or responsibilities are not specifically described or included within the definition of “Services” hereunder, but are required for the proper performance of Services hereunder, they will be deemed to be implied by and included within the scope of the Services to the same extent as if specifically described in this MSA or each Statement of Work involved.

6.2 Service Delivery Mechanisms. Supplier acknowledges SOV operates in a business environment characterized by constant change, and the performance of Services may require the continued and dynamic setting of priorities based on changing business requirements, transactions and operations from time to time as may be communicated to Supplier by SOV (subject to any confidentiality and contractual restrictions by which SOV may be bound) at any time and from time to time during the Term, and necessitated by changes in the Insurance Industry Regulations or otherwise, but in all events subject to the Change Control Procedures. So long as Supplier meets all of its obligations under this MSA, including achieving the applicable Service Levels, and meeting the requirements of each Statement of Work, except as provided in a Statement of Work otherwise, Supplier shall have the right to change the Supplier Personnel used to perform Services hereunder. Notwithstanding the above, nothing herein shall be deemed to require Supplier and/or SOV to violate any Laws, and if, during the course of the Term, there is a change in Law that requires modifying, altering, eliminating, diminishing or otherwise making any substantive change to the Statement of Work, the provisions of Section 23.2(m) [Compliance with Laws] shall control.

6.3 Deleted.

6.4 Resources. Unless otherwise expressly provided in this MSA, all Resources required for the proper performance of Services by Supplier hereunder shall be under the control, management and supervision of Supplier and Supplier shall be responsible, at its sole cost and expense, for procuring, obtaining and making available, in proper and qualified, professional and high quality working and performing order, all such Resources.

6.5 Proposal Assistance. If at any time during the Term, the State of Vermont elects to request any bid, quote, information and/or proposal from one or more third party service providers for the provision of all or any part of the Services being provided by Supplier hereunder, Supplier shall cooperate with SOV by providing SOV reasonable access to relevant Supplier Personnel for the benefit of the State of Vermont in connection with the State of Vermont’s request. Nothing herein shall be deemed to create an affirmative obligation on the part of Supplier to disclose any of its confidential information or to provide any such third party provider with access to Supplier’s

Facilities, if in Supplier's reasonable judgment in good faith, such third party provider is a competitor of Supplier. In the event that such third party provider is not a competitor, then Supplier's obligations pursuant to this Section are subject to the conditions that: (i) each such third party service provider agree, in writing, to reasonable security and confidentiality restrictions, generally in accordance with the provisions and requirements of this MSA; and (ii) that such activities shall not adversely disrupt Supplier's ability to provide Services.

6.6 Premier Customer. Supplier will treat SOV as a premier and significant customer in all respects, consistent with Supplier's practices and treatment of its best and most favored customers. As such, SOV shall be entitled to the following:

- (a) **Continuous Improvement.** Throughout the Term, Supplier shall, subject to and always consistent with the Requirements and provisions of this MSA, proactively stay abreast of emerging technology and processes and present to SOV for SOV consideration: (i) opportunities to implement improved Supplier Resources, processes and methodologies in connection with the Services; (ii) opportunities to implement improved State of Vermont Resources, processes and methodologies then currently used by the State of Vermont in performing services and operations which have been retained by and are performed by the State of Vermont and which relate to the Services; (iii) any other opportunities Supplier may choose to bring to SOV's attention which Supplier is or becomes aware of and may be of potential benefit for SOV to consider; and (iv) potential improvements in Service Levels, whether identified as proven techniques and tools from other installations within its operations or through industry awareness or otherwise. Supplier shall include references to all of the foregoing items in the periodic reports provided to SOV in connection with Statements of Work and this MSA generally. Supplier shall cooperate with SOV in evaluating such proposed improvements, which, for the avoidance of ambiguity, shall not be implemented by Supplier unless reviewed, approved and agreed upon in accordance with the Change Control Procedures or a subsequent Statement of Work entered into by the parties.
- (b) **Disaster Recovery Priority.** In accordance with the requirements of this MSA, in the event of a disaster, material interruption or any disruption in or affecting the Services, in prioritizing and dedicating efforts by Supplier to recover and resume normal and proper Service delivery and the provision of services, information and resources to its other customers generally, no other Supplier customer will receive higher priority than the State of Vermont, including all efforts and activities with respect to the Resources involved in performing such efforts and activities and recovering or resuming Services.
- (c) **Priority Staffing.** Supplier shall make a good faith effort throughout the Term to assign qualified personnel resources to the State of Vermont account and overseeing the Services and interfacing with SOV and State of Vermont personnel.

6.7 Third Party Resources. From time to time SOV may request that Supplier obtain and provide to SOV, at SOV's expense, third party Resources related to the Services but outside the scope of what Supplier is then obligated to provide under a Statement of Work, including the benefit of any volume purchasing discounts, pricing or terms available to SOV or its suppliers. Supplier shall notify SOV at the time of any such request of any relationships Supplier may have with such suppliers that may be of benefit to SOV in this respect. To the extent that SOV may

have a more favorable relationship with any third party supplier, upon notice from SOV, Supplier agrees to consider such Resources from SOV's designated supplier and unless otherwise specifically agreed by SOV in writing, Supplier will not add an administrative fee or other markup to any third party Resources it procures on behalf of or for the benefit of SOV and the Services provided hereunder.

7. DEVELOPMENT, IMPLEMENTATION AND DOCUMENTATION.

7.1 Specifications. For each of the aspects and/or functional areas of the Services to be designed and/or delivered by Supplier under this MSA, Supplier shall develop, create and deliver to SOV, as applicable, detailed functional specifications for the Services required by each Statement of Work, (the "**Specifications**"). The scope and details of the Specifications, including, but not limited to, delivery times, approval processes, Milestone Schedule(s) and any Migration Plans shall be set forth in the applicable Statement of Work.

8. ACCEPTANCE.

8.1 Acceptance, Acceptance Testing and Acceptance Testing Procedures. The criteria for acceptance of all deliverables under this MSA ("**Acceptance**"), criteria for testing and determining Acceptance ("**Acceptance Testing**"), timing for resubmission in the event that any of the Acceptance Testing fails, and all other details related to Acceptance and Acceptance Testing, shall be set forth in the applicable Statement of Work.

9. THIRD PARTY COOPERATION

If the State of Vermont contracts with, or directs SOV to contract with, a third party to perform any service similar to or to enhance all or any portion of any of the Services, Supplier will cooperate with SOV and the third party, including provision of: (i) written Documentation so that any enhancements or developments may be operated by Supplier; (ii) commercially reasonable assistance and support services to such third party at the Charges specified in the applicable Statement of Work; and (iii) reasonable access to Supplier's Resources and Services operations as necessary for such third parties to perform their work; provided, however, that cooperation with third party auditors and benchmarkers shall be as otherwise set forth in this MSA. SOV shall use reasonable efforts to require such third parties to comply with Supplier's reasonable requirements regarding confidentiality, operations, standards, and security. Supplier shall support and maintain such third party work product, provided the service provider complies with any Documentation applicable to Supplier in respect of the Services involved. The cost, if any, of any incremental Resources necessary to accommodate such third party work and activity shall be borne by the third party service provider.

10. MAINTENANCE AND SUPPORT

10.1 Corrective Maintenance. Supplier shall immediately, upon discovery of same or upon electronic, telephonic or any other form of notice from SOV or any other entity, commence the correction of any errors, defects and problems which prevent any Services from performing or being provided in accordance with the Requirements. Supplier shall immediately notify SOV of the nature of the problem and steps being taken to resolve and correct same. A Severity Level (as defined in the Statement of Work) shall be assigned as described in the Statement of Work to such problem and Supplier agrees to follow the Service Level Agreements applicable and defined therein. If Supplier identifies more than one commercially reasonable and equally satisfactory method for properly resolving a particular problem, Supplier shall promptly inform SOV of each

of the various solutions, the time required to implement each, the differences of each potential solution, including the impact of each upon the Services, and a recommendation and Supplier's reasons therefor. SOV shall have the opportunity to select the solution to be implemented by Supplier, but no such selection shall relieve Supplier of its obligations to meet the Requirements hereunder with respect to the Services involved.

10.2 Forecasting. Unless otherwise set forth in a Statement of Work, Supplier shall be responsible for providing reasonable forecasts (of staffing and other matters relevant to SOV's operations and the provision of Services by Supplier hereunder) and updated forecasts upon such times to be agreed upon and set forth in, or under, the Statement of Work, with such further detail as the parties may agree from time to time. Based upon such forecasts, to the extent relevant for the applicable Statement of Work, Supplier will make recommendations for any changes to the Services, taking into account factors that are unique to such Services, the geographic location where the Services are to be provided, and other relevant factors that will reasonably impact the operation of the Exchange or the provision of the Services, including, but not necessarily limited to, hardware and/or software capacity training and other considerations applicable to the Services involved. Any changes and/or recommendations will be designed to minimize interruptions, disruptions and/or any degradation of Services. Supplier shall update and notify SOV as and when any forecast changes are required or appropriate based on updated information.

10.3 Preventative Maintenance. Supplier shall provide on-going support and perform preventive maintenance for all Services, including process improvements, upgrades, new releases, enhancements, performance engineering and coding updates and improvements, routine by-passes, fixes and patches of minor problems, pending a new release version or more permanent correction, application tuning, code restructuring, and other efforts undertaken to improve the efficiency and reliability of the Services and minimize on-going maintenance requirements, while maintaining the Services in conformity with the Requirements. Supplier shall, within thirty (30) business days of each Statement of Work Effective Date and on or before each annual anniversary of that date thereafter during the Statement of Work Term, provide SOV with an annual forecast and projected schedule of regularly scheduled preventive maintenance for the Services, structured to minimize any interruption, disruption and/or degradation of the Services. Supplier shall update and notify SOV as and when any changes to such schedule are required or appropriate based upon updated information or changed Requirements.

10.4 General Support. Supplier agrees to provide SOV with the following general support for the Services, at no additional cost unless otherwise specifically provided in the applicable Statement of Work:

- (a) Supplier shall correct and repair all Services, following telephonic, electronic or other notification of any failure, malfunction, defect or nonconformity which prevents the Services from performing as warranted and otherwise required hereunder;
- (b) Supplier shall acknowledge and confirm to SOV, by telephone (or other confirmed means), the commencement of problem resolution activities in response to any failure, malfunction, defect or nonconformity in any Services, within one (1) hour, and shall apply on a continuous, dedicated basis all necessary Supplier Personnel and Resources to resolve the problem and restore Services to the requisite Service Levels, as soon as possible but in no event later than four (4) hours from the commencement of problem resolution activities. Supplier's activities shall be consistent with the Service Level assigned in accordance with the Statement of Work. If the problem

cannot be satisfactorily resolved within said four (4) hour period and said problem may or actually does cause the Services to fail to meet the Service Levels (on an extrapolated basis, if applicable), then in addition to any Service Level Credits or other rights, obligations and activities required or permitted hereunder, Supplier shall immediately institute the Contingency Plans (as defined in Section 25.6 (d) [Force Majeure; Contingency Plans] applicable to the Services involved and maintain same in effect until the original problem is resolved and proper Service can be restored.

- (c) Supplier and SOV shall provide consultation, cooperation and technical advice and information to each other in order to assist in problem resolution and problem prevention efforts hereunder;
- (d) Supplier shall provide, on a best commercially reasonable efforts basis, any services mutually agreed and directly related to the Services under any Statement of Work, to cause the Services achieve or exceed the Service Levels (provided that nothing in this Section excuses any failure of Supplier to achieve or exceed the Service Levels).
- (e) Deleted.

11. PERFORMANCE STANDARDS AND SERVICE LEVELS

11.1 Service Levels. In providing Services hereunder, Supplier shall meet or exceed the Service Levels applicable to each of the Services hereunder. Unless otherwise set forth in the applicable Statement of Work, Supplier's actual performance against the required Service Levels will be measured on a monthly basis.

11.2 Performance Standards.

- (a) If any of the Services hereunder does not have a specifically defined, designated or associated Service Level, Supplier shall perform such Service or obligation with a level of accuracy, quality, completeness, timeliness, and responsiveness that meets or exceeds the highest industry standards of other sophisticated outsourcing companies providing services similar to the Services, taking into consideration any differences in the delivery of services by SOV or any third party that would reasonably impact different outcomes for Supplier.
- (b) Supplier shall at all times: (i) perform all Services and obligations promptly, diligently and in a workmanlike and professional manner, using qualified Supplier Personnel; and (ii) perform the Services and its obligations hereunder in a manner consistent with the mutually agreed upon pricing methodology for Charges payable by SOV set forth in the Statement of Work while still meeting required Service Levels and the Requirements.

11.3 Measurement and Monitoring Tools. Supplier shall implement measurement and monitoring tools and procedures satisfactory to SOV reasonably designed to measure the Services and compare such performance to the applicable Service Levels. Supplier shall provide SOV with periodic reports of Service Level performance, with such frequency and in such formats as are mutually agreed upon, with information and a level of detail sufficient to verify Supplier's compliance with said Service Levels. Upon SOV's request, Supplier shall provide SOV or its auditors with any information and access to the measurement and monitoring tools necessary to

verify compliance by Supplier with the Service Levels and shall maintain a database of such information and reports and make same available to SOV and its auditors for verification purposes at all times. Each Statement of Work shall, at SOV's option, specify such additional and more frequent monitoring, auditing and reporting tools and reports, to correspond to SOV's requirements and the Services applicable to that Statement of Work.

11.4 Failure to Meet Service Levels.

- (a) Supplier acknowledges that its failure to meet any Service Levels may have a material adverse effect on the business and operations of SOV and that the actual amount of damage sustained by SOV because of such failure would be impracticable, extremely difficult or impossible to determine. Accordingly, Service Level Credits for failures to meet a Service Level may be included in the applicable Statement of Work for the Services involved.
- (b) If any Services fail to meet the requisite Service Levels or otherwise upon SOV's request for any deficiencies in the Services, Supplier shall immediately: (i) perform a root-cause analysis reasonable under the circumstances to identify the cause of any deficiency or failure of a Service to meet applicable Service Levels; (ii) provide SOV with a written report detailing such root cause of, and procedure for correcting, such deficiency or failure; (iii) implement such correction procedure; and (iv) provide SOV with assurances reasonably satisfactory to SOV that such deficiency or failure will not recur following the completion of the implementation of the procedure. Notwithstanding anything to the contrary, the parties agree that Supplier will not be responsible for the failure to perform the Service Levels under any Statement of Work as a result of the failure of SOV, the State of Vermont and/or any other SOV or State of Vermont supplier or SOV or State of Vermont third party to perform its obligations under this MSA or the applicable Statement of Work, the failure of SOV's software or systems provided, the acts and/or omissions of any third party vendors of SOV, or as otherwise set forth in the Statement of Work.

11.5 Adjustment to Service Levels. The parties will review the Service Levels at least bi-annually, or more frequently as either party may request. The parties may by mutual written agreement add to, delete or adjust the Service Levels, in whole or in part; provided, however, that in no event will SOV be obligated to agree to any additions, deletions or adjustments that it believes to be less advantageous than the Service Levels contained in any Statement of Work. The reasons for additions, deletions or adjustments to the Service Levels hereunder may include improved performance capabilities associated with advances in the technology and methods used to perform Services, or changes in SOV's business or technology environment, such as the implementation of a major initiative that changes the nature of the Services or any business process or operational improvements implemented or instituted by SOV or improvements in Supplier's Resources or operations; or other changes to the scope of work which render the achievement of the originally agreed upon Service Levels unreasonable or impractical.

12. EQUIPMENT AND FACILITIES

12.1 Equipment.

- (a) Except for Equipment specifically provided by SOV and specified in a Statement of Work, Supplier, itself or through its suppliers, will be solely responsible for

procuring, maintaining and making available all Equipment necessary and/or appropriate to effectively and properly provide the Services. If specifically set forth in a Statement of Work, SOV shall make available SOV Resources, that will continue to be owned or leased by or for SOV, then Supplier shall: (i) use the SOV Resources solely and exclusively to provide Services and Supplier shall not use SOV Resources to provide any goods, services, information, material or resources to or for the benefit of any third party; (ii) comply with any directions from SOV concerning the location, use and disposition of SOV Resources; (iii) upon SOV's written request, provide, or arrange for third parties to provide, maintenance of and necessary support for the SOV Resources equal or superior to that provided prior to the Statement of Work Effective Date, at the same or lower cost; and (iv) if applicable, return such SOV Resources to SOV's possession, custody and control at a SOV designated location, upon the expiration or termination of the applicable Statement of Work, in the same condition it was in on the Statement of Work Effective Date or such other date such SOV Resources were initially made available to Supplier, if later, in each case ordinary and reasonable wear and tear excepted.

- (b) If specified in a Statement of Work, SOV shall assign, and Supplier shall assume, all of SOV's obligations under leases for Equipment used to provide Services in such Statement of Work or SOV may sell Equipment owned by it to Supplier ("**Transferred Equipment**"). Supplier, with SOV's assistance, shall seek to obtain consents to such assignments and shall arrange for full releases of SOV's liability under such leases and provide such other security, collateral or insurance, as SOV may reasonably require, to indemnify and hold SOV harmless from and against any further liability. The Statement of Work shall state any other terms and conditions applicable to such Transferred Equipment, if any. Assignment of SOV's interests in the Transferred Equipment is and shall be made "AS IS," AND "WHERE IS," WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND AND SPECIFICALLY WITHOUT ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

12.2 Facilities. Except for SOV Resources as described in this Section and as specifically set forth in a Statement of Work, Supplier will be responsible for procuring, managing, maintaining and otherwise making available all Resources necessary to provide the Services in accordance with the Requirements hereunder. Supplier will seek and obtain SOV's prior written approval for any relocation of any Supplier Facilities at, from or through which the Services are provided and shall mitigate any impact to SOV. Any such relocation shall be without additional cost to SOV. Unless otherwise provided in a Statement of Work, no Supplier Facility providing Services pursuant to this MSA and any Statement of Work shall be located outside the United States.

12.3 Dedicated/Partitioned Environment. Unless otherwise provided in a Statement of Work, Supplier shall provide all Services in the United States using customer care consultants and line leadership dedicated to supporting SOV and Supplier shall not provide any Services from a non-partitioned or shared processing environment unless specifically approved in writing by SOV, in its sole discretion. In addition to any other security requirements and protections specified in this MSA, those areas of Supplier's Facilities used in the provision of the Services or in which SOV Information is stored, used, accessible, transmitted, processed or otherwise available shall be partitioned and separately secured. Security controls will include, at a minimum: (i) inspecting,

authenticating and verifying identification and allowing only authorized personnel to enter such Supplier Facilities and partitioned areas; (ii) monitoring and logging access to Supplier Facilities and partitioned areas; (iii) utilizing Equipment and Software that do not allow for the physical download of SOV Information (*e.g.*, computers without attached CD-ROM); and (iv) printing and/or reproducing physical copies only as necessary to perform the Services (*i.e.*, on a “need-to-print”, “need to copy” basis), providing SOV with access, upon request and on a periodic basis, to print logs maintained by Supplier, and establishing, maintaining and enforcing policies approved by SOV requiring the shredding and secure disposal of documents, materials and all media containing SOV Information and that no physical copies are removed from secured and partitioned areas of Supplier’s Facilities. Equipment located in partitioned SOV areas of Supplier’s Facilities will be on a separate local area network and will have a separate file server and Supplier Personnel will not have access (*e.g.*, email or Supplier file servers) therefrom. The cost of building out the segregated and partitioned SOV areas of Supplier’s Facilities will be borne by Supplier.

12.4 SOV Facilities. If and to the extent specified on the Statement of Work, during the Statement of Work Term, SOV shall make available to Supplier space in any SOV facility applicable to the Services and Statement of Work involved (“**SOV Facility**”), subject to the conditions that Supplier: (i) shall only use such space solely and exclusively for and in support of the Services; (ii) shall not use SOV Facilities to provide goods or services to or for the benefit of any third party; (iii) shall comply with the leases, security, use and rules and agreements applicable to the SOV Facilities; (iv) shall not use SOV Facilities for any unlawful purpose; (v) shall comply with all policies and procedures governing access to and use of SOV Facilities that are provided to Supplier in writing; (vi) instruct Supplier Personnel not to photograph or record, duplicate, disclose, transmit or communicate any SOV Information or any other information, materials, data or other items, tangible or intangible, obtained or available as a result of permitted use of SOV Facilities; and (vii) return such space to SOV in the same condition it was in on the Statement of Work Effective Date, ordinary wear and tear excepted. SOV Facilities will be made available to Supplier on an “AS IS, WHERE IS” basis, with no warranties whatsoever.

13. SUPPLIER PERSONNEL

13.1 Qualifications; Personnel Security; Continuity.

- (a) Supplier will perform and support the Services consistent with the Requirements. Supplier Personnel will be properly educated, trained and qualified for the Services they are to perform and Supplier will put appropriate training in place to meet initial and on-going training requirements of Supplier Personnel assigned to perform Services.
- (b) Supplier shall be responsible, at its own cost and expense, for any and all recruitment, hiring, Supplier-specific training, education and orientation for all Supplier Personnel assigned or to be assigned to perform Services or support the Requirements, including any costs and expenses to smoothly and successfully transition or migrate Services to Supplier in a timely and efficient manner, if and as specified in the Statement of Work. The Charges for SOV program-specific training will be set forth in the Statement of Work.
- (c) Except as otherwise agreed in a Statement of Work, all Supplier Personnel, in addition to any Supplier security policies and procedures, shall be required to comply

with the security requirements in this MSA and SOV's Security Policies, as set forth in Exhibit F, as such policies may be modified, amended or replaced from time to time. Supplier Personnel in a position to obtain or have access to SOV Information shall be subject to the background checks set forth in Exhibit F-1.

- (d) All Supplier employees providing or assigned to provide Services or otherwise in a position to obtain or have access to SOV Information, shall execute the Intellectual Property Rights Agreement substantially in the form attached as Exhibit B-1, prior to being assigned by Supplier and commencing performance of any Services or work in support of any Services hereunder. Supplier shall provide SOV with a signed copy of each such agreement immediately after each is signed as required.
- (e) The timing for transfer, reassignment or replacement of Supplier Personnel will be coordinated with requirements for timing and other elements of the Services so as to maintain continuity in the performance of the Services and avoid interruption or disruption to the Services or any failures to maintain Service Levels. Except as otherwise set forth herein, with respect to Key Supplier Positions, a transfer, reassignment or replacement will only be performed in accordance with a succession plan mutually agreed upon by the parties.
- (f) If SOV believes any Service requires continuity and dedicated support or attention from Supplier, SOV may request, by written notice to Supplier, that Supplier assign one or more individuals, on a full time, dedicated and exclusive basis to the support, performance and provision of such Service and the parties will work through the details of any such assignment, temporary or permanent, in accordance with the Change Control Procedures, including the documentation of additional Charges, if any, for same.

13.2 Key Supplier Positions.

- (a) Certain Supplier Personnel positions are or will be identified in this MSA or a Statement of Work as "**Key Supplier Positions**" which shall include, at a minimum, the Supplier Account Manager described below and a project manager for each Statement of Work ("**Supplier Statement of Work Project Manager**") described below. SOV reserves the right to approve Key Supplier Position assignments which approval shall not be unreasonably delayed or withheld, and SOV and Supplier may agree to change or update the Key Supplier Positions at any time and from time to time based on mutual agreement. Unless otherwise set forth in a Statement of Work, Supplier will cause the personnel filling the Key Supplier Positions to devote full time and dedicated effort to the provision of the Services and the achievement of Service Levels required for the Services. Personnel filling Key Supplier Positions will be assigned for the period of time set forth in the Statement of Work, if any, or if not, then the shorter of the duration of their positions under the applicable Statement of Work, or eighteen (18) months, and Supplier will obtain SOV's written approval at least sixty (60) days prior to changing or reassigning any personnel filling the Key Supplier Positions; provided, however, Supplier will have no obligation to obtain such sixty (60) days prior approval of the Key Supplier Position change in the event that (i) Supplier is terminating the employment of the individual for cause, (ii) the individual has terminated his or her employment with Supplier, or (iii) the individual

is physically unable to perform his or her required functions (e.g., death, illness, military service, or in compliance with the Family and Medical Leave Act) (provided that in any event SOV shall have the right to approve the replacements therefor which approval shall not be unreasonably delayed or withheld).

- (b) Supplier will designate an individual to serve as the “**Supplier Account Manager**” who will: (i) be a senior employee within Supplier’s organization, with the information, authority and resources available to cause Supplier to properly discharge its responsibilities to SOV required hereunder (including all then current Statements of Work); (ii) serve as primary interface and the single-point of accountability and responsibility for the relationship between the parties; (iii) have responsibility for SOV customer satisfaction and authority to manage resolution of issues raised by SOV; (iv) devote all appropriate efforts to managing and coordinating the Services (and the parties on the Effective Date estimate this will require approximately one quarter dedication); and (v) periodically visit Supplier's Facilities, or SOV’s Facilities or such other appropriate location as reasonably requested by SOV.
- (c) Supplier will under each Statement of Work designate an individual to serve as the “**Supplier Statement of Work Project Manager**” who will: (i) be a senior employee within Supplier’s organization, with the information, authority and resources available to properly discharge the responsibilities required hereunder; (ii) serve as primary interface and the single-point of accountability and responsibility for the provision of Services by Supplier; (iii) have day-to-day responsibility for, and authority to manage, SOV customer satisfaction; (iv) devote full time and dedicated efforts to managing and coordinating the Services; and (v) be located at Supplier's Facilities, or State of Vermont Facilities or such other appropriate location as Supplier and SOV may mutually agree.

13.3 Personnel Assigned to SOV Account.

- (a) SOV and Supplier both agree it is in their best interests to maintain the continuity of Supplier Personnel performing the Services. Accordingly, Supplier will provide SOV with data concerning the turnover rate of Supplier Personnel under this MSA (including the turnover rate applicable to staff holding ‘middle-management’ positions and other separate categories reasonably requested by SOV), meet with SOV to discuss the reasons for, and impact of, staff turnover and otherwise keep and/or restore such turnover rate to a level commercially reasonable in light of the geographic locations of the Services and the nature of the Services being performed, as may be further described in the applicable Statement of Work. If appropriate, Supplier will submit to SOV its proposals for reducing the turnover rate, and the parties will mutually agree on a program to bring the turnover rate to acceptable levels.
- (b) f SOV reasonably determines for any lawful purpose that any Supplier Personnel may be adversely affecting the Services, SOV, SOV’s business, operations or reputation, is acting in a manner inconsistent with or detrimental to the proper performance and delivery of Services, is or may be disruptive or unqualified, or has violated any Laws or any Supplier or SOV policies or Requirements hereunder, Supplier will attempt to remediate the situation, and if unable within a reasonable time to remediate the situation to the reasonable satisfaction of SOV, or if Supplier determines instead to remove such

individual, then Supplier shall promptly remove such individual from the SOV account and shall replace such individual with another individual of suitable ability and qualification.

- (c) There will be no charge to SOV for any replacement or temporary employee or other personnel while the replacement acquires the necessary orientation and training to properly take on the position and make a productive contribution commensurate with the requirements of the position.

13.4 Changes in Supplier Personnel.

- (a) If Supplier fails in any material respect to meet the Requirements, and a root cause analysis determines that the failure was due in material part to an inadequate number of personnel, then Supplier shall promptly assign appropriate personnel to address the inadequacy. As mutually agreed, changes to the number of Supplier Personnel shall be documented either as part of the forecasting process or in accordance with the Change Control Procedures. Notwithstanding the foregoing, nothing herein shall be deemed to require Supplier to increase the number of those Supplier Personnel who are assigned to perform Services for SOV on a variable basis (e.g., CC agents) without adjusting the Charges as set forth in the applicable Statement of Work.
- (b) Unless SOV is paying for specific Services hereunder on a fixed price basis, if SOV believes that Supplier is inefficiently utilizing any Resources or Supplier Personnel assigned to perform Services, SOV may give Supplier a notice requesting a decrease in the number of Supplier Personnel. Upon receipt of such notice, Supplier shall, within five (5) days from SOV's notice, provide SOV with a recommendation which Supplier reasonably considers will accomplish the requisite decrease or Supplier may provide an objection to such decrease, citing the reasons therefor in reasonable detail. SOV and Supplier will discuss any objections and mutually agree upon any modifications necessary to Supplier's recommendation. The provisions of this Section shall be deemed to amplify, where necessary, the staffing procedures set forth in Section 10.2 [Forecasting].

13.5 Transition of Supplier Employees. During each Statement of Work Term, Supplier shall make available to SOV or SOV's designee any Supplier Personnel performing Services on a time and materials basis in connection with that Statement of Work at the Charges applicable to that individual based upon the rates applicable under that Statement of Work.

13.6 Non-Solicitation. Except as specifically set forth in this MSA or otherwise agreed to by the parties in writing and subject to 3 V.S.A. §312, during and for a period of one (1) year after the later of the expiration or termination of the Term or any Statement of Work Term, SOV shall not directly solicit, recruit, hire, retain or engage the services of any of Supplier's personnel, without the express prior written consent Supplier. If any of Supplier's personnel choose to apply for employment with SOV, SOV will consider the candidate in the same manner it evaluates any applicant, and can freely hire Supplier's personnel, consistent with applicable law.

14. THIRD PARTY CONTRACTS.

14.1 Third Party Contracts – SOV –Deleted.

14.2 Third Party Contracts – Supplier. SOV acknowledges and understands that Supplier has third party contracts with the following Supplier subcontractors: (i) Cosentry, Inc. for data center hosting; (ii) Allison Payment Systems, LLC for printing and postal delivery of invoices; and (iii) Sage Payment Solutions, a merchant acquirer for procuring card based payment transactions. SOV hereby consents to the use by Supplier of these subcontractors, provided however that any such consent is not deemed acceptance of the terms of any subcontracts by SOV and that the provisions of Section 16.3 apply .

15. INTELLECTUAL PROPERTY RIGHTS.

15.1 Software; Escrow. Deleted.

15.2 New Software. Any new Software to be used in connection with Services after the Statement of Work Effective Date shall only be added to the Statement of Work using the Change Control Procedures and shall be subject to the terms and conditions applicable to such Software as set forth herein or as may be otherwise mutually agreed in the Change Control Procedures.

15.3 SOV Software and Intellectual Property. Each Statement of Work shall identify any SOV Software that Supplier will be authorized to use to perform the Services and effective as of the applicable Statement of Work Effective Date and subject to any additional restrictions contained therein, Supplier will have a limited license, during that Statement of Work Term, to use and access the identified SOV Software; provided, however, that under no circumstances shall Supplier access or use any SOV Software for any purpose other than the performance of Services or in support of Supplier’s obligations to SOV under this MSA. Supplier shall discontinue and cease use of such SOV Software upon completion, expiration or termination of the Statement of Work.

(a) Except for the limited rights and licenses granted to Supplier in connection with the Services as specified in this MSA, SOV shall retain all right, title and interest in and to all Customer Data, and to all Information that is created under this MSA as a result of the provision of Services, including, but not limited to, all data that is generated under this MSA as a result of the use by Supplier, SOV or any third party of any technology systems or knowledge bases that are developed for SOV and used by Supplier to deliver the Services under this MSA (“**SOV Information**”), and to SOV Resources, SOV Software, SOV intellectual property, and all other rights, tangible or intangible (collectively, “**SOV Intellectual Property**”). Supplier may not use SOV Intellectual Property for any purpose other than as specified in this MSA. Upon expiration or termination of this MSA or any applicable Statement of Work, all such licenses granted to Supplier in connection therewith shall immediately terminate without further notice required, and Supplier shall return or destroy all SOV Intellectual Property and all copies thereof, and Supplier shall have no further right or license to such SOV Intellectual Property.

b) SOV retains all right, title and interest in and to SOV Software and except for the specific rights and limited license granted to Supplier hereunder, nothing shall or shall be construed as granting to Supplier any right or license under any of SOV’s present or future patent rights or copyrights, or as granting to Supplier any right or license to use for any purpose other than those purposes expressly stated herein any SOV Information or any other Resources, Work Product or other items received, discovered, or produced by Supplier in connection with the Services nor shall or shall be construed to restrict, impair, transfer, license, convey or otherwise alter or deprive SOV of any of its rights or proprietary interests therein, all of which are hereby expressly reserved.

15.4 Third Party Software. Each Statement of Work will specify any Third Party Software licensed by SOV to which Supplier will be granted access or licensed by Supplier on behalf of and for the benefit of SOV, under the same conditions and restrictions as SOV Software noted above, for use in connection with the provision of the Services; provided, however, the Statement of Work shall include any additional restrictions or terms and conditions applicable to such Third Party Software, including such duties, use and confidentiality obligations imposed on SOV under the licenses for such Third Party Software. All licenses for Third Party Software are subject to prior SOV approval. Unless otherwise specified in a Statement of Work, Supplier will assume operational and financial responsibility for such Third Party Software and any related maintenance obligations during the applicable Statement of Work Term, to the same extent as if Supplier were the licensee of such Third Party Software. Unless otherwise specified in a Statement of Work, Supplier will pay such third party licensors directly, or reimburse SOV upon receipt of invoices therefor, for all license fees, royalties, use, support and other charges and amounts due under such Third Party Software licenses commencing upon the Statement of Work Effective Date and continuing throughout the Statement of Work Term. Supplier will cease use of such Third Party Software upon expiration or termination of the applicable Statement of Work. Subject to the indemnification procedures set forth in Section 24.6, Supplier agrees to defend, indemnify, and hold SOV and its respective officers, directors, employees, suppliers, customers, successors and permitted assigns, harmless from and against any and all actual or alleged Losses in connection with any claim or action relating to or arising out of Supplier's breach or failure to comply with its obligations to SOV or to the owner or licensor of said Third Party Software.

15.5 Supplier Software. Each Statement of Work will identify any Supplier Software that will be used to provide Services and in all respects, Supplier will be responsible for such Supplier Software. Supplier shall not use any Supplier Software to provide Services that is not set forth in a Statement of Work or added thereafter through the Change Control Procedures. Supplier shall install, operate, update and maintain, at its expense, all Supplier Software used in connection with the Services. Supplier shall not use any Supplier Software to provide Services that is not available to SOV on reasonable commercial terms in the marketplace unless SOV's written approval, which may be withheld in SOV's sole discretion, is obtained in advance. As of the applicable Statement of Work Effective Date and continuing until the expiration of the Statement of Work, Supplier grants to SOV and its suppliers, a limited, revocable, worldwide, royalty free, non-exclusive right and license (or such other equivalent or comparable rights required) to access and use all Services solely in connection with, and to the extent necessary to receive the deliverables and Work Product specifically set forth in the Statement of Work. Except for the limited rights and licenses as are granted to SOV in connection with the Services as specified in this MSA, Supplier shall retain all right, title and interest in and to its Information, Resources, Facilities, Supplier Software, Supplier IP and derivatives thereof (as that term is defined under U.S. copyright law, Title 17 U.S.C.), and all other rights, tangible or intangible ("**Supplier Goods**"). Upon expiration or termination of this MSA or any applicable Statement of Work for any reason, (except as otherwise set forth in the Statement of Work or another document agreed to by the parties) all such licenses granted to SOV in connection therewith shall immediately terminate without further notice required, and SOV shall return all Supplier Goods and all copies and SOV shall have no further right or license to such Supplier Goods. So long as SOV has any right to use any Supplier Goods, Supplier grants to SOV a nonexclusive, royalty-free, worldwide and limited right and license to receive the Services described in a Statement of Work for its operation of the Exchange. The parties specifically agree that any language or provisions contained in any "shrinkwrap" or "clickwrap" or other electronic version of any license agreement or other

document which may accompany the Supplier Software is of no force and effect if, and to the extent that, any such language or provisions conflict with any terms of this MSA.

15.6 Work Product.

- (a) All Work Product shall belong exclusively to SOV, with SOV having the sole and exclusive right to apply for, obtain, register, hold and renew, in its own name and/or for its own benefit, all patents and copyrights, and all applications and registrations, renewals and continuations thereof and/or any and all other appropriate protection. To the extent exclusive title and/or complete and exclusive ownership rights in and to any Work Product may not originally vest in SOV by operation of Laws or otherwise as contemplated hereunder, Supplier shall immediately upon request, unconditionally and irrevocably assign, transfer and convey to SOV all right, title and interest therein. Without any additional cost to SOV, Supplier Personnel shall promptly give SOV all reasonable assistance and execute all documents SOV may reasonably request to assist and enable SOV to perfect, preserve, enforce, register and record its rights in and to all Work Product; provided, however, SOV shall reimburse Supplier for reasonable Out-of-Pocket Expenses incurred at the specific request of SOV in connection therewith. Supplier hereby appoints SOV, through its designated signatory, as Supplier's agent and Attorney-in Fact to execute, deliver and file, as and if necessary, any and all documents necessary to give effect to the provisions of this Section and to take all actions necessary therefore, in Supplier's stead and name, with the same force and effect as if executed, delivered and/or filed by Supplier.
- (b) Pursuant to Section 13.1(d), Supplier shall cause all Supplier Personnel charged with performing Services in connection with this MSA, or who are otherwise in a position to obtain or be granted access to SOV Information, to execute Exhibit B-1. Supplier shall require that all Supplier Personnel comply with the provisions of the attached Exhibit B-1 and Supplier is responsible for any failure of any Supplier Personnel to comply with all such provisions, and Supplier shall be responsible for enforcing the provisions of such forms; provided, however, that SOV shall have the right to do so, at Supplier's cost and expense, if and/or to the extent Supplier is unwilling or unable or fails to do so for any reason. Periodically, and unless otherwise specified in the Statement of Work, no less frequently than each week during the Statement of Work Term, Supplier shall provide SOV with the most current versions of all Work Product and related Documentation.

15.7 Supplier Property. Nothing in this MSA shall be construed to transfer, convey, restrict, impair or deprive Supplier of any of its ownership or proprietary rights or interest in any Supplier IP, work, ideas, inventions, discoveries, tools, methodology, computer programs, processes and improvements, computer processes, specifications, operating instructions, notes, and any other documentation (whether or not patentable) created by Supplier prior to, or, other than Work Product, during the provision of the Services and the delivery of Work Product or which has been independently developed by Supplier without use of or reference to any SOV Information (hereinafter, "Supplier Property"). Supplier Property will not be incorporated into any Work Product. Supplier retains all right, title and interest in and to Supplier IP and except for the specific license relating to the receipt of Supplier Services granted to SOV hereunder and ownership by SOV of Customer Data, nothing shall or shall be construed as granting to SOV, the State of Vermont and/or any third party any right or license under any of Supplier's present or future Supplier IP, or as granting to SOV, the State of Vermont and/or any third party any right or

license to use for any purpose other than those purposes expressly stated herein any Supplier Information or any other Supplier Resources or Supplier Facilities or other Supplier proprietary items received, discovered or produced by Supplier in connection with the Services nor shall or shall be construed to restrict, impair, transfer, license, convey or otherwise alter or deprive Supplier of any of its rights or proprietary interests therein, all of which are hereby expressly reserved.

- (a) CGI and the State of Vermont acknowledge that Supplier is a provider of commercial premium billing and payment processing services enabled by Supplier's proprietary technology and has developed materials, processes and systems prior to entering into this Agreement. Supplier will continue to develop materials, processes and systems as Supplier provides services to third parties and as Supplier provides the Services, and in addition to the Supplier IP, Supplier may own other patent, trade secret, copyright, trademark and other proprietary rights in techniques, brands, models, systems and concepts that were not paid for by the State of Vermont (collectively "**COCO IP**"). COCO IP and Supplier IP are proprietary to Supplier and shall remain Supplier's exclusive property. As Supplier provides the Services, CGI and the State of Vermont will receive the benefit of COCO IP and Supplier IP (in their current state and as each is improved/developed), but CGI (on its own behalf and not on behalf of the State of Vermont) hereby waives any and all claims that it may have now or may hereafter have in any jurisdiction to so-called "rental rights," "moral rights" and all rights of "droit moral" with respect to COCO IP and Supplier IP and to the results and proceeds thereof.
- (b) If SOV requests and agrees in a Statement of Work to directly and explicitly pay for customizations of Supplier's COCO IP ("Customizations"), the terms and conditions of ownership of and rights to use of the Customizations shall be governed by this Section 15.7(b). SOV agrees that Customizations shall remain the exclusive property of Supplier, and that Supplier shall retain all right, license, and interest thereto. However, consistent with Section 15.7(d) below, Supplier agrees to grant SOV and the Centers for Medicare & Medicaid Services, an agency of the Department of Health and Human Services, a royalty-free, nonexclusive and irrevocable right to use the Customizations as part of the Services or under contract with Supplier for similar services for Federal purposes and to authorize others to do so. "Federal purposes" include the purpose of administering health insurance exchanges under the Affordable Care Act of 2010. Supplier is further subject to applicable regulations governing patents and inventions, including those issued by the Department of Commerce at 37 CFR Part 401.
- (c) SOV and Supplier acknowledge that SOV and Supplier may also agree in a Statement of Work that Supplier will develop custom software for SOV which are not Customizations and which will become SOV Software. Any such agreement will be clearly stated in the Statement of Work.
- (d) Without limiting any rights of SOV in this MSA or any Statement of Work, Supplier acknowledges that this MSA is in support of SOV's implementation of the Patient Protection and Affordable Care Act of 2010, and is subject to the certain property rights provisions of the Code of Federal Regulations and a Grant from the Department of Health and Human Services, Centers for Medicare & Medicaid Services. This MSA is subject to, and incorporates by reference, 45 CFR 74.36 and

45 CFR 92.34 governing rights to intangible property. Supplier must deliver all SOV Software and all Work Product to SOV in a manner that ensures the Centers for Medicare & Medicaid Services, an agency of the Department of Health and Human Services, obtain a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use the SOV Software and Work Product for Federal purposes and to authorize others to do so. "Federal purposes" include the purpose of administering health insurance exchanges under the Affordable Care Act of 2010. Supplier is further subject to applicable regulations governing patents and inventions, including those issued by the Department of Commerce at 37 CFR Part 401.

15.8 Residual Knowledge. Nothing contained in this MSA shall restrict either party from the use of general ideas, concepts, know-how, methodologies, processes, technologies, algorithms or techniques retained in the undocumented mental impressions of such party's personnel relating to the Services which either party, individually or jointly, develops or discloses under this MSA or any Statement of Work ("**Residual Knowledge**"); subject to the condition that in or by doing so such party does not infringe the intellectual property or other proprietary rights of the other party or any third parties, does not violate any Laws or breach any obligation, including any confidentiality obligation under this MSA.

16. CONTRACT AND PROJECT MANAGEMENT.

16.1 Meetings. The types, frequency and mutual responsibilities of the parties with respect to the manner in which they conduct meetings during the Term shall be set forth in the applicable Statement of Work.

16.2 Reports. Supplier shall provide SOV with periodic reports as described in the applicable Statement of Work (hereinafter, each a "**Report**") and hereby warrants that the information provided in such Reports shall be true and accurate at the time that it is provided, and that Supplier will act reasonably in accordance with the information provided in such Reports.

16.3 Subcontracting.

- (a) Other than as explicitly provided for herein, Subcontracting under this MSA is strictly prohibited without the prior written consent of SOV, which consent SOV may withhold in its sole and absolute discretion. Supplier contractors approved by SOV shall be identified in the applicable Statement of Work; provided, however, that Supplier will be and remain SOV's primary point of contact; and provided, further, that Supplier will at all times remain responsible and liable for all obligations, services and functions performed by any such third parties, whether contractors or any other permitted parties, to the same extent as if performed or to be performed by Supplier.
- (b) Supplier will include, as flow-down provisions in each agreement with an approved contractor, terms and conditions substantially similar to the provisions of this MSA necessary to cause Supplier and each Supplier contractor to remain in compliance with the obligations of this MSA. Such flow-down provisions will be deemed to include, to the extent applicable to each such subcontractor, but are not limited to, Section 6.2 [Service Delivery Mechanisms], Section 6.7 [Premier Customer], Article 8 [Acceptance], Article 9 [Third Party Cooperation], Section 10.1 [Corrective Maintenance], Section 10.3 [Preventive Maintenance], Section 11.3 [Measurement

and Monitoring Tools], Section 12.3 [Dedicated/Partitioned Environment], Section 12.4 [SOV Facilities], Section 13.1 [Qualifications; Personnel Security; Continuity], Section 13.6 [Non-Solicitation], Article 15 [Intellectual Property Rights], Section 16.3 [Subcontracting], Article 17 [Audits], Article 21 [Confidentiality], Article 22 [Security], Section 23.2 [Supplier Representations and Warranties], Section 26.7 [Termination Assistance], Section 28.2 [Assignment], Section 28.10 [Severability], and Section 28.12 [Survival]. In addition, to the extent that any subcontractor will have access to Customer Data or otherwise have contact with SOV Clientele (and prior to permitting any subcontractor to access Customer Data), Supplier shall be responsible for ensuring that such subcontractor is fully knowledgeable about and will remain compliant with the rules, regulations, policies and guidelines promulgated by CMS, including those relating to HIPAA, as well as in compliance with all other Insurance Industry Regulations and Data Security Standards. Supplier will not disclose SOV Information to any third party, including any Supplier Affiliates, contractor or other entity or any Supplier Personnel, until due and proper execution of the applicable forms attached as Exhibit B. Supplier will also cause any approved Supplier contractor to enter into a Business Associate Subcontract in substantially the form of the Business Associate Agreement attached as Exhibit K.

- (c) Without limiting SOV's discretion under this MSA, SOV shall have the right to withhold or, if applicable, revoke approval of any Supplier contractor, if its performance is deficient, misrepresentations were found to have been made at any time, or for other factors related to SOV's experience with or any background reference checks made regarding such contractor (whether or not related to this MSA); provided, however, that in no event will such revocation be deemed to relieve Supplier of its obligations to continue to perform the Services of such subcontractor or otherwise relieve Supplier of its liability to SOV for the acts and/or omissions of such subcontractor or any other contractor that may subsequently perform such Services.

16.4 Quality Assurance and Improvement Supplier will provide quality assurance and continuous quality improvement through: (i) identification and application of proven techniques and tools from other accounts under its control or supervision (i.e., "best practices"); (ii) the use and application of products, processes and procedures, such as, by way of example, only: CMM for Software and eSCM models, Six-Sigma processes, ISO 900-2000 standards and COPC guidelines; and (iii) implementation of concrete programs, practices and measures approved by SOV in writing. Supplier shall provide SOV with detailed documentation describing its quality assurance processes, tools, methodologies, procedures and protocols to be implemented and adhered to in connection with the Services, and once approved by SOV shall be included as part of the Requirements applicable to the Services associated with said quality assurance and quality improvement.

16.5 Customer Satisfaction Survey. Supplier shall conduct a customer satisfaction survey for SOV designated end-users of the Services, unless SOV opts to forego any such survey as provided more fully in the applicable Statement of Work. The scope, timing, format and content of such survey and the procedures by which each such survey will be conducted and administered shall be set forth in the Statement of Work or in accordance with the Change Control Procedures, and therefore, subject to SOV's prior written approval.

16.6 Training. Each of the parties shall notify the other of their respective training policies and procedures and, at least once per year during the Statement of Work Term or any time upon SOV's request, Supplier will provide SOV with a copy of all documentation applicable to Supplier's training program, including training manuals and documentation. Supplier, upon request, shall provide such training to a reasonable number of individuals designated by SOV, to enable SOV personnel to understand the operations of the Services, at a minimum, to train SOV personnel involved in supervising or assisting in the provision of Services, and each of the parties may be required to engage in "train-the-trainer" training to enable the other party personnel to provide Services training to others. Supplier shall implement product-specific training that is provided to Supplier by SOV and any other training Supplier deems necessary or reasonably requested by SOV to ensure an adequate number of trained, qualified Supplier Personnel are available to meet the Requirements and perform the Services at the required Service Levels.

16.7 Problem Codes; Credits. In the event of any Service problems or failure to meet the Service Levels or Requirements hereunder, howsoever caused, regardless of how such problem or failure came to the attention of either party and regardless of which party or entity discovers, notifies any other party hereunder, SOV shall, upon learning of the problem, report the problem to Supplier as described in the Statement of Work. SOV shall notify Supplier of the Problem as set forth in the Statement of Work. Supplier shall commence problem resolution activities as set forth in the Statement of Work. Service Level Credits applicable to any failure to meet the Service Levels under any Statement of Work shall be taken, consistent with this MSA and the provisions specified in the applicable Statement of Work.

17. AUDITS.

17.1 Audit Rights. Supplier 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 MSA. Supplier will provide to SOV, 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 Supplier Personnel and to any and all Supplier Facilities or where the required information, data and records are maintained, for the purpose of performing audits and inspections (including unannounced and random audits) of Supplier and/or Supplier Personnel and/or any or all of the records, data and information applicable to this MSA. At a minimum, such audits, inspections and access shall be conducted to the extent permitted or required by any Laws applicable to SOV or Supplier (or such higher or more rigorous standards, if any, as SOV or Supplier applies to its own similar businesses, operations or activities), to (i) verify the accuracy of charges and invoices; (ii) verify the integrity of SOV Information and examine the systems that process, store, maintain, support and transmit that data; (iii) examine and verify Supplier's and/or its permitted contractors' operations and security procedures and controls; (iv) examine and verify Supplier's and/or its permitted contractors' disaster recovery planning and testing, business resumption and continuity planning and testing, contingency arrangements and insurance coverage; and (v) examine Supplier'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; (4) quality initiatives and quality assurance, (5) contingency and continuity planning, disaster recovery and back-up procedures for processes, resources and data; (6) Supplier's and/or its permitted contractors' efficiency and costs in performing Services; (7) compliance with the terms of this MSA and applicable Laws, and (8) any other matters reasonably requested by SOV. Supplier shall provide and cause its permitted contractors to provide full cooperation to such auditors, inspectors, regulators and representatives

in connection with audit functions and with regard to examinations by regulatory authorities, including the installation and operation of audit software. Notwithstanding anything in this Article 17 to the contrary, audits conducted on Supplier premises shall be limited to systems and data solely related to SOV and the Services; provided that if any audit to be conducted by or on behalf of SOV would be prevented or restricted because of systems and data that relate to both SOV and to other Supplier customers, Supplier will reasonably cooperate to permit an audit that meets SOV's needs while not providing access to the confidential information of other Supplier customers or any systems, data or information belonging or relating to any customer other than SOV. Further, SOV shall only be provided access to cost data which forms the basis upon which SOV is charged (e.g., reimbursable expenses, out-of-pocket expenses, or cost-plus charges) and/or are necessary to calculate the applicable variable fees, but not cost components of any fixed price charges. In performing audits, SOV and any auditors shall endeavor to avoid unnecessary disruption of Supplier's operations and unnecessary interference with Supplier's ability to perform the Services in accordance with the Service Levels. Any external auditor retained by SOV in connection with audits under this Section shall execute a non-disclosure agreement with provisions no less stringent than those set forth in Article 21 [Confidentiality].

17.2 Supplier Audits and Certifications.

- (a) **Certifications.** Supplier shall obtain and maintain all certifications listed in each Statement of Work. Supplier shall promptly notify SOV of any other certifications obtained by Supplier relating to the Services or the Resources used by Supplier to provide the Services. Supplier shall promptly notify SOV of any failure to obtain or maintain any required certification, or any other certification of which SOV is notified under this Section, and shall provide SOV with a written plan to obtain or re-acquire each such failed certification.
- (b) **SSAE-16.** Unless otherwise expressly stated in the applicable Statement of Work, each year, starting in Supplier's new fiscal year which follows the first Services to support SOV's production activities, Supplier shall cause its external auditors to (i) perform a SSAE-16 SOC 2 audit, regarding those security, privacy, financial and processing integrity controls performed by Supplier that are relevant to SOV's operations, based on Supplier's fiscal year and Supplier's internal controls framework (the "Baseline Internal Controls Audit"), and (ii) produce an audit report in connection therewith (the "Baseline Internal Controls Audit Report"). On or about April 1st of each year, Supplier shall provide to SOV a copy of the most current Baseline Internal Controls Audit Report. The Baseline Internal Controls Audit shall be performed and the Baseline Internal Controls Audit Report shall be produced at no additional cost to SOV. In the event that SOV requests audit and reporting which are not covered by the Baseline Internal Controls Audit, such additional audit and reporting shall be (i) addressed through the Change Control Procedures, and (ii) performed by the same auditors who have performed the Baseline Internal Controls Audit, at SOV's cost and expense, unless Supplier is subject to another SSAE-16 audit for the same or similar operations that is acceptable to SOV, in which case SOV shall be provided with a copy of that other SSAE-16 audit.
- (c) **Government Audits.** On an annual basis, unless otherwise requested in writing by SOV, Supplier shall inform SOV of any audit of Supplier's data center(s) from which it provides Services or any other of its Facilities or operations it uses to provide Services by any agency of the federal government or the state of Vermont, and shall,

to the extent not prohibited by applicable law, provide SOV with a copy of the report or results of each such audit.

17.3 Audit Follow Up. Supplier shall promptly respond and rectify the deficiencies identified and implement changes suggested by any audit report relating to Supplier in a manner approved by SOV in writing. In the event that any audit of Charges or Services reveals that SOV has overpaid any amounts due to Supplier, Supplier shall promptly refund such overpayment.

17.4 Records Retention. Until the later of: (i) three (3) years after expiration or termination of this MSA; (ii) such time as is required by applicable Laws; or (iii) the date that all pending matters relating to this MSA (e.g., disputes) are closed or resolved by the parties, Supplier will maintain and provide access (and cause its permitted contractors to maintain and provide access) upon request to the records, data, documents and other information required to fully and completely enable and permit SOV to take advantage of its audit rights under this MSA (“**Audit Records**”). Upon termination or expiration of this MSA, SOV and Supplier shall mutually agree as to any records or documentation of which Supplier may retain one archived copy following the periods set forth above, and Supplier shall not destroy Audit Records without first giving SOV the option to have Supplier provide the same to SOV. Each Statement of Work may include additional retention provisions.

17.5 Financial Reports. The State of Vermont shall periodically review Supplier’s financial statements. To the extent that such financial statements are not publicly available, then at the State of Vermont’s request, Supplier shall provide the State of Vermont with copies of such financial statements. In addition, Supplier shall, at the State of Vermont’s request, provide the State of Vermont with access to Supplier’s senior financial executives, in order to discuss financial statements with the State of Vermont. The financial statements shall be reasonably detailed, prepared in accordance with generally accepted accounting principles, such as the International Financial Reporting Standards (IFRS), and be audited by an independent certified public accountant.

18. SOV RESPONSIBILITIES.

Except as otherwise set forth in Article 26 [Termination], SOV’s failure to perform any of its responsibilities set forth in this MSA or any Statement of Work shall not be deemed to be grounds for termination by Supplier; provided that Supplier’s failure to properly perform its obligations under this MSA or a Statement of Work will be excused if and to the extent that such failure would not have occurred but for SOV’s failure to perform its responsibilities required under this MSA and the Statement of Work involved, and Supplier provides SOV with reasonable notice of such nonperformance and uses commercially reasonable efforts to perform notwithstanding SOV’s failure to perform. SOV agrees to reimburse Supplier for Supplier’s additional Out Of Pocket Expenses for such efforts directly attributable to such SOV failure.

19. CHARGES.

19.1 General.

- (a) The Charges applicable to Services provided to SOV pursuant to Statements of Work entered into hereunder shall be Supplier’s current Charges as set forth in each Statement of Work. The Charges shall remain unchanged for the duration of the initial term of each Statement of Work. It is understood by the parties that this MSA is based on a fixed price per Work Product, all inclusive of overhead and expenses of

the Supplier. Unless otherwise mutually agreed to in writing by the parties, the Charges for any Statement of Work renewal term will not increase by more than the increase in the previous year of the Northeast Region Consumer Price Index Average for “all items” shown in such index for “Urban Wage Earners and Clerical Workers (including single workers), all items, groups, subgroups and special groups of items” published by the Bureau of Labor Statistics of the U.S. Department of Labor, or a successor index or a comparable index for the State of Vermont (or Burlington, Vermont) if one shall be determined by the Bureau of Labor Statistics, or except as set forth in the Statement of Work otherwise.

- (b) All Charges for the Services will be calculated, priced and billed to SOV in U.S. dollars and will not be subject to any adjustment for fluctuations in currency exchange rates, unless specifically identified in the applicable Statement of Work.
- (c) In accordance with the provisions of this MSA, SOV shall pay Supplier the Charges set forth in each Statement of Work as payment in full for the Services under such Statement of Work performed by Supplier. Unless otherwise specifically set forth in this MSA and always subject to and in accordance with Exhibit H, SOV shall not be obligated to pay any amounts other than as set forth in the Statements of Work.

19.2 Pass-Through Expenses.

- (a) “Pass-Through Expenses” means charges to be paid directly by SOV or through Supplier on an Out-of-Pocket Expenses basis. If the parties agree that a Pass-Through Expense is to be paid: (i) by SOV directly, Supplier will promptly provide SOV with the original third party invoice and back-up substantiation for the expense, together with a written confirmation that Supplier has reviewed the invoiced charges and has determined the charges are proper and valid and should be paid by SOV; or (ii) by Supplier, Supplier will act as payment agent for SOV and after reviewing the invoiced charges and determining the charges are proper and valid, will pay third party charges comprising the Pass-Through Expense. In the event Supplier is acting as SOV’s payment agent pursuant to (ii) above, Supplier will provide SOV with a reasonable opportunity to review the invoice to confirm Supplier’s determination. Following this review by Supplier and SOV, Supplier will pay the amounts due and will invoice SOV for such Pass-Through Expense.
- (b) Supplier will use commercially reasonable efforts to minimize the amount of Pass-Through Expenses. With respect to services or materials paid for on a Pass-Through Expense basis, SOV reserves the right to: (i) obtain these services or materials directly from a third party; (ii) designate the third party source for these services or materials; (iii) designate the particular services or materials (e.g., equipment make and model); provided that, if Supplier demonstrates to SOV this designation will have an adverse impact on Supplier’s ability to meet the Service Levels, this designation will be subject to Supplier’s approval; (iv) require Supplier to identify and consider multiple sources for these services or materials or to conduct a competitive procurement or bidding process; and (v) review and approve the Pass-Through Expense for these services or materials before entering into a contract for these services or materials.

19.3 Incidental Expenses. Supplier acknowledges that, except as expressly provided otherwise in the applicable Statement of Work, all other costs and expenses that Supplier incurs in performing the Services are included in Supplier's Charges to SOV and rates applicable hereunder.

Accordingly, such Supplier expenses are not separately reimbursable by SOV unless, on a case-by-case basis for unusual expenses, SOV has agreed in advance and in writing to reimburse Supplier for the expense.

19.4 Taxes.

- (a) Supplier understands and acknowledges responsibility, if applicable, for compliance with all SOV tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property within the State, corporate and/or personal income tax on income earned within the State.
- (b) Supplier certifies under the pains and penalties of perjury that, as of the Effective Date of this MSA, and the Effective Date of any Statement of Work, Supplier 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) Supplier understands that final payment under this MSA or any Statement of Work may be withheld if the Commissioner of Taxes determines that Supplier or any of its Affiliates 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) Supplier also understands that State of Vermont may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if Supplier has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and Supplier has no further legal recourse to contest the amounts due.

19.5 New Services. Any services outside the scope of the Services that are materially different from or which are not, explicitly or implicitly, already covered by the descriptions or categories of Services and which are requested by SOV will be considered "**New Services.**" New Services will be priced by Supplier at the rates that are (i) set forth in the applicable Statement of Work, if such rates for the New Services are contained therein, or (ii) such other rates as the parties may mutually agree upon and specify in the applicable Statement of Work. Supplier will not begin performing any New Services until the charges therefor have been approved by SOV or, if charges cannot be agreed upon, upon SOV's instruction to begin work and agreement to pay the charges proposed by SOV while the charges are being resolved. Any dispute over Charges will be resolved in accordance with dispute resolution procedures set forth in this MSA.

19.6 Deleted

20. INVOICING; PAYMENT; PAYMENT DISPUTES

20.1 Invoices. Unless otherwise specifically provided in this MSA or the Subcontract or Statement of Work involved, Supplier shall issue to SOV, monthly in arrears, a separate invoice in U.S. Dollars for the amounts due under such Statement of Work for Services provided in the previous month. Each invoice shall separately state Charges for each Statement of Work, Pass-Through Expenses and taxes payable, and shall include such detail and categories of information as mutually agreed upon by the parties. Each invoice shall separately itemize the specific sections

of this MSA or the Statement of Work on which such Charge is based and include calculations used to establish such Charges. Invoices shall be coded and charges segregated as directed by SOV to facilitate proper accounting among multiple funding sources and different cost allocations among different parts of the solution. All periodic Charges under this MSA (excluding charges based upon actual usage or consumption of Services) shall be computed on a calendar month basis and shall be prorated for any partial month.

20.2 Payment and Retainage.

- (a) Unless otherwise provided in this MSA or a particular Statement of Work, the undisputed portion of each invoice properly rendered and delivered hereunder shall be due and payable within thirty (30) days following the date such invoice is actually received by SOV. Any amounts disputed by SOV shall be disputed in accordance with the provisions of Section 20.3 [Payment Disputes]. All payments shall be made to Supplier by SOV in U.S. dollars, unless otherwise specifically agreed upon and set forth in the applicable Statement of Work.

(b) Supplier will be compensated solely by SOV. Accordingly, Supplier may not seek payment for Services provided to SOV under this MSA or any Statement of Work from any other person or entity. No payments made under this MSA shall be construed as evidence of the adequate performance of the Services nor shall any payments be construed as acceptance of any unsatisfactory Services by SOV.

20.3 Payment Disputes. In order to dispute an invoice, or any part thereof, SOV must set forth in writing the amount(s) disputed and the specific basis or reason for the dispute, which shall be reasonably detailed and not general or speculative in nature (“**Payment Dispute Notice**”). SOV shall forward a Payment Dispute Notice to Supplier on or prior to the due date of the invoice disputed. SOV shall not dispute any invoice unless SOV believes, in good faith, that SOV is being charged for Services which have not been provided or at prices higher than those set forth in the applicable Statement of Work(s), or that manifest errors in calculation or the like have occurred, or that SOV is otherwise being charged for items contrary to specific provisions of Exhibit H, the applicable Statement of Work(s) and/or the other provisions of this MSA. Upon compliance with the foregoing provisions, SOV may, at its option, withhold payment of the disputed amount(s) of the invoice, and shall remit to Supplier the undisputed amount(s), if any, in a timely manner. Upon receipt of the Payment Dispute Notice, both parties shall make reasonable, diligent, good faith efforts to resolve the dispute as soon as possible in accordance with the dispute resolution procedures set forth in Section 27.2 [Informal Dispute Resolution].

20.4 Liquidated Damages. The parties agree that failed, delayed, and/or other performance by Supplier not in compliance with the terms of this MSA or any Statement of Work will cause damages to SOV which may be uncertain and impractical or difficult to ascertain, and SOV shall assess, and Supplier promises to pay SOV in the event of such failed, delayed and/or other performance not in compliance with the terms of this MSA or any Statement of Work, the amounts described in the Statement of Work as liquidated damages (“**Liquidated Damages**”) and not penalties. The process for assessment of such Liquidated Damages is set forth in the Statement of Work. Any assessment of Liquidated Damages shall not constitute a waiver or release of any other remedy SOV may have under this MSA for Supplier’s failed or delayed performance or any other breach of this MSA, including without limitation, SOV’s right to terminate this MSA or any Statement of Work, or to recover damages caused by Supplier’s failure to perform its obligations under this MSA and each Statement of Work, subject to Section

25.2 (b); provided, however, that SOV will reduce such actual damages by the amounts of Liquidated Damages received for the same events causing the actual damages.

20.5 Credits; Refunds; Set Off. To the extent SOV is entitled to any credit other than a Service Level Credit, such credit shall be reflected on the first invoice rendered after the credit is earned. If the amount of any credit exceeds the amount owing to Supplier reflected on any invoice, Supplier shall pay the balance of the credit to SOV within thirty (30) days after the invoice date. If no further amounts are payable to Supplier under this MSA, Supplier shall pay the amount of the credit to SOV within thirty (30) days after the last invoice due date under the applicable Statement of Work. SOV shall be entitled to make payments in respect of all Charges and other amounts which become due to Supplier hereunder, in case, by wire transfer, purchase, debit or comparable payment card, device or other instrument and Supplier will undertake and establish any and all mechanisms, accounts or other arrangements to enable and facilitate any mechanism reasonably selected by SOV to make such payments hereunder. If Supplier receives a refund, credit or rebate for goods or services for which a corresponding Charge has been paid by SOV, Supplier shall promptly notify SOV and either credit such amount to the Statement of Work to which such refund, credit or rebate applies, or pay such amount to SOV, within thirty (30) days after Supplier's receipt thereof. With respect to any amount to be reimbursed to SOV or that is otherwise payable to SOV, SOV may upon notice to Supplier deduct the entire amount owed to SOV against the Charges payable or any other amounts owed or becoming due to Supplier. Further, SOV may set off any sums (including but not limited to Liquidated Damages or other damages) that Supplier owes SOV against any sums due Supplier under this MSA or any Statement of Work, 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 in 32 V.S.A. §3113.

21. CONFIDENTIALITY.

21.1 Non-Disclosure; Use Restricted; Exceptions.

- (a) Subject to the requirements of 1 V.S.A. §§ 315-320, the Vermont Access to Public Records Act, each party agrees to regard and preserve as strictly confidential all Information of the other party that may be obtained by such party from any source or may be developed as a result of this MSA. Each party agrees to hold the Information of the other in trust and confidence and will not disclose such Information to any individual or entity, except where required by Law, or use (directly or indirectly) any such Information for its own benefit or the benefit of any other party other than in the performance of its obligations under this MSA. Even when disclosure is permitted, each party agrees to limit access to and disclosure of the other party's Information to its employees and contractors (subject to any further provisions of this Agreement relating thereto) on a "need to know" basis. Without limiting the generality of the foregoing, Information includes trade secrets, Supplier IP, proprietary or competitive information, financials, the specific terms of this MSA, past and present operations, future plans and strategy and, unless the parties mutually agree upon a publicity or press release or other form of public announcement, the existence of a contractual or other relationship between the parties. In addition, in this MSA, without limiting the generality of any of other provision of this MSA, Personal Information, as hereinafter defined, is and shall be considered confidential and proprietary information, subject to all of the confidentiality, non-disclosure, security and other obligations applicable thereto. The term "**Personal Information**" means any and all information about individuals, including but not limited to names, signatures, addresses, driver's license numbers, any State-issued identification number, telephone numbers, account numbers, social security numbers, credit reports, demographic information, financial and other personal data, transaction information, and lists of

customers, employees, or investors, received from, created, received, available, accessible or obtained in any manner and/or from any source by Supplier as a result of this MSA and/or Services hereunder. The following provisions shall, to the extent the obligations herein are not already included comprehensively in any other sections of this MSA, shall apply to Personal Information:

- i. Supplier specifically acknowledges that in the performance of its obligations under this MSA and any Statement of Work, it will be a “data collector” pursuant to Chapter 62, Title 9 of the Vermont Statutes (9 V.S.A. §2430(3)).
- ii. Supplier shall each implement and maintain a comprehensive written information security program (hereinafter, the “**Information Security Program**”) which shall include all necessary measures, including, as appropriate, the establishment and maintenance of policies, procedures and technical, logical, physical, and administrative safeguards, to (i) ensure the security and confidentiality of Personal Information, (ii) protect against any foreseeable threats or hazards to the security or integrity of Personal Information, (iii) protect against unauthorized access to or use of such information, (iv) ensure that all Personal Information is encrypted in transit and during transmission and communication, and (v) ensure appropriate disposal of the Personal Information. Without limiting the generality of the foregoing, Supplier’s Information Security Program shall provide for (i) continual assessment and re-assessment of the risks to the security of Personal Information acquired or maintained by Supplier and its agents and contractors in connection with the Services, including but not limited to (X) identification of internal and external threats that could result in unauthorized disclosure, alteration or destruction of Personal Information and systems used by Supplier and its agents and contractors, (Y) assessment of the likelihood and potential damage of such threats, taking into account the sensitivity of such Personal Information, and (Z) assessment of the sufficiency of policies, procedures, information systems of Supplier and its agents and contractors, and other arrangements in place, to control risks; and (ii) appropriate protection against such risks. The adequacy of Supplier’s Information Security Program shall be subject to the review and approval of SOV and Supplier agrees to make such adjustments that SOV may deem necessary. Supplier shall, and shall require its agents and contractors to, regularly test key controls, systems and procedures relating to the Information Security Program. The frequency and nature of such Supplier tests shall be determined by Supplier's risk assessment, in consultation with SOV. Supplier shall provide SOV with the results of all such tests and any other audit, review or examination relating to its Information Security Program. Supplier certifies that its Information Security Program is and shall be in compliance with all applicable Laws as well as the specific provisions specified in Exhibit F [Vermont Security Policies], including all privacy, data security, data protection, breach notification, identity theft or other statutes, regulations, ordinances, court or regulatory orders applicable to Personal Information. For purposes of this MSA, references to and compliance with applicable Laws shall include compliance with Laws applicable to Personal Information of the jurisdiction in which an individual resides, even if such Laws do not otherwise impose an obligation on Supplier. Supplier will deliver such additional certifications as SOV may request in its efforts to comply with applicable Laws.

iii. Subject to the audit procedure in Section 17.1, SOV or its designee (which may include regulatory authorities with jurisdiction over SOV, or outside auditing firms retained by SOV) shall have the right at any reasonable time to enter any premises at which any Services are performed or Personal Information is or may be accessible or available, for the purpose of inspecting and auditing the provision of such Services and to determine, among other things, whether the Services are being provided in accordance with applicable Laws and the terms of this MSA, and whether Supplier and its agents and contractors have adequate policies, procedures, and controls in place to protect the security of Personal Information. During any such inspection or audit or at any other reasonable time, Supplier shall make its officers and employees available to SOV to discuss the Supplier's measures to comply with the provisions of this MSA and shall give SOV or its designee access to all records, in whatever form maintained, relating to the provision of the Services and to all facilities, resources, devices, programming, databases and other items used by Supplier or its agents or contractors in performing the Services. Such records shall include all audits, test results, and other evaluations relevant to compliance that have been conducted by Supplier or any other party.

(b) Supplier shall, in advance and in writing, ensure each individual who obtains or is in a position to obtain Information, including, without limitation, Personal Information, of SOV, understands and has agreed to comply with the obligations in this MSA. In the event either party is required by Laws to respond to and comply with any judicial, regulatory or governmental compulsion to disclose the other party's Information, the party compelled shall (i) immediately notify the other party of receipt of such demand; (ii) take all reasonable and legally permissible actions to limit the compelled disclosure to only such Information and to such persons as specifically required by and solely for the purposes of such compulsion; and (iii) take all available steps to maintain the confidentiality of the Information, limit and restrict disclosure and use as stated above, and protect the Information from further disclosure to the extent permitted by applicable Laws. State of Vermont shall immediately notify Supplier (either by facsimile or email as set forth in Section 28.10 [Notices]) 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 this MSA. Supplier may, in its discretion, seek an appropriate protective order, or otherwise defend any right it may have to maintain the confidentiality of this MSA under applicable Law within) three (3) business days of Supplier's receipt of State of Vermont's notice. Supplier agrees that it will not make any claim against State of Vermont if State of Vermont 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 agency compelling its production.

(c) Each party agrees that upon the expiration or termination of this MSA for any reason or upon the request of either party at any time, the other party will immediately return to such requesting party any and all Information under the other party's control or in its possession, and will not at any time thereafter itself use, copy, reproduce, transmit or furnish to any other party, any such Information; provided, however, either party may retain, subject to the restrictions and conditions herein, copies of such Information as is actually necessary for: (i) archival, audit copies required by Laws; (ii) litigation (subject to obtaining appropriate judicial protective orders) and otherwise protecting the legal and proprietary interests of such party in relation to threatened or actual legal proceedings; (iii) compliance with Laws; (iv) preservation of such party's Information to the extent it actually is embedded in and inextricable from the other party's Information; and (v) enforcement and/or protection of such party's legal rights, including any intellectual property rights. Any permitted archives containing SOV Information shall be used by Supplier solely for audit and recovery purposes and shall be maintained and used in accordance with the Vermont Security Policies attached as Exhibit F, as such policies may be modified, amended or replaced from time to time and provided to Supplier.

(c) Except as otherwise specifically provided in this MSA, each party shall not during the Term and after expiration or earlier termination hereof: (i) disclose, in whole or in part, any Information of the other party; or (ii) sell, rent, lease, transfer, encumber, pledge, reproduce, publish, transmit, translate, modify, reverse engineer, compile, disassemble, adapt, create derivative works from or otherwise use or allow anyone else to use, any such Information.

(d) Each party shall exercise the same care in preventing unauthorized disclosure or use of the other party's Information that it takes to protect its own proprietary and confidential information of a similar import, but in no event less than reasonable care. Reasonable care includes, without limiting the generality of the foregoing: (i) informing each and every entity who does or is in a position to receive, obtain or have access to Information, of the strictly confidential and sensitive nature of the Information and the applicable terms of this MSA, requiring them to comply with these terms, and obtaining their written acknowledgment that they have been so informed and directed, and their written undertaking to abide by terms no less stringent than the applicable terms of this MSA; and (ii) notifying the other party immediately upon discovery of any actual, threatened or alleged violation or breach of any of the provisions of this MSA, and assisting the other party in every reasonable way to help regain possession of the Information and to prevent further violations or breach hereof.

(f) Each party further acknowledges that: (i) unauthorized use or disclosure of Information shall cause immediate injury and damages not readily measurable or compensable in monetary damages, and therefore irreparable; (ii) in the event of any breach or threatened breach of the provisions of this Article, and without limiting or waiving any other rights and remedies available under this MSA, at law or in equity, all of which are hereby cumulatively reserved, the other party shall be entitled to injunctive relief, specific performance and other equitable relief as may be deemed proper by a court of competent jurisdiction, without the posting of bond or other security; (iii) except for the rights expressly granted in this MSA, the other party retains all right, title and interest and reserves all rights in and to its Information; and (iv) it shall be and shall remain primarily and fully liable for any violation or breach of the provisions hereof, by any Affiliate, officer, director, employee, or contractor, as if such party had disclosed the Information.

(g) Information which is required to be kept confidential under the foregoing provisions does not include Information that the receiving party can establish: (i) is or has become generally available to the public, without any breach of this MSA or any other agreement by which the receiving party may be bound; (ii) is or was known to the receiving party prior to disclosure to or receipt by the receiving party free of any confidentiality, non-disclosure or comparable restriction and without breach of this MSA or any other agreement by which the receiving party may be bound; (iii) was or is disclosed to or obtained by the receiving party on a non-confidential basis by a third party who did not owe an obligation of confidence to the disclosing party with respect to the disclosed information and did not breach any agreement; or (iv) was independently developed by one party without any reference to or use of any Information of the other party.

(h) Notwithstanding any expiration or termination of this MSA, each party's obligations regarding the nondisclosure and use of the other party's Information that is disclosed prior to the effective date of such expiration or termination shall survive for a period of three (3) years following the disclosure thereof; provided, however, that each party's nondisclosure and use obligations with respect to the other party's Information that constitutes trade secrets pursuant to applicable Laws will continue for so long as any such Information continues to constitute a trade secret under applicable Laws, and further provided that obligations of each party regarding Personal Information or Protected Health Information shall continue in perpetuity.

21.2 Destroyed or Lost Data. Supplier will not delete or destroy any SOV Information or media on which SOV Information resides without prior authorization from SOV. Supplier will maintain and provide to SOV one or more reports that identify the SOV Information, including media, that has been destroyed. In the event any SOV Information is lost or destroyed due to any impermissible act or omission of Supplier, including any breach of the security procedures described herein or the negligence of Supplier, Supplier shall be responsible for the prompt regeneration, reconstruction or replacement of such SOV Information. Supplier shall prioritize this effort so that the loss of SOV Information will not have any adverse effect upon the Services. SOV agrees to cooperate with Supplier to provide any available information, files or raw data needed for the regeneration, reconstruction or replacement of the SOV Information. If Supplier fails to fully regenerate, reconstruct and/or replace any lost or destroyed SOV Information within the time reasonably set by SOV, then SOV may obtain data reconstruction services from a third party, and Supplier shall cooperate with such third party as requested by SOV. In addition to any damages incurred by SOV, Supplier will be responsible for the actual costs incurred by SOV for the regeneration, reconstruction and replacement of SOV Information by a third party. In the event it is determined that SOV Information has been lost or destroyed as a result of the willful, intentional or negligent acts or omissions of Supplier, SOV may terminate the applicable Statement of Work or this MSA for cause pursuant to Section 26.2 [Termination by SOV for Cause] and pursue any civil and criminal actions available to it.

21.3 Ownership and Protection of SOV Information and Customer Data; Security Breach Reporting

- (a) SOV Information will not be utilized by Supplier for any purpose other than that of rendering the Services. SOV Information is and will remain the exclusive property of SOV. Supplier will not possess or assert any lien, claim, demand or other right or interest in, against or to SOV Information. No SOV Information, or any part thereof, will be sold, assigned, leased, licensed or otherwise disposed of, directly or indirectly, to third parties or commercially exploited by or on behalf of Supplier or used for any purpose, other than in support of Supplier's performance of its

obligations hereunder and only to the extent necessary and permitted by SOV for Supplier to do so.

- (b) Upon SOV's request or the termination or expiration of this MSA or any Statement of Work for any reason, Supplier shall either return or, if specifically directed by SOV, destroy all SOV Information in its possession, power or control in a manner that assures the SOV Information is rendered unrecoverable. Any permitted archives containing SOV Information shall be used by Supplier solely for audit and recovery purposes and shall be maintained and used in accordance with HIPAA and the Security Policies included as Exhibit F, as such policies may be modified, amended or replaced from time to time and provided to Supplier.
- (c) As between SOV and Supplier, SOV shall be deemed to own all Customer Data, and Supplier shall at all times process the Customer Data in accordance with the terms of this MSA and any applicable Statement of Work, and all applicable Laws. To the extent that Supplier has certain responsibilities under applicable Customer Data Laws and as a processor of the Customer Data, Supplier shall comply with its obligations under the Customer Data Laws, and SOV is consenting to Supplier's access to the Customer Data for such purpose and under such promise by Supplier. If the Customer Data Laws are modified or new Customer Data Laws are applicable to any of the Services, Supplier will continue to comply with such Customer Data Laws as so modified or added, but to the extent that compliance with such modifications or additions requires the delivery of New Services, the parties will follow the Change Control Procedures set forth herein. Notwithstanding the foregoing, Supplier compliance with modifications or additions to Customer Data Laws shall not be excused or delayed as a result of the Change Control Procedures.
- (d) In addition to the requirements set forth in the Business Associate Agreement, Supplier shall immediately notify the appropriate security contact (as set forth in Section 28.11 [Notices]) in the event of any known or suspected unauthorized use, disclosure, acquisition, modification, or destruction of Personal Information, unauthorized access to Personal Information, compromise, disclosure, damage, alteration or loss of Personal Information (generally, a "security breach"), and Supplier shall (X) provide SOV with a detailed written statement describing said occurrence and the circumstances surrounding any security breach, and (Y) promptly develop, provide and implement a remediation plan, acceptable to the State of Vermont, to address and remedy the occurrence and prevent any further incidents. Supplier shall, at its expense, take all necessary measures to mitigate any damages, adverse or harmful effects thereof, and to the extent either Supplier or SOV or the State of Vermont have any legal or regulatory obligations as a result of the security breach, Supplier shall cooperate fully with SOV and if the breach is a direct result of Supplier's failure to perform its obligations hereunder bear all related costs and expense.
- (e) Supplier agrees to comply with all applicable Customer Data Laws that require notification in the event of a security breach, as those Customer Data Laws may be amended from time to time, including but not limited to Chapter 62 of Title 9 of the Vermont Statutes Annotated, HIPAA and/or HITECH. In the event of any security breach compromising Customer Data, Supplier agrees to assume responsibility for such notice and the expense thereof (at SOV's sole option and discretion) if the State

of Vermont determines it to be appropriate under the circumstances of any particular security breach. Supplier shall also assume all other costs associated with a security breach, including but not limited to outside investigation and services (including mailing, call center, forensics, counsel and/or crisis management), and/or credit monitoring, in the reasonable determination of State of Vermont.. Without limiting the generality of the foregoing, Supplier acknowledges and agrees that, by execution of this MSA, it is acting or conducting business in the State of Vermont.

- (f) In the event that State of Vermont determines there has been a material breach by Supplier of any of the Supplier's obligations with regard to Personal Information, SOV may if directed by the State of Vermont, immediately upon notice to Supplier, terminate this MSA and/or any or all Statements of Work, in whole or in part. Without limiting any other provision of this MSA, Supplier's obligations with regard to Personal Information shall survive any termination of this MSA.
- (g) Subject to the indemnification procedures set forth in Section 24.6, and in addition to any other indemnification obligations in this MSA, Supplier agrees to defend, indemnify, and hold SOV and its officers and employees harmless from and against any and all actual or alleged Losses in connection with any third party claim or action relating to or arising out of a breach of the foregoing provisions of this Article by Supplier, or any person, firm or entity, howsoever characterized or designated, acting under, through, in the name of, under authority of or on behalf of Supplier, including Supplier's employees, agents, representatives or subcontractors.

22. SECURITY.

22.1 General. Without limiting the generality of the requirements of Article 21 and subject to SOV's review as set forth in Section 21.1(a)(ii), Supplier agrees to develop, provide and implement security provisions and controls to maintain the confidentiality, integrity and availability of all SOV Information in the possession or under the control of Supplier hereunder, which at a minimum Supplier would provide for its own proprietary, sensitive and confidential information and digitally stored files, data and programs (acting with due and proper regard for same) and as otherwise required by Laws, including such provisions and controls that: (i) safeguard the physical integrity and condition of all Supplier Facilities, Equipment, Software and all media in Supplier's possession or control containing SOV Information; (ii) ensure that access to SOV Information, in any form on any media, is available only to SOV and its designated employees and/or authorized representatives; and (iii) prevent use by or disclosure of any and all SOV Information to any third party, to any employee or agent of Supplier that does not have a need to know in the performance of Services hereunder or otherwise, unless Supplier has obtained SOV's explicit prior written approval, which may be withheld for any reason in SOV's sole discretion.

22.2 SOV Insurance Industry Regulations, Policies and Flowthroughs. Supplier will comply with: (i) SOV's Insurance Industry Regulations, policies and procedures and other provisions that are required to be flowed through to Supplier by the federal or Vermont state governments that are in effect during the Term, which may be promulgated by the federal or state government, as set forth in Exhibit G, and as such policies may be modified, amended or replaced from time to time and provided to Supplier; and (ii) SOV's policies and procedures that are in effect during the Term regarding the business process, operating procedures or business activities, as such procedures are created or modified by SOV from time to time for application to third party

suppliers and provided to Supplier. Any specific modifications to such policy or policies may be included in each applicable Statement of Work or updated at any time thereafter by notice from SOV. Supplier will be responsible for ensuring that Supplier Personnel comply with such policies and procedures. Supplier will provide, at SOV's request, copies of Supplier's internal control policies and procedures for SOV's review and if any such policies and procedures are found by SOV to be inadequate, SOV shall so notify Supplier and Supplier will take steps to immediately correct any deficiencies so identified.

22.3 Data Security. Throughout the Term, Supplier and its permitted assignees and subcontractors shall comply with all information/technology control policies and standards applicable to the security of data, including, but not limited to, the Data Security Standards, the Insurance Industry Regulations, and Exhibit F [Security Policies]. If, as a result of an on-site review or audit performed in accordance with Article 17 [Audits] hereof or otherwise, Supplier is found not to be in compliance with such policies or standards, then Supplier shall, at its expense, take appropriate steps to promptly correct such non-compliance. The parties will execute and comply with the Business Associate Agreement attached as Exhibit K.

22.4 Supplier Facilities.

- (a) Throughout the Term and without limiting the generality of the foregoing, Supplier shall ensure that, in accordance with the Data Security Standards, physical and logical security measures and safeguards are instituted, maintained and enforced at all Supplier Facilities (including security measures and safeguards set forth in Section 12.3 [Dedicated/Partitioned Environment] specific to those areas of the Supplier Facilities that are partitioned from the rest of the Supplier Facilities and dedicated to the provision of the Services) to guard against the unauthorized access to or destruction, loss, theft, damage or alteration of any SOV property, Services and/or SOV Information.
- (b) The security measures and safeguards at the Supplier Facilities shall be no less rigorous than those set forth in Data Security Standards and shall be no less rigorous than those maintained by Supplier for its other facilities. Without limiting the generality of the foregoing, Supplier's security measures shall include at a minimum:
 - i. With respect to any Supplier Facilities at or from which SOV Information is stored, used, accessible, transmitted processed or otherwise made available, providing security guards and technical support engineers on a 24x7 basis and maintaining access controls which include, at a minimum: (1) restricting physical and logical, direct or remote access to the Supplier Facilities and any portions of the Supplier Facilities containing SOV Information; and (2) monitoring and logging access to the Supplier Facilities.
 - ii. With respect to any Supplier Facilities at which the Services are performed, implementing and maintaining access controls to such Supplier Facilities (particularly with respect to the areas of such Supplier Facilities from which the Services are performed or SOV Information is stored, used, accessible, transmitted processed or otherwise made available), which controls will include, at a minimum: (1) inspecting, authenticating and verifying identification and allowing only authorized personnel to enter such Supplier Facilities; (2) monitoring and logging access to such Supplier Facilities; (3) utilizing Equipment and Software that do not allow for the download of SOV Information

(e.g., computers without attached CD-ROM burners, disc drives); and (4) printing and/or reproducing physical copies only as necessary to perform the Services (*i.e.*, on a “need-to-print”, “need to copy” basis), providing SOV with access to print logs maintained by Supplier, upon request and on a periodic basis, and establishing, maintaining and enforcing policies approved by SOV requiring the shredding and secure disposal of documents and other materials containing SOV Information and that no physical materials containing SOV Information are removed from secured areas of the Supplier Facilities.

- (c) Supplier shall not (and shall prohibit anyone acting under, through, in the name of, under authority of or on behalf of Supplier) from performing the Services in any manner that, directly or indirectly, defeats security provisions, by-passes security procedures or otherwise avoids the application of required security on devices, SOV Information, files and/or materials containing, without limitation, attorney-client privileged material or attorney work product (and Supplier is responsible for any failure of anyone acting under, through, in the name of, under authority of, or on behalf of Supplier to comply with the provisions of this Section). Without limiting the generality of the foregoing, Supplier shall ensure that (i) all connectivity to SOV Resources and SOV Information and all attempts at the same as permitted hereunder by Supplier Personnel shall be accomplished only through SOV’s security gateways/firewalls in accordance with all Industry Data Standards; and (ii) it will not access, and will not permit any unauthorized persons or entities to access, SOV Resources or SOV Information without SOV’s express written authorization and any such actual or attempted access shall be consistent with any such authorization. Supplier covenants that, in addition to the other provisions of this MSA, Supplier shall inform SOV whenever access is sought by any unauthorized individual or entity to any such devices, information, files and/or materials. Supplier waives and expressly disclaims any claim that SOV, by any act contemplated or permitted under this MSA, including any Statement of Work or otherwise, has waived any rights or privileges to which it is otherwise entitled by virtue of SOV’s allowance, enabling or facilitating Supplier’s performance of any Services.

22.5 Indemnity. Subject to the indemnification procedures set forth in Section 24.6, and in addition to any other indemnification obligations in this MSA, Supplier agrees to defend, indemnify, and hold SOV and its officers and employees harmless from and against any and all actual or alleged Losses in connection with any third party claim or action relating to or arising out of a breach or alleged breach of the foregoing provisions of this Article by Supplier, or any entity, howsoever characterized or designated, acting under, through, in the name of, under authority of or on behalf of Supplier, including Supplier’s employees, agents, representatives or subcontractors.

23. REPRESENTATIONS AND WARRANTIES.

23.1 Representations and Warranties. Each party represents and warrants that, as of the Effective Date and each Statement of Work Effective Date:

- (a) This MSA including each Statement of Work constitutes a legal, valid and binding obligation of such party, enforceable against it in accordance with its terms except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and any other laws of general application affecting enforcement of creditors’ rights generally.

23.2 Supplier Representations and Warranties. As of the Effective Date, each Statement of Work Effective Date and continuing throughout the Term and each Statement of Work Term, Supplier represents, warrants and covenants to SOV that:

- (a) It is a corporation duly incorporated (or is any other form of legally recognized entity), validly existing and in good standing under the Laws of the jurisdiction in which it is incorporated, and is duly qualified and in good standing in each other jurisdiction where the failure to be so qualified and in good standing would have an adverse effect on its business, activities, ability to perform its obligations under this MSA or compliance with any of its promises, representations and warranties hereunder.
- (b) It has all necessary corporate power and authority to own, lease and operate its assets and to carry on its business as presently conducted and as it will be conducted pursuant to this MSA including any Statement of Work.
- (c) It has all necessary corporate power and authority to enter into this MSA including each Statement of Work and to perform its obligations hereunder and thereunder, and the execution and delivery of this MSA including each Statement of Work and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate actions.
- (d) **Work Standards.** Supplier will properly render the Services in accordance with the Requirements, with promptness and diligence and will execute them in a workmanlike manner, in accordance with the practices and high professional standards used in well-managed operations performing services similar to the Services, with an adequate and sufficient number of qualified individuals with suitable training, education, experience and skill to perform the Services.
- (e) **Requirements.** The development, creation, delivery, provision, implementation, testing, maintenance and support of all Services shall be performed and conform to the Requirements (and any provisions relating thereto in the applicable Statement of Work) and all Deliverables will conform to their applicable Documentation.
- (f) **Documentation.** Documentation required under a Statement of Work shall conform to and accurately describe the Services to which such Documentation relates and be sufficient to enable a reasonably skilled professional, trained in the Services to which such Documentation relates to understand, use, operate, access, take advantage of, support, maintain and modify the Services, as and when necessary, to satisfy SOV's Requirements.
- (g) **Maintenance.** Supplier will make available and maintain the Supplier Resources as required by the provisions of this MSA, in order that they operate and perform in accordance with the applicable Documentation.
- (h) **Cost Effectiveness.** Supplier will use all Supplier Resources to provide Services as required under this MSA, with a view to balancing cost considerations with quality in consultation with SOV and consistent with the Requirements.

- (i) **Technology.** The Services will utilize proven, current technology that will enable SOV to take advantage of technological advancements in its industry and support SOV's efforts to maintain competitiveness in the markets in which SOV operates.
- (j) **Ownership; Non-Infringement.** Supplier: (i) is either the owner of, or authorized to use, the Supplier Resources and related material used in connection with the Services; and (ii) is fully authorized to grant SOV all rights, title, interest and ownership in and to all Work Product developed hereunder; and (iii) will perform under this MSA in a manner that does not violate, infringe, misappropriate or constitute an infringement or misappropriation of any patent arising under the laws of the United States, and any copyright, trademark, trade secret or other intellectual, industrial or proprietary rights of any third party.
- (k) **Inducements.** By entering into each Statement of Work, Supplier affirms each of the representations and warranties set forth in this MSA as of the Statement of Work Effective Date. Each time SOV agrees to enter into a Statement of Work with Supplier, Supplier acknowledges such agreement is based upon and is in reliance upon, among other things, the representations, warranties and other inducements described in this MSA and/or the Statement of Work and Exhibits incorporated or referenced therein.
- (l) **Viruses.** With respect to SOV Information, SOV Software and SOV Resources, Supplier will not insert, introduce or include, or permit, enable or cause any third party to insert, introduce or include, any program code, programming instruction or set of instructions constructed with the ability or the intention to damage, interfere with, interrupt or otherwise affect computer programs, data files or operations in any manner without the authorization, knowledge or approval of any actual or intended user, operator, administrator, publisher, licensor or licensee, or any worms or so called 'Trojan Horses' or logic bombs, or any back door, trap door or other access means or portal which would enable an entity or device to access any programs, data, systems or communications devices, without the knowledge or authorization of the owner, operator or user of the programs, data, systems or communications devices, or any other code typically designated to be a virus or other form of malicious code (each is a "**Virus**").
 - i. Immediately upon the discovery or detection of any Virus, Supplier will remove such Virus and will provide all necessary Services to minimize the impact of such Virus, including the verification and confirmation of the integrity, authenticity, accuracy and completeness of SOV Information which is or may have been affected by such Virus. Without limitation, unless directly attributable to SOV, the State of Vermont, a separate supplier of SOV or any non-Supplier provided third party, Supplier will be liable for loss of SOV Information, data or records of SOV, to the extent such loss of data or records is due to the insertion, introduction or inclusion of any Virus.
 - ii. Supplier will not, without the prior written consent of SOV, insert, introduce or include any means, code, enabling device or mechanism, that would have the effect of disabling or otherwise shutting down, adversely affecting, impairing or denying access to all or a portion of the

Services or to any SOV Information or Resources, and with respect to disabling code that may be part of any Supplier Resources, will not invoke disabling code at any time under any circumstances. If at any time a licensor of Third Party Software invokes or threatens to invoke any disabling code in Third Party Software, Supplier will promptly inform SOV and use Supplier's best commercially reasonable efforts to preclude or immediately reverse such action.

- iii. Supplier will provide such assistance and Services as are reasonably requested by SOV as a result of, or in the furtherance of any investigation of, any breach of security.

- (m) **Compliance with Laws.** Supplier and its permitted contractors will at all times comply with those Laws: (i) applicable to Supplier and Supplier's business, activities, Supplier's Facilities and the provision of Services hereunder, including Laws of any country or jurisdiction from which or through which Supplier provides the Services or obtains resources or personnel to do so ("**Supplier Laws**"); and (ii) applicable to SOV (including Insurance Industry Regulations) ("**SOV Laws**"), to the extent (A) set forth in a Statement of Work, (B) SOV notifies Supplier of such Laws in writing, or (C) Supplier knows, has reason to know or, based upon the Services provided, should have known, of such Laws, or Supplier otherwise is or becomes aware of such Laws in any other manner, whether or not in connection with any Services and/or this MSA. Supplier shall be responsible for monitoring and interpreting Supplier Laws, including changes in Supplier Laws, and for identifying the impact of such Supplier Laws (and changes thereto) on Supplier's performance of the Services. Supplier shall implement (and bear the costs associated with) any change in Supplier Laws prior to the deadline imposed by the regulatory or governmental body having jurisdiction for such requirement or change. SOV shall be responsible, with Supplier's cooperation and assistance, for monitoring and interpreting SOV Laws, including changes in SOV Laws, and for identifying the impact of such SOV Laws (and changes thereto) on SOV's requirements and the parties will work together to determine the impact on the Services and Supplier's performance hereunder. Supplier shall implement, subject to the Change Control Procedures, any change in Vermont Laws prior to the deadline imposed by the regulatory or governmental body having jurisdiction for such requirement or change; provided, however, that if the State of Vermont does not agree to pay any additional Charges identified by Supplier as part of the Change Control Procedures for a change in Vermont Laws that is mandatory for the State of Vermont to comply with, SOV, if directed by the State of Vermont may elect to terminate the affected portion of the Services upon notice to Supplier, and such termination shall be subject to the Change Control Procedures to document the scope of such termination and permit Supplier to recover the costs it incurs in connection with such termination. For avoidance of any doubt, such termination shall be a termination for convenience, however, the parties agree that termination for convenience fees specified in a Statement of Work shall not apply. If changes in Laws, in any way or to any extent, prevent Supplier from performing its obligations hereunder, Supplier shall develop and implement a suitable workaround until such time as Supplier can perform its respective obligations without such workaround. Supplier will be responsible for any fines and penalties imposed on Supplier or SOV arising from any noncompliance by Supplier or Supplier Personnel of its obligations in this Section 23.2(m) except to the extent directed otherwise in writing by SOV. In

the event that any Supplier Personnel become aware of any changes in the SOV Laws prior to being notified of same by SOV, Supplier will provide prompt written notice to SOV, and the parties will work in good faith to develop a workaround as quickly as possible, subject to the Change Control Procedures.

- (n) **Debarment.** Supplier certifies under pains and penalties of perjury that as of the Effective Date, neither Supplier nor any of Supplier'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.
- (o) **Certification Regarding Use of State Funds.** In the case that Supplier is an employer and this MSA is a "State Funded Grant" in excess of \$1,001, Supplier certifies that none of these State funds will be used to interfere with or restrain the exercise of Supplier's employee's rights with respect to unionization.
- (p) **Export Control; Anti-Bribery.** Neither Supplier nor any Supplier Personnel are included on any list of entities maintained and updated by the Department of Commerce, Bureau of Industry and Security to whom the export of certain types of software is prohibited by United States' Laws, as updated from time to time ("**Entity List**") or list of individuals maintained and updated by the Department of Commerce, Bureau of Industry and Security to whom the export of certain types of software is prohibited by United States' Laws, as updated from time to time ("**Denied Persons List**") and Supplier shall never involve any entity or Supplier Personnel included on any Entity List or Denied Persons List in connection with the SOV account or any Services. Supplier shall provide, upon SOV's request and at any time new Supplier Personnel are assigned to the SOV account, a list of such Supplier Personnel and a statement confirming that such Supplier Personnel are not included on any Entity List or Denied Persons List. Supplier additionally acknowledges certain Software and technical data to be provided in connection with Services hereunder and certain transactions contemplated in connection with this MSA may be subject to export controls under the Laws of the United States and other countries and Supplier agrees and covenants Supplier shall not export or re-export any such items or any direct product thereof or undertake any transaction in violation of any such Laws. Supplier shall be responsible for, and shall coordinate and oversee, compliance with such Laws in respect of such items exported or imported hereunder and Supplier shall include with copies of all SOV Software provided by SOV to Supplier that Supplier is permitted to use outside of the United States specific documentation stating that "These commodities, technology or software were exported from the United States in accordance with the Export Administration Regulations. Diversion or re-export contrary to U.S. law is prohibited." Supplier has not violated Laws or any policies referenced herein regarding the offering of inducements in connection with this MSA.
- (q) **Consents, Licenses and Permits.** As part of the Services, except as otherwise expressly set forth herein or in a Statement of Work, Supplier will be responsible for obtaining, maintaining and complying with all applicable licenses, authorizations, consents, approvals and permits required of Supplier in connection with the performance of Services and to otherwise carry out Supplier's obligations under each Statement of Work. Supplier will have financial, management and compliance

responsibility for, and will pay, all fees and taxes associated with such licenses, authorizations, consents, approvals and permits relating to Supplier's ability to provide Services.

- (r) **Date-Related Processing.** All Services, and all Supplier Resources, do and will operate in a manner which is consistent with their intended use and which prevents ambiguous or erroneous output, including with respect to all date-related data and functions. For the avoidance of ambiguity, neither the operation or use, nor any results, data or information processed, derived, arising from, generated or transmitted in connection with the Services, shall be incorrect, invalid or adversely affected in any manner based on a change in year, century or otherwise in connection with any date or dates.
- (s) **Facilities; Labor Conditions.** In all respects under any and all circumstances:
- i. Supplier shall comply with the requirements of Title 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Supplier 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 Supplier under this MSA and any Statement of Work. Supplier further agrees to include this provision in all subcontracts.
 - ii. Supplier shall not use child labor (*i.e.*, individuals under the age of majority), nor any forced or compulsory labor in any form, including, but not limited to, prison, indentured, political, bonded or otherwise. Deposits or similar arrangements shall not be required as a condition of employment.
 - iii. Supplier shall not discriminate based on race, creed, gender, marital or maternity status, religious or political beliefs, age, sexual orientation, or gender identity. Supplier decisions related to hiring, salary, benefits, advancement, termination or retirement shall be based solely on the ability of an individual to do the job and the performance of the individual on the job.
 - iv. Supplier shall implement and maintain management practices that respect and recognize the dignity of individual employees, the rights of free association, the right to a work place free of discrimination, harassment, abuse or corporal punishment and all other legal rights.
 - v. Supplier shall provide at least the legal minimum wage or the prevailing industry wage where the facility is located to each employee. Supplier shall provide each employee a clear, written accounting for each wage period and shall not deduct for performance or disciplinary issues.
 - vi. Supplier shall provide each employee with all legally mandated benefits.
 - vii. Supplier shall comply with the legally mandated work hours and compensate employees for all time worked according to Laws, including overtime work and training. Supplier shall not require any employee to work more than sixty (60)

hours per week or local limits if lower, including overtime, except in extraordinary business circumstances. Supplier shall provide employees with at least one (1) day off in seven (7) days.

- viii. Supplier shall provide employees with a safe and healthy workplace that does not expose employees to hazardous conditions. Supplier shall have written health, safety and environmental guidelines and policies, including those applying to employee residential facilities, where applicable.
- ix. Supplier shall maintain on file all documentation needed to demonstrate compliance with the foregoing representations and warranties and agrees to make such documentation available to SOV with or without prior notice. Supplier shall publicize and enforce a non-retaliation policy that permits employees to speak with SOV or its auditors without fear of retaliation by Supplier or its management.

23.3 The indemnification obligations of Supplier detailed herein or in any Subcontract Agreement shall not apply and Supplier is not responsible for any claimed breaches of the foregoing warranties caused by: (i) modifications made to the item in question by anyone other than Supplier and its subcontractors working at Supplier's direction, or pursuant to written directions or instructions from Supplier; (ii) the combination, operation or use of the item with other items Supplier did not supply or that are not so described in the documentation provided by Supplier; (iii) SOV's misuse of the Service in violation of the terms of this Agreement or applicable Law; or (iv) Supplier's adherence to SOV's written specifications or written instructions in each case provided or approved in writing by an authorized SOV representative, or use of erroneous data inputs provided by or on behalf of SOV (to the extent Supplier did not know such data was erroneous and Supplier was not obligated under this MSA to validate the accuracy of such data).

23.4 Disclaimer of Warranty. EXCEPT AS SPECIFIED IN THIS MSA, NEITHER SOV NOR SUPPLIER MAKES ANY OTHER REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THIS AGREEMENT AND EACH EXPLICITLY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

24. INSURANCE.

24.1 Required Insurance Coverage.

- (a) Throughout the Term, Supplier shall maintain in force, at minimum, the insurance coverage described below. All subcontractors must comply with required insurance requirements as set forth in this Article. Any exceptions must be approved by SOV. Additional insurance coverage(s) may be required under a Statement of Work.
 - i. Commercial General Liability Insurance, including Products/Completed Operations and Advertising Injury coverage, with a per occurrence limit of \$2,000,000 and an aggregate limit of \$5,000,000.
 - ii. Automobile liability Insurance covering use of all owned, non-owned and hired automobiles with a minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage liability.

- iii. Worker's Compensation Insurance or any alternative plan or coverage as permitted or required by applicable Laws and employers liability insurance with a minimum occurrence limit of \$500,000/employee.
 - iv. Crime Insurance including Employee Dishonesty and Computer Fraud for loss arising out of or in connection with fraudulent or dishonest acts committed by the employees of Supplier, acting alone or in collusion with others, in a minimum amount of \$10,000,000 per loss.
 - v. Errors and Omissions/Professional Liability Insurance for an error or omission arising out of the professional services provided by Supplier including Network Security and Privacy Liability in an amount of at least \$5,000,000 per claim/aggregate coverage.
 - vi. Network Security and Privacy Liability, including coverage for breach, theft, unauthorized disclosure, alteration, corruption, destruction or deletion of information stored or processed on a computer system, the failure to prevent the transmission of malicious code, and remediation expenses (including forensics and attorneys' fees); as well as the notification requirements mandated by state and federal laws, in an amount of at least \$5,000,000 per claim/aggregate. This coverage can also be included within the professional liability coverage.
- (b) If for any reason such policy insurer cancels or fails to renew such policy, Supplier shall immediately purchase a replacement policy containing substantially the same terms as such policy and including a Prior Acts Coverage Endorsement effective from the Effective Date or a run-off "tail" policy effective for a period of three (3) years following the later of the expiration or earlier termination of the Term or the expiration or termination of the last Statement of Work Term.

(c) The insurance policies required hereunder shall be primary and not contributory with any liability coverage carried by SOV or any other party. The Commercial General Liability and Automobile policies shall name SOV as additional insured and provide for severability of interests.

24.2 Deleted.

24.3 General Insurance Requirements. All insurance policies Supplier is required to carry pursuant to this Section shall: (a) be primary and non-contributing with respect to any other insurance or self-insurance SOV may maintain; (b) name SOV and its officers and employees as additional insureds on the Commercial General Liability and Automobile Policies, as such parties' interests may appear with respect to this MSA and any Statement of Work (except as to the insurance described in Section 24.1(a)(iii), 24.1(a)(v) and 24.1(a)(vi)); (c) be provided by reputable and financially responsible insurance carriers approved by SOV, with an A.M. Best's minimum rating of "A-" and minimum Best's financial size category of "X"; (d) require that the insurer endeavor to notify SOV in writing at least thirty (30) days in advance of cancellation (and Supplier shall in any event provide SOV with such notice at least thirty (30) days in advance of cancellation unless Supplier has not been so informed by its insurer); and (e) in the case of the Commercial General Liability policies, and subject to the requirements of Supplier's existing policies with its insurers, use reasonable efforts to cause all other insurance policies to include a

waiver of all rights of subrogation against State of Vermont. Each insurer under each such policy shall be amenable to suit and collection of any judgment in the State of Vermont. Supplier shall provide a certificate of insurance issued by their insurance broker (as well as updates to such certificate at each policy renewal) evidencing the coverage. If Supplier is unable to provide the insurance coverage specified in this Article then SOV shall be entitled, on commercially reasonable terms, to obtain all or any portion of such coverage at Supplier's sole cost and expense, and the premiums paid by SOV therefor shall not be subject to any limitations set forth in Article 25; provided that Supplier shall have the right, within sixty (60) days, to cure any failure to provide insurance hereunder so long as coverage does not lapse, and if coverage has lapsed or a lapse is imminent, then Supplier shall not be entitled to cure except as consented to by SOV in its reasonable discretion.

24.4 Indemnification by Supplier. Supplier shall defend, indemnify and hold SOV and its officers and employees harmless from and against all Losses arising from, in connection with or relating to, third party claims, actions and/or allegations based upon any of the following:

- (a) Failure of Supplier or Supplier's Affiliates to perform any obligations required to be performed by either of them under a contract between either of those parties and the third party making the claim;
- (b) Breach of Supplier's warranty set forth in Section 23.2(g) [Ownership; Non-Infringement];
- (c) Breach of Section 23.2(i) [Viruses];
- (d) Negligent, willfully malicious, fraudulent, bad faith or criminal acts or omissions of Supplier, Supplier, Personnel or Supplier's contractors;
- (e) acts, omissions, occurrences and/or events Supplier is required to insure against pursuant to Article 24 [Insurance] and fails to do so;
- (f) Supplier's or Supplier Personnel's breach of any obligations under Article 21 or 22 of this MSA;
- (g) the improper or wrongful termination of, or abandonment of work under, any Statement of Work;

- (h) any theft or other misappropriation of SOV's Resources, property or funds by Supplier or any Supplier Personnel;
- (i) any actual, alleged, threatened or potential violation or contravention of any Laws by Supplier or Supplier Personnel;
- (j) death of or injury to any individual, to the extent caused by the tortious conduct of such party or any entity acting for, in the name of, at the direction or supervision or on behalf of that party; and
- (k) damage to, or loss or destruction or, any real or tangible personal property to the extent caused by the tortious conduct of Supplier.

24.5 Infringement. If any Supplier Resources or other goods, services or items (hereinafter, an "item") is, or in Supplier's reasonable opinion is likely to become, the subject of an infringement or misappropriation claim or proceeding, Supplier will, in addition to indemnifying SOV and honoring SOV's other rights under this MSA and all Laws, promptly take the following actions at no additional charge to SOV: (i) secure the right to continue using the item; (ii) if (i) is not reasonably available to Supplier, replace or modify the item to make it non-infringing, provided that the replacement or modification will not degrade performance or quality of the Services and performs substantially the same or equivalent function with the same or equivalent operating characteristics; or (iii) if (ii) is not reasonably available to Supplier, remove the item from the Services and the parties agree to equitably adjust the Charges associated with such item to reflect the diminished value to SOV of such removal.

24.6 Indemnification Procedures. Promptly after receipt of any written claim or notice of any action or incident giving rise to a claim for indemnification ("Claim"), SOV shall notify Supplier and provide copies of such Claim and any documents relating to same in its possession or any other relevant information. No failure of SOV to so notify Supplier shall relieve Supplier of its indemnification obligations except to the extent, but only to the extent, the failure or delay is prejudicial. Supplier shall have sole control over the defense and any settlement of such Claim; provided, however, that (i) SOV shall be entitled to participate in the defense of such Claim and to employ counsel at its own expense to assist in the handling of such Claim, and (ii) without SOV's written consent, Supplier may not admit that SOV has any liability, obligate SOV to pay any non-reimbursable sum or make any admission of a wrongdoing by SOV in conjunction with the defense or as a result of settlement of the Claim.

24.7 Disclaimer of State of Vermont Indemnification Obligations. Supplier acknowledges and agrees that the laws and the public policy of the State of Vermont prohibit the State from agreeing to indemnify contractors and other parties. Supplier agrees that to the extent this MSA or any Statement of Work expressly provide for or imply indemnification of Supplier and/or other third parties by the State of Vermont, such actions shall be waived and have no force and effect with respect to the State of Vermont.

25. LIMITATION OF LIABILITY

25.1 General Intent. Subject only to the limitations set forth in this Article, a party who breaches any obligations under this MSA or any Statement of Work shall be liable to the other for damages actually incurred by the other as a result of such breach. The parties agree that the limitations in this Article 25 will not be read so as to limit any liability to an extent that would not be permitted under applicable law.

25.2 Limit on Types of Damages Recoverable.

(a) EXCEPT AS SET FORTH IN SECTION 25.3 OF THIS ARTICLE BELOW, NEITHER PARTY SHALL BE LIABLE FOR INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES (OR ANY COMPARABLE CATEGORY OR FORM OF SUCH DAMAGES, HOWSOEVER CHARACTERIZED IN ANY JURISDICTION), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AND EVEN IF FORESEEABLE OR IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(c) Except as set forth in Section 25.3 of this Article below, each party's aggregate liability for damages under this MSA (including each and every Statement of Work hereunder) shall not exceed the amount of all direct provable damages suffered, incurred or sustained by such party hereunder up to a cap equal to the greater of (1) the amount paid or payable (based on aggregate Charges under this MSA and any Statement(s) of Work) to Supplier under this MSA; or (2) five million dollars (\$5,000,000). In no event shall this MSA limit the liability of Supplier for claims made against Supplier by parties other than the State of Vermont. The following are agreed to be direct damages and neither party shall assert that they are consequential damages or any other form of damages for which recovery hereunder is denied by the provisions of Section 25.2(a) of this Article above to the extent that such damages result from Supplier's failure to fulfill its obligations in accordance with this MSA and/or any Statement of Work:

- i. costs of recreating or reloading any of SOV's lost or damaged information;
- ii. costs of implementing a workaround in respect of a failure to provide the Services;
- iii. costs of replacing lost or damaged Supplier Facilities, Equipment, Software or other materials;
- iv. costs and expenses incurred to correct errors in Supplier Facilities, Equipment and/or Software maintenance and enhancements provided as part of the Services;
- v. costs and expenses incurred to procure the Services from an alternate source; and
- vi. straight time, overtime, or related expenses incurred by SOV, including overhead allocations of SOV for SOV's employees, wages and salaries of additional employees, travel expenses, overtime expenses, telecommunication charges, and similar charges, due to the failure of Supplier to provide the Services or incurred in connection with (i) through (v) above.

25.3 Exclusions Not Applicable. The exclusions set forth in Sections 25.2(a) and 25.2(b) of this Article above shall not apply to (i) fraud, malicious or willful misconduct, recklessness or gross negligence of a party; (ii) any breach of Supplier's nondisclosure or confidentiality obligations contained in this MSA, or any violation of the Business Associate Agreement (provided that damages payable to SOV for a breach of Article 21 relating to Personal Information or the Business Associate Agreement related to Protected Health Information, but not caused by the gross negligence or willful misconduct of Supplier or its Affiliates or the personnel of either of them, shall be limited to a maximum of two (2) times the amount paid or payable (based on aggregate Charges under this MSA and any Statement(s) of Work) to Supplier under this MSA but not less than ten million dollars (\$10,000,000); provided further that this cap on damages for breach of Article 21 relating to Personal Information or the Business Associate Agreement related to Protected Health Information only applies to damages incurred by SOV and does not limit the amount payable by Supplier in indemnification under Section 24.4 or in damages to SOV under any other Section or for any other type of breach); (iii) any Claim that is the subject of indemnification pursuant to this MSA; (iv) improper or wrongful termination of this MSA or a Statement of Work or abandonment of work by Supplier, or (v) Supplier's breach of Section 23.2 (m) [Compliance with Laws].

25.4 Duty to Mitigate. Each party shall have a duty to mitigate damages for which the other party is liable.

25.5 Intentionally Deleted.

25.6 Force Majeure; Contingency Plans

(a) Subject to Sections 25.6(b) and 25.6(c) of this Article below, neither party will be liable for default or delay in the performance of its obligations hereunder, to the extent such default or delay both:

(i) is caused by any of the following: acts of war, domestic and/or international terrorism, civil riots or rebellions, quarantines, embargoes and other similar unusual governmental actions; extraordinary elements of nature or acts of God; a failure of the Internet through no fault of the non-performing party; and

(ii) could not have been prevented by the non-performing party's reasonable precautions or commercially accepted processes, or could not have been reasonably circumvented by the non-performing party through the use of substitute services, alternate sources, work-around plans or other means by which the requirements of a buyer of services substantively similar to the Services hereunder would be satisfied. Events meeting both criteria set forth in clauses (i) and (ii) above are referred to herein individually and collectively as "**Force Majeure Events.**" The parties expressly acknowledge that Force Majeure Events do not include and cannot be caused by vandalism, Laws, the regulatory acts of governmental agencies, labor strikes, or the non-performance of contractors relied on or otherwise engaged by Supplier as permitted herein for the delivery of the Services or any negligence or failure to properly perform obligations or provide Services in conformity with the terms and conditions of this MSA or any Statement of Work, unless such failure or non-performance by such contractors is itself caused by a Force Majeure Event. Upon the occurrence of a Force Majeure Event, the non-performing party will be excused from performance or observance of obligations so affected for as long as (1) the circumstances prevail and (2) the party continues to use commercially reasonable efforts to recommence performance or observance to the greatest extent possible without delay.

(b) If any Force Majeure Event lasts for five (5) consecutive days or fifteen (15) days in the aggregate or such lesser period of time which is the shortest period: (i) specified in SOV's standards and policies for such Services; (ii) specified in the Requirements for such Services; or (iii) specified in the Statement of Work for such Services, then at SOV's option and at any time thereafter that such Force Majeure Event continues, SOV may (reserving cumulatively all other remedies and rights at law, in equity and under this MSA) (x) procure the affected Services from an alternate source; or (y) terminate this MSA, in whole or in part, or any affected Statement of Work, without penalty or further obligation or liability of SOV, and the Charges payable under this MSA will be equitably adjusted by SOV to reflect those terminated Services.

(c) Notwithstanding any other provision of this Section, no Force Majeure Event shall relieve Supplier of its obligation to commence and successfully implement all of the Services relating to information security, disaster recovery and/or business continuity Services that are described in this MSA or included in any Statement of Work within the time period described in such Statement of Work

(d) Supplier shall at all times maintain business continuity, contingency and disaster recovery plans, procedures and capabilities with respect to the Services, including all Supplier Facilities,

that meet all Requirements and applicable regulatory requirements, including Laws, if any (collectively, “**Contingency Plans**”). An abstract summary of the minimum standards required for Supplier’s Contingency Plans applicable to the performance and resumption of the Services at all Supplier Facilities is attached hereto as Exhibit J [Contingency Plans]. With respect to disaster recovery, Supplier will, at a minimum:

(i) Perform functions in accordance with internationally accepted business continuity, contingency and disaster recovery planning standards and procedures agreed upon by Supplier and SOV, which standards and procedures will provide fully integrated cross-functional recovery, as specified in any procedures manuals that are developed by the parties for the Services (“**Procedures Manual(s)**”) and which will be no less stringent than the standards and procedures used at well-managed, prudently managed operations providing functions and containing assets similar to the Services.

(ii) Perform tests and backups as specified in the Procedures Manual(s) or as otherwise reasonably necessary to maximize availability of the Services during problems, including disaster/business recovery functions for all SOV Information.

(iii) Provide, maintain, and as appropriate, upgrade, replace and enhance state of the art uninterrupted power supplies for all Equipment used to provide the Services.

(iv) Maintain backup network and telecommunications services that will allow SOV to dial-in or otherwise connect to the hot site or any other remote facility used by Supplier during a disaster.

(v) Provide technology change and upgrade capability so that business continuity, contingency and disaster recovery capabilities and resources stay current with the technology levels for the Services.

(vi) Refrain from making any changes or modifications to Supplier’s business continuity, contingency and disaster recovery plans, procedures and capabilities that may affect the Services, SOV or Supplier’s Facilities in the event of a disaster or business interruption. Supplier shall notify SOV at least sixty (60) days prior to making any changes or modifications to any Contingency Plans, and upon notice from SOV shall refrain from and delay initiating or implementing any such change if, as specified in said notice, SOV has reason to believe such change or modification may adversely affect any backup, recovery or contingency capabilities and resources applicable to the Services.

(vii) Develop and maintain a plan for the transition back to the Supplier Facilities upon cessation of the disaster or recovery from the business interruption and promptly implement such plan to restore the Services to normal operation.

(e) SOV shall retain authority for developing policies and business requirements regarding contingency planning, disaster recovery and business resumption planning applicable to the SOV Facilities. Supplier shall fully cooperate with SOV and provide such assistance as requested by SOV from time to time in connection with the testing and auditing of all SOV Contingency Plans and all other SOV policies, procedures and business requirements provided to Supplier or otherwise applicable to the SOV Facilities, Resources and Services (collectively, the “**SOV Contingency Plans**”). Supplier shall comply with the SOV Contingency Plans, including any Laws relative to SOV, to the extent such plans, policies, requirements and Laws apply to the Services. Supplier shall develop and execute contingency planning, business resumption and

disaster recovery practices consistent with such policies, business requirements, and Laws, including a plan providing for the recovery of the Services in the priority order specified by SOV from time to time. SOV shall, from time to time, review and modify the policies and business requirements and such modifications shall be implemented by Supplier.

26. TERMINATION.

26.1 Deleted.

26.2 Termination By State of Vermont for Cause. The State of Vermont may (reserving cumulatively all other remedies and rights under this MSA and at law and in equity), by giving written notice to Supplier, terminate this MSA and/or any Statement of Work (and any other Statement of Work for which performance by Supplier thereunder is in the reasonable determination of State of Vermont materially adversely impacted by the termination of the breached Statement of Work), in whole or in part for the following breach events (provided that additional provisions regarding State of Vermont's right to terminate a Statement of Work may be set forth in such Statement of Work):

(a) if for (A) a material breach of a Statement of Work, or (B) a material breach of this MSA, and the applicable breach is not cured by Supplier within thirty (30) days of the date on which State of Vermont provides written notice of such breach or if the breach is not one that can reasonably be cured within thirty (30) days, but is one that is able to be cured, if the Supplier does not develop a plan to cure the breach within thirty (30) more days, or does not cure by the end of such second thirty (30) day period:

(b) upon written notice of termination for any material breach of the Business Associate Agreement entered into by the parties under this MSA;

(c) for repeated and material failures to meet Service Levels as set forth in each Statement of Work; or

(d) upon written notice of termination, if, as a result of the implementation of Supplier's contingency, backup, recovery, business interruption or continuity plans or any other reason, including a temporary relocation, Supplier is unable or fails, for any reason, to restore and return the provision and/or performance of Services, to the same national and legal jurisdiction as that specified in the Statement of Work, within thirty (30) days of written notice from State of Vermont (except to the extent that a delay is the result of written directions from State of Vermont to delay such restore and return).

Except as otherwise provided in this Article, State of Vermont shall notify Supplier of the exercise of any termination option set forth in this Section by delivering to Supplier written notice identifying the scope of the termination and the effective termination date, if other than immediate. If State of Vermont chooses to terminate any Statement of Work in part, the Charges payable under such Statement of Work will be equitably adjusted by State of Vermont to reflect those Services that are not terminated.

26.3 Other SOV Termination Rights.

(a) Deleted.

(b) **Government Contracts.** In the event that any government or governmental agency or instrumentality, either inside or outside the United States, terminates any agreement with SOV (each, a “**Government Contract**”) and Supplier was providing Services under a Statement of Work that contemplated, provided or supported all or any part of such Government Contract, SOV may terminate such Statement of Work immediately for convenience and without cause at any time by giving Supplier written notice.

(c) **Laws.** SOV may terminate this MSA and/or any and all Statements of Work, in whole or in part, immediately and without cause at any time by giving Supplier written notice, in the event that any changes to the Laws of the United States or any other government or governmental agency or instrumentality (including in its capacity as a customer of SOV under any Government Contract) or the interpretation of such Laws by any such agency or instrumentality: (i) prohibits or imposes conditions or restrictions on the provision of all or any portion of any Service in the manner contemplated or in effect hereunder; (ii) objects to all or any portion of this MSA, any Statement of Work or any Services contemplated hereby, including, any objection to the provision of all or any portion of any Services outside the United States, or by an offshore or foreign service provider; (iii) imposes or seeks to impose any material or substantial burdens on any of the Services or transactions contemplated by this MSA; and/or (iv) requires SOV to terminate this MSA and/or any Statement of Work in whole or in part or requires SOV to insert any provisions into contracts and agreements applicable to the Services hereunder (in which event this MSA, including each Statement of Work, shall be deemed amended to comply therewith).

(d) **Change of Control.** In the event that Supplier undergoes a change in Control (except a change in Control among Supplier’s then current executives) where Supplier is acquired, directly or indirectly, in a single transaction or series of related transactions, or all or substantially all of Supplier’s assets are acquired, by any entity, or Supplier is merged with or into another entity to form a new entity, Supplier shall provide SOV with notice and this MSA and the Subcontract Agreement shall be assigned to the acquirer provided that acquirer agrees in writing to be bound by the terms and conditions of this MSA and the Subcontract Agreement. Notwithstanding these provisions, if the assignment to a proposed acquirer creates a conflict of interest for the State of Vermont, SOV may terminate this MSA and/or any or all Statements of Work, in whole or in part, without further liability or obligation, by giving Supplier at least sixty (60) days prior written notice.

(e) **Revocation of Funding; Appropriations.** SOV may terminate this MSA and/or any and all Statements of Work, in whole or in part, immediately and without cause at any time by giving Supplier written notice, in the event that any of SOV’s funding sources to carry out such mandate are reduced or revoked. If appropriations are insufficient to support this MSA or any Statement of Work, SOV may cancel on a date agreed to by the parties or upon the expiration or reduction of existing appropriate authority. In the case that this MSA or any Statement of Work is funded in whole or in part by federal or other non-State funds, and in the event those funds become unavailable or reduced, SOV may suspend or cancel this MSA or any Statement of Work immediately, and SOV shall have no obligation to fund this MSA or any Statement of Work from State revenues.

(f) **Insolvency.** SOV may immediately terminate this MSA in its entirety (including all Statements of Work), if Supplier (i) becomes insolvent or is unable to meet its debts as they mature, (ii) files a voluntary petition in bankruptcy (or any other equivalent, comparable or similar legal protection applicable to debtors in the jurisdiction) or seeks reorganization or to effect a plan or other arrangement with creditors, (iii) files an answer or other pleading admitting, or fails to deny or contest, the material allegations of an involuntary petition filed against it

pursuant to any applicable statute relating to bankruptcy, arrangement or reorganization, (iv) shall be adjudicated a bankrupt or shall make an assignment for the benefit of its creditors generally, (v) shall apply for, consent to or acquiesce in the appointment of any receiver or trustee for all or a substantial part of its property, or (vi) any such receiver or trustee shall be appointed and shall not be discharged within thirty (30) days after the date of such appointment.

26.2 Deleted.

26.3 Deleted.

26.4 Effect of Termination. Termination of this MSA or any Statement of Work or categories of Services, in whole or in part and for any reason, shall not affect (a) any liabilities or obligations of either party arising before such termination or out of the events causing such termination, or (b) any damages or other remedies to which a party may be entitled under this MSA or any Statement of Work, at law or in equity.

26.5 Termination Assistance.

- (a) Commencing six (6) months prior to the expiration of this MSA or any Statement of Work or such earlier date as SOV may request, or commencing upon notice of termination or non-renewal of this MSA or any Statement of Work for any reason, and continuing through the effective date of expiration or termination thereof, Supplier will provide pursuant to terms mutually accepted by each party SOV or its designee (collectively, “**Successor**”), such termination assistance services as are required to allow the Services to continue without interruption or adverse effect and to facilitate orderly migration and transfer of the Services to the Successor (“**Termination Assistance**”). Without limiting the generality of the foregoing:
- (b) If SOV is entitled to a license, sublicense or other right to use any Equipment or Software owned, leased or licensed by Supplier and utilized in performing the Services, Supplier will provide for the license, sublicense, lease or other right, as applicable, as part of Termination Assistance.
- (c) Once the parties have reached agreement on the nature and scope of the Termination Assistance, Supplier shall provide to SOV a reasonable, good faith estimate of the entire cost thereof, and such Charges shall be billable in accordance with the parties’ previously agreed upon billing practices and as further set forth herein. Unless the parties have agreed in writing in advance that the amount paid by SOV will constitute a fixed settlement price for Termination Assistance all then undisputed, unpaid billed and unbilled Services through the effective date of termination, upon Supplier’s completion and SOV’s acceptance of all services relating to the Termination Assistance, Supplier shall deliver to SOV reasonably detailed invoices covering such Services and all Services performed through the effective date of termination not previously invoiced, which shall be prepared based upon all of the rates and Charges contained in Supplier's estimate or, if applicable and not included in the estimate, the applicable Statements of Work (as same may have from time to time been amended by the parties as specifically permitted herein). To the extent that the total amount paid by SOV is more than the total amount of the final invoices relating thereto (after giving effect, if applicable, to the resolution of any properly disputed amounts), Supplier shall promptly refund SOV the difference. To the extent that the amount paid by SOV is less than the total amount of such invoices

(after giving effect, if applicable, to the resolution of any properly disputed amounts), SOV shall promptly pay to Supplier the difference.

- (d) Supplier acknowledges that, if it were to breach, or threaten to breach, its obligation to provide SOV with Termination Assistance, SOV would be immediately and irreparably harmed and monetary compensation would not be measurable or adequate. In such circumstances, SOV shall be entitled to obtain such injunctive, declaratory or other equitable relief as SOV deems necessary to prevent such breach or threatened breach, without the requirement of posting any bond and Supplier waives any right it may have to allege or plead or prove that SOV is not entitled to injunctive, declaratory or other equitable relief. If the court should find that Supplier has breached (or attempted or threatened to breach) any such obligations, Supplier agrees that without any additional findings of irreparable injury or other conditions to injunctive or any equitable relief, Supplier will not oppose the entry of an order compelling its performance and restraining Supplier from any further breaches (or attempted or threatened breaches).

27. DISPUTE RESOLUTION.

27.1 General. Unless specifically provided otherwise in this MSA or a particular Statement of Work, any dispute or controversy between the parties hereunder shall be resolved as provided in this Section. A dispute over payment will not entitle Supplier to withhold, suspend or decrease its required performance under this Agreement. Supplier shall continue performing its obligations hereunder while the parties are seeking to resolve any dispute in accordance with this Article, unless and until such obligations are terminated or expire in accordance with the provisions of this MSA or the applicable Statement of Work and the existence of such dispute shall not relieve either party of any of its obligations under this MSA and any and all Statements of Work.

27.2 Informal Dispute Resolution. The parties may attempt to resolve any dispute or controversy hereunder, informally by submitting the dispute, in writing, to the SOV and Supplier managers responsible for the Statement of Work or Statements of Work giving rise to the dispute (“**Statement of Work Project Managers**”), who shall meet in person or by telephone conference call in an effort to resolve the dispute, as often as they deem necessary to gather and analyze any information relevant to the resolution of the dispute, but not less than once every day.

- (a) During the course of attempting to resolve the dispute informally, all reasonable requests for non-privileged information related to the dispute, made by one party to the other, shall be honored; provided, however, in attempting to resolve the dispute, the conduct and activities of the parties, any offers of compromise, all settlement proposals and/or information exchanged shall: (i) be considered Information that is confidential and proprietary to each of the parties, and therefore, prohibited from disclosure by either of them in accordance with the provisions of Article 21 [Confidentiality]; (ii) be considered settlement discussions, and shall be inadmissible in any subsequent proceedings; and (iii) shall in no way be construed or deemed to preclude, prohibit or restrict either party, at any time or in any manner, from proceeding to litigation or otherwise exercising any right or remedy available to it under this MSA, at law or in equity.

- (b) If the Statement of Work Project Managers determine in good faith that resolution through continued discussions does not appear likely or if the dispute is not resolved within five (5) business days after the dispute has been submitted in writing, either party may notify the other (“**Dispute Notice**”) to proceed with the following escalation and dispute resolution procedures:
- i. The Statement of Work Project Managers shall gather any additional information relevant to the resolution of the dispute and which may be necessary and appropriate for presentation to the Supplier Account Manager and an executive designated by CGI or State of Vermont, as applicable (“**SOV Executive**”) (identified by CGI or State of Vermont, as applicable within two (2) business days of receipt of the notification above) responsible for the Services involved in such dispute.
 - ii. The Statement of Work Project Managers shall, within fifteen (15) business days after the Dispute Notice has been given, submit a Report to the Supplier Account Manager and designated SOV Executive which includes a description of the nature, extent and basis of the dispute, how the dispute arose, the U.S. dollar amount involved in the dispute, any agreed upon statements of fact, a fair, accurate and complete representation of the positions of each of the parties in the dispute, and any other information relevant to the dispute, including information that represents agreed upon stipulations and statements of fact, as well as points of disagreement between the parties. The Report shall include one or more recommendations and alternatives which the parties believe the Supplier Account Manager and designated SOV Executive should consider. A description of the projected impact of the failure to resolve the dispute promptly and amicably shall also be included in the submission. Each party may include separate statements of impact, recommendations or other information to the extent any of the participants cannot or do not agree on particular items.
 - iii. Not later than ten (10) days after the Report in connection with any dispute is submitted to them for review, the Supplier Account Manager and designated SOV Executive shall meet in an attempt to resolve the dispute. Either party may request additional information, material, advice and input from individuals and organizations inside or outside CGI’s or State of Vermont’s as applicable, and Supplier’s organization.
 - iv. If the Supplier Account Manager and designated SOV Executive are unable to resolve the dispute within five (5) business days after the aforesaid meeting date, the parties may mutually agree to refer the dispute to non-binding mediation, which shall be conducted using the rules and procedures promulgated by the American Arbitration Association, applicable to mediation in a location to be agreed upon in Vermont, where the parties agree all such proceedings shall be conducted. Such mediation shall be conducted by a qualified neutral, independent third party mediator, knowledgeable in the subject matter of the dispute and, if the parties cannot agree upon a mediator, each party shall select such a mediator and the two (2) mediators so selected

shall mutually agree upon a third and the mediation shall, in that case, be conducted by a panel of the three (3) mediators so selected. Each party shall bear its own expenses and an equal share of the expenses of the mediator(s) and the fees of the American Arbitration Association.

- v. If the parties accept and agree to the mediators' recommendations or otherwise reach agreement resolving the dispute, such agreement shall be made in writing and once duly executed, shall be binding on the parties; provided, however, that for the avoidance of any doubt or ambiguity, nothing in this MSA or any Statement of Work shall be construed as restricting, prohibiting, preventing or otherwise impairing either party from proceeding to litigation, instituting judicial or other proceedings, including a formal claim or legal action, or from pursuing any and all other legal, equitable or contractual remedies available to such party, at any time. Notwithstanding anything in this MSA to the contrary, State of Vermont shall not agree to arbitration and State of Vermont shall not waive any right to a trial by jury.

27.3 Governing Law. All questions concerning the validity, interpretation, enforcement and performance of this MSA and all Statements of Work shall be governed by and decided in accordance with the substantive internal laws of the state of Vermont without regard to its choice of law principles.

27.4 Jurisdiction and Venue. THE PARTIES HEREBY SUBMIT AND IRREVOCABLY CONSENT TO VENUE IN AND THE EXCLUSIVE JURISDICTION OF SUPERIOR COURT OF THE STATE OF VERMONT, CIVIL DIVISION, WASHINGTON UNIT, AND IRREVOCABLY AGREE THAT ALL ACTIONS OR PROCEEDINGS RELATING TO THIS MSA AND ANY STATEMENT OF WORK SHALL BE LITIGATED IN STATE COURTS, AND EACH OF THE PARTIES WAIVES ANY OBJECTION WHICH IT MAY HAVE BASED ON IMPROPER VENUE OR FORUM NON CONVENIENS TO THE CONDUCT OF ANY SUCH ACTION OR PROCEEDING IN SUCH COURT. SUPPLIER HEREBY CONSENTS TO BE JOINED IN ANY ACTION OR PROCEEDING IN WHICH THE STATE OF VERMONT IS A DEFENDANT AND FOR WHICH SUPPLIER IS REQUIRED TO INDEMNIFY THE STATE OF VERMONT PURSUANT TO THE PROVISIONS OF THIS MSA OR ANY STATEMENT OF WORK. Except as required by the indemnification provisions of this MSA, neither party shall be liable for attorney's fees incurred by the other party in any proceeding. The parties expressly agree that no provision of this MSA or any Statement of Work is in any way intended to constitute a waiver by the State of Vermont of any immunities from suit or from liability that the State of Vermont may have by operation of law.

27.5 Equitable Remedies. The parties agree that, notwithstanding the provisions of Section 27.2 of this Article [Informal Dispute Resolution], either party may seek immediate injunctive or equitable relief which may be enforced by the preliminary or permanent, mandatory or prohibitory injunction, temporary or permanent restraining or other order of a court of competent jurisdiction, subject to Section 27.4, without the posting of any bond or other security, in the event of any breach or threatened breach of any provision of this MSA or any Statement of Work involving: (i) Information; (ii) Supplier IP, intellectual, industrial or other property rights; (iii) the protection from physical harm, personal injury or property damage; (iv) a good faith determination that damages from a breach will be immediate, irreparable or so severe or incapable of adequate redress or compensation, only injunctive or other equitable relief would be

adequate; or (v) any other matter for which equitable rights may be granted and money damages would be an inadequate remedy.

28. GENERAL.

28.1 Independent Review. Supplier acknowledges and agrees that SOV is required pursuant to 3 V.S.A. § 2222 to obtain an independent expert review of this Agreement and the services to be rendered hereunder, which review shall be commenced as soon as practicable after the Effective Date of this Agreement. Such review will include, as required by law: (A) an acquisition cost assessment; (B) a technology architecture review; (C) an implementation plan assessment; and (D) a cost analysis and a model for benefit analysis. Upon completion of the review, and upon SOV's request, Supplier shall meet with SOV to discuss the results and Supplier will cooperate with SOV to address any aspects of the Agreement or services that are identified in the review as SOV deems necessary. Supplier acknowledges and agrees that if necessary and as required by SOV, the Agreement and/or the applicable Statement(s) of Work will be amended to address the issues identified in the review.

28.2 Assignment. Excluding the Change of Control provisions of Section 26.3(d), neither this MSA, nor any rights or obligations hereunder, is assignable, by operation of Laws, voluntarily by a party, or otherwise, without the prior written consent of SOV (which consent shall not be unreasonably withheld) and any attempt to do so without such written consent shall be void *ab initio*. Subject to the foregoing, this MSA and each Statement of Work shall be binding on the parties and their respective successors and permitted assigns.

28.3 Expenses. In this MSA, unless otherwise specifically provided herein or in a Statement of Work, all costs and expenses (including the fees and disbursements of legal counsel) incurred in connection with this MSA and the performance of the transactions and obligations contemplated by this MSA shall be borne by the party incurring such expenses.

28.4 Reliance by SOV on Representations. All payments by SOV under this MSA or any Statement of Work will be made in reliance upon the accuracy of all prior representations by Supplier, including but not limited to bills, invoices, progress reports and other proofs of work.

28.5 Supplier Bankruptcy. Supplier acknowledges that if Supplier, 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 MSA, SOV may elect to retain its rights under this MSA as provided in Section 365(n) of the Bankruptcy Code. Upon written request of the State of Vermont to Supplier or a bankruptcy trustee, Supplier or such bankruptcy trustee shall not interfere with the rights of the State of Vermont as provided in this MSA, including the right to obtain the SOV Information.

28.6 No Gifts or Gratuities. Supplier 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 State of Vermont during the Term.

28.7 Copies. All written reports prepared under this MSA will be printed using both sides of the paper.

28.8 Deleted.

28.9 Further Assurances. Each party shall provide such further documents or instruments required by the other party as may be reasonably necessary, appropriate or desirable to give effect to this MSA and to carry out its provisions.

28.10 Severability. Any provision in this MSA which is prohibited, invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, invalidity or unenforceability, without invalidating, affecting or impairing the remaining provisions or affecting the validity or enforceability of such provision in any other jurisdiction. To the extent practicable, the prohibited, invalid or unenforceable provision shall be replaced, for purposes of such jurisdiction, with a permitted, valid and enforceable provision which comes closest to the intention of the parties with respect to the provision so replaced.

28.11 Notices. The following contacts are in addition to the contacts in the Agreement.

For purposes of notice under Access to Public Records Act:

Dani Delong
Public Records Officer
Department of Vermont Health Access 312 Hurricane Lane Williston, VT 05495
Ph: (802) 879-5901 Fax:(802) 879-5962
Dani.delong@state.vt.us

For purposes of notice in the event of a security breach:

Michael K. Morey
Chief Information Officer
Department of Information and Innovation
Phone: (802) 828.1144
Email: michael.morey@state.vt.us

With a Required Copy in all cases to:

Allan W. Ruggles
Assistant Attorney General Department
of Vermont Health Access
312 Hurricane Lane
Williston, VT 05495
Ph: (802) 879-5901 Fax:(802) 879-5962
Allan.ruggles@state.vt.us

28.12 Survival. Any provision of this MSA which contemplates performance or observance subsequent to any termination or expiration of this MSA or which must survive in order to give effect to its meaning, shall survive the expiration or termination of this MSA.

28.13 Deleted.

28.14 Third Party Beneficiaries. Nothing in this MSA, express or implied, shall or is intended to confer on any other entity, any rights, benefits, remedies, obligations or liabilities of this MSA, other than the State of Vermont, the parties, their respective successors or permitted assigns.

28.15 Deleted.

28.16 Deleted.

EXHIBIT D

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is entered into by and between the State of Vermont Agency of Human Services, operating by and through its Department of Vermont Health Access (“Covered Entity”) and Archetype Consulting, Inc. (“Business Associate”) as of September 26, 2014 (“Effective Date”). This Agreement supplements and is made a part of the contract/grant to which it is attached.

Covered Entity and Business Associate enter into this Agreement to comply with 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.

“Agent” means those person(s) who are agents(s) of the Business Associate, in accordance with the Federal common law of agency, as referenced in 45 CFR § 160.402(c).

“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 in 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” or PHI shall have the meaning given in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Agency.

“Security Incident” means any known successful or unsuccessful attempt by an authorized or unauthorized individual to inappropriately use, disclose, modify, access, or destroy any information or interference with system operations in an information system.

“Services” includes all work performed by the Business Associate for or on behalf of Covered Entity that requires the use and/or disclosure of protected health information to perform a business associate function described in 45 CFR § 160.103 under the definition of Business Associate.

“Subcontractor” means a person or organization to whom a Business Associate delegates a function, activity or service, other than in the capacity of a member of the workforce of the Business Associate. For purposes of this Agreement, the term Subcontractor includes Subgrantees.

2. **Identification and Disclosure of Privacy and Security Offices.** Business Associate and Subcontractors shall provide, within ten (10) days of the execution of this agreement, written notice to the Covered Entity's contract/grant manager the names and contact information of both the HIPAA Privacy Officer and HIPAA Security Officer. This information must be updated any time either of these contacts changes.

3. **Permitted and Required Uses/Disclosures of PHI.**

3.1 Except as limited in this Agreement, Business Associate may use or disclose PHI to perform Services, as specified in the underlying grant or contract with Covered Entity. The uses and disclosures of Business Associate are limited to the minimum necessary, to complete the tasks or to provide the services associated with the terms of the underlying agreement. 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.

3.2 Business Associate may make PHI available to its employees who need access to perform Services provided that Business Associate makes such employees aware of the use and disclosure restrictions in this Agreement and binds them to comply with such restrictions. Business Associate may only disclose PHI for the purposes authorized by this Agreement: (a) to its agents and Subcontractors in accordance with Sections 9 and 17 or, (b) as otherwise permitted by Section 3.

3.3 Business Associate shall be directly liable under HIPAA for impermissible uses and disclosures of the PHI it handles on behalf of Covered Entity, and for impermissible uses and disclosures, by Business Associate's Subcontractor(s), of the PHI that Business Associate handles on behalf of Covered Entity and that it passes on to Subcontractors.

4. **Business Activities.** Business Associate may use PHI received in its capacity as a Business Associate to Covered Entity if necessary for Business Associate's proper management and administration or to carry out its legal responsibilities. Business Associate may disclose PHI received in its capacity as Business Associate to Covered Entity 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 the 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 or entity to notify Business Associate, within two (2) business days (who in turn will notify Covered Entity within two (2) business days after receiving notice of a Breach as specified in Section 6.1), in writing of any Breach of Unsecured PHI of which it is aware. Uses and disclosures of PHI for the purposes identified in Section 3 must be of the minimum amount of PHI necessary to accomplish such purposes.

5. **Safeguards.** Business Associate, its Agent(s) and Subcontractor(s) shall implement and use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this Agreement. With respect to any PHI that is maintained in or transmitted by electronic media, Business Associate or its Subcontractor(s) shall comply with 45 CFR sections 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards) and 164.316 (policies and procedures and documentation requirements). Business Associate or its

Agent(s) and Subcontractor(s) shall identify in writing upon request from Covered Entity all of the safeguards that it uses to prevent impermissible uses or disclosures of PHI.

6. Documenting and Reporting Breaches.

6.1 Business Associate shall report to Covered Entity any Breach of Unsecured PHI, including Breaches reported to it by a Subcontractor, as soon as it (or any of its employees or agents) becomes aware of any such Breach, and in no case later than two (2) business days after it (or any of its employees or agents) becomes aware of the Breach, except when a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security.

6.2 Business Associate shall provide Covered Entity with the names of the individuals 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 individuals, as set forth in 45 CFR § 164.404(c), and, if requested by Covered Entity, 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 to it. Business Associate shall require its Subcontractor(s) to agree to these same terms and conditions.

6.3 When Business Associate determines that an impermissible acquisition, use or disclosure of PHI by a member of its workforce is not a Breach, as that term is defined in 45 CFR § 164.402, and therefore does not necessitate notice to the impacted individual(s), it shall document its assessment of risk, conducted as set forth in 45 CFR § 402(2). When requested by Covered Entity, Business Associate shall make its risk assessments available to Covered Entity. It shall also provide Covered Entity with 1) the name of the person(s) 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. When a breach is the responsibility of a member of its Subcontractor's workforce, Business Associate shall either 1) conduct its own risk assessment and draft a summary of the event and assessment or 2) require its Subcontractor to conduct the assessment and draft a summary of the event. In either case, Business Associate shall make these assessments and reports available to Covered Entity.

6.4 Business Associate shall require, by contract, a Subcontractor to report to Business Associate and Covered Entity any Breach of which the Subcontractor becomes aware, no later than two (2) business days after becomes aware of the Breach.

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. If requested by Covered Entity, Business Associate shall make its mitigation and corrective action plans available to Covered Entity. Business Associate shall require a Subcontractor to agree to these same terms and conditions.

8. Providing Notice of Breaches.

8.1 If Covered Entity determines that an impermissible acquisition, access, use or disclosure of PHI for which one of Business Associate's employees or agents was responsible constitutes a Breach as defined in 45 CFR § 164.402, and if requested by Covered Entity, Business Associate shall provide notice to the individual(s) whose PHI has been the subject of the Breach. When requested to provide notice, 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. The cost of notice and related remedies shall be borne by Business Associate.

8.2 If Covered Entity or Business Associate determines that an impermissible acquisition, access, use or disclosure of PHI by a Subcontractor of Business Associate constitutes a Breach as defined in 45 CFR § 164.402, and if requested by Covered Entity or Business Associate, Subcontractor shall provide notice to the individual(s) whose PHI has been the subject of the Breach. When Covered Entity requests that Business Associate or its Subcontractor provide notice, Business Associate shall either 1) consult with Covered Entity about the specifics of the notice as set forth in section 8.1, above, or 2) require, by contract, its Subcontractor to consult with Covered Entity about the specifics of the notice as set forth in section 8.1

8.3 The notice to affected individuals shall be provided as soon as reasonably possible and in no case later than 60 calendar days after Business Associate reported the Breach to Covered Entity.

8.4 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).

8.5 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 received from Covered Entity or created or received by Business Associate on behalf of Covered Entity in which the Subcontractor agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such PHI. Business Associate must enter into this Business Associate Agreement before any use by or disclosure of PHI to such agent. 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 Business Associate 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 three (3) 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 three (3) 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 three (3) 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 received from Covered Entity or created or received by Business Associate on behalf of Covered Entity available to the Secretary 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 of the PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity subject to Section 18.7.

14.2 If Business Associate breaches any material term of this Agreement, Covered Entity may either: (a) provide an opportunity for Business Associate to cure the breach and Covered Entity may terminate the contract or grant without liability or penalty if Business Associate does not cure the breach within the time specified by Covered Entity; or (b) immediately terminate the contract or grant without liability or penalty if Covered Entity believes that cure is not reasonably possible; or (c) if neither termination nor cure are feasible, Covered Entity shall report the breach to the Secretary. Covered Entity has the right to seek to cure any breach by Business Associate and this right, regardless of whether Covered Entity cures such breach, does not lessen any right or remedy available

to Covered Entity at law, in equity, or under the contract or grant, nor does it lessen Business Associate's responsibility for such breach or its duty to cure such breach.

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, all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity pursuant to this contract or grant 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 the PHI. Business Associate shall certify in writing for 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 provide to Covered Entity notification of any conditions that Business Associate believes make the return or destruction of PHI infeasible. If Covered Entity agrees that return or destruction is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible for so long as Business Associate maintains such PHI. This shall also apply to all Agents and Subcontractors of Business Associate.

16. Penalties and Training. 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. If requested by Covered Entity, Business Associate shall participate in training regarding the use, confidentiality, and security of PHI.

17. Security Rule Obligations. The following provisions of this section apply to the extent that Business Associate creates, receives, maintains or transmits Electronic PHI on behalf of Covered Entity.

17.1 Business Associate shall implement and use administrative, physical, and technical safeguards in compliance with 45 CFR sections 164.308, 164.310, and 164.312 with respect to the Electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate shall identify in writing upon request from Covered Entity all of the safeguards that it uses to protect such Electronic PHI.

17.2 Business Associate shall ensure that any Agent and Subcontractor to whom it provides Electronic PHI agrees in a written agreement to implement and use administrative, physical, and technical safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of the Electronic PHI. Business Associate must enter into this written agreement before any use or disclosure of Electronic PHI by such Agent or 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 Electronic PHI. Business Associate shall provide a copy of the written agreement to Covered Entity upon request. Business Associate may not make any disclosure of Electronic PHI to any Agent or Subcontractor without the prior written consent of Covered Entity.

17.3 Business Associate shall report in writing to Covered Entity any Security Incident pertaining to such Electronic PHI (whether involving Business Associate or an Agent or Subcontractor). Business Associate shall provide this written report as soon as it becomes aware of any such Security Incident, and in no case later than two (2) business days after it becomes aware of the incident. Business Associate shall provide Covered Entity with the information necessary for Covered Entity to investigate any such Security Incident.

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

18. Miscellaneous.

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

18.2 Business Associate shall cooperate with Covered Entity to amend this Agreement from time to time as is necessary for Covered Entity to comply with the Privacy Rule, the Security Rule, or any other standards promulgated under HIPAA.

18.3 Any ambiguity in this Agreement shall be resolved to permit Covered Entity 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 and Security Rule, and the HIPAA omnibus final rule) in construing the meaning and effect of this Agreement.

18.5 As between Business Associate and Covered Entity, Covered Entity owns all PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity.

18.6 Business Associate shall abide by the terms and conditions of this Agreement with respect to all PHI it receives from Covered Entity or creates or receives on behalf of Covered Entity 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 the PHI may not be sold without Agency'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 11 survives the expiration or termination of this Agreement with respect to accounting requests, if any, made after such expiration or termination.

(Rev: 9/21/13)