State of Vermont

CONTRACT

Contract ID		Page
00000000000000000000026012		1 of 2
Contract Dates	**Origin**	
02/23/2014 to 02/22/2016	DII	
Description:	**Contract Maximum**	
Retainer - IT Services, etc.	$240,000.00	
Buyer Name / **Buyer Phone**	**Contract Status**	
Kipp,Peter J	Approved	

Vendor ID 0000305448
Desai Management Consulting
11 Floral Street
S Burlington VT 05403
United States

Phone #:

Line #	Item ID	Item Desc	UOM	Unit Price	Max Qty	Max Amt
1		IT services in the category(s) of Strategic Planning, Independent Review, Project Management and Business Analysis. Services to be provided by the Contractor will be described in subsequent Statements of Work Agreements with State Agencies.	JOB	1.00000	0.00	240,000.00

CONTRACT TERMS AND ADDITIONAL INFORMATION

STANDARD CONTRACT FOR PERSONAL SERVICES

1. Parties. This is a contract for personal services (the 'Master Agreement') between the State of Vermont, (hereafter called 'State') and Desai Management Consulting, LLC, with principal place of business at 476 Shunpike Road, Williston, VT 05495 (hereafter called 'Contractor'). Contractor's form of business organization is Limited Liability Corporation. It is the contractor's re'sponsibility to contact the Vermont Department of Taxes to determine if, by law, the contractor is required to have a Vermont Department of Taxes Business Account Number.

2. Subject Matter. As a result of the Pre-Qualification for Information Technology (IT) Services request for proposal (RFP) and the Contractor's response, the Contractor has been qualified by the State of Vermont to provide IT services in the category(s) of Strategic Planning, Independent Review, Project Management and Business Analysis. Services to be provided by the Contractor will be described in subsequent Statements of Work Agreements with Contracting Agencies (as defined herein). This process is set forth in Attachment A.

3. Maximum Amount. . In consideration of the services to be performed by Contractor under this Master Agreement, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a maximum amount not to exceed $240,000.

4. Contract Term. The period of Contractor¿s performance shall begin on 02/23/2014, and end on 02/22/2016. This contract may be renewed for two additional one year periods at the discretion of the State. Upon the termination of this Master Agreement, all outstanding SOW Agreements shall terminate.

5. Prior Approvals. If approval of this Master Agreement by the Attorney General's Office or the Secretary of Administration is required, (under current law, bulletins, and interpretations), neither this contract nor any amendment to it is binding until it has been approved by either or both such persons.
Approval by the Attorney General's Office is required.
Approval by the Secretary of Administration is not required.
Approval by the CIO/Commissioner DII is required.
Certain SOW Agreements may require additional review under applicable law or policy.

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

7. Cancellation. Either party may cancel this Master Agreement or any SOW Agreement by giving written notice at least 30 days in advance.

8. Attachments. This contract consists of 26 pages including the following attachments:
Attachment A - General Requirements
Attachment B - Payment Provisions
Attachment C - Standard Contract Provisions for Contracts and Grants, a preprinted form (revision date 11/7/2012 ; the parties agree that the terms of Attachment C shall apply to each SOW Agreement as well as to this Master Agreement as if it were appended separately to each SOW Agreement.
Attachment D
Attachment D-1 - Generic Statement of Work RFP
Attachment D-2 - Form SOW Agreement
Attachment E - Attachment D-3 - Other Terms and Conditions (if applicable)

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Attachment F - Business Associate Agreement (if applicable)
Attachment G - Agency Of Human Services' Customary Contract Provisions (if applicable)
Attachment H - Academic Research (if applicable)
Attachment I - Agency of Human Services - Contracts with Specific Providers (if applicable)

9. Order of Precedence. Any ambiguity, conflict or inconsistency in the Contract Documents shall be resolved according to the following order of precedence:
(1) Standard Contract
(2) Attachment E (if applicable)
(3) Attachment C (Standard Contract Provisions for Contracts and Grants)
(4) Attachment A
(5) Attachment B
(6) Attachment D
(7) List other attachments in order of precedence

For purposes of each SOW Agreement, the terms and conditions of Attachment C, Attachment A and Attachment B of this Master Agreement, in that order, shall take precedence and supersede any ambiguity, conflict or inconsistency in the SOW Agreement or Attachments thereto.

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT

By the STATE of VERMONT

Date: E-SIGNED by Darwin Thompson on 2014-02-03 16:41:22 GMT
Signature:
Name: Darwin Thompson
Title: Deputy Commissioner - DII
Email:

By the CONTRACTOR

Date: E-SIGNED by Vijay Desai on 2014-02-04 18:38:24 GMT
Signature:
Name: Vijay Desai
Title: Principal Consultant
Email:

ATTACHMENT A

General Requirements

The following is applicable to all work to be performed under Master Agreement.

The Offices, Agencies or Departments within the State of Vermont (each, a "Contracting Agency"), may prepare project specific statements for work to be performed under this contract and submit them to the Contractor and other vendors for proposals. This is referred to as the SOW-RFP process and may include any or all of the following:

- a pre-proposal conference
- a question and answer period
- amendment or revocation of the SOW-RFP where necessary
- proposal evaluation
- award recommendation.

Contractor may submit a response to the SOW RFP and shall describe how the Contractor is best qualified to meet the requirements of the SOW RFP in accordance with this Master Agreement. Proposed pricing must be submitted in response to each SOW RFP as a fixed cost or time and materials, as requested in the SOW RFP, based on completion of deliverables as described in the SOW RFP, inclusive of all expenses. Any cost of licenses, software or hardware must be specified separately. Any Contractor-required documentation must be submitted with the response to the SOW RFP. The terms of any such Contractor documentation, including End User License Agreements or Maintenance and Support Agreements, shall be subject to State review, negotiation and approval. When the applicable Contracting Agency decides which, if any, of the proposals reflect the State's best interest, an SOW agreement, in a form substantially in the form attached hereto as Attachment D-2, will be drafted and signed by both the Contracting Agency and the Contractor (each, an "SOW Agreement"). All SOW Agreements shall be subject to the terms of this Master Agreement and SOW Agreement terms which purport to supersede these Master Agreement terms shall be void and have no effect.

All SOW Agreements between the Contractor and the Agency of Human Services shall include specific reference to the applicable Attachments attached hereto.

The Contractor will not be compensated for time spent developing proposals in response to a Statement of Work RFP.

RESPONSIBILITY FOR SOW-RFP AND SOW AGREEMENT

The Contracting Agency, or an agent thereof identified in the SOW Agreement, has the primary responsibility for the management of the SOW-RFP process, for the resolution of SOW scope issues, and for authorizing any changes to the SOW Agreement. The Contracting Agency Project Manager, or an agent thereof identified in the SOW Agreement, may perform administrative functions, issue written directions; monitor Contractor compliance with the terms and conditions of this Master Agreement and the SOW Agreement; and approve project deliverables.

Contractor shall be responsible for achieving on budget/on time/on target (e.g., within scope) completion of the applicable SOW Agreement.

SOW RFP SUBMISSIONS

All SOW RFP responses must be submitted prior to the date and time specified in the SOW RFP. The Procurement Officer for the Contracting Agency will not accept proposals after the date and time set forth in the SOW-RFP. The Contractor's SOW Proposal shall be submitted via e-mail as two attachments in Portable Document Format (pdf). The "subject" line in the e-mail submission shall state the SOW-RFP Project Name. The first file will be the technical response to this SOW-RFP and titled, "SOW-RFP Project Name Technical". The second file will be the financial response to this SOW-RFP and titled, "SOW-RFP Project Name Financial".

STAFFING

Contractor shall obtain approval in advance by the State, in consultation with the Contracting Agency, of all employees, independent contractors or agents proposed for each SOW-RFP Project. Contractor shall use reasonable efforts to make available all key Project staff for the entire life of an SOW RFP Project. Contractor shall notify State in advance and obtain approval of any new Project staffing, if staffing changes occur during a Project. If Contractor staff does not perform up to acceptable or professional standards as required in this Master Agreement or the SOW Agreement, Contractor shall, when notified by the State, either replace the employees, independent contractors or agents with approved employees, independent contractors or agents or take remedial action agreed by State to ensure SOW Agreement staffing is acceptable.

WARRANTIES

The Contractor represents, warrants and covenants that:

(i) The Contractor has all requisite power and authority to execute, deliver and perform its obligations under this Master Agreement and the execution, delivery and performance of this Master Agreement by the Contractor has been duly authorized by the Contractor.

(ii) There is no outstanding litigation, arbitrated matter or other dispute to which the Contractor is a party which, if decided unfavorably to the Contractor, would reasonably be expected to have a material adverse effect on the Contractor's ability to fulfill its obligations under this Master Agreement.

(iii) The Contractor will comply with all laws applicable to its performance of the services and otherwise to the Contractor in connection with its obligations under this Master Agreement.

(iv) All deliverables performed under an SOW Agreement will be free from material errors and shall perform in accordance with the specifications therefor.

(v) The Contractor owns or has the right to use under valid and enforceable agreements, all intellectual property rights reasonably necessary for and related to delivery of the services and provision of the deliverables as set forth in any SOW Agreement and none of the deliverables or other materials or technology provided by the Contractor to the State will infringe upon or misappropriate the intellectual property rights of any third party.

(vi) Each and all of the services shall be performed in a timely, diligent, professional and workpersonlike manner, in accordance with the highest professional or technical standards applicable to such services, by qualified persons with the technical skills, training and experience to perform such services in the planned environment. At its own expense and without limiting any other rights or remedies of the State hereunder, the Contractor shall re-perform any services that the State has determined to be unsatisfactory in its reasonable discretion, or the Contractor will refund that portion of the fees attributable to each such deficiency.

(vii) The Contractor has adequate resources to fulfill its obligations under this Master Agreement.

INTELLECTUAL PROPERTY/WORK PRODUCT OWNERSHIP

The State and any Contracting Agency shall retain all right, title and interest in and to all data content provided by the State or Contracting Agency, as the case may be, and to all information that is created under this Master Agreement or any SOW Agreement, including, but not limited to, all data that is generated under this Master Agreement or any SOW Agreement as a result of the use by Contractor, the State or any third party of any technology systems or knowledge bases that are developed for the State and used by Contractor hereunder ("**State Information**"), and all other rights, tangible or intangible (collectively, "**State Intellectual Property**"). Contractor may not use State Intellectual Property for any purpose other than as specified in this Master Agreement. Upon expiration or termination of this Master Agreement or any applicable SOW Agreement, Contractor shall return or destroy all State Intellectual Property and all copies thereof, and Contractor shall have no further right or license to such State Intellectual Property.

All Work Product shall belong exclusively to the State or Contracting Agency, as the case may be, with the State or Contracting Agency having the sole and exclusive right to apply for, obtain, register, hold and renew, in its own name and/or for its own benefit, all patents and copyrights, and all applications and registrations, renewals and continuations thereof and/or any and all other appropriate protection. To the extent exclusive title and/or complete and exclusive ownership rights in and to any Work Product may not originally vest in the State or Contracting Agency by operation of law or otherwise as contemplated hereunder, Contractor shall immediately upon request, unconditionally and irrevocably assign, transfer and convey to the State or Contracting Agency all right, title and interest therein. Without any additional cost to the State or Contracting Agency, Contractor shall promptly give the State all reasonable assistance and execute all documents the State may reasonably request to assist and enable the State or Contracting Agency to perfect, preserve, enforce, register and record its rights in and to all Work Product. Contractor hereby appoints the State or Contracting Agency, through its designated signatory, as Contractor'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 Contractor's stead and name, with the same force and effect as if executed, delivered and/or filed by Contractor.

"**Work Product**" means any tangible or intangible work product, creation, material, item or deliverable, documentation, information and/or other items created by Contractor, either solely or jointly with others, and which are developed, conceived of, prepared, procured, generated or produced by Contractor. Work Product may include ideas, inventions, improvements, discoveries, methodologies or processes, or writings, designs, models, drawings, photographs, reports, formulas, algorithms, patterns, devices, compilations, databases, computer programs, specifications, operating instructions, procedures manuals, or other documentation, whether or not protectable under Title 17 of the U.S. Code and whether or not patentable or otherwise protectable under Title 35 of the U.S. Code, that are developed, conceived of, prepared, arise, procured, generated or produced in connection with this Master Agreement, whether as individual items or a combination of components and whether or not the services or the deliverables are completed or the same are reduced to practice during the Contract term. For the avoidance of doubt, Work Product shall not be deemed to include Contractor Technology, provided the State shall be granted a license to any such Contractor Technology that is incorporated into Work Product.

(ii) Upon full payment to Contractor under any SOW Agreement, and subject to the terms and conditions contained therein, Contractor shall (i) assign to State all rights in and to the Deliverables, except to the extent they include any Contractor Technology; and (ii) grant to State or Contracting Agency the right to use, for State's internal business purposes, any Contractor Technology included in the Deliverables in connection with its use of the Deliverables. Except for the foregoing license grant, Contractor or its licensors retain all rights in and to all Contractor Technology.

For purposes of these terms (i) "Technology" means works of authorship, materials, information and other intellectual property; (ii) "Contractor Technology" means all Technology created prior to or independently of the performance of the Services, or created by Contractor or its subcontractors as a tool for their use in performing the Services, plus any modifications or enhancements thereto and derivative works based thereon; and (iii) "Deliverables" means all Technology that Contractor or its subcontractors create for delivery to State as a result of the Services.

The Contractor shall not sell or copyright a work product or item produced under this Master Agreement or SOW Agreement without explicit permission from the State.

If the Contractor is operating a system or application on behalf of the State of Vermont, then the Contractor shall not make information entered into the system or application available for uses by any other party than the State of Vermont, without prior authorization by the State. Nothing herein shall entitle the State to pre-existing Contractor Technology.

ORAL PRESENTATIONS/INTERVIEWS

In connection with any SOW RFP, Contractor and proposed employees, independent contractors or agents of Contractor may be required to make an oral presentation to State or Contracting Agency representatives. Significant representations made by a Contractor during the oral presentation shall be submitted in writing. All material representations acceptable to the State shall be incorporated in any applicable SOW Agreement. The Contracting Agency will notify Contractor of the time and place of oral presentations.

SOW AGREEMENT

Based upon an evaluation of SOW Proposals, a Contractor will be selected to perform the work. A specific SOW Agreement will be entered into between the State and the selected Contractor, which will bind the selected Contractor to the terms of the SOW Agreement, including Project-specific payment terms. All SOW Agreements shall be subject to the terms of this Master Agreement and the Attachments hereto.

PROJECT MANAGEMENT/BUSINESS ANALYSIS/ENTERPRISE ARCHITECT SERVICES

All SOW Agreements for Project Management Business Analysis/Architect Services shall be submitted to the State of Vermont Office of the Attorney General for a determination in accordance with 3 V.S.A. 311(a)(10) that such engagement is not contrary to the spirit and intent of the classification plan and merit system principles and standards provided by Chapter 13 of Title 3 of the Vermont Statutes.

NON-DISCLOSURE AGREEMENT

In some cases, Contractor may be required to sign a Non-Disclosure Agreement in a form acceptable to the State in order to protect confidential State data to which the Contractor, its employees, subcontractors or agents may have access.

CONTRACT MANAGEMENT OVERSIGHT ACTIVITIES

The State Enterprise Project Management Office (EPMO) will perform contract management oversight on this Master Agreement and each SOW Agreement. EPMO may monitor the progress of any or all of the SOW Agreements in order to ascertain whether the Contractor is completing its work in accordance with this Master Agreement and the applicable SOW Agreement. The Contractor shall provide relevant information on performance to DII EPMO in a timely manner upon request. In the event the Contractor refuses or otherwise fails to submit information as requested, this Master Agreement may be terminated for cause. In all cases, Contractor shall remain solely responsible for achieving on-budget/on-time completion of the applicable SOW Agreement.

REQUIRED PROJECT POLICIES, GUIDELINES AND METHODOLOGIES

The Contractor shall be required to comply with all applicable laws, regulations, policies, standards and guidelines affecting information technology projects, which may be created or changed periodically. It is the responsibility of the Contractor to insure adherence and to remain abreast of new or revised laws, regulations, policies, standards and guidelines affecting specific project execution. These may include, but are not limited to:

- Health Insurance Portability and Accountability Act (HIPAA) HIPAA (Health Insurance Portability and Accountability Act of 1996) — Agency of Human Services
- The State's Enterprise Architecture Program at: Policies and Procedures | Department of Information and Innovation
- The State Information Technology Security Policy and Standards at: Policies and Procedures | Department of Information and Innovation
- The State Digital Imaging Guidelines at http://vermontarchives.org/records/standards/pdf/VSA_Imaging_Guidelines.pdf
- The State File Formats Policy at http://vermont-archives.org/records/standards/pdf/FileFormatsPolicy2007.pdf
- The State File Formats Guideline at http://vermont-archives.org/records/standards/pdf/FileFormatsGuideline2007.pdf
- The State's Record Management Best Practice at: http://vermont-archives.org/records/standards/pdf/RecordsManagementBestPractice.pdf
- The State's Standard Project Process (SPP) and related information found from the EPMO home page with links to project management methodology, templates, and processes at http://dii.vermont.gov/pm

CONFIDENTIALITY OF CONTRACTOR MATERIALS.

All SOW RFP Responses and SOW Agreements will be subject to the State's Access to Public Records Law, 1 VSA§ 315 et seq. However, the State will not disclose information for which a reasonable claim of exemption can be made pursuant to 1 VSA § 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 Contractor shall specify in the cover letter to any SOW Response if it desires any portion of its SOW RFP Response be treated as proprietary or otherwise

confidential. **A redacted copy should be included for those portions of an SOW RFP Response that are not proprietary.**

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 attorneys' fees awarded in accordance with 1 V.S.A. § 320, or otherwise incurred by the State, in connection with any action brought by Contractor or a third party in connection with Contractor's attempts to prevent public disclosure of Contractor's information.

CONFIDENTIALITY AND SECURITY OF STATE MATERIALS

Contractor agrees to keep confidential all information received and collected by Contractor in connection with this Master Agreement or an SOW Agreement ("State Data"), unless otherwise instructed by the State. The Contractor agrees not to publish, reproduce, or otherwise divulge any such 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 those employees on his/her staff who must have the information on a "need to know" basis.

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.

The Contractor represents and warrants that it has implemented and it shall maintain during the term of this Master Agreement the highest industry standard administrative, technical, and physical safeguards and controls consistent with NIST *Special Publication 800-53* 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 include at a minimum, as applicable: (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.

SECURITY BREACH REPORTING.

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 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/theft of a PC or other portable device (laptop, desktop, tablet, smartphone, removable data storage device), loss/theft of printed materials, failure of security policies, etc.) (collectively, a "Security Breach"), and in accordance with 9 V.S.A. §2435(b)(2), the Contractor will 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 that require notification in the event of unauthorized release of personally-identifiable information as they 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, 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, 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. Without limiting the generality of the foregoing, the Contractor acknowledges and agrees that, by execution of this agreement, it acknowledges it is acting or conducting business in the State of Vermont.

In addition to any other indemnification obligations in this Master Agreement, 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 by the Contractor, its officers, agents, employees, and subcontractors of such State Data.

If required by an SOW Agreement, Contractor's security controls shall conform to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") including the Standards for the Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164 ("Privacy Rule") 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 and the Federal Information Security Management Act ("FISMA"), 44 U.S.C. 3541 et seq., as applicable.

State Data which is stored at a physical location other than a State server located in the State of Vermont, shall be stored and processed only in the continental United States.

Contractor acknowledges and agrees that all State Data belongs to the State and that the Contractor acquires no rights or licenses, including, without limitation, intellectual property rights or licenses, to use State Data for its own purposes. In no event shall the Contractor claim any security interest in the State Data.

RETAINAGE

Contractor agrees that any SOW Agreement may provide, in the discretion of the Contracting Agency, that the Contracting Agency withhold a percentage, determined in the discretion of the Contracting Agency, of the total amount payable for each SOW Agreement deliverable, to be payable only after satisfactory completion and the State's final acceptance of the SOW RFP Project.

INVOICING

Payment will only be made upon completion and acceptance of the deliverables as defined in the applicable SOW Agreement.

The Contractor shall submit invoices for payment upon acceptance of separately priced deliverables, or on a time and materials basis, as the case may be, on or before the 15th day of the month following written acceptance from the Contracting Agency that the deliverable is complete. A copy of the notice(s) of acceptance shall accompany all invoices submitted for payment.

Invoices shall be sent to the Contracting Agency at the address provided in the SOW Agreement.

REPORTING

SOW AGREEMENT PROJECTS

The Contractor and each Contracting Agency shall conduct progress meetings as set forth in the applicable SOW Agreement. A project progress report shall be submitted to the Project Manager for the Contracting Agency and the State Oversight Manager via email and shall contain, at a minimum, the following information:

- E-mail subject line: Contracting Agency name, IT service category name, reporting period and "Progress Report".
- Work accomplished during the frequency period and all tasks planned for the upcoming frequency period.
- Deliverable progress, as a percentage of completion.
- Problem areas, including scope creep, deviation from the work plan; tasks incomplete, or behind schedule in the previous week (with reasons given for those behind schedule); and the status of any corrective actions undertaken and other unresolved issues and requirements to resolve unresolved issues.
- Planned activities for the next reporting period.
- Gantt chart updated from the original to show actual progress; as applicable, explanations for variances and plan for completion on schedule.
- An accounting report for the current reporting period and a cumulative summary of the totals for both the current and previous reporting periods. The accounting report shall include amounts invoiced-to-date and paid-to-date.
- Significant changes to Contractor's organization or method of operation or to the Project management team, where applicable.

ADDITIONAL QUARTERLY REPORTING TO THE STATE:

Contractor shall submit **quarterly reports** to the State Contracts Agent via email to SOV.ITContractingandProcurement@state.vt.us. Each report must contain the following information: contract number; each Contracting Agency's address, contact name, and telephone number; SOW Title(s);

and price charged per SOW Agreement, with totals for each SOW Agreement in each reporting period. The State reserves the right to request additional information or to modify the following reporting periods.

Failure to report Quarterly can result in the State canceling this Master Agreement and any SOW Agreements in place.

Unless otherwise directed by the State, quarterly reports must be submitted in accordance with the following schedule:

Reporting Period	Report Due
January 1 -March 31	April 15
April 1 - June 30	July 15
July 1 - September 30	October 15
October 1 - December 31	January 15

CONFLICTS OF INTEREST

Contractor will be providing professional services under this contract. Contractor agrees that during the term of this Contract, its performance shall be solely in the best interest of the State. Contractor will not perform services for any person or entity which has also contracted with the State of Vermont in connection with the same project, without express written consent of the State. Contractor shall fully disclose, in writing, any such conflicts of interest, including the nature and extent of the work to be performed for any other person or entity so that the State may be fully informed prior to giving any consent. Contractor agrees that the failure to disclose any such conflicts shall be deemed an event of default under this Contract and any SOW, and this Contract shall be terminable immediately.

CHANGE ORDERS

Any change to an SOW Agreement that alters one or more aspects of the Project scope, schedule, deliverables, or cost, may require a formal change order. While such changes may typically incur additional costs and possible delays relative to the Project schedule, some changes may result in less cost to the State (i.e.; the State decides we no longer need a deliverable in whole or part) or less effort on the part of the Contractor. The change order must define the effort involved in implementing the change, the total cost or associated savings to the State, of implementing the change, and the effect, if any, of implementing the change on the Project schedule. No scope of work modifications shall be performed until a change order is executed and approved by the applicable Contracting Agency. In no event shall any delay in the approval or denial of a Change Request constitute a deemed approval by the State.

INSURANCE; PROFESSIONAL LIABILITY INSURANCE:

The certificates of insurance required pursuant to Paragraph 7 of Attachment C to this Master Agreement shall be provided to a Contracting Agency before commencing work on any SOW Agreement.

In addition to the insurance required in Attachment C to this Master Agreement, Contractor agrees to procure and maintain professional liability insurance for any and all services performed under this Master Agreement, with a minimum coverage of $1,000,000 per occurrence. This minimum coverage requirement may be increased in the discretion of the Contracting Agency for purposes of any SOW Agreement.

CONTRACT ASSIGNMENT

Notwithstanding anything to the contrary in Attachment C hereto, the State agrees that the Contractor may, upon not less than thirty (30) days advance written notice, assign this Master Agreement and any SOW Agreement entered in accordance with this Master Agreement, including all of the Contractor's rights and obligations hereunder, to any successor in interest to the Contractor arising out of the sale or reorganization of the Contractor; provided, however, that upon such notice, the State may elect to immediately terminate this Master Agreement.

EVENTS OF DEFAULT

In the event the State terminates this Master Agreement or any SOW Agreement for cause, Contractor shall only be paid through the date of termination to the extent SOW Project Deliverables have been completed and accepted by the State. Prepayments made by the State or a Contracting Agency for licensing or work such as maintenance and support services shall be returned to the State (or offset against payables), on a pro-rata basis.

NO WAIVER

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

ORDER OF PRECEDENCE

Additional Contractor documentation requirements for any SOW Agreement, such as an end user license agreement, or terms and conditions supplemental to this Master Agreement shall be subject to the review and approval of the State of Vermont Office of the Attorney General.

The Contractor specifically agrees that any language or provisions contained in any "shrinkwrap" or "clickwrap" or other electronic version of any contractor documentation required in connection with the work performed under any SOW Agreement shall be of no force and effect if such language or provisions conflict with the terms of this Master Agreement.

Further, in no event shall any Contractor documentation, including any paper or electronic version thereof which may be required in connection with the performance of the services contemplated by the terms of this Master Agreement or any SOW Agreement (a) require indemnification of the Contractor by the State ; (b) waive the State's right to a jury trial; (c) establish jurisdiction in any venue other than the Superior Court of the State of Vermont, Washington County Division; (d) constitute an implied or deemed waiver of the immunities, defenses, rights or actions arising out of State's sovereign status or under the Eleventh Amendment to the United States Constitution; or (e) limit the time within which an action may be brought hereunder. Further, there shall be no limitation of liability, including a waiver of consequential, indirect, special, punitive or exemplary damages, or disclaimers of warranty without approval from the Office of the Attorney General.

ATTACHMENT B

PAYMENT PROVISIONS

Services and costs

The maximum dollar amount payable under this Master Agreement is not intended as any form of a guaranteed amount. The Contractor will be paid for products or services specified in an SOW Agreement, or services actually performed, up to the maximum allowable amount specified in this Master Agreement. The payment schedule for completion of specific deliverables in accordance with the applicable SOW Agreement, or rates for services performed, and any additional reimbursements, shall be included in the applicable SOW Agreement, but shall not exceed the maximum amounts set forth in this Attachment B.

When providing IT services in the category(s) set forth in paragraph 2 of the Standard Contract for Personal Services, the maximum dollar amount payable under this Master Agreement is $240,000 and each category of service in an SOW Agreement shall have a maximum amount as follows:

Service	Maximum SOW Agreement Amount
(1) Strategic Planning	$100,000
(2) Independent Review	$25,000
(3) Project Management	$100,000
(4) Business Analysis	$100,000

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 a payment made by the State under this Master Agreement or an SOW Agreement. If taxes are to be applied to the purchase it will be so noted in the applicable SOW RFP response.

State Projects which exceed the maximum amount of $100,000 shall require a formal Request for Proposal (RFP) process, and may not be undertaken through this Master Agreement.

Attachment C

Standard State Provisions For Contracts and Grants

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

2. **Applicable Law:** This Agreement will be governed by the laws of the State of Vermont.

3. **Definitions:** For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement.

4. **Appropriations:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and in the event federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.

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

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

The Party 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 Party or of any agent of the Party. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit.

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

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

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

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont.

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

Premises - Operations
Products and Completed Operations
Personal Injury Liability
Contractual Liability

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

$1,000,000 Per Occurrence
$1,000,000 General Aggregate
$1,000,000 Products/Completed Operations Aggregate
$ 50,000 Fire/ Legal/Liability

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

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than: $1,000,000 combined single limit.

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

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

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

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. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a single audit is required.

10. **Records Available for Audit:** The Party will maintain all books, documents, payroll papers, accounting records and other evidence pertaining to costs incurred under this agreement and make them available at reasonable times during the period of the Agreement and for three years thereafter 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. The State, by any authorized representative, shall have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement.

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

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

13. **Taxes Due to the State:**

a. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.

b. Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.

c. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.

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

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

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

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

15. **Sub-Agreements:** Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party also agrees to include in all subcontract or subgrant agreements a tax certification in accordance with paragraph 13 above.

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

17. **Copies:** All written reports prepared under this Agreement will be printed using both sides of the paper.

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

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

19. **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.

(End of Standard Provisions)

ATTACHMENT D

Example of Scope of Work Proposal Format and Statement of Work Agreement

The following documents are generic representations of the Statement of Work (SOW) Contracting Agencies will use for purposes of this Master Agreement, the outline for Contractor response, and the resulting SOW Agreement.

ATTACHMENT D-1

FORM OF SOW RFP

State of Vermont
Department of Information & Innovation
133 State St., 5th floor
Montpelier Vermont, 05633

Request for Quote
Month DD, YYYY

ADMINISTRATIVE INFORMATION

AGENCY/DEPT RESPONSIBILITY FOR SOW-RFP AND SOW AGREEMENT

Name the person/s and Agency/Dept.

This SOW RFP is being issued in accordance with the Master Agreement between the Contractor and the State of Vermont, Department of Information and Innovation. After an evaluation of Contractor's response to this SOW RFP, the Contracting Agency may elect to enter into a specific SOW Agreement which will outline all contract requirements and payment provisions.

SOW PROPOSAL SUBMISSIONS

All SOW Proposals are due no later than: **(Date) and Time**

Proposals must be submitted by email to: (State Agency Contact e-mail)

The SOW RFP Response is to be submitted to the contact set forth above via e-mail as two attachments in Portable Document Format (pdf). The "subject" line in the e-mail submission shall state the SOW-RFP Project Name. The first file will be the technical response to this SOW-RFP and titled, "SOW-RFP Project Name Technical". The second file will be the financial response to this SOW-RFP and titled, "SOW-RFP Project Name Financial".

The Contractor proposal must be fixed price, including hours and hourly rate, for the service to accomplish the deliverable or deliverables as outlined below. The State reserves the right to negotiate any and all proposals in its discretion in the best interests of the State.

The Contractor shall specify in the cover letter to any SOW RFP Response if it desires any portion of its RFP Response be treated as proprietary or otherwise confidential. **A redacted copy should be included for those portions of an RFP Response that are not proprietary. The Contractor acknowledges that the Contracting Agency is subject to the State of Vermont Access to Records Laws, 1 VSA 315 et seq.**

STATEMENT OF RIGHTS

The State of Vermont reserves the right to obtain clarification or additional information necessary to properly evaluate a proposal. The Contractor may be asked to give a verbal presentation of its proposal after

submission. Failure of Contractor to respond to a request for additional information or clarification could result in rejection of the Contractor's proposal. To secure a project that is deemed to be in the best interest of the State, the State reserves the right to accept or reject any and all bids, in whole or in part, with or without cause, and to waive technicalities in submissions. The State also reserves the right to make purchases outside of the awarded contracts where it is deemed in the best interest of the State.

METHOD OF AWARD

Awards will be made in the best interest of the Contracting Agency. The Contracting Agency may award one or more SOW Agreements and reserves the right to make additional awards to other compliant bidders at any time during the term of the SOW Agreement if such award is deemed to be in the best interest of the Contracting Agency.

ORAL PRESENTATIONS/INTERVIEWS

The State will conduct a pre-bid conference call on (Replace with Date and Time) to answer any questions potential bidders may have. The call in number will be (Replace with Phone Number)

Prior to making a final selection, the State will determine whether to conduct oral presentations. The decision will be based on the quality and quantity of responses received. If it is determined that oral presentations are needed they will be conducted at no expense to the State. Oral presentation may be by phone or in person. In person presentations will take place as directed by the Contracting Agency on a yet to be determined date at no expense to the State.

As part of the selection process, the State reserves the right to interview, either in person or via phone, all candidates for on-site staff that are proposed to fulfill the development work defined within this SOW RFP. The State may also request a change to vendor staffing after a vendor has been selected if upon on-site efforts the State deems the relationship to not be acceptable. Replacement staff will be subject to additional interviewing and approval by the State at no additional cost to the State.

For this particular request, knowledge requirements include
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.

NON-DISCLOSURE AGREEMENT

Contractors will be required to sign a standard non-disclosure agreement if there is not already one on file.

SCOPE OF WORK

PURPOSE

BACKGROUND

High level description of Contracting Agency's business unit and the business case or situation leading to this Project

TECHNICAL REQUIREMENTS

PROJECT APPROACH(change as needed)

Describe the project management approach required by your agency or business unit. If certain project management methodologies are to be employed and project progress reports and project team meetings are to take place, they need to also be defined as deliverables below.

PROJECT MANAGEMENT

PROJECT MANAGEMENT SERVICES

All proposed SOW Agreements for Project Management Services shall be submitted to the State of Vermont Office of the Attorney General for a determination in accordance with 3 V.S.A. 311(a)(10) that such engagement is not contrary to the spirit and intent of the classification plan and merit system principles and standards provided by Chapter 13 of Title 3 of the Vermont Statutes.

PM Approach

The Contractor shall follow project management methodologies that are consistent with the Project Management Institute's (PMI) *Project Management Body of Knowledge (PMBOK) Guide 4th Edition*. All projects under this Agreement shall be managed in accordance with the State's EPMO Standard Project Process (SPP) outlined here: http://dii.vermont.gov/pm/process

Contractor shall produce the minimum required set of project deliverables in accordance with the EPMO SPP, using the corresponding standard EPMO required templates. Once contracted, PM's are given access to these deliverable source documents for use on State projects. PDF versions can be previewed here: http://dii.vermont.gov/pm/pmtemplates/spp

Contractor staff will produce project deliverables using Microsoft Office products in v2007 or newer (Word, Excel, Project, Visio, etc.), and Adobe PDF, or other mutually acceptable formats that can be utilized by the State without their need to purchase additional software applications

DELIVERABLES

Describe required deliverable in detail. Under no circumstance should a SOW be developed or an SOW RFP be released where the deliverables are not quantified or the criteria for acceptance are not defined. Be clear and concise.

Example: DELIVERABLE/ DELIVERY SCHEDULE

ID	**Deliverables**	**Expected Completion:** <If known>
2.2.2.1	Deliverable A	
2.2.2.2	Deliverable B	

2.2.2.3	Deliverable C	

Example: DELIVERABLES MATRIX

ID	Acceptance Criteria	Est Completion Date	Quoted Cost
2.2.2.1	(1)		
2.2.2.2	(2)		
2.2.2.3	(3)		
2.2.2.4	(4)		
2.2.2.5			
2.2.2.6			
2.2.2.7			
	Total		

REQUIRED PROJECT POLICIES, GUIDELINES AND METHODOLOGIES

The Contractor shall be required to comply with all applicable laws, regulations, policies, standards and guidelines affecting State of Vermont information technology projects, as the same may be adopted or amended from time-to-time. It is the responsibility of the Contractor to insure adherence and to remain abreast of new or revised Laws, regulations, policies, standards and guidelines affecting project execution. These include, but may not be limited to:

- Health Insurance Portability and Accountability Act (HIPAA)
- Business Associate Agreement – Agency of Human Services.
- Agency of Human Services Customary Contract Provisions.
- The State's Enterprise Architecture Program
- The State Information Technology Security Policy and Standards
- The State Digital Imaging Guidelines
- The State File Formats Policy and Guidelines
- The State Records Management Guidelines
- The EPMO's SSP and related information found from the EPMO home page with links to project management methodology, templates, and processes at http://dii.vermont.gov/pm

INVOICING and PAYMENT

1. **Price each deliverable individually** and understand that the final agreement may only contain certain deliverables. The Contractor may invoice the State only after each agreed to deliverable has been accepted as satisfactory by the State.
2. All work performed by the Contractor must be approved in advance by the State. Once work has been completed, delivered and accepted by the State, invoicing can occur. The State's payment terms are net 30 days and payments are processed as an EFT.

CHANGE ORDERS

We do not anticipate the need to make change orders, however, if it becomes necessary, such work must be authorized by the State in writing before such work can proceed.

REFERENCES

Provide the names, addresses, and phone numbers of at least three companies or State Agencies with whom you have transacted similar business in the last 12 months. You must include contact names who can talk knowledgeable about performance and deliverables.

OFFSHORE OUTSOURCING

Please indicate whether or not any services being provided are or will be outsourced as part of bidding on this project.

SOW PROPOSAL FORMAT

FORMAT

Email PDF's or Microsoft Office documents as set forth above under SOW PROPOSAL SUBMISSIONS

A SOW RFP Proposal shall provide the following:

1) Proposed Services – Work Plan
    i) Proposed Solution: A description of the Contractor's proposed solution to accomplish the specified work requirements, including dates of completion.
    ii) Assumptions: A description of any assumptions formed by the Contractor in developing the Technical Proposal.
    iii) Risk Assessment: An assessment of any risks inherent in the work requirements and actions to mitigate these risks.
    iv) Proposed Tools: A description of proposed tools that may be used to facilitate the work.
    v) Tasks and Deliverables: A description of and the schedule for each task and deliverable, illustrated by a Gantt chart. Start and completion dates for each task, milestone, and deliverable shall be indicated. Must include deliverables specified in SOW-RFP as well as other deliverables that may be proposed by Contractor.
    vi) Work Breakdown Structure: A detailed work breakdown structure and staffing schedule, with labor hours by skill category that will be applied to meet each milestone and deliverable, and to accomplish all specified work requirements.
2) Proposed Personnel
    i) Identify all personnel by name and skill set who will be working on the project, include resumes
    ii) Certification that all proposed personnel meet the minimum required qualifications and possess the required certifications to complete the work as required.
    iii) Provide the names and titles of all key management personnel who will be involved with supervising the services rendered under the Agreement.
3) Subcontractors
    i) Identify all proposed subcontractors and their full roles that may be involved completing the Scope of Work. Note: no work shall be subcontracted without knowledge of and approval by the State.
4) State Assistance

i) Provide an estimate of expectation concerning participation by State personnel.

5) Confidentiality
   i) Contractor should give specific attention to the identification of those portions of its proposal that it considers confidential, proprietary commercial information or trade secrets, and provide justification why such materials, upon request, should not be disclosed by the State under the State's Public Record Law . Contractor is advised that, upon request for this information from a third party, the SOW Procurement Officer will be required to make an independent determination regarding whether the information may be disclosed.

6) Transmittal Letter
   i) The Contractor must submit a signed letter acknowledging the terms and conditions of the Master Agreement and any special requirements that may be included in a specific SOW Agreement.

REQUIRED PRICE PROPOSAL RESPONSE

All pricing must be fixed cost, inclusive of all expenses and fees if this Statement of Work is for a fixed price agreement. (Remove if Time and Materials agreement)

For Time and Materials the pricing proposal must be include estimated effort hours, hourly rate for proposed personnel, projected timeline, including timing expectations for the State functional and technical resources and be submitted as a separate document from the rest of the proposal. (Remove if not Time and Materials)

EXAMPLE of
PRICE PROPOSAL FORM
(not inclusive of all requirements defined above)

PRICE PROPOSAL FOR SOW-RFP PROJECT NAME_____

Deliverables	Expected Completion:	Hourly Rate	Price
Deliverable I	Date		
Deliverable II	Date		
Deliverable III	Date		
Combined Bid	Date		

The Price Proposal form must use the same deliverables as outlined in the Request from the State.

PROCEDURE FOR AWARDING A SOW AGREEMENT

EVALUATION CRITERIA

The responses will be evaluated based on the following:

- Quality of proposal content
- Cost
- Prior Experience with this type of work
- Timeline for completion of work to be performed

Contractor selection, or the determination to terminate the SOW RFP without award shall be done in the best interest of the State.

COMMENCEMENT OF WORK UNDER A SOW AGREEMENT

Commencement of work as a result of the SOW-RFP process shall be initiated only upon issuance of a fully executed SOW Agreement and Purchase Order**.**

SOW AGREEMENTS

If selected, the Contractor will sign an SOW Agreement with the Contracting Agency to provide the deliverables set forth in its response, at prices agreed by the Contracting Agency. Minimum support levels set forth in this SOW RFP and terms, and conditions from the Master Agreement, including Attachment C thereto, will become part of each SOW Agreement. Each SOW Agreement will be subject to review throughout its term. The Contracting Agency will consider cancellation of each SOW Agreement, as well as the Master Agreement upon discovery that the Contractor is in violation of any portion of the Master Agreement or an SOW Agreement, including an inability by the Contractor to provide the products, support, and/or service offered in its response. Each SOW Agreement shall specify the term of the Agreement.

In no event shall any SOW Agreement or any document proposed by the Contractor (a) require indemnification by the State of the Contractor; (b) waive the State's right to a jury trial; (c) establish jurisdiction in any venue other than the Superior Court of the State of Vermont, Washington County Division; (d) constitute an implied or deemed waiver of the immunities, defenses, rights or actions arising out of State's sovereign status or under the Eleventh Amendment to the United States Constitution; or (e) limit the time within which an action may be brought hereunder. Further, there shall be no limitation of liability, including a waiver of consequential, indirect, special, punitive or exemplary damages, or disclaimers of warranty without approval from the Office of the Attorney General.

EXHIBIT D-2

EXAMPLE

STATEMENT OF WORK AGREEMENT

SOW-RFP PROJECT TITLE__XXXXXXXXX Project__
VISION PO #_____
PRE-QUALIFICATION CONTRACT # __XXXXX_____ ("Master Agreement")

This is a Statement of Work Agreement ("SOW Agreement") between the State of Vermont, [CONTRACTING AGENCY] (hereafter called "State") and _____., with principal place of business at _____, (hereafter called "Contractor"). This SOW Agreement is entered into in accordance with the Master Agreement and incorporates all of the terms and conditions of the Master Agreement. This SOW Agreement shall not in any way amend conflict with or supersede the Master Agreement.

. [Applicable to AHS SOW Agreements: This SOW Agreement incorporates Attachment(s) F-I attached to the Master Agreement.]

Time for Performance

The term of this SOW Agreement shall begin on _____ and end on _____ (the "Initial Term"). The Initial Term is for a period of [**duration of term]**, and may be extended as the parties may agree. In the event the term of the Master Agreement is not extended beyond [INSERT TERMINATION OF MASTER], this SOW Agreement shall terminate upon the termination of the Master Agreement.

Scope of Work

The Contractor shall, in full satisfaction of the specific requirements of this SOW Agreement, provide the services set forth herein [and Attachments 1, 2, 3 to this SOW Agreement]. These services shall be provided in accordance with the Master Agreement and this SOW Agreement.

In Scope:

XXXXXXXXXX

Deliverables and Services Produced

XXXXXXXXXXX

Phases (Remove or add if not needed)

XXXXXXXXX

Approach **(modify as needed)**

Contractor shall provide a project manager to work as the primary point of contact with the State. As a part of its project management duties, the Contractor Project Manager will attend an agreed upon number of informational and status meetings and, when appropriate, call and lead such meetings. Such meetings may include the Project Management Team, the Contract Administrator, other consultants, elected officials, and other stakeholders as designated by the State. The Contractor Project Manager shall work directly with the State Project Manager to define, manage, and control the project scope, timeline, issue escalation and resolution processes. The State Project Manager will require status reports on a weekly basis and will reserve the option of changing that requirement dependent upon which phase the project is in or if in his/her judgment circumstances warrant it. In addition, Contractor will create and routinely update the project plan to reflect changes in the nature and timing of project activities, all changes being subject to the SOV Project Manager's approval. Project deliverables and activities will be subjected to the State's quality management process to be defined by the State prior to the project kick-off.

Project Management/Business Analysis/Enterprise Architect (Require AG signoff)

[INDICATE STATE RESOURCES AND CENTRAL POINT OF CONTACT]
[INDICATE KEY CONTRACTOR STAFF AND CONTRACTOR PROJECT MANAGER]
[INDICATE PROJECT MANAGEMENT METHODOLOGY, IF APPLICABLE]

PROJECT MANAGEMENT/BUSINESS ANALYST/ENTERPRISE ARCHITECT SERVICES

This SOW Agreement for Project Management/Business Analyst/Enterprise Architect Services shall be submitted to the State of Vermont Office of the Attorney General for a determination in accordance with 3 V.S.A. 311(a) (10) that such engagement is not contrary to the spirit and intent of the classification plan and merit system principles and standards provided by Chapter 13 of Title 3 of the Vermont Statutes.

XXXXXXXXXXX

SOV Responsibilities **(modify as needed)**

XXXXXXX

ORGANIZATION **(modify as needed)**

XXXXXXXX

WARRANTIES

The Contractor represents, warrants and covenants that:

(viii) The Contractor has all requisite power and authority to execute, deliver and perform its obligations under the Master Agreement and this SOW Agreement and the execution, delivery and performance of this SOW Agreement by the Contractor has been duly authorized by the Contractor.

(ix) There is no outstanding litigation, arbitrated matter or other dispute to which the Contractor is a party which, if decided unfavorably to the Contractor, would reasonably be expected to have a material adverse effect on the Contractor's ability to fulfill its obligations under this SOW Agreement.

(x) The Contractor will comply with all laws applicable to its performance of the services and otherwise to the Contractor in connection with its obligations under the Master Agreement and this SOW Agreement.

(xi) All deliverables performed under this SOW Agreement will be free from material errors and shall perform in accordance with the specifications therefor.

(xii) The Contractor owns or has the right to use under valid and enforceable agreements, all intellectual property rights reasonably necessary for and related to delivery of the services and provision of the deliverables as set forth in this SOW Agreement and none of the deliverables or other materials or technology provided by the Contractor to the State will infringe upon or misappropriate the intellectual property rights of any third party.

(xiii) Each and all of the services shall be performed in a timely, diligent, professional and workpersonlike manner, in accordance with the highest professional or technical standards applicable to such services, by qualified persons with the technical skills, training and experience to perform such services in the planned environment. At its own expense and without limiting any other rights or remedies of the State hereunder, the Contractor shall re-perform any services that the State has determined to be unsatisfactory in its reasonable discretion, or the Contractor will refund that portion of the fees attributable to each such deficiency.

(xiv) The Contractor has adequate resources to fulfill its obligations under this SOW Agreement.

PAYMENT PROVISIONS (modify as needed)

The maximum amount payable under this agreement is $10,000 [Modify as needed]. In no case shall the total amount payable, including any change orders or amendments that may arise, exceed $10,000 [Modify as needed] without written approval of the State of Vermont CIO.

Submit invoices to: State of Vermont, [CONTRACTING AGENCY], [CONTRACTING AGENCY ADDRESS], Montpelier, VT. 05633. **Invoice should include Name of Project and Contract PO which is at top of this Form.**

[The State shall retain 10% of each payment to hold until the satisfactory completion of the Project by the prescribed time and to the satisfaction of the State. Payment of retained fees shall occur [one month after the completion date upon receipt of invoicing from Contractor] [MODIFY AS NEEDED], provided State has accepted all deliverables under this SOW Agreement.]

Consideration and Payment

The consideration to be paid the Contractor shall be made in accordance with the Master Agreement and this SOW Agreement and shall not exceed $_____. Payments to the Contractor shall be made as outlined below:

SERVICES	Date	Amount
Deliverable A		
Deliverable B		
Deliverable C		
Deliverable D		

[ADD IF APPLICABLE]
For services performed at an hourly rate on a time and materials basis, State shall pay Contractor at the rate of $___ per hour, however, total payment for services shall not exceed $_____.

[ADD IF APPLICABLE:]

ESTIMATED SOFTWARE, HARDWARE AND SUPPORT COSTS	COST IN $
Total Estimated Software, Hardware, and Support Costs	

Contractor shall not purchase software or hardware and sell to the State at a profit. State is not obligated to purchase software or hardware from Contractor and may opt to purchase software or hardware direct from a third-party if more cost-effective and if time allows.

Deliverable payments shall be made only upon approval and acceptance by the Contracting Agency.

The State shall not be responsible for any expenses of the Contractor.

Taxes Due to the State. Contractor certifies under the pains and penalties of perjury that, as of the date this SOW Agreement 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.

IN WITNESS THEREOF, the parties have executed this SOW Agreement as of the date hereinabove set forth.

Signatures

<Insert SOW contractor Name>

_____ _____

Signature Date

STATE OF VERMONT, <Insert Requesting Agency or business unit>

_____ _____

Signature Date

ATTACHMENT E

Other Terms and Conditions

[Modifications to Attachment C or G and other terms and conditions, if applicable]

To be used in instances where there is State agreement to modify the standard State provisions of Attachment C or the Standard AHS provisions of Attachment G. Any such modification needs to be specific and will require an approval of the Attorney General.

This attachment will also be used to the extent required to supersede and modify Contractor Documents.

Attachment F: Business Associate Agreement

This standardized Attachment contains language to be used when the reviewing Assistant Attorney General has determined that it is required under the federal Health Insurance Portability and Accountability Act known as HIPAA.

This Business Associate Agreement ("Agreement") is entered into by and between the State of Vermont Agency of Human Services, operating by and through its _____ **[Insert Name of AHS Department, Office or Division]** ("Covered Entity") and Desai Management Consulting, LLC ("Business Associate") as of 2/23/2012 ("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)

ATTACHMENT G

AGENCY OF HUMAN RESOURCES

CUSTOMARY CONTRACT PROVISIONS

1. **Agency of Human Services – Field Services Directors** will share oversight with the department (or field office) that is a party to the contract for provider performance using outcomes, processes, terms and conditions agreed to under this contract.

2. **2-1-1 Data Base:** The Contractor providing a health or human services within Vermont, or near the border that is readily accessible to residents of Vermont, will provide relevant descriptive information regarding its agency, programs and/or contact and will adhere to the "Inclusion/Exclusion" policy of Vermont's United Way/Vermont 211. If included, the Contractor will provide accurate and up to date information to their data base as needed. The "Inclusion/Exclusion" policy can be found at www.vermont211.org

3. **Medicaid Program Contractors**:

   Inspection of Records: Any contracts accessing payments for services through the Global Commitment to Health Waiver and Vermont Medicaid program must fulfill state and federal legal requirements to enable the Agency of Human Services (AHS), the United States Department of Health and Human Services (DHHS) and the Government Accounting Office (GAO) to:

   Evaluate through inspection or other means the quality, appropriateness, and timeliness of services performed; and Inspect and audit any financial records of such Contractor or subcontractor.

   Subcontracting for Medicaid Services: Having a subcontract does not terminate the Contractor, receiving funds under Vermont's Medicaid program, from its responsibility to ensure that all activities under this agreement are carried out. Subcontracts must specify the activities and reporting responsibilities of the Contractor or subcontractor and provide for revoking delegation or imposing other sanctions if the Contractor or subcontractor's performance is inadequate. The Contractor agrees to make available upon request to the Agency of Human Services; the Department of Vermont Health Access; the Department of Disabilities, Aging and Independent Living; and the Center for Medicare and Medicaid Services (CMS) all contracts and subcontracts between the Contractor and service providers.

   Medicaid Notification of Termination Requirements: Any Contractor accessing payments for services under the Global Commitment to Health Waiver and Medicaid programs who terminates their practice will follow the Department of Vermont Health Access, Managed Care Organization enrollee notification requirements.

   Encounter Data: Any Contractor accessing payments for services through the Global Commitment to Health Waiver and Vermont Medicaid programs must provide encounter data to the Agency of Human Services and/or its departments and ensure that it can be linked to enrollee eligibility files maintained by the State.

   Federal Medicaid System Security Requirements Compliance: All contractors and subcontractors must provide a security plan, risk assessment, and security controls review document within three months of the start date of this agreement (and update it annually thereafter) to support audit compliance with

45CFR95.621 subpart F, *ADP* (Automated Data Processing) *System Security Requirements and Review Process*.

4. **Non-discrimination Based on National Origin as evidenced by Limited English Proficiency**. The Contractor agrees to comply with the non-discrimination requirements of Title VI of the Civil Rights Act of 1964, 42 USC Section 2000d, et seq., and with the federal guidelines promulgated pursuant to Executive Order 13166 of 2000, which require that contractors and subcontractors receiving federal funds must assure that persons with limited English proficiency can meaningfully access services. To the extent the Contractor provides assistance to individuals with limited English proficiency through the use of oral or written translation or interpretive services in compliance with this requirement, such individuals cannot be required to pay for such services.

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

6. **Drug Free Workplace Act.** The Contractor will assure a drug-free workplace in accordance with 45 CFR Part 76.

7. **Privacy and Security Standards.**

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

   Substance Abuse Treatment Information: The confidentiality of any alcohol and drug abuse treatment information acquired by or provided to the Contractor or subcontractor shall be maintained in compliance with any applicable state or federal laws or regulations and specifically set out in 42 CFR Part 2.

   Other Confidential Consumer Information: The Contractor agrees to comply with the requirements of AHS Rule No. 08-048 concerning access to information. The Contractor agrees to comply with any applicable Vermont State Statute, including but not limited to 12 VSA §1612 and any applicable Board of Health confidentiality regulations. The Contractor shall ensure that all of its employees and subcontractors performing services under this agreement understand the sensitive nature of the information that they may have access to and sign an affirmation of understanding regarding the information's confidential and non-public nature.

   Social Security numbers: The Contractor agrees to comply with all applicable Vermont State Statutes to assure protection and security of personal information, including protection from identity theft as outlined in Title 9, Vermont Statutes Annotated, Ch. 62.

8. **Abuse Registry.** The Contractor agrees not to employ any individual, use any volunteer, or otherwise provide reimbursement to any individual in the performance of services connected with this agreement, who provides care, custody, treatment, transportation, or supervision to children or vulnerable adults if there is a

substantiation of abuse or neglect or exploitation against that individual. The Contractor will check the Adult Abuse Registry in the Department of Disabilities, Aging and Independent Living. Unless the Contractor holds a valid child care license or registration from the Division of Child Development, Department for Children and Families, the Contractor shall also check the Central Child Protection Registry. (See 33 V.S.A. §4919(a)(3) & 33 V.S.A. §6911(c)(3)).

9. **Reporting of Abuse, Neglect, or Exploitation.** Consistent with provisions of 33 V.S.A. §4913(a) and §6903, any agent or employee of a Contractor who, in the performance of services connected with this agreement, has contact with clients or is a caregiver and who has reasonable cause to believe that a child or vulnerable adult has been abused or neglected as defined in Chapter 49 or abused, neglected, or exploited as defined in Chapter 69 of Title 33 V.S.A. shall make a report involving children to the Commissioner of the Department for Children and Families within 24 hours or a report involving vulnerable adults to the Division of Licensing and Protection at the Department of Disabilities, Aging, and Independent Living within 48 hours. This requirement applies except in those instances where particular roles and functions are exempt from reporting under state and federal law. Reports involving children shall contain the information required by 33 V.S.A. §4914. Reports involving vulnerable adults shall contain the information required by 33 V.S.A. §6904. The Contractor will ensure that its agents or employees receive training on the reporting of abuse or neglect to children and abuse, neglect or exploitation of vulnerable adults.

10. **Intellectual Property/Work Product Ownership.** All data, technical information, materials first gathered, originated, developed, prepared, or obtained as a condition of this agreement and used in the performance of this agreement - including, but not limited to all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video or audio**)**, pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and printouts, notes and memoranda, written procedures and documents, which are prepared for or obtained specifically for this agreement - or are a result of the services required under this grant - shall be considered "work for hire" and remain the property of the State of Vermont, regardless of the state of completion - unless otherwise specified in this agreement. Such items shall be delivered to the State of Vermont upon 30 days notice by the State. With respect to software computer programs and / or source codes first developed for the State, all the work shall be considered "work for hire," i.e., the State, not the Contractor or subcontractor, shall have full and complete ownership of all software computer programs, documentation and/or source codes developed.

    The Contractor shall not sell or copyright a work product or item produced under this agreement without explicit permission from the State.

    If the Contractor is operating a system or application on behalf of the State of Vermont, then the Contractor shall not make information entered into the system or application available for uses by any other party than the State of Vermont, without prior authorization by the State. Nothing herein shall entitle the State to pre-existing Contractor's materials.

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

implement any required.

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

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

    1. Contractor's provision of certified computing equipment, peripherals and mobile devices, on a separate Contractor's network with separate internet access. The Agency of Human Services' accounts may or may not be provided.
    2. State supplied and managed equipment and accounts to access state applications and data, including State issued active directory accounts and application specific accounts, which follow the National Institutes of Standards and Technology (NIST) security and the Health Insurance Portability & Accountability Act (HIPAA) standards.

    The State will not supply e-mail accounts to the Contractor.

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

14. **Non–discrimination.** The Contractor will prohibit discrimination on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under Title IX of the Education Amendments of 1972, or on the basis of race, color or national origin under Title VI of the Civil Rights Act of 1964. No person shall on the grounds of sex (including, in the case of a woman, on the grounds that the woman is pregnant) or on the grounds of religion, be excluded from participation in, be denied the benefits of, or be subjected to discrimination, to include sexual harassment, under any program or activity supported by state and/or federal funds.

    The Contractor will also not refuse, withhold from or deny to any person the benefit of services, facilities, goods, privileges, advantages, or benefits of public accommodation on the basis of disability, race, creed, color, national origin, marital status, sex, sexual orientation or gender identity under Title 9 V.S.A. Chapter 139.

15. **Environmental Tobacco Smoke.** Public Law 103-227, also known as the Pro-children Act of 1994

(Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, child care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such Federal funds.

The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where Women, Infants, & Children (WIC) coupons are redeemed.

Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

Contractors are prohibited from promoting the use of tobacco products for all clients. Facilities supported by state and federal funds are prohibited from making tobacco products available to minors.

Attachment F - Revised AHS -12/10/10

ATTACHMENT H

Academic Research

This attachment is only used for contracts with a college or university or academic research center where the contract involves academic research to provide 'intellectual property' protection for the academic researcher. It is not used with private entities or other non-profits.

- Instructions: when to use Attachment G, and when not to
- Attachment G for contracts (rev. 8/31/10)

ATTACHMENT I

Agency of Human Resources

Contracts with Specific Providers

For agreements with Fletcher Allen Health Care

The following attachment is to be used in **all** cases involving agreements with Fletcher Allen Health Care (Contracts or Grants) since Fletcher Allen Health Care cannot add the State as an additional insured.

- Attachment D -- Fletcher Allen (rev. 12/8/09)

For all agreements (contracts or grants) with the following designated agencies:

- Clara Martin Center (CMC)
- Health Care Rehabilitation Svcs (HCRS)
- Lamoille Community Connections
- Sterling Area Services
- Upper Valley Services
- Families First
- Howard Center
- Lincoln Street, Inc.
- United Counseling Service (UCS)

- Attachment D-1 for agreements with these nine designated agencies (rev. 10/30/10)

For all agreements (contracts or grants) with the following designated agencies:

- Champlain Community Services
- Northeast Kingdom Human Services (NEKHS)
- Northwestern Counseling & Support Services (NWCSS)
- Washington County Mental Health (WCMH)
- Counseling Service of Addison County (CSAC)
- Northeastern Family Institute (NFI)
- Rutland Mental Health Services (RMHS);