

State of Vermont

Buildings and General Services
Office of Purchasing & Contracting
109 State St
Montpelier VT 05609-3001
USA

CONTRACT



Supplier 0000378543
Zeco Systems, Inc.
767 S Alameda St.
Suite 200
Los Angeles CA 90021
USA

Contract ID 0000000000000000000038907		Page 1 of 2
Contract Dates 11/01/2019 to 08/31/2021		Origin CPS
Description: Statewide EV Charging Stations		Contract Maximum \$3,000,000.00
Buyer Name Erin Marie Collier	Buyer Phone	Contract Status Approved

Phone #:

Line #	Item ID	Item Desc	UOM	Unit Price	Max Qty	Max Amt
1		Statewide Electric Vehicle Charging Stations Services	JOB	0.01000	0.00	3,000,000.00

1. Parties. This is a contract for services between the State of Vermont, through its Department of Buildings & General Services (hereinafter called "State"), and Zeco Systems, Inc. dba Greenlots, with a principal place of business in Los Angeles, CA (hereinafter called "Contractor"). Contractor's form of business organization is a Delaware corporation. It is Contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, Contractor is required to have a Vermont Department of Taxes Business Account Number.

2. Subject Matter. This contract establishes master terms and conditions for the purchase of Electric Vehicle Charging Station equipment and installation services from Contractor, pursuant to any one or more Statement of Work (SOW) Agreements executed under, as further described in Attachment A hereto. All SOW Agreements shall be performed by the Contractor subject to and in accordance with all terms and conditions established under this contract.

3. Maximum Amount. Equipment and services provided by Contractor pursuant to any one or more Statement of Work (SOW) Agreements executed under this contract will be paid for by the eligible purchasing entity in accordance with the payment provisions specified in Attachment B hereto and the specific SOW agreement. Total aggregate payments made by State Purchasers through SOW Agreements executed under this contract shall not exceed \$3,000,000.00.

4. Contract Term. The period of contractor's performance shall begin on November 1, 2019 and end on August 31, 2021 with an option to renew for one additional (2) two-year period.

5. Prior Approvals. This Contract shall not be binding unless and until all requisite prior approvals have been obtained in accordance with current State law, bulletins, and interpretations.

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

7. Termination for Convenience. This contract may be terminated by the State at any time by giving written notice at least thirty (30) days in advance. In such event, Contractor shall be paid under the terms of this contract for all services provided to and accepted by the State prior to the effective date of termination.

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

Attachment A - Scope of Services
Attachment B - Payment Provisions
Attachment B1 - Price Schedule
Attachment C - "Standard State Provisions for Contracts and Grants" a preprinted form (12/15/17)
Attachment D - General Conditions for Design/Build Contracts (05/22/2019)
Attachment E - Security Requirements for Correctional Facilities, Courthouses, and Public Safety Buildings and Sample Background Clearance Forms
Attachment F - BGS Maintenance District Map
Attachment G - End User Agreement

9. Order of Precedence. Any ambiguity, conflict or inconsistency between the documents comprising this contract shall be resolved according to the following order of precedence:

- (1) Standard Contract
- (2) Attachment C - (Standard Contract Provisions for Contracts and Grants)
- (3) Attachment D - General Conditions for Design/Build Contracts (05/22/2019)
- (4) Attachment E - Security Requirements for Correctional Facilities, Courthouses, and Public Safety Buildings and Sample Background Clearance Forms
- (5) Attachment A - Scope of Services
- (6) Attachment B - Payment Provisions

ATTACHMENT A – SCOPE OF SERVICES

1. As required by any SOW agreement executed under this contract (each a “Project”), the Contractor shall provide the charging station equipment and installation services. The following equipment and services may be purchased under this contract: charging stations, electrical services, transformers, utility poles, panels, breakers, disconnects, conduit, conductors, concrete pads and footings, mounting hardware, safety bollards, new pavement, sidewalk replacement, curbs and landscaping.
2. The Contractor shall:
 - 2.1. Obtain all required permits and coordinate with the electric distribution utility company.
 - 2.2. Coordinate with BGS, Energy Office regarding all aspects of the design and installation. Provide a preliminary design with plan view, panel frame details and one-line power diagram and options specified in the Statement of Work RFP (SOW-RFP) as identified below in 2.21. Process. Provide a detailed engineered design of complete system with complete submittals of specified components within a maximum of 14 days after review and approval of preliminary design. Design shall be stamped by a Vermont licensed electrical engineer if required by code or requested by users of this contract.
 - 2.3. Provide Level 2 charging stations with network connectivity (networked station) capable of providing point of sale service to electric vehicle motorists, optional multiple charging ports and optional retractable cord(s). The networked station manufacturer must have an online reporting platform with multiple user account accessibility and associated energy and dollar tracking capability. Adjustable charging rate (cost) is preferred but is not mandatory.
 - 2.4. Contractor’s typical working hours under this Contract will range between 6:00 AM and 5:00 PM, Monday through Friday, but occasions may arise which would require work to be performed before or after these hours, on weekends, or Federal government observed holidays. The typical working hours may vary by the type of facility or the operational needs of the Purchaser where work is being performed and, if typical work hours vary from the above, such hours will be established at the beginning of each project.
 - 2.5. Contractor shall notify the BGS Energy Office of any maintenance related issues that are discovered while performing work.
 - 2.6. All unclaimed work articles found in or about the work area by the Contractor shall be turned in immediately to the BGS Energy Office, with the location where the article was found.
 - 2.7. Contractor acknowledges that security procedures in some State buildings require a background clearance be performed on any contractor working inside the building, prior to beginning work. Projects at Correctional Facilities, Courthouses, and Public Safety buildings may all require clearances.
 - 2.8. Contractor shall secure and pay for any permits and inspections required by the authorities having jurisdiction, or for warranty purposes. Contractor shall ensure that any inspections are made by the appropriate State or local authority having jurisdiction, or manufacturer from which the warranty will be issued.
 - 2.9. Subcontractors, if required, shall be approved in writing by the BGS Energy Office prior to performing work as part of the contract.
 - 2.10. **WARRANTY:** The Contractor shall include with their SOW-RFP a written manufacturer warranty for each product that the manufacturer intends to furnish. Warranties must be based on commercial use and shall extend for a minimum term of one (1) year from the date a Product is available for use by the

purchaser; however, longer term warranties are desirable and will be given favorable consideration, all else being equal.

- 2.11. **REPORTING REQUIREMENTS:** Contractor will be required to submit quarterly product sales report to the Purchasing Agent pursuant to the schedule below. Each report must contain the following information: Contract Number; Using Department's Address, Contact Name, and Telephone Number; Product Ordered; Quantity Ordered; Quantity Shipped; and Price Charged, with totals for each product for each reporting period. We reserve the right to request additional information or to modify the reporting periods. Reporting Periods: Quarterly Reports must be submitted in accordance with the following schedule:
Reporting Period: January 1 to March 31 - Report Due April 15
Reporting Period: April 1, to June 30 - Report Due July 15
Reporting Period: July 1 to September 30 - Report Due October 15
Reporting Period: October 1 to December 31 - Report Due January 15
- 2.12. **DELIVERY:** All pricing is to include F.O.B. delivery to the ordering facility. Responsibility for product delivery remains with the contractor until the product is properly delivered and signed for. Shipments shall be securely and properly packed, according to accepted commercial practices, without extra charge for packing cases or other containers. Upon delivery, all packaging and containers shall become the property of the State, unless otherwise stated. Delivered goods that do not conform to the specifications or are not in good condition upon receipt shall be replaced promptly by the contractor.
- 2.13. **QUALITY:** All products will be new and unused. All products provided by the contractor must meet all federal, state, and local standards for quality and safety requirements. Products not meeting the requirements of this section will be deemed unacceptable and returned to the contractor for credit at no charge to the State.
- 2.14. **DEFAULT:** In case of default of the contractor, the State may procure the materials or supplies from other sources and hold the contractor responsible for any excess cost occasioned thereby, provided, that if public necessity requires the use of materials or supplies not conforming to the specifications they may be accepted and payment therefore shall be made at a proper reduction in price.
- 2.15. **STATE OF VERMONT CYBERSECURITY STANDARD 19-01:**
All products and service provided to or for the use of the State under this Contract shall be in compliance with State of Vermont Cybersecurity Standard 19-01, which Contractor acknowledges has been provided to it, and is available on-line at the following URL:
<https://digitalservices.vermont.gov/cybersecurity/cybersecurity-standards-and-directives>
- 2.16. **ADDITIONAL PURCHASERS:** Towns, Schools, Political Subdivisions and Independent Colleges of the State may participate in the awarded contract at the same prices, terms and conditions. Financial obligations of the State are limited to the orders placed by the departments and agencies of the State having legally available funds. The State incurs no financial obligations on behalf of its political subdivisions or other eligible entities.
- 2.17. **SITE SUPERVISION:**
2.17.1. Contractor shall provide adequate supervision of his employees to ensure complete and satisfactory performance of all work in accordance with the terms of the contract. Contractor shall have a responsible supervisor on the job at all times when the work of the contract is being carried out.

- 2.17.2. Contractor's site supervisor shall be responsible for communication with the State's representatives and shall meet with the BGS Energy Office at the site on a weekly basis to discuss project status, including any problems, ideas, or concerns related to the project work.
- 2.17.3. Contractor and its employees shall be subject to all applicable State and Federal statutes and regulations for the conduct of personnel.
- 2.17.4. The Contractor shall provide adequate supervision of his/her subcontractors and their employees at all times.

2.18. WORKMANSHIP AND MATERIALS:

- 2.18.1. Contractor shall furnish all supervision, labor, transportation, materials, tools and equipment necessary to satisfactorily complete the service in a manner consistent with the Purchaser's plan and schedule. Contractor's equipment shall be of the size and type appropriate for completing the various types of work described in the contract or any associating Purchase Order. Contractor shall ensure that any equipment considered by the State to be improper or inadequate for this purpose is removed from the site and replaced with satisfactory equipment.
- 2.18.2. All work performed under this contract shall be completed in accordance with local, state, and national codes and standards, and other recognized industry standards associated with the work.
- 2.18.3. The Contractor guarantees that all materials shall be new and conform to the specifications of the applicable Purchase Order, that all work shall be done in a professional manner, and that all aspects of the project will be delivered in good working order, complete and in conformity to the specifications of the applicable Purchase Order, and that all systems and materials necessary to make the project completely operational as contemplated by the above description of the project and set forth in the applicable Purchase Order shall be included in the contract price.
- 2.18.4. Contractor shall ensure that all supplies, equipment and machines shall be kept free of traffic lanes or other areas that may be hazardous. Contractor shall further ensure that all dirt and debris resulting from the work under this contract shall be disposed of at the end of each day or at the completion of work in each building.
- 2.18.5. Contractor shall, at no additional cost to the State, repair furnishings, equipment, facilities or other property of the State damaged by Contractor, its officers, employees, agents, contractors, subcontractors and invitees. Contractor acknowledges that the determination of the need for, and extent of, any repair work shall be made at the sole discretion of the State.
- 2.18.6. It is the contractor's responsibility to contact Dig-Safe prior to beginning any excavation work. For private complexes, such as prisons, the contractor will need to contact a private underground utility locator prior to beginning work.

2.19. FUNDING SOURCE:

- 2.19.1. These projects may be funded, in whole or in part, through the state's capital construction act(s) and would require compliance with the Vermont Prevailing Wage and Fringe Benefit Rate requirements (reference Instructions to Bidders, Prevailing Wage Rate

Requirements). A complete list of occupations and associated wage rates are available on the internet at: <http://www.vtlmi.info/lmipub.htm>. If applicable, this requirement shall be identified in the SOW-RFP of the individual project.

- 2.19.2. **Vermont Prevailing Wage Rate Requirements.** Vermont law requires that projects comply with the prevailing wage rate requirements set forth in 29 V.S.A. §161. The full text of 29 V.S.A. §161 is available at: <https://legislature.vermont.gov/statutes/section/29/005/00161>
- 2.19.3. **For projects using Special Experimental Projects (SEP) funds, the following shall apply and be identified in the SOW-RFP of the individual project.**
- 2.19.4. These projects may be funded using federal monies and would require compliance with the Davis-Bacon Act. Wages shall be paid using rates no less than those established under the Davis-Bacon prevailing wage rates. Complete information related to Davis-Bacon and Related Acts is available at: <http://www.dol.gov/whd/contracts/dbra.htm>. If applicable, this requirement shall be identified in the SOW-RFP of the individual project.
- 2.19.5. **Disadvantaged Business Enterprises (DBEs):** Certified DBE's are encouraged to submit proposals for the work being bid. If Certified DBE's are unable to bid the project directly, and only want to bid on portions of the work, then you are encouraged to seek out a current plan holder. Plan holder lists are posted weekly at: <http://bgs.vermont.gov/purchasing>, and then click on Construction Bid Tabulations/Plan Holder Lists on the right hand column of the screen. For more information on the DBE Certification application process visit: <http://vtrans.vermont.gov/civil-rights/doing-business/dbe-center> or contact Sonya Boisvert, 802-828-2644, email: sonya.boisvert@vermont.gov.
- 2.19.6. Contractors and Subcontractors are required to follow the requirements of 46 CFR 381.7 (a)-(b). For guidance on requirements of Part 381 – Cargo Preference – U.S. Flag Vessels please go to the following web link: <https://www.fhwa.dot.gov/construction/cqit/cargo.cfm>
- 2.19.7. Additional requirements associated with this project shall require Contractor compliance with the following:
- 2.19.7.1.FHWA 1273: <http://vtrans.vermont.gov/civil-rights/doing-business/contractors-center/davis-bacon>
- 2.19.7.2.USDOL Vermont Highway Wage Decisions: : <http://vtrans.vermont.gov/civil-rights/doing-business/contractors-center/davis-bacon>
- 2.19.7.3.USDOL Building Wage Decisions: <http://www.wdol.gov/dba.aspx>, click on: State, County then Construction Type (would be Building), then hit search.
- 2.19.7.4.VTrans CR Contractor and Labor Compliance website: <http://vtrans.vermont.gov/civil-rights>.

2.19.8. **Jobsite Posters:** VTrans will be providing the Federal poster package to BGS for use by the Contractor on-site. When a job office is not established due to the nature of the work and/or the length of the contract, the contractor and subcontractors must display all notices or posters at their home offices where hiring is conducted, and each employee must be provided copies of all the notices or posters and sign a statement acknowledging they received and understood the content of all the notices or posters. The signed statement must be included with all invoices.

2.20. **PLAN SECURITY CERTIFICATION:** Contractor acknowledges that the plans pertaining to this project have been declared exempt from public record inspection for security reasons and have been disclosed to Contractor as per 1 V.S.A. §317(c)(32) for the performance of the Work specified herein. Contractor hereby expressly acknowledges and agrees to disclose plans ***only to a licensed architect, engineer, or Contractor who is bidding on or performing work on or related to buildings, facilities, infrastructures, system s, or other structures owned, operated, or leased by the state.***

Furthermore, Contractor agrees to abide by BGS Administrative Policy # 35 and any existing or future directives set forth by the State concerning the copying or distribution of the plans. Fraud, misrepresentation, falsification, or concealing or covering up material facts relating to compliance with these directives may result in one or more of the following actions: termination of the contract(s), suspension of bidding privileges, withholding, deducts, forfeiture of security bonds, and criminal prosecution punishable by imprisonment of up to five years and/or up to a \$10,000 fine as per 13 V.S.A. §3016.

2.21. **PROCESS:**

2.21.1. This Contract may be utilized for the purchase of charging stations and installation services including but, not limited to furnish and install charging stations, electrical service, transformers, utility poles, panels, breakers, disconnects, conduit, conductors, concrete pads and footings, mounting hardware, safety bollards, new pavement, sidewalk replacement, curbs and landscaping. Projects are not to exceed \$500,000.00.

2.21.2. When a Purchasing Entity has a need for services, it will prepare a Statement of Work (SOW)-RFP. The SOW-RFP may be issued to the Contractors who are pre-qualified to provide the desired service(s). Those pre-qualified contractors may then submit bids within the date and time established by the SOW-RFP.

2.21.3. Following SOW-RFP evaluation, the Purchasing Entity may enter into a SOW Agreement with a Contractor selected in the best interest of the State. Projects are not to exceed \$500,000.00 including all cost associated with the Project such as labor, materials and equipment, etc. All SOW forms can be found on the Office of Purchasing & Contracting's website under the Electric Vehicle Charging Station Services category.

2.21.4. If the Contractor is selected to perform work on a project, the Purchasing Entity will issue a Purchase Order (PO) with a project Statement of Work as necessary to meet the Purchasing Entity's requirements. POs funded by federal funds may include additional terms as necessary to comply with federal requirements.

- 2.21.5. Purchasing Entities must follow the procedures of the State Contract Administrator to execute POs against this Contract, which shall include, as applicable, obtaining approval from the Department of Buildings and General Services (BGS), Energy Office, prior to making purchases under this Contract.
- 2.21.6. All POs placed under this Contract must include the Contract Number on the Purchase Order. The Purchasing Entity shall provide a PO number to the Contractor to reference on their invoice for services completed under that specific Statement of Work assignment.
- 2.21.7. All references to “The Contract Documents” and “The Contract” outlined in Attachment D, General Conditions for Design/Build Contracts will apply to the SOW – RFP, SOW – Agreement and PO described in and completed under this Contract as follows:
 - 2.21.7.1. The Contract Documents – include the SOW-RFP and the Contractor’s response to the SOW – RFP.
 - 2.21.7.2. The Contract – represents the SOW-Agreement and may only be amended by a SOW-Amendment.
- 2.21.8. Each SOW Agreement will be subjected to the terms of Attachment G. as such terms are modified by this Master Contract.
- 2.21.9. Attachment F – BGS Maintenance District Map is included to show towns/cities within BGS Districts.

3. SECURITY OF STATE INFORMATION.

3.1. **SECURITY STANDARDS.** To the extent Contractor has access to, processes, handles, collects, transmits, stores or otherwise deals with State Data, the Contractor represents and warrants that it has implemented and it shall maintain during the term of this Contract the highest industry standard administrative, technical, and physical safeguards and controls consistent with NIST Special Publication 800-53 (version 4 or higher) and Federal Information Processing Standards Publication 200 and designed to (i) ensure the security and confidentiality of State Data; (ii) protect against any anticipated security threats or hazards to the security or integrity of the State Data; and (iii) protect against unauthorized access to or use of State Data. Such measures shall include at a minimum: (1) access controls on information systems, including controls to authenticate and permit access to State Data only to authorized individuals and controls to prevent the Contractor employees from providing State Data to unauthorized individuals who may seek to obtain this information (whether through fraudulent means or otherwise); (2) industry-standard firewall protection; (3) encryption of electronic State Data while in transit from the Contractor networks to external networks; (4) measures to store in a secure fashion all State Data which shall include multiple levels of authentication; (5) dual control procedures, segregation of duties, and pre-employment criminal background checks for employees with responsibilities for or access to State Data; (6) measures to ensure that the State Data shall not be altered or corrupted without the prior written consent of the State; (7) measures to protect against destruction, loss or damage of State Data due to potential environmental hazards, such as fire and water damage; (8) staff training to implement the information security measures; and (9) monitoring of the security of any portions of the Contractor systems that are used in the provision of the services against intrusion on a twenty-four (24) hour a day basis.

3.2. ACCESS TO STATE DATA: The State may import or export State Materials in part or in whole at its sole discretion at any time (24 hours a day, seven (7) days a week, 365 days a year), during the term of this Contract or for up to [three (3) months] after the Term (so long as the State Materials remain in the Contractor's possession) without interference from the Contractor in a format usable without the Service and in an agreed-upon file format and medium at no additional cost to the State.

3.2.1. The Contractor must allow the State access to information such as system logs and latency statistics that affect its State Materials and or processes.

3.2.3. The Contractor's policies regarding the retrieval of data upon the termination of services have been made available to the State upon execution of this Contract under separate cover. The Contractor shall provide the State with not less than thirty (30) days advance written notice of any material amendment or modification of such policies.

3.3. DESTRUCTION OF STATE DATA: At any time during the term of this Contract within (i) thirty days of the State's written request or (ii) [three (3) months] of termination or expiration of this Contract for any reason, and in any event after the State has had an opportunity to export and recover the State Materials, Contractor shall at its own expense securely destroy and erase from all systems it directly or indirectly uses or controls all tangible or intangible forms of the State Materials, in whole or in part, and all copies thereof except such records as are required by law. The destruction of State Data and State Intellectual Property shall be performed according to National Institute of Standards and Technology (NIST) approved methods. Contractor shall certify in writing to the State that such State Data has been disposed of securely. To the extent that any applicable law prevents Contractor from destroying or erasing State Materials as set forth herein, Contractor shall retain, in its then current state, all such State Materials then within its right of control or possession in accordance with the confidentiality, security and other requirements of this Contract, and perform its obligations under this section as soon as such law no longer prevents it from doing so.

3.3.1. Further, upon the relocation of State Data, Contractor shall securely dispose of such copies from the former data location and certify in writing to the State that such State Data has been disposed of securely. Contractor shall comply with all reasonable directions provided by the State with respect to the disposal of State Data.

3.4. SECURITY BREACH NOTICE AND REPORTING: The Contractor shall have policies and procedures in place for the effective management of Security Breaches, as defined below, which shall be made available to the State upon request.

3.4.1. In the event of any actual security breach of Contractor's information technology systems which the Contractor either suffers or learns of that either compromises or could compromise State Data (a "Security Breach"), the Contractor shall notify the State within 24 hours of its discovery. Contractor shall immediately determine the nature and extent of the Security Breach, contain the incident by stopping the unauthorized practice, recover records, shut down the system that was breached, revoke access and/or correct weaknesses in physical security. Contractor shall report to the State: (i) the nature of the Security Breach; (ii) the State Data used or disclosed; (iii) who made the unauthorized use or received the unauthorized disclosure; (iv) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and (v) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. The Contractor shall provide such other information,

including a written report, as reasonably requested by the State. Contractor shall analyze and document the incident and provide all notices required by applicable law.

- 3.4.2. In accordance with Section 9 V.S.A. §2435(b)(3), the Contractor shall notify the Office of the Attorney General, or, if applicable, Vermont Department of Financial Regulation (“DFR”), within fourteen (14) business days of the Contractor’s discovery of the Security Breach. The notice shall provide a preliminary description of the breach. The foregoing notice requirement shall be included in the subcontracts of any of Contractor’s subcontractors, affiliates or agents which may be “data collectors” hereunder.
- 3.4.3. The Contractor agrees to fully cooperate with the State and assume responsibility at its own expense for the following, to be determined in the sole discretion of the State: (i) notice to affected consumers if the State determines it to be appropriate under the circumstances of any particular Security Breach, in a form recommended by the AGO; and (ii) investigation and remediation associated with a Security Breach, including but not limited to, outside investigation, forensics, counsel, crisis management and credit monitoring, in the sole determination of the State.
- 3.4.4. The Contractor agrees to comply with all applicable laws, as such laws may be amended from time to time (including, but not limited to, Chapter 62 of Title 9 of the Vermont Statutes and all applicable State and federal laws, rules or regulations) that require notification in the event of unauthorized release of personally-identifiable information or other event requiring notification.
- 3.4.5. In addition to any other indemnification obligations in this Contract, the Contractor shall fully indemnify and save harmless the State from any costs, loss or damage to the State resulting from a Security Breach or the unauthorized disclosure of State Data by the Contractor, its officers, agents, employees, and subcontractors.

4. AUDIT RIGHTS:

- 4.1. Contractor will maintain and cause its permitted contractors to maintain a materially complete audit trail of all transactions and activities, financial and non-financial, in connection with this Contract. Contractor will provide to the State, its internal or external auditors, clients, inspectors, regulators and other designated representatives, at reasonable times (and in the case of State or federal regulators, at any time required by such regulators) access to Contractor personnel and to any and all Contractor facilities or where the required information, data and records are maintained, for the purpose of performing audits and inspections (including unannounced and random audits) of Contractor and/or Contractor personnel and/or any or all of the records, data and information applicable to this Contract.
- 4.2. At a minimum, such audits, inspections and access shall be conducted to the extent permitted or required by any laws applicable to the State or Contractor (or such higher or more rigorous standards, if any, as State or Contractor applies to its own similar businesses, operations or activities), to (i) verify the accuracy of charges and invoices; (ii) verify the integrity of State Data and examine the systems that process, store, maintain, support and transmit that data; (iii) examine and verify Contractor’s and/or its permitted contractors’ operations and security procedures and controls; (iv) examine and verify Contractor’s and/or its permitted contractors’ disaster recovery planning and testing, business resumption and continuity planning and testing, contingency arrangements and insurance coverage; and (v) examine Contractor’s and/or its permitted contractors’ performance of the Services including audits of: (1) practices and procedures; (2) systems, communications and information technology; (3) general controls and physical and

data/information security practices and procedures; (4) quality assurance, (5) contingency and continuity planning, disaster recovery and back-up procedures for processes resources and data; and (6) compliance with the terms of this Contract and applicable laws, and (7) any other matters reasonably requested by the State. Contractor shall provide and instruct its permitted contractors to provide full cooperation to such auditors, inspectors, regulators and representatives in connection with audit functions and with regard to examinations by regulatory authorities, including the installation and operation of audit software.

4.3 The State shall give Contractor reasonable advance notice (at least three business days) prior to any such audit, and such audit shall be performed during business hours and in a manner that minimizes disruption to Contractor's operations. The person and/or entity performing the audit shall enter into a commercially reasonable non-disclosure and non-use agreement related to all Confidential Information it may have access to in the course of such audit. The audit shall be limited to information and records directly related to the Project(s) under this Agreement. The State shall or shall cause the party conducting the inspection or audit, to provide a complete copy of the inspection or audit report to Contractor following receipt of such report.

5. PROFESSIONAL LIABILITY AND CYBER LIABILITY INSURANCE COVERAGE:

5.1. In addition to the insurance required in Attachment C to this Contract, before commencing work on this Contract and throughout the term of this Contract, Contractor agrees to procure and maintain (a) Technology Professional Liability insurance for any and all services performed under this Contract, with minimum third party coverage of \$1, 000,000 per claim, \$3,000,000 aggregate. To the extent Contractor has access to, processes, handles, collects, transmits, stores or otherwise deals with State Data, Contractor shall maintain first party Breach Notification Coverage of not less than \$1,000,000.

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

5.3. With respect to the first party Breach Notification Coverage, Contractor shall name the State of Vermont as additional insured for liability arising out of this Contract.

6. LIMITATION OF LIABILITY:

6.1. CONTRACTOR'S LIABILITY FOR DAMAGES TO THE PURCHASING ENTITY AUTHORIZED TO PURCHASE HEREUNDER ARISING OUT OF THE SUBJECT MATTER OF THIS CONTRACT SHALL NOT EXCEED THREE TIMES THE MAXIMUM AMOUNT PAYABLE UNDER THE PURCHASING ENTITY'S SOW AGREEMENT, OR ONE MILLION U.S. DOLLARS, WHICHEVER IS GREATER. LIMITS OF LIABILITY FOR STATE CLAIMS SHALL NOT APPLY TO STATE CLAIMS ARISING OUT OF: (A) CONTRACTOR'S DEFENSE OR INDEMNITY OBLIGATIONS; (B) CONTRACTOR'S CONFIDENTIALITY OBLIGATIONS; (C) PERSONAL INJURY OR DAMAGE TO REAL OR PERSONAL PROPERTY; (D) CONTRACTOR'S GROSS NEGLIGENCE, FRAUD OR INTENTIONAL MISCONDUCT; OR (E) VIOLATIONS OF THE STATE OF VERMONT FALSE CLAIMS ACT. IN NO EVENT SHALL THIS LIMIT OF LIABILITY BE CONSTRUED TO LIMIT CONTRACTOR'S LIABILITY FOR THIRD PARTY CLAIMS AGAINST THE CONTRACTOR WHICH MAY ARISE OUT OF CONTRACTOR'S ACTS OR OMISSIONS IN THE PERFORMANCE OF THIS CONTRACT.

6.2. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL OR SPECIAL DAMAGES, DAMAGES WHICH ARE UNFORESEEABLE TO THE PARTIES AT THE TIME OF CONTRACTING, DAMAGES WHICH ARE NOT PROXIMATELY CAUSED BY A PARTY, SUCH AS LOSS OF ANTICIPATED BUSINESS, OR LOST PROFITS,

INCOME, GOODWILL, OR REVENUE IN CONNECTION WITH OR ARISING OUT OF THE SUBJECT MATTER OF THIS CONTRACT.

6.3 EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THE CONTRACT DOCUMENTS, CONTRACTOR MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER WITH RESPECT TO ANY GOODS OR SERVICES, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. BUYER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY SELLER, OR ANY OTHER PERSON ON SELLER'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN THE CONTRACT DOCUMENTS.

ATTACHMENT B – PAYMENT PROVISIONS

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

1. Prior to commencement of work and release of any payments, Contractor shall submit to the State:
 - 1.1. a certificate of insurance consistent with the requirements set forth in Attachment C, Section 8 (Insurance), and with any additional requirements for insurance as may be set forth elsewhere in this contract; and
 - 1.2. a current IRS Form W-9 (signed within the last six months).
2. All invoices are to be rendered by the Contractor on the Contractor's standard billhead and forwarded directly to the institution or agency ordering materials or services and shall specify the address to which payments will be sent. Payment terms are **Net 30** days from the date the Purchasing Entity receives an error-free invoice with all necessary and complete supporting documentation.
3. In consideration of the services performed by Contractor, the Purchasing Entity shall pay Contractor in accordance with the pricing specified on the attached Price Schedule. These rates are inclusive of all fees and expenses including mileage and travel time.
4. The State will not consider any contractor's installation construction material mark-up exceeding 10% over the Contractor's actual cost. Installation construction material shall mean all materials required to prepare a site so that electric vehicle charging stations can be satisfactorily installed and operable per the scope of work.
 - 4.1. The State will not consider any mark-up exceeding 5%, by the contractor, on any work performed by subcontractors.
 - 4.2. The State will not consider any subcontractor's material mark-up exceeding 10% over the subcontractor's actual cost.
5. The State Purchasing Card may be used by State Purchasers for the payment of invoices. Use of the Purchasing Card requires all required documentation applicable to the purchase. The Purchasing Card is a payment mechanism, not a procurement approach and, therefore, does not relieve State Purchasers from adhering to all procurement laws, regulations, policies, procedures, and best practices.
6. Contractor shall submit detailed invoices, to the address identified on the SOW-Agreement, itemizing all work performed during the invoice period, including the dates of service, rates of pay, hours of work performed, and any other information and/or documentation appropriate and sufficient to substantiate the amount invoiced for payment by the Purchasing Entity.
 - 6.1. Services may be issued on a time and materials basis or a fixed price. The following information is required on all invoices:
 - 6.1.1. All invoices under this contract must include the Contract # and numbered invoice pursuant to the SOW Agreement;
 - 6.1.2. Time frame indicated of when work was performed;

- 6.1.3. Copy of quote originally submitted;
- 6.1.4. The agreed to markup for profit and overhead unless a previously agreed to billing schedule was approved in the contract;
- 6.1.5. Certification that the contractor has no ownership (majority or minority) in any subcontractor they claim for profit and overhead;
- 6.1.6. Provide supporting documentation of material costs, in accordance with the percentage specified in the contract. This supporting documentation is required for verification.
- 6.2. For projects billed on a Time & Materials basis, the following additional information must be included:
 - 6.2.1. Invoices shall include description of work, # of hours worked if applicable, including copies of time sheets and a certified payroll following the USDOL form (or comparable);
 - 6.2.2. Copies of original receipts for all materials purchased or costs incurred as a result of the scope of work;
- 7. Contractor shall submit invoices to the State in accordance with the schedule set forth in the SOW Agreement.
- 8. If the option to renew this Master Contract is agreed upon by both parties, the Price Schedule shall be increased or decreased per the Consumer Price Index for All Urban Consumers (CPI-U) for the previous twenty-four (24) months and adjusted through an executed contract amendment.

1. Product Pricing

	Manufacturer	Model Number	Product Description	Charging Station Price	Retractable Cord Option Price (indicate if already 'included in charging station price)	Additional Cost for Gateway or similar type of station if applicable	Cost for station activation, configuration and/or validation
Network Connected Pedestal Mounted Single Port with holster and cord management with 18 feet Minimum cord	EV Box	Businessline Hub	Single wall mount, 18ft cable with RFID, 3-year standard warranty	\$2,290	\$623	\$110	\$100
	BTC	Single Pedestal 30A	Touch screen, RFID, cellular, 2-year standard warranty	\$3,849	\$315	Included	\$100
	EVSE	3704	Automated Retracting Cable, 30A with RFID, 3-year standard warranty	\$4,437	included in pricing	\$2,206	\$100
	NovaCharge	NC - 7000 Series	Client, single port, Pedestal mount, OCPP, RFID, 4-year standard warranty	\$3,072	N/A - Holster Lock Handle	\$551	\$100

	Manufacturer	Model Number	Product Description	Charging Station Price	Retractable Cord Option Price (indicate if already 'included in charging station price)	Additional Cost for Gateway or similar type of station if applicable	Cost for station activation, configuration and/or validation
Network Connected Pedestal Mounted Dual Port with holster and cord management with 18 feet Minimum cord	EV Box	Businessline DOUBLE Hub	Dual Pedestal mount, 18ft cable with RFID, 3-year standard warranty	\$4,153	\$826	\$220	\$100
	BTC	Dual Pedestal 30A	Touch screen, RFID, cellular, 2-year standard warranty	\$4,561	\$630	Included	\$100
	EVSE	3704	Automated Retracting Cable, 30A with RFID, 3-year standard warranty	\$8,400	included in pricing	\$2,206	\$100
	NovaCharge	NC - 7000 Series	Client, dual port, Pedestal mount, OCPP, RFID, 4-year standard warranty	\$5,329	N/A - Holster Lock Handle	\$551	\$100

Network Connected Wall Mounted Single Port with holster and cord management with 18 feet Minimum cord	EV Box	Businessline Hub	Single wall mount, 18ft cable with RFID, 3-year standard warranty	\$2,071	\$262	\$110	\$100
	Manufacturer	Model Number	Product Description	Charging Station Price	Retractable Cord Option Price (indicate if already 'included in charging station price')	Additional Cost for Gateway or similar type of station if applicable	Cost for station activation, configuration and/or validation
Network Connected Wall Mounted Single Port with holster and cord management with 18 feet Minimum cord	BTC	Single Wall Mount 30A	Touch screen, RFID, cellular, 2-year standard warranty	\$3,589	\$315	Included	\$100
	EVSE	3704	Automated Retracting Cable, 30A with RFID, 3-year standard warranty	\$3,963	included in pricing	\$2,206	\$100
	NovaCharge	NC - 7000 Series	Client, single port, wall mount, OCPP, RFID, 4-year standard warranty	\$2,257	N/A - Holster Lock Handle	\$551	\$100

Network Connected Wall Mounted Dual Port with holster and cord management with 18 feet Minimum cord	EV Box	Businessline DOUBLE Hub	Dual Wall mount, 18ft cable with RFID, 3-year standard warranty	\$4,153	\$524	\$220	\$100
	BTC	Dual Wall Mount 30A	Touch screen, RFID, cellular, 2-year standard warranty	\$4,315	\$630	Included	\$100
Network Connected Wall Mounted Dual Port with holster and cord management with 18 feet Minimum cord	Manufacturer	Model Number	Product Description	Charging Station Price	Retractable Cord Option Price (indicate if already 'included in charging station price')	Additional Cost for Gateway or similar type of station if applicable	Cost for station activation, configuration and/or validation
	EVSE	3704	Automated Retracting Cable, 30A with RFID, 3-year standard warranty	\$7,926	included in pricing	\$2,206	\$100
	NovaCharge	NC - 7000 Series	Client, dual port, wall mount, OCPP, RFID, 4-year standard warranty	\$4,514	N/A - Holster Lock Handle	\$551	\$100

Non-Network Connected Pedestal Mounted Single Port with holster and cord management with 18 feet Minimum cord	EVCharge	EVIntelligentTM iEVSE®	EVIntelligent 32A, 7.68 kW RFID, 25 ft. cable, 3-year Standard Warranty	\$1,232	\$513	N/A	\$100
Non-Network Connected Pedestal Mounted Dual Port with holster and cord management with 18 feet Minimum cord	EVCharge	EVIntelligentTM iEVSE®	EVIntelligent 32A, 7.68 kW RFID, 25 ft. cable, 3-year Standard Warranty	\$1,950	\$822	N/A	\$100
	Manufacturer	Model Number	Product Description	Charging Station Price	Retractable Cord Option Price (indicate if already 'included in charging station price')	Additional Cost for Gateway or similar type of station if applicable	Cost for station activation, configuration and/or validation
Non-Network Connected Wall Mounted Single Port with holster and cord management with 18 feet Minimum cord	EVCharge	EVIntelligentTM iEVSE®	EVIntelligent 32A, 7.68 kW RFID, 25 ft. cable, 3-year Standard Warranty	\$718	\$308	N/A	\$100

Non-Network Connected Wall Mounted Dual Port with holster and cord management with 18 feet Minimum cord	EVCharge	EVIntelligentTM iEVSE®	EVIntelligent 32A, 7.68 kW RFID, 25 ft. cable	\$1,438	\$616	N/A	\$100
Level 3 DCFC less than or equal to 50kW	BTC Power	Slim Line 50kW	Dual Connector (CHAdemo & CCS), Cell modem, CC, RFID	\$30,568	Included in pricing	N/A	\$300
	Efacec	QC45	CHAdemo- CCS Dual Connector with Cell modem	\$29,134	Included in pricing	N/A	\$300
	Tritium	Veefil RT 50kW TRI91	Dual Connector CHAdemo - CCS with RFID	\$25,687	Included in pricing	N/A	\$300

2. Network Connection Service Plan

Indicate description of service included. For example, Secure Network Connection, Software Updates, Electric Vehicle Operator Support, Point of Sale Pricing and Fund Collection, Data Collection and Analytics, etc.	Name of Provider	1-year Price (\$)	2 years Price (\$)	5 years Price (\$)
SKY Core License, includes: - Access to SKY dashboard for real-time data of L2 - Reporting and payment collection - Driver & User Management -Cellular Data	SKY Core (L2 per port)	\$350.00	\$1,000.00	\$1,500.00

SKY Core License, includes: - Access to SKY dashboard for real-time data of DCFC - Reporting and payment collection - Driver & User Management	SKY Core (DCFC per unit)	\$650.00	\$1,750.00	\$2,760.00
---	-------------------------------------	----------	------------	------------

*Infrastructure for delivering SKY Network is hosted by Amazon Web Services (AWS).

3. Installation Services:

Design and Service Categories	Type	Fixed or Hourly Rate
Design/Management	Estimate	Free
	Regular Rate	\$85/hour
	Overtime	\$120/hour
	Double Time	\$160/hour
Installation/Maintenance	Labor Rate	\$65/hour
	Overtime	\$87/hour
	Double Time	\$115/hour

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

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

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

3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial: This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under this Agreement. Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

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

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

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

7. Defense and Indemnity: The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits.

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

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

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

8. Insurance: Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of this Agreement. No warranty is made that the coverages and limits listed

herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

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

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

Premises - Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

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

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate

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

\$1,000,000 Personal & Advertising Injury

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

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

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

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

10. False Claims Act: The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

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

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

13. Records Available for Audit: The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or

acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

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

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

16. Taxes Due to the State:

- A. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- B. Party certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- C. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- D. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

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

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

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

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

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

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

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 12 ("Location of State Data"); Section 14 ("Fair Employment Practices and

Americans with Disabilities Act”); Section 16 (“Taxes Due the State”); Section 18 (“Child Support”); Section 20 (“No Gifts or Gratuities”); Section 22 (“Certification Regarding Debarment”); Section 30 (“State Facilities”); and Section 32.A (“Certification Regarding Use of State Funds”).

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

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

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

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

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

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

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

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

27. Termination:

- A. Non-Appropriation:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, and in the event Federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
- B. Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party’s notice or such longer time as the non-breaching party may specify in the notice.
- C. Termination Assistance:** Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

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

29. No Implied Waiver of Remedies: Either party's delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

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

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

- A. Requirement to Have a Single Audit:** The Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required. For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.
- B. Internal Controls:** In accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- C. Mandatory Disclosures:** In accordance with 2 CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

32. Requirements Pertaining Only to State-Funded Grants:

- A. Certification Regarding Use of State Funds:** If Party is an employer and this Agreement is a State-funded grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.
- B. Good Standing Certification (Act 154 of 2016):** If this Agreement is a State-funded grant, Party hereby represents: (i) that it has signed and provided to the State the form prescribed by the Secretary of Administration for purposes of certifying that it is in good standing (as provided in Section 13(a)(2) of Act 154) with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets, or otherwise explaining the circumstances surrounding the inability to so certify, and (ii) that it will comply with the requirements stated therein.

(End of Standard Provisions)

ATTACHMENT D

STATE OF VERMONT STANDARD FORM

GENERAL CONDITIONS FOR DESIGN BUILD CONTRACTS (May 22, 2019)

The following general conditions are for use with DESIGN BUILD construction contracts with the State of Vermont, administered through the Department of Buildings and General Services.

These general conditions will be attached to, and become part of, the Contract Documents.

If there is a conflict between the terms and conditions stated in these general conditions and the terms and conditions contained in the CONTRACT FORM FOR DESIGN-BUILD SERVICES, the terms of the CONTRACT FORM FOR DESIGN-BUILD SERVICES control.

ARTICLE 1: CONTRACT DOCUMENTS

1.1 DEFINITIONS

1.1.1 The term “CONTRACT FORM FOR DESIGN-BUILD SERVICES” refers to the specific agreement between the State of Vermont and a particular contractor whereby the State and the Contractor identify, explain and agree to the specific contractual obligations of each party and identify the nature and scope of a particular project.

1.1.2 THE CONTRACT DOCUMENTS

The Contract Documents consist of the CONTRACT FORM FOR DESIGN-BUILD SERVICES, the Conditions of the Contract (General, Supplementary and other Conditions), performance documents including: Drawings, Specifications, and all Addenda issued prior to bid opening and any change orders after execution of the Contract. The Contract Documents include the Request for Proposals (RFP) and the selected Contractor’s response to the State’s RFP.

1.1.3 THE CONTRACT

The Contract Documents form the contract for design and construction. This contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. The contract may only be amended by

change order. The Contract Documents shall not be construed to create any contractual relationship of any kind between any consultant and the Contractor; the Contractor is responsible for any and all consultants including Engineers, Architects, or otherwise, all of whom shall be obligated to comply with the Contract Documents. Nothing contained in the Contract Documents shall create any contractual relationship between the State and any Design Professional or any Subcontractor or Sub-Subcontractor, including the Contractor's designer(s) and consultant(s).

1.1.4 THE WORK

The Work comprises the completed design, permitting and supporting documentation, construction, and commissioning required by the Contract Documents and includes all labor necessary to produce such construction and commissioning, and all materials and equipment incorporated or to be incorporated in such construction.

1.1.5 THE PROJECT

The Project is the total design, construction, and commissioning of which the Work performed under the Contract Documents may be the whole or a part.

1.2 EXECUTION & INTENT

1.2.1 The CONTRACT FORM FOR DESIGN-BUILD SERVICES will be signed in duplicate by the State and Contractor.

1.2.2 By executing the Contract, the Contractor represents that it has visited the site, familiarized itself with the local conditions under which the Work is to be performed, and correlated its observations with the requirements of the Contract Documents.

1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as, if required by all. Work not covered in the Contract Documents will not be required unless it is consistent with the Contract Documents and is reasonably inferable from the Contract Documents as being necessary to produce the intended results. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

1.2.4 The organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

1.3 OWNERSHIP AND USE OF DOCUMENTS

All drawings, specifications, and all other project-related documents, including shop drawings and calculations, prepared at any time in connection with the Project, shall, upon payment for those particular services, become the sole property of the State and may not be copyrighted or resold by the Contractor.

ARTICLE 2: DESIGN PROFESSIONAL

2.1 DEFINITION

The term “Design Professional,” as used in this contract means a person, or entity, lawfully licensed to practice architecture or a person or entity lawfully licensed to provide professional engineering services who has either been retained by the Contractor or works as an employee of the Contractor to perform services detailed in the CONTRACT FORM FOR DESIGN-BUILD SERVICES. The term “Design Professional” means the architect or engineer, or their authorized representative. Architects may not be used to perform engineering services, and engineers may not be used to practice architecture under this contract.

2.2 RESPONSIBILITIES

The Contractor acknowledges and agrees that:

2.2.1 All Design Professionals shall provide professional services for the Project utilizing their requisite skills, abilities, and judgment reasonably and without neglect. Specifically, each firm or individual employed by the Contractor must be registered with the Secretary of State and properly licensed to practice in Vermont. These firms and individuals must design the Project in compliance with all federal, state, and local building codes in effect at the time including any and all permit conditions that may be imposed by authorities having jurisdiction.

2.2.2 The Contractor shall retain the Design Professionals set forth in its proposal, in agreement with the State. Any change of Design Professional must be approved by the State at least thirty days in advance of the requested change.

2.2.3 All Design Professionals shall act with a reasonable and professional standard of care. Additional costs to the Project caused by inconsistencies, errors, or omissions outside this standard of care shall be subject to the provisions of Subparagraph 4.2.5.

2.2.4 The Design Professionals, in collaboration with the Contractor, shall work with jurisdictional authorities required to approve the Construction Documents and the entities providing utilities to the project. The Design Professionals shall respond to authorities’ requirements as well as notify the Contractor and the Project Manager of potential conflicts.

2.3 ADMINISTRATION OF THE CONTRACT

The Contractor acknowledges and agrees that:

2.3.1 Design Professionals will not be responsible for the administration of the Contract unless designated to do so by the Contractor.

2.3.2 As part of the obligations of the Contractor, all Design Professionals will visit the site at intervals appropriate to the stage of construction to familiarize themselves generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. Determining the frequency, duration, and type of on-site inspections shall be the responsibility of the Contractor; however, all Design Professionals are obligated on the basis of their professional expertise to keep the Contractor

informed of the progress of the Work and to ensure all Work conforms to the Contract Documents. The Contractor recognizes and understands that all its Design Professionals have an obligation to assist the Contractor to identify deficiencies in design, construction, and commissioning.

2.3.3 The Design Professional will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, for conformance with the design concept of the Work and with the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay.

2.3.4 The Contractor shall prepare Proposed Change Orders in accordance with the Contract Documents and forward to the Project Manager for approval.

ARTICLE 3: OWNER ("STATE")

3.1 DEFINITION

3.1.1 The State of Vermont, by and through the Department of Buildings and General Services, is the Owner and is the entity identified as "State" in the CONTRACT FORM FOR DESIGN-BUILD SERVICES and throughout the Contract Documents.

3.1.2 The term "Project Manager" refers to the employee of the State who has been assigned responsibility for overseeing and managing the proper and timely implementation of the project. The State will identify a Project Manager for the Project. The Project Manager will be the sole point of contact between the Contractor and the State. The Project Manager will be the State's representative authorized to communicate the State's position and directions related to all contract work and to coordinate all change orders with the Commissioner of Buildings and General Services as deemed necessary.

3.1.3 The term "Clerk of the Works" refers to an individual retained by the State to provide inspection and monitoring work on behalf of the State and is solely responsible to the State. The Project Manager may secure a Clerk of the Works at the State's discretion.

3.2 RESPONSIBILITIES

3.2.1 The Project Manager will determine the initial dates of Substantial Completion, Final Completion, and Contract Completion. These dates may thereafter be adjusted only by Change Order.

3.2.2 The State shall furnish all available surveys describing the physical characteristics, legal limitations and known utility locations for the site of the Project, and a legal description of the site. The Contractor shall be responsible for verifying any and all utility locations.

3.2.3 For projects with existing buildings, the State shall furnish all available plans and reports of existing conditions. The Contractor shall be responsible for verifying all existing conditions.

3.2.4 For projects involving existing buildings, the State may, at its discretion, continue to provide existing heat, electricity, water, and sewer services during construction.

3.2.5 Except as provided in Subparagraph 4.10.1, the State shall secure and pay for necessary approvals, easements, assessments, and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities. In all cases, the Contractor shall provide all professional design, documentation, and form completion required for these approvals, easements, assessments, and charges except for legal counsel.

3.2.6 The Contractor and its Design Professionals shall be entitled to rely upon the accuracy of reports and tests provided by the State.

3.2.7 The State shall secure for itself such legal, accounting, and insurance counseling services as may be necessary for the Project and such auditing services as the State may require.

3.2.8 Information or services under the State's control shall be furnished by the State with reasonable promptness to avoid delay in the orderly progress of the Work.

3.2.9 The State shall coordinate the services of its own consultants. Upon the Contractor's request, the State shall provide copies of the contracts between the State and its consultants. The State shall require its consultants to maintain professional liability insurance and/or other insurance appropriate to the service provided.

3.2.10 The foregoing are in addition to any other duties and responsibilities of the State enumerated in the Contract Documents including those responsibilities described in Articles 7, 9 and 11 of this agreement.

3.3 ADMINISTRATION OF THE CONTRACT

3.3.1 The Project Manager is responsible for the administration of the Contract.

3.3.2 If a Clerk is used for the Project, the Clerk shall make continuous and complete on-site inspections of the work performed on the Project, to the extent reasonable under all the circumstances. The on-site inspection of the work performed and any reports prepared by the Clerk(s) will be made available to the Contractor, however the use of the Clerk's reports does not relieve the Contractor from its obligations. The services of the Clerk shall not relieve the Contractor or its Design Professionals from their obligation to exercise due diligence and ensure that the Work has progressed to the point indicated and that the quality of work is in accordance with the Contract Documents.

3.3.3 The State shall review and approve all of the Contractor's work in a timely fashion.

ARTICLE 4: CONTRACTOR

4.1 DEFINITION

The Contractor is the person or entity identified as such in the CONTRACT FORM FOR DESIGN-BUILD SERVICES and is referred to throughout the Contract Documents as Contractor. The Term Contractor means the Contractor or its authorized representative.

4.2 GENERAL RESPONSIBILITIES

4.2.1 Contractor and its employees, consultants, and subcontractors shall comply with any applicable professional licensing requirements for this project's location.

4.2.2 At the initiation of this contract, the Contractor shall designate in writing its representative who is authorized to act on the Contractor's behalf with respect to this Project.

4.2.3 Contractor shall supervise and direct the Work, using its best skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract. All aspects of the Project shall be subject to the inspection and approval of the State.

4.2.4 Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work. The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor. All communications shall be in writing when made or shall be confirmed in writing, by the Contractor, within twenty-four (24) hours of the communication.

4.2.5 Contractor shall be responsible to the State for the acts and omissions of its employees, design professionals, consultants, Subcontractors and their agents and employees, and other persons performing any of the Work under a contract with the Contractor.

4.2.6 Contractor shall not be relieved from its obligations to perform the Work in accordance with the Contract Documents by inspections, tests or approvals required or performed under Paragraph 15.7 by persons other than the Contractor.

4.2.7 Contractor shall adequately protect the project, adjacent property, and the public, shall be responsible for any damage or injury due to the Contractor's act or neglect, and shall hold the State harmless in respect thereto.

4.2.8 Contractor shall keep the premises free from liens arising out of or from the Project.

4.2.9 Contractor's superintendent, consultants, subcontractors, and key personnel may not be changed on the project without approval of the State.

4.3 PROGRESS SCHEDULE AND REPORTS

4.3.1 The Contractor, immediately after being awarded the contract, shall prepare and submit for the State's information an estimated progress schedule for the Work. The progress schedule shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. This information shall be submitted in a Gantt chart format and shall include Substantial Completion, Final Completion, and End of Contract Term milestones. This schedule shall identify periods of time allowed for the State's and jurisdictional authorities' review.

4.3.2 The Contractor shall update the State monthly on the progress of the Work by submitting an updated Gantt chart for the Project, an updated list of issues not on the chart requiring action,

and an updated Schedule of Values with percentages of work completed.

4.4 COMMUNICATIONS

The State uses an information management system called Submittal Exchange, at the discretion of the State. If Submittal Exchange is used for this project, the Contractor is responsible for training its consultants, employees, and subcontractors for the system's use. The Contractor and its consultants, employees, and subcontractors are responsible for submitting, reviewing, and approving all required items in a timely manner.

4.5 DESIGN OF THE WORK

4.5.1 At the beginning of the project, the Contractor shall confirm that the State's criteria comply with applicable laws, statutes, codes, and ordinances. The Contractor shall promptly notify the State of any conflicts.

4.5.2 The Contractor shall coordinate and conduct meetings with the State and its Design Professionals to review and evaluate the State's criteria for design, including its program of functions and spaces. The preliminary evaluation shall include possible alternatives to design and construction of the Project and include the Contractor's recommendations, if any, for accelerated construction including phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

4.5.3 The State must approve the final criteria, the design and construction approach, preliminary cost information and schedule, and other presented considerations before the Contractor may proceed with Preliminary Design.

4.5.4 Preliminary Design Phase Upon approval, the Contractor shall prepare and submit a preliminary design to the State. The preliminary design shall include a report updating the State's criteria for design, building plans, elevations, and sections, site plan, preliminary structural and systems designs, and outline specifications. The State may additionally require renderings at no additional cost. The preliminary design shall include an updated cost estimate organized by trade categories, allowances, contingencies, Contractor's fee, and all other items that will comprise the Contract Sum. The Contractor shall identify all employees, consultants, subcontractors, and suppliers who will contribute to the Work. The Contractor shall in addition provide an updated design, construction, and commissioning schedule that identifies the Contractor's proposed dates of Substantial Completion, Final Completion, and Contract Completion. The Contractor shall revise the documents until accepted and approved by the State.

4.5.5 Contract Amendment Upon the State's approval of the preliminary design, the Project Manager will amend the contract sum (maximum limiting amount) and contract term to reflect the final contract sum and schedule.

4.5.6 Construction Design Phase The next phase of design, Construction Document Phase, shall not begin until the State approves the preliminary design and supporting documents and issues written notice for the Contractor to proceed. The Construction Documents shall establish and detail all aspects of the Work to be performed, including levels of performance and quality. The Construction Documents will not deviate from the approved preliminary design unless agreed

upon by the State. The failure of the State discover any deviations shall not relieve the Contractor of the obligation to design the Work in accordance with the approved preliminary design. The Contractor shall submit the Construction Documents to the State for approval, and the Contractor shall revise the Construction Documents until approved by the State.

4.6 INTIATION OF CONSTRUCTION

4.6.1 Construction shall not commence until the State approves the Construction Documents and issues written notice for the Contractor to proceed. All permits must be approved before construction can proceed.

4.6.2 The Contractor shall perform no portion of the Work at any time without Construction Documents or, where required, approved Shop Drawings, Substitutions, Product Data or Samples for such portion of the Work.

4.7 LABOR AND MATERIALS

4.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

4.7.2 The Contractor shall at all times enforce strict discipline and good order among its employees and shall not employ on the Work any unfit person or anyone not skilled to perform the tasks assigned.

4.8 WARRANTY AND CERTIFICATIONS

4.8.1 Contractor guarantees to repair, replace, re-execute or otherwise correct any defect in workmanship, materials, or the like that fails to conform with the requirements of this Contract or that appears during the progress of the Work or within one year of Substantial Completion or final acceptance of the State, whichever dates later.

4.8.2 The Contractor warrants to the State that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If requested by the State, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Paragraph 13.2 of these General Conditions.

4.8.3 As required, the Contractor shall furnish certifications from its Design Professionals that, to the best of their knowledge, information and belief, the documents or services certified (a) are consistent with the Contract Documents and (b) comply with applicable statutes, ordinances, codes, or other regulations.

4.9 TAXES

The State is exempt from all sales and federal excise taxes. Contractors will be responsible for the payment of any sales, consumer, use and other similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted at the time bids are received, whether or not yet effective.

4.10 PERMITS, FEES AND NOTICES

4.10.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for all permits, licenses, inspections, and certifications required by the Vermont Division of Fire Safety, subject to fee waivers the State is entitled to.

4.10.2 The Contractor shall be responsible for the cost of all environmental testing, geotechnical testing such as but not limited to borings, pits, percolation tests, bearing tests, and seismic evaluation. The Contractor shall also be responsible for the cost of structural, mechanical, chemical and other laboratory tests, inspections, and reports required by law or this Contract, including the cost of approvals/permits, subject to fee waivers the State is entitled to.

4.10.3 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work.

4.10.4 It is the responsibility of the Contractor to make certain that the Contract Documents are in accordance with applicable laws, statutes, building codes and regulations. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, the Contractor shall promptly notify the Design Professional(s) and Project Manager and any necessary changes shall be accomplished by appropriate modification.

4.10.5 If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, the Contractor shall assume full responsibility thereof and shall bear all costs attributable thereto, and for bringing Work into full compliance.

4.11 ALLOWANCES

4.11.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by these allowances shall be supplied for such amounts and by such persons as dictated by the process contained in the Contract Documents.

4.11.2 Unless otherwise provided in the Contract Documents:

(a) These allowances shall cover the cost to the Contractor, less any applicable trade discount, of the materials and equipment required by the allowance delivered at the site, and all applicable taxes subject to Paragraph 4.9.

(b) The Contractor's costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the original allowance shall be included in the Contract Sum and not in the allowance.

(c) Whenever the actual cost is more than or less than the allowance, the Contract Sum

shall be adjusted accordingly by Change Order. The Change Order shall list separately adjustments to the allowance and changes in the Contract Sum due to handling costs on site, labor, installation costs, overhead, profit and other expenses.

4.12 DOCUMENTS AND SAMPLES AT THE SITE

4.12.1 The Contractor shall maintain at the site for the State one record copy of all Drawings, Specifications, Addenda, Change Orders and other modifications, in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data and Samples. These shall be available to the State for monthly review prior to approval of Contractor's monthly application for payment. Prior to substantial completion of the Work, the Contractor shall ensure that one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data and Samples are delivered to the State.

4.12.2 The Contractor shall require its consultants and subcontractors to review and update the site set of Drawings, Specifications, Addenda, Change Orders, and other modifications each month before submitting their own requests for payment.

4.13 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

4.13.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or any Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

4.13.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system for some portion of the Work.

4.13.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

4.13.4 The Contractor shall create and update a schedule of submittals for all shop drawings, product data, and samples. This schedule shall be tied to or be part of the overall project schedule described in Paragraph 4.3.

4.13.5 The Contractor shall review, approve and submit, with reasonable promptness and in such sequence as to cause no delay in the Work or in the work of the State or any separate Contractor, all Shop Drawings, Product Data and Samples required by the Contract Documents.

4.13.6 By approving and submitting Shop Drawings, Product Data and Samples, the Contractor represents that it has determined and verified all materials, field measurements, and field construction criteria related thereto, or will do so, and that the Contractor has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

4.13.7 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Design Professional's approval of Shop Drawings, Product Data or Samples under Subparagraph 2.3.3 of these General Conditions unless the Contractor has specifically informed the State in writing of such deviation at the time of submission and the State has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the Project Manager's approval thereof.

4.13.8 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by a Design Professional on previous submittals.

4.13.9 No portion of the Work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been approved by the associated Design Professional and the Project Manager. All such portions of the Work shall be in accordance with approved submittals.

4.14 USE OF AND ACCESS TO SITE

4.14.1 The Contractor shall confine operations at the site to areas permitted by law, including areas designated for operations or prohibited from operations by any applicable permit and or regulation, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with any materials or equipment.

4.14.2 Employees of the State, its separate contractors, and its consultants shall at all times have access to the site, subject to safety precautions established by the Contractor.

4.15 CUTTING AND PATCHING OF WORK

4.15.1 The Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the Work or to make its several parts fit together properly.

4.15.2 The Contractor shall not damage or endanger any portion of the Work or the work of the State or any separate Contractors by cutting, patching or otherwise altering any work, or by excavation. The Contractor shall not cut or otherwise alter the work of the State or any separate Contractor except with the written consent of the State and of such separate Contractor. The Contractor shall not unreasonably withhold from the State or any separate Contractor its consent to cutting or otherwise altering the Work.

4.16 HAZARDOUS MATERIALS

4.16.1 The Contractor is responsible for compliance with any requirements for hazardous materials on the jobsite, whether they are discovered, brought on site for storage or use, or being removed. The Contractor shall indemnify the State for any cost the State incurs to remediate substances negligently handled.

4.16.2 If the Contractor encounters an unforeseen hazardous material that could result in injury or death to persons, the Contractor shall, upon recognizing the condition, immediately stop Work

in the affected area and report the condition to the Project Manager in writing. Upon receiving notice the Project Manager shall issue a Construction Change Directive (CCD) according to Subparagraph 12.1.8. Work may resume in the affected area shall resume upon written agreement of the State and the Contractor.

4.17 CLEANING UP

4.17.1 The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by the Contractor's operations. At the completion of the Work the Contractor shall remove all waste materials and rubbish from and about the Project as well as all tools, construction equipment, machinery and surplus materials. The Contractor shall leave the premises in a clean and satisfactory condition.

4.17.2 If the Contractor fails to clean up at the completion of the Work, the State may do so as provided in Paragraphs 14.5 and 14.6 and the cost thereof shall be charged to the Contractor.

4.18 ROYALTIES AND PATENTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent rights and shall save the State harmless from loss on account thereof, except that the State shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified, but if the Contractor has reason to believe that the design, process or product specified is an infringement of a patent or any other right or interest held by a third party. The Contractor shall be responsible for such loss unless the Contractor promptly gives such information to the State.

4.19 INDEMNIFICATION

The Contractor hereby agrees and consents to indemnify and hold harmless the State under the terms and conditions specified in "Attachment C".

ARTICLE 5: COMMISSIONING SERVICES

5.1 DEFINITIONS

5.1.1 The scope of commissioning services shall be detailed in Attachment A of the CONTRACT FORM FOR DESIGN-BUILD SERVICES.

5.1.2 The Contractor shall designate and retain a Commissioning Coordinator who creates the commissioning plan; coordinates inspections and observations of all parties (State, Design Professionals, and jurisdictional authorities); maintains logs, checklists, reports, and certifications; coordinates Warranty Phase tasks; and assists the Contractor with the production the O&M manual.

5.1.3 The State may, at its discretion, retain an independent Commissioning Agent. The Commissioning Coordinator will coordinate all commissioning activities with this Agent when one is retained.

5.2 RESPONSIBILITIES

5.2.1 A draft of the O&M manual for the project must be submitted by the Contractor to the State prior to Substantial Completion.

5.2.2 All commissioning and Warranty Phase tasks must be completed and approved by the State before the Project Manager will approve a Certificate for Payment for Contract Completion to close out the contract.

6 ARTICLE 6: SUBCONTRACTORS

6.1 DEFINITIONS

6.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform any of the Work for this Project. The term Subcontractor means a Subcontractor or its authorized representative. The term Subcontractor does not include any separate Contractor or its Subcontractors.

6.1.2 A Sub-Subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform any of the Work. The term Sub-Subcontractor means a Sub-Subcontractor or an authorized representative thereof.

6.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

Unless other procedures are specified or required by the Contract Documents or the Bidding Documents, then the following provisions are applicable:

6.2.1 The Parties agree that it is in the best interest of both the Contractor and the State to determine and select subcontractors as soon as possible after the Contractor has been awarded the Project. Therefore the Contractor agrees to furnish to the State in writing the names of the persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each of the principal portions of the Work within ten (10) working days of award of the Project to the Contractor. The State will reply within ten (10) working days to the Contractor in writing stating whether or not the State, after due investigation, has reasonable objection to any such proposed person or entity.

6.2.2 The Contractor shall not contract with any such proposed person or entity to whom the State has made reasonable objection under the provisions of Subparagraph 6.2.1 of these General Conditions. The Contractor shall not be required to contract with anyone to whom it has a reasonable objection.

6.2.3 If the State has reasonable objection to any such proposed person or entity, the Contractor shall submit a substitute to whom the State has no reasonable objection, and the Contract Sum shall be increased or decreased by the difference in cost occasioned by such substitution and an

appropriate Change Order shall be issued; however, no increase in the Contract Sum shall be allowed for any such substitution unless the Contractor has acted promptly and responsively in submitting names as required by Subparagraph 6.2.1 of these General Conditions.

6.2.4 The Contractor shall make no substitution for any Subcontractor, person or entity previously selected if the State makes a reasonable objection to such substitution.

6.3 SUBCONTRACTUAL RELATIONS

By written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the State. Said agreement shall preserve and protect the rights of the State under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the Contractor Subcontractor agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Documents, has against the State. The Contractor shall require each Subcontractor to enter into similar agreements with its Sub-Subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Paragraph 6.3, and identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to its Sub-Subcontractors.

7 ARTICLE 7: WORK BY STATE OR SEPARATE CONTRACTORS

7.1 STATE'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS

7.1.1 The State reserves the right to perform work related to the Project with its own forces, and to award separate contracts in connection with other portions of the Project or other work on the site under these or similar Conditions of the Contract. If the Contractor claims that delay or additional cost is involved because of such action by the State, the Contractor shall make such claim as provided elsewhere in the Contract Documents.

7.1.2 When separate Contracts are awarded for different portions of the Project or other work on the site, the term Contractor in the Contract Documents in each case shall mean the Contractor who executes each separate State Contractor Agreement.

7.1.3 The State will provide for the coordination of the work of its own forces and of each separate Contractor with the Work of the Contractor, who shall cooperate therewith as provided in Paragraph 6.2.

7.2 MUTUAL RESPONSIBILITY

7.2.1 The Contractor shall afford the State and separate Contractors reasonable opportunity

for the delivery and storage of their materials and equipment and the execution of their work, and the Contractor shall connect and coordinate its work with the work of the State and separate Contractors as required by the Contract Documents.

7.2.2 If any part of the Contractor's Work depends upon the work of the State or any separate Contractor for proper execution or results, the Contractor shall, prior to proceeding with that portion of the Work, report in a timely way to the Project Manager any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acceptance of the State's or separate Contractors work as fit and proper to receive the Contractor's Work, except as to defects which may subsequently become apparent in such work by others.

7.2.3 Any costs caused by defective or ill-timed work shall be borne by the responsible party.

7.2.4 Should the Contractor wrongfully cause damage to the work or property of the State, or to other work on the site, the Contractor shall promptly remedy such damage as provided in Subparagraph 10.2.6 of these General Conditions.

7.3 STATE'S RIGHT TO CLEAN UP

If a dispute arises between the Contractor and separate Contractors as to their responsibility for cleaning up as required by Paragraph 4.17 of these General Conditions, the State may clean up and charge the proportional cost thereof to the Contractor.

ARTICLE 8: TIME

8.1 DEFINITIONS

8.1.1 All time limits stated in the Contract Documents are material terms and time is the essence of the Contract. A failure by the Contractor to do what is required by the time specified in the Contract Documents is a breach of the contract.

8.1.2 Unless otherwise provided, the Contract's Term is the period of time between the Date of Commencement and the Date of Contract Completion, including authorized adjustments thereto.

8.1.3 The Date of Commencement is the date established in a notice to proceed. If there is no notice to proceed, it shall be the date indicated in the CONTRACT FORM FOR DESIGN-BUILD SERVICES. In the absence of a notice to proceed and an express commencement date in the CONTRACT FORM FOR DESIGN-BUILD SERVICES, then the date of execution of the CONTRACT FORM FOR DESIGN-BUILD SERVICES shall be the commencement date.

8.1.4 Substantial completion is the stage in the progress of the Work when the Work is sufficiently complete in accordance with the Contract Documents so that the State can occupy or utilize the Work for its intended use.

8.1.5 The Date of Substantial Completion of the Work or designated portion thereof is the date the following tasks and deliverables are complete: (a) that work is granted a certificate of

occupancy (conditional or complete) by authorities having jurisdiction; (b) the Contractor's punch list as defined in Subparagraph 9.8.1 is submitted; (c) the Design Professional has certified that work as sufficiently complete and in accordance with the Contract Documents and that the punch list is accurate; (d) the Contractor has submitted record copies of all documents plus samples from the site in accordance with Subparagraph 4.12.1; (e) the Contractor has submitted the draft O+M Manual covering that work; (f) the Contractor has submitted its Certificate of Substantial Completion; and (g) the State has reviewed and accepted all of the above items.

8.1.6 The Date of Final Completion of the Work is the date the entire Work and the Contractor's Certificate for Payment for Final Completion is accepted by the Project Manager.

8.1.7 The Date of Contract Completion shall be established as one year from the Date of Final Completion, and it shall not occur until the Contractor's Warranty Phase tasks and deliverables are complete and submitted in accordance with Article 5 and as required elsewhere in the Contract Documents, until the Contractor's certified Certificate for Payment for Contract Completion is submitted, and until these tasks and deliverables have been approved by the Project Manager.

8.1.8 The term day as used in the Contract Documents shall mean calendar day unless otherwise specifically designated.

8.2 PERFORMANCE, DELAYS AND EXTENSIONS OF TIME

8.2.1 The Contractor shall begin the Work on the Date of Commencement and shall carry the Work forward expeditiously with adequate forces.

8.2.2 The Contractor shall not commence construction work until all insurance (other than property insurance) is effective. The Contract Time shall not be extended as a result of the Contractor's failure to obtain insurance.

8.2.3 If in the sole opinion of the State, the Contractor fails to commence work on the project or to complete the Work within agreed-upon the time limits, or to perform the Work in such a manner that it appears that the completion date can be assured, the State shall have the right to notify the Contractor and surety, if any, by Certified Mail that the terms of the Contract have been violated, and that within seven (7) days the Contract will be terminated and that the State has the right to and in fact will take over and attend to completion of the Project without prejudice to the State's remedies for any losses sustained.

8.2.4 If the Contractor is delayed at any time in the progress of the Work by any act or failure to act by the State, or by any State employee, or by any separate Contractor of the State, or by changes ordered in the Work, fire, unusual delay in transportation, adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the Contractor's control, or by delay authorized by the State pending alternative dispute resolution proceedings, or by any other cause which may justify the delay, then the Contract Time shall be extended by Change Order for such reasonable time as agreed upon by the Contractor and Project Manager.

8.2.5 Any claim for extension of time shall be made in writing to the Project Manager not more than twenty days after the commencement of the delay; otherwise it shall be waived. In the case of a continuing delay only one claim is necessary. The Contractor shall provide an estimate of

the probable effect of such delay on the progress of the Work.

8.2.6 This Paragraph 8.2 does not exclude the recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9: PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

The Contract Sum is the Maximum Limiting Amount stated in the CONTRACT FORM FOR DESIGN-BUILD SERVICES and, including authorized adjustments thereto, is the total amount payable by the State to the Contractor for the performance of the Work including its commissioning under the Contract Documents. No additional amount for reimbursable expenses shall be due. All reimbursable expenses incurred by the Contractor, its consultants, its employees, and its subcontractors shall be included in the Maximum Limiting Amount.

9.2 SCHEDULE OF VALUES

Prior to the commencement of construction and before the first Application for Payment, the Contractor shall submit to the Project Manager a schedule of values allocated to the various portions of the Work including commissioning, formatted and documented to substantiate its accuracy. This schedule shall be used by the Project Manager as the measure for the Contractor's Applications for Payment, and the Contractor shall update the schedule monthly.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 At least ten (10) days before the date established for the approval of each progress payment, the Contractor shall submit to the Project Manager an itemized Application for Payment, notarized if required, supported by such data substantiating the Contractor's right to payment as the State may require, and reflecting retainage, if any, as provided elsewhere in the Contract Documents.

9.3.2 Unless otherwise provided in the Contract Documents, payments will be made for services, materials, and equipment not only incorporated in the Work but also delivered and suitably stored at the site. If approved in advance by the State, payments may similarly be made for materials or equipment suitably stored at some other location agreed upon in writing. Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the State to establish the State's title to such materials or equipment or otherwise protect the State's interest, including applicable insurance and transportation to the site for those materials and equipment stored off the site.

9.3.3 The Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the State either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article 9 as "liens"; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein

or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

9.4 CERTIFICATES FOR PAYMENT

In conjunction with an Application for Payment, the Contractor shall issue a Certificate for Payment containing certifications from all project Design Professionals, based on their observations at the site as provided in Subparagraph 2.3.2 of these General Conditions and the data documenting the Application for Payment, that the Work has progressed to the point indicated; that, to the best of each Design Professional's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in the Certificate); and that the Contractor is entitled to payment in the amount certified.

9.5 PROGRESS PAYMENTS

9.5.1 Within ten days of receiving an Application for Payment and accompanying Certificate for Payment, the Project Manager will either approve said documents, with a copy to the Contractor, or notify the Contractor of his or her reasons for withholding approval as provided in Paragraph 9.6 of these General Conditions.

9.5.2 After the Project Manager has approved a Certificate for Payment, the State shall make payment in the manner and within the time provided in the Contract Documents.

9.5.3 The Contractor shall promptly pay each consultant and Subcontractor, upon receipt of payment from the State, out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which said Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such Subcontractor's Work. The Contractor shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its Sub-Subcontractors in similar manner.

9.5.4 The State may, on request and at its discretion, furnish to any Subcontractor, if practicable, information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken thereon by the Project Manager on account of Work done by such Subcontractor.

9.5.5 Contractor shall be solely responsible for all payments due any consultant or Subcontractor and shall defend, indemnify and hold harmless the State against any obligation to pay or to see to the payment of funds to any Subcontractor or consultant of the Contractor.

9.5.6 No Certificate for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the State, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

9.6 PAYMENTS WITHHELD

9.6.1 The State may withhold acceptance of a Certificate, in whole or in part, to the extent reasonably necessary to protect the State, if in the Project Manager's opinion, the Contractor is unable to make representations to the State as required in Paragraph 9.4 of these General Conditions. If the Contractor and the State cannot agree on a revised amount, the Contractor will promptly issue a Certificate for Payment for the amount that is undisputed. Any disputed amounts will be subject to the dispute resolution procedures specified in these General Conditions. The Project Manager may also decline to approve payment or, because of subsequently discovered evidence or subsequent observations, he or she may nullify the whole or any part of any Certificate for Payment previously issued, to such extent as may be necessary in his or her opinion to protect the State from loss because of:

- (a) Defective Work not remedied,
- (b) Third party claims filed or reasonable evidence indicating probable filing of such claims,
- (c) Failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment,
- (d) Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum,
- (e) Damage to the State or another Contractor,
- (f) Reasonable evidence that the Work will not be completed within the Contract Time, or
- (g) Persistent failure to carry out the Work in accordance with the Contract Documents.

9.6.2 When the grounds for non-payment described in Subparagraph 9.6.1 are removed, payment shall be made for amounts withheld because of them.

9.7 FAILURE OF PAYMENT

If the State does not pay the Contractor within the time limit established in the Contract Documents any amount approved by the Project Manager or awarded by alternative dispute resolution proceedings, then the Contractor may, upon seven additional days written notice to the State, stop the Work until payment of the amount owing has been received. The Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, which shall be effected by appropriate Change Order in accordance with Paragraph 12.3.

9.8 SUBSTANTIAL COMPLETION

9.8.1 When the Contractor considers that the Work, or a designated portion thereof, is substantially complete as defined in Subparagraph 8.1.4 of these General Conditions, the Contractor shall prepare for submission to the Design Professional(s) and Project Manager a list (the "punch list") of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Contractor acknowledges that when the Design Professional(s) and Project Manager on the basis of an inspection determine that the Work or designated portion thereof is substantially complete, and the jurisdictional authority has granted a total or partial Certificate of Occupancy, the Contractor will then prepare a Certificate of Substantial Completion which includes certifications of all Design Professionals. The Certificate of Substantial Completion shall establish the Date of Substantial Completion, shall state the responsibilities of the State and the Contractor for security, maintenance, heat, utilities, damage to the Work,

and insurance, and shall fix the time, which shall not exceed thirty (30) days, within which the Contractor shall complete the items listed therein. Warranties required by the Contract Documents shall commence on the Date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Contractor shall submit the Certificate of Substantial Completion to the State for its written acceptance of the responsibilities assigned to the State in the Certificate. The Work shall not be considered substantially complete prior to the receipt of an approved draft O & M manual for that portion of Work as required by Subparagraph 5.2.1 as well as record copies of all documents and samples in accordance with Subparagraph 4.12.1 and as required elsewhere in the Contract Documents.

9.8.2 Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor, approval for occupancy by the jurisdictional authority, certification by the Design Professional(s), and after the State has had a reasonable period of time to review and approve the Certificate, the State shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof, as provided in the Contract Documents.

9.8.3 The State may occupy or use any completed or partially completed portion of the Work at any stage, provided such occupancy or use is consented to by endorsement by the insurer provided property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the State and the Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. Consent of the Contractor shall not be unreasonably withheld. The process of Substantial Completion and Warranty Phase will apply to occupied portions of the Work.

9.9 FINAL COMPLETION AND PAYMENT FOR FINAL COMPLETION

9.9.1 Upon receipt of written notice from the Contractor that the Work is ready for final inspection, the Design Professional(s) will promptly make such Inspection(s) and, when the Design Professional(s) find the Work acceptable under the Contract Documents and the Contract fully performed, the Design Professionals will certify the Contractor's Certificate for Payment for Final Completion stating that to the best of their knowledge, information and belief, and on the basis of their observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor, and noted in said Certificate, is due and payable. The Contractor's certified Certificate for Payment of Final Completion will constitute a further representation that the Contractor has fulfilled the conditions entitling it to Payment for Final Completion as set forth in Subparagraph 9.9.3 of these General Conditions and will be provided to the Project Manager for approval and subsequent payment.

9.9.2 Neither the Payment for Final Completion nor the remaining retained percentage shall become due until the Contractor submits to the State (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the State or its property might in any way be responsible, have been paid or otherwise satisfied, (2)

consent of surety, if any, to Payment for Final Completion and (3), if required by the State, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by the State. If any Subcontractor refuses to furnish a release or waiver required by the State, the Contractor may furnish a bond satisfactory to the State in an amount sufficient to discharge any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the State all moneys that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

9.9.3 Within ten days of receipt of an application for Payment for Final Completion with accompanying Certificate for Payment for Final Completion, plus all the requirements identified in Subparagraph 9.9.2, the Project Manager will either approve said documents, with a copy to the Contractor, or notify the Contractor of his or her reasons for withholding approval as provided in Subparagraph 9.61 of these General Conditions.

9.9.4 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by the issuance of Change Orders affecting final completion, the State shall, upon application by the Contractor and after certification by the Design Professional(s) and after a reasonable time for review by the State of the application and certifications, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Contract Documents, and if bonds have been furnished as required by the Contract Documents, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the State prior to certification of such payment. Such payment shall be made under the terms and conditions governing Payment for Final Completion, except that it shall not constitute a waiver of claims.

9.9.5 The acceptance of Payment for Final Completion shall constitute a waiver of all claims by the Contractor for any additional payments under the Contract.

9.10 CONTRACT CLOSE-OUT AND PAYMENT FOR CONTRACT COMPLETION

One year after Final Completion, and upon completion of all Warranty Phase tasks and deliverables, the Contractor may make its Final Application and its Final Certificate for Payment for Contract Completion which will close out this Contract. Warranty Phase tasks and deliverables are described in detail in Attachment A, but typically include (a) seasonal testing, (b) warranty work, (c) State staff training, (d) completion of the O&M Manual, (e) completion of the Commission Record, (f) complete as-built drawings and digital files, and (g) Design Professionals' completion of certifications such as LEED or Efficiency Vermont. The Contractor's Final Certificate for Payment for Contract Completion must be certified by all project Design Professionals. All work and deliverables, and the Final Application and the Final Certificate for Payment for Contract Completion, must be approved by the Project Manager before the State issues final payment to close out the contract.

ARTICLE 10: PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

- (a) all employees on the Work and all other persons who may be affected thereby;
- (b) all the Work and all materials and equipment to be incorporated therein, whether in storage on or off-the site, under the care; custody or control of the Contractor or any of its Subcontractors or Sub-Subcontractors; and
- (c) other property at the site or adjacent thereto, including trees, shrubs; lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

10.2.2 The Contractor shall give all notices and shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

10.2.4 When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall: (1) exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel; and (2) give the State notice, in writing, seven (7) days in advance of the planned activity of the Contractor's intent to store and/ or use explosives or other hazardous materials or equipment on the project site.

10.2.5 When the project involves the placement or replacement of roofing systems of all types on State-owned buildings, including flat, low-pitched and steep roofs, Contractor must comply with all requirements of the latest edition of VOSHA Safety and Health Standards for Construction (29 CFR 1926) including, but not limited to, Subpart M – Fall Protection. Prior to execution of a contract by BGS, contractors engaged in placement or replacement of roofing systems of all types must submit a signed certification statement attesting to their intention to comply with VOSHA Fall Protection Regulations. Such certification shall be submitted on a State-provided form along with proof of insurance.

10.2.6 The Contractor shall promptly remedy all damage or loss (consistent with Contractor's obligations described in Attachment C) to any property referred to in Clauses 10.2.1(b) and 10.2.1(c) of these General Conditions caused in whole or in part by the Contractor, any Subcontractor, any Sub-Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible under Clauses 10.2.1(b) and 10.2.1(c), except damage or loss

attributable to the acts or omissions of the State or anyone directly or indirectly employed by the State, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor

10.2.7 The Contractor shall designate a responsible member of its organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the State.

10.2.8 The Contractor shall not load or permit any part of the Work to be loaded so as to endanger its safety.

10.3 EMERGENCIES

In any emergency affecting the safety of persons or property, the Contractor shall act to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in Article 12 for Changes in the Work.

ARTICLE 11: INSURANCE

Insurance obligations of the parties to this agreement are fully set forth below. Attachment "C", numbered paragraph 8 has been deleted in its entirety and the following provisions are applicable:

11.1 INSURANCE – GENERAL REQUIREMENTS

Insurance obtained by the Contractor to cover the below-listed requirements shall be procured from an insurance company registered and licensed to do business in the State of Vermont. Before the Contract is executed, the Contractor shall file with the State a certificate of insurance, executed by an insurance company or its licensed agent(s), on form(s) satisfactory to the State, stating that with respect to the Contract awarded, the Contractor carries insurance in accordance with the following requirements:

- (a) *Workers' Compensation Insurance:* With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.
- (b) *Commercial General Liability (CGL) Insurance:* With respect to all operations performed by the Contractor and any Subcontractors, the Contractor shall carry Commercial General Liability (CGL) Insurance affording all major divisions of coverage including, but not limited to:

Independent Contractors' Protective Products and Completed Operations
Personal Injury Liability
Contractual Liability
Broad Form Property Damage
Explosion, Collapse and Underground (XCU) Coverage
Fire Legal Liability

State may require additional specific liability coverage(s) when applicable.

Limits of Coverage shall be not less than:

\$1,000,000 Each Occurrence
\$2,000,000 General Aggregate Applying, In Total To This Project Only
\$1,000,000 Products/Completed Operations Aggregate
\$1,000,000 Personal Injury and Advertising Liability
\$ 50,000 Fire Legal Liability
\$ 5,000 Medical Expense

Aggregate Limits of Insurance (Per Project) Form must be included (or as excepted in (f) below) with the Commercial General Liability Policy.

Umbrella Excess Liability Policies may be used in conjunction with primary policies to comply with any of the limit requirements specified above.

"Claims-made" coverage forms are not acceptable without the express written prior consent of the State. Each policy furnished shall contain a rider or non-cancellation clause reading in substance as follows:

“Anything herein to the contrary notwithstanding, notice of any cancellation, termination or alteration to the insurance contracts must be delivered by registered mail to the Commissioner, Department of Buildings and General Services, State of Vermont, Montpelier, Vermont, at least sixty (60) days before effective cancellation, termination or alteration date unless all work required to be performed under the terms of the Contract is satisfactorily completed as evidenced by the formal acceptance by the State of Vermont.”

- (c) *Professional Liability Insurance:* Before commencing work on this Agreement and throughout the term of this Agreement, all Design Professionals shall procure and maintain professional liability insurance for all professional services performed under this Agreement, with minimum coverage as required by the Agency of Administration but not less than \$1,000,000 per claim and \$2,000,000 policy aggregate.
- (d) *Automobile Liability Insurance:* Contractor shall carry Automobile Liability Insurance covering all motor vehicles, including owned, hired, borrowed and non-owned vehicles, used in connection with the project. Limits of Coverage shall be not less than:

\$1,000,000 Combined Single Limit

- (e) Contractor shall require each Subcontractor, if any, to maintain the same Workers'

Compensation, Commercial General Liability, and Automobile Liability coverage as specified in paragraphs (a), (b), and (d) above.

- (f) *Scope of Insurance & Special Hazards:* The insurance required under subparagraphs (b), (c), and (d) above shall provide protection for the State, Contractor and the Subcontractors, if any, against damage claims which may arise from work being performed. Special hazards may be encountered by the Contractor or by any person directly or indirectly employed by the Contractor or a Subcontractor, and additional coverage may be required if conditions warrant.
- (g) If Contractor is unable to provide Aggregate Limits of Insurance (Per Project) as required in (b) above, Contractor shall purchase an Owner's Protective Liability Insurance Policy in the name of the State of Vermont to cover all exposures, including bodily injury and death, arising out of and in the course of this Contract. Limits of liability shall be the same as those required of the Contractor under paragraph (b) above.
- (h) *Additional Insured:* The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.
- (i) *Notice of Cancellation or Change:* There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior written notice to the State of Vermont, Office of Purchasing & Contracting.

11.2 INSURANCE REQUIREMENTS FOR BUILDER'S RISK INSURANCE

11.2.1 Builder's Risk for New Construction Projects: Contractor shall secure and maintain Builder's Risk insurance for this project if it involves new construction. The following provisions apply:

- (a) Contractor shall purchase and maintain Builder's Risk Insurance. The Contractor shall name the Contractor and the State of Vermont as their interest may occur. Other parties shall be insured as the State may reasonably require.
- (b) Contractor shall secure and maintain insurance on portions of the work stored off-site, on site and in transit. Boiler & Machinery Insurance may be used in conjunction with this coverage if it is required to meet the testing requirement.
- (c) Any deductible applicable to loss covered by insurance provided hereunder shall be borne by the Contractor.

11.2.2 Builder's Risk for Construction/Renovation Projects: At the sole discretion of the State, Contractor may also be required to obtain and maintain Builder's Risk insurance on

construction/renovation projects.

If the project is for the construction/renovation of an existing structure, and the State has determined that Contractor will not be obligated to obtain and maintain Builder's Risk insurance, then the following provisions apply:

- (a) The State will maintain property insurance upon the construction site and will not require Contractor to purchase and maintain Builder's Risk Insurance upon the entire work at the site.
- (b) The decision of the State to waive the requirement that the Contractor maintain builder's risk coverage does not waive Contractor's liability for damage to the State's real and personal property. Contractor's liability for loss to the State's real and personal property will be limited to the first \$100,000 of each and every property loss at the work site provided such loss is covered under the State's property insurance coverage. If the Contractor elects to meet this obligation by purchase of commercial insurance, this insurance shall name the Contractor and the State of Vermont as Named Insureds and shall include the interests of the Contractor and Subcontractors. Other parties shall be insured as the State may reasonably require.
- (c) Contractor shall secure and maintain insurance on portions of the work stored off-site, on site and in transit. Boiler & Machinery Insurance may be used in conjunction with this coverage if it is required to meet the testing requirement. The cost of any deductible applicable to loss covered by insurance provided hereunder shall be borne by the Contractor.
- (d) Except as provided for in 11.2.2 (a)-(c) above the State and Contractor waive all rights against each other and the Subcontractor, Sub-subcontractors, agents and employees of the other.

11.3 No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Contractor for the Contractor's operations. These are solely minimums that have been set to protect the interests of the State.

11.4 Contractor shall comply with the regulations and requirements of any insurance company which issues a policy on any part of the work or site.

11.5 The State shall have power to adjust and settle any loss with the insurers.

ARTICLE 12: CHANGES IN THE WORK

12.1 DEFINITIONS

12.1.1 Change Order: A Change Order is a written order to the Contractor signed by the State and the Contractor issued after execution of the Contract, authorizing a change in the Work, an adjustment in the Contract Sum, and/or the Contract Term. The Contract Sum and the Contract Term may be changed only by Change Order. A Change Order signed by the Contractor indicates its agreement therewith, including the adjustment in the Contract Sum and/or the Contract Term.

12.1.2 Proposed Change Order (PCO): A PCO is a written request submitted to the Contractor by either the Contractor or the State requesting a change to the Contract Sum and/or the Contract

Term. The State will prescribe a PCO form for use by the Contractor. The Contractor shall submit all PCO's on the prescribed form.

12.1.3 Construction Change Directive (CCD): A CCD is a written document prepared by the State directing the Contractor to make changes in the Work where the State and the Contractor have not yet reached an agreement on proposed changes in the Contract Sum and/or Contract Term. A CCD becomes part of a PCO. The State will prescribe a CCD form for use by the Project Manager. All CCD's must be submitted on the prescribed form.

12.1.4 The State, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and the Contract Term being adjusted accordingly. All such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents.

12.1.5 Payment for changes in the Work will only be made after a Change Order is signed by the Contractor and the State, and after the Change Order is executed by the State.

12.1.6 The general process by which changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions is as follows:

- (a) If the Proposed Change Order (PCO) originates from the Contractor, the Contractor signs and submits the PCO to the State on the prescribed form.
- (b) If the PCO originates from the State, the Project Manager submits the PCO to the Contractor for its review and signature, then presents the PCO to the State for approval.
- (c) The PCO is signed by the Project Manager.
- (d) The Project Manager shall coordinate with the Contractor through email or other written documentation every 30 days as to the merit of issuing a Change Order. If the Project Manager and Contractor agree that a Change Order should be submitted, the Contractor, will compile all approved PCOs and include into one (1) Change Order.
- (e) The Change Order is then submitted to the Project Manager who then processes the Change Order.

12.1.7 The cost or credit to the State resulting from a change in the Work shall be determined in one or more of the following ways:

- (a) by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- (b) by unit prices stated in the Contract Documents or subsequently agreed upon;
- (c) by cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- (d) by the method provided in Subparagraph 12.1.8.

12.1.8 If none of the methods set forth in Clauses 12.1.7 (a)–(c) is agreed upon, or cannot be agreed upon at the time due to the nature of the change, emergent conditions, or lack of required information, the Contractor, provided it receives a Construction Change Directive (CCD) signed by the State, shall promptly proceed with the Work involved. The cost of such Work shall then be recommended by the Contractor on the basis of the reasonable expenditures and savings of those performing the Work attributable to the change, including, in the case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under

Clauses 12.1.7 (c) and 12.1.7 (d) above, the Contractor shall keep and present, in such form as the Project Manager may prescribe, an itemized accounting together with appropriate supporting data for inclusion in a Proposed Change Order (PCO). Unless otherwise provided in the Contract Documents, cost shall be limited to the following: cost of materials, cost of delivery; cost of labor, including social security, medicare, and unemployment insurance, and fringe benefits required by agreement or custom; workers' or workmen's compensation insurance; bond premiums; rental value of equipment and machinery; and the additional costs of supervision and field office personnel directly attributable to the change. Pending final determination of cost to the State, payments on account shall be made on the Contractor's Certificate for Payment. The amount of credit to be allowed by the Contractor to the State for any deletion or change which results in a net decrease in the Contract Sum will be the amount of the actual net cost as confirmed by the Project Manager. When both additions and credits covering related Work or substitutions are involved in any one change, the allowance for Overhead and Profit shall be figured on the basis of the net increase, if any, with respect to that change. It is the Project Manager's responsibility to ensure that all CCD's are converted and incorporated into a PCO within thirty (30) days of completion of the changes to the work that are the subject of the CCD.

12.1.9 Reimbursable expenses, such as consultant hourly rates, transportation costs, lodging, printing, reproductions, and postage, shall be established at the time of bidding and recorded in Attachment B, or they shall be reimbursed at the discretion of the State. All unit rates must be fully burdened; no multipliers shall be added.

12.1.10 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order that application of the agreed unit prices to the quantities of Work proposed will cause substantial inequity to the State or the Contractor, the applicable unit prices shall be equitably adjusted.

12.2 CONCEALED CONDITIONS

12.2.1 Should concealed conditions encountered in the performance of the Work below the surface of the ground, or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Contract Documents or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract, be encountered, the Contract Sum shall be equitably adjusted by Change Order upon claim by either party made within twenty days after the first observance of the conditions.

12.3 CLAIMS FOR ADDITIONAL COST

12.3.1 If the Contractor wishes to make a claim for an increase in the Contract Sum, the Contractor shall give the State written notice thereof within twenty days after the occurrence of the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property in which case the Contractor shall proceed in accordance with Paragraph 10.3 of these General Conditions. No such claim shall be valid unless so made. If the State and the Contractor cannot agree on the amount of the adjustment in the Contract Sum, it shall be determined pursuant to the dispute resolution provisions in these General Conditions. Any change in the Contract Sum

resulting from such claim shall be authorized by Change Order.

12.3.2 If the Contractor claims that additional cost is involved because of, but not limited to, (1) any order by the State to stop the Work pursuant to Paragraph 14.5 of these General Conditions where the Contractor was not at fault, or (2) failure of payment by the State pursuant to Paragraph 9.7 of these General Conditions, the Contractor shall make such claim as provided in Subparagraph 12.3.1 of this agreement.

12.3.3 The State will have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the State and Contractor within ten (10) days unless the Contractor or the State objects to the change in writing.

ARTICLE 13: UNCOVERING AND CORRECTING OF WORK

13.1 UNCOVERING OF WORK

13.1.1 If any portion of the Work should be covered contrary to the request of the State or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the State, be uncovered for the Project Manager's or Clerk's observation and shall be replaced at the Contractor's expense.

13.1.2 If any other portion of the Work has been covered which the State has not specifically requested to observe prior to being covered, the State may request to see such Work and it shall be uncovered by the Contractor. If such Work is found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the State. If such Work is found not to be in accordance with the Contract Documents, the Contractor shall pay such costs unless it is found that this condition was caused by the State or a separate contractor as provided in Article 7 of these General Conditions, in which event the State shall be responsible for the payment of such costs.

13.2 CORRECTION OF WORK

13.2.1 The Contractor shall promptly correct all Work which the State has found to be defective or which fails to conform to the Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including compensation for the State's additional services made necessary thereby.

The State, upon a finding of defect or failure to conform, shall immediately notify the Contractor, in writing, of the defect. The Contractor shall begin correcting the defective or non-conforming Work within ten (10) days unless the State agrees to a Change Order which reflects the reduction in Contract Sum due to the value of diminishment of the defective or nonconforming Work.

13.2.2 If, within one year after the Date of Substantial Completion of the Work or designated portion thereof or within one year after acceptance by the State of designated equipment or within such longer period of time as may be prescribed by law or by the terms of any applicable

special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the State to do so unless the State has previously given the Contractor a written acceptance of such condition. This obligation shall survive termination of the Contract. The State shall give such notice promptly after discovery of the condition.

13.2.3 The Contractor shall remove from the site all portions of the Work which are defective or non-conforming and which have not been corrected under Paragraphs 4.8 and 13.2 of these General Conditions, unless removal is waived by the State.

13.2.4 If the Contractor fails to correct defective or nonconforming Work as provided in Paragraphs 4.8 and 13.2, the State may correct it in accordance with Paragraph 14.6 of these General Conditions.

13.2.5 If the Contractor does not proceed with the correction of such defective or non-conforming Work within a reasonable time, the State may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten (10) days thereafter, the State may upon ten (10) additional days written notice sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, and the State's additional services and expenses made necessary thereby. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the State.

13.2.6 The Contractor shall bear the cost of making good all work of the State or separate Contractors destroyed or damaged by such correction or removal.

13.2.7 Nothing contained in this Paragraph 13.2 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including Paragraph 4.8 of these General Conditions. The establishment of the time period of one year after the Date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the Contractor's obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to its obligations other than specifically to correct the Work.

13.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK

The State may accept defective or nonconforming Work pursuant to Subparagraph 13.2.1 of this agreement. If the State elects to accept the defective or nonconforming Work, a Change Order will be issued to reflect a reduction in the Contract Sum. The Design Professional will recommend to the State the value of diminishment of the defective or nonconforming Work, however the State reserves the right to obtain a third party estimate of the value of the diminishment. If the State and Contractor cannot agree, then the issue will be resolved pursuant

to the dispute resolution provisions of these General Conditions. Such adjustment shall be effected whether or not Payment for Final Completion has been made.

ARTICLE 14: TERMINATION AND SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

If the Work is stopped for a period of thirty days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with the Contractor, or if the Work should be stopped for a period of thirty (30) days by the Contractor because the State has not made payment thereon as provided in Paragraph 9.7, then the Contractor may, upon seven (7) additional days written notice to the State, terminate the Contract and recover from the State payment for all Work executed and for any proven loss sustained upon any materials, equipment, tools, construction equipment and machinery, including reasonable profit and damages.

14.2 TERMINATION BY THE STATE FOR CAUSE

14.2.1 If the Contractor is adjudged bankrupt, or if the Contractor makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of the Contractor's insolvency, or if the Contractor persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if the Contractor fails to make prompt payment to Subcontractors or for materials or labor, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a violation of a provision of the Contract Documents, then the State, after determining that sufficient cause exists to justify such action, may, without prejudice to any right or remedy and after giving the Contractor and its surety, if any, seven (7) days written notice, terminate the Contract and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever method the State may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the Work is finished.

14.2.2 If the costs of finishing the Work, including compensation for State's additional services and expenses made necessary thereby, exceed the unpaid balance of the Contract Sum, the Contractor or Contractor's Surety shall pay the difference to the State. If the unpaid balance of the Contract Sum exceeds the costs of finishing the Work, including compensation for the State's additional services and expenses made necessary thereby, such excess shall be paid to the Contractor. The Contractor's obligation to pay all costs of finishing the Work shall survive the termination of the Contract.

14.3 TERMINATION BY STATE FOR CONVENIENCE

14.3.1 The State may, at any time, terminate this agreement for the State's convenience and without cause.

14.3.2 Upon receipt of written notice from the State of such termination for the State's convenience, the Contractor shall:

- (a) cease operations as directed by the State in the notice;
- (b) take actions necessary, or that the State may direct, for the protection and preservation of the Work; and
- (c) except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter no further subcontracts and purchase orders.

14.3.3 In case of such termination for the State's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

14.4 SUSPENSION BY STATE FOR CONVEIENCE

14.4.1 The State may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the State may determine.

14.4.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Subparagraph 14.4.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

- (a) that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- (b) that an equitable adjustment is made or denied under another provision of this Contract.

14.5 STATE'S RIGHT TO STOP THE WORK

If the Contractor fails to correct defective Work as required by Paragraph 13.2 or fails to carry out the Work in accordance with the Contract Documents, the State, by a written order signed personally or by an agent specifically so empowered by the State in writing, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the State to stop the Work shall not give rise to any duty on the part of the State to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Subparagraph 7.1.3.

14.6 STATE'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within seven (7) days after receipt of written notice from the State to commence and continue correction of such default or neglect with diligence and promptness, the State may, after seven (7) days following receipt by the Contractor of an additional written notice and without prejudice to any other remedy he may have, make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the State's additional services made necessary by such default, neglect or failure. If the payments then or thereafter due the Contractor are not sufficient to cover the amounts paid

by the State to make good such deficiencies, then the Contractor shall pay the difference to the State.

ARTICLE 15: MISCELLANEOUS PROVISIONS

15.1 GOVERNING LAW

The Contract shall be governed by the laws of the State of Vermont.

15.2 SUCCESSORS AND ASSIGNS

The State and the Contractor each bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any moneys due or to become due to itself hereunder, without the previous written consent of the State.

15.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or entity or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address known to him who gives the notice.

15.4 CLAIMS FOR DAMAGES

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of its employees, agents or others for whose acts it is legally liable, claim shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

15.5 BOND REQUIREMENTS

The Contractor hereby agrees to comply with the State's bonding requirements as incorporated into the Contract Documents.

15.6 RIGHTS AND REMEDIES

15.6.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

15.6.2 No action or failure to act by the State or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be

specifically agreed in writing.

15.7 TESTS

15.7.1 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested or approved, the Contractor shall give the Project Manager timely notice of its readiness so the Project Manager, or his or her designated representative may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests or approvals conducted by public authorities.

15.7.2 Contractor acknowledges and agrees that if a Design Principal or the State determines that any Work requires special inspection, testing, or approval which Subparagraph 15.7.1 does not include, the State will instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in Subparagraph 15.7.1. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents, the Contractor shall bear all costs thereof; otherwise the State shall bear such costs, and an appropriate Change Order shall be issued.

15.7.3 Required certificates of inspection, testing or approval shall be secured by the Contractor and promptly delivered by the Contractor to the Project Manager.

15.7.4 If a Design Professional is to observe inspections, tests or approvals required by the Contract Documents, the Contractor shall ensure the Design Professional is present for the inspections, tests, or approvals.

15.8 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at a rate of twelve percent (12 %) per annum. A payment is NOT due and payable unless and until the State has received an invoice filled out correctly and completely with required supporting documentation, including the Project Manager's approval.

15.9 DISPUTE RESOLUTION PROCESS

Any claim, dispute or other matter in question shall be subject to the following dispute resolution process: Contractor may seek review by the Commissioner of Buildings and General Services. Contractor must seek review by the Commissioner within ten (10) days of identification, in writing, of the disputed issue between the Project Manager and the Contractor otherwise the recommendation shall be deemed accepted by the Contractor. Failing resolution by the Commissioner, the Contractor then may request that the parties submit to non-binding mediation with a mutually agreed upon mediator under the most current Construction Industry Mediation Rules of the American Arbitration Association. The cost of non-binding mediation shall be borne equally by both parties unless both parties agree to a different arrangement for payment prior to the mediation.

ATTACHMENT E: SECURITY REQUIREMENTS

SECTION 01900

SECURITY REQUIREMENTS – CORRECTIONAL FACILITIES

PART 1 - GENERAL REQUIREMENTS

1.1 Related Documents

- A. All sections of Division 1.
- B. Examine all drawings and all other Sections of the Specifications for requirements therein affecting the work of this Section. Work shall be coordinated with other trades prior to installation to prevent interference and relocations.

1.2 Security Clearances

- A. The General Contractor is to supply the Department of Corrections with full names, dates of birth, and social security numbers of all employees who will be on site. This information must be submitted a **minimum of two (2) weeks prior to access to the site**. The Department of Corrections has final word on who will be permitted access to the site. A form for this purpose is attached for your use.
- B. Exclusionary Criteria: Only convictions within the last five (5) years will be considered.
 - a. Drug Conviction
 - b. Domestic Assault
 - c. Aggravated Assault
 - d. Escape from Custody

These need to be new convictions. Furlough violations, technical parole violations or probation violations do not factor in.

1.3 Contractor and Employee Security Precautions

- A. The security aspects of working at the Correctional Facility are critical. The following security precautions are part of the site conditions and are a part of this Contract. All persons coming on the site in any way connected with this Work shall be made aware of them, and it is the (General) Contractor's responsibility to check and enforce them.
 - 1. Parked vehicles must have their keys removed and doors locked. Under no circumstances will firearms, drugs, or alcohol be kept in vehicles.
 - 2. No firearms, bows and arrows, etc., are allowed on any persons or in any vehicles. Any weapons found will be confiscated and will not be returned.
 - 3. No alcohol or drugs are allowed on facility grounds (medication exempted by permission only). If drugs or alcohol are found on persons in vehicles, persons involved will be barred from working at this facility or any other State correctional facility for a period of up to one year. Violators will be prosecuted for illegal substances.
 - 4. No tobacco products or cell phones are allowed within the secured perimeter.

5. When necessary for employees to enter secure portions of the Facility, they may be subject to search and inventory of tools.
6. Workers will not engage in conversation or be in proximity with inmates, nor do or agree to do any personal requests or favors for any inmate.
7. All tools must be either in use, locked up, or removed from the site. Any tools found unattended will become the property of the Department of Corrections.
8. If any tools, or portions of tools such as hacksaw blades, are lost or misplaced, the disappearance shall be brought to the attention of the Director of Security at the facility immediately.
9. Any trailers left on site must be locked each night.
10. Regular working hours are from 7:00 a.m. to 4:30 p.m., Monday thru Friday. However, if agreed upon with Correctional Facility staff, the Contractor's working hours may be changed from those referenced above. A security guard will be available to assist contractor's personnel, equipment and vehicles through the trap.
11. If an accident occurs on State property, a written report must be submitted to the Chief of Security.

END OF SECTION 01900



VERMONT DEPARTMENT OF CORRECTIONS
WAIVER FOR CRIMINAL RECORD
AND BACKGROUND VERIFICATION

---- BGS Project Manager is to fill-in this section before giving the form to the contractor ----

Project:	Facility:
BGS Project Manager:	e-mail:

Company Name:			
Applicant Name:			
Alias/Maiden/Other Names:			
Social Security Number:		Date of Birth:	
Place of Birth:			
	City/Town	State	Country
Current Residence:			
	# and Street	City/Town	State/Country
Previous Residence:			
	# and Street	City/Town	State/Country
Telephone Number:	Hgt:	Wgt:	Race/Sex

I, _____ hereby acknowledge and authorize the Vermont Department of Corrections to conduct a check of any criminal record of convictions which may be maintained by the Vermont Criminal Information Center and the FBI. I understand that the results of that check will be made available to the Department of Corrections for use in reviewing my suitability for working within a Department of Corrections facility. I further understand that I have the right to appeal the results of the criminal record check to the Vermont Criminal Information Center, Department of Public Safety, 45 State Drive, Waterbury, Vermont 05671-1300.

Signature of Applicant

Date

Identity Verified by Construction Company

Date

NOTE: Do not send the completed form to the BGS Project Manager, the form must be sent to the Department of Corrections at the address below. If this form is not filled out entirely the record check will not be done.

e-mail completed form to:

Gary Dillon
Department of Corrections
NOB 2 South
280 State Drive
Waterbury, VT 05671-2000
gary.dillon@vermont.gov

SECTION 01901

SECURITY REQUIREMENTS - COURTS

PART 1 - GENERAL REQUIREMENTS

1.1 Related Documents

- A. All sections of Division 1
- B. Examine all drawings and all other Sections of the Specifications for requirements therein affecting the work of this Section. Work shall be coordinated with other trades prior to installation to prevent interference and relocations.

1.2 Security Clearances

- A. The General Contractor is to supply the Court with names, dates of birth, and social security numbers of all employees who will be on site. This information must be submitted one (1) week prior to access to the site. The Court has final word on who will or who will not be allowed on the project premises.

1.3 Contractor and Employee Security Precautions

- A. As the project site is an operational Court, the Contractors must take the following security precautions.
- B. Parked vehicles must have their keys removed and doors locked. Under no circumstances will firearms, drugs, or alcohol be kept in vehicles.
- C. No firearms, illegal drugs, or alcohol will be allowed on premise. Violators will be prosecuted.
- D. When necessary for employees to enter secure portions of the Facility, they may be subject to search and inventory of tools.
- E. Employees are to avoid fraternizing with the public while in the facility.
- F. All tools must be either in use, locked up, or removed from the site. Any tools found unattended will become the property of the Courts.
- G. If any tools, or portions of tools such as hacksaw blades, are lost or misplaced, the disappearance shall be brought to the attention of the Director of Security at the facility immediately.

END OF SECTION 01901

BY SIGNING BELOW I UNDERSTAND THAT A ROUTINE CRIMINAL
RECORD CHECK WILL BE PERFORMED IN ACCORDANCE WITH THE BGS
SECURITY DEPARTMENT REGULATIONS.

THE VERMONT JUDICIAL BRANCH REQUIRES BACKGROUND CLEARANCE
FOR WORKING WITHIN COURTHOUSES AND JUDICIAL FACILITIES.

PRINT NAME: _____

AUTHORIZING

SIGNATURE: _____

DATE OF BIRTH: _____

SSN: _____XXX-XX-_____ (LAST 4 DIGITS)

CONTRACTOR: _____

PROJECT: _____

BGS PROJECT MGR _____

PLEASE SEND COMPLETED FORM TO:

Robert Schell

Security and Safety Program Manager

Office of the Court Administrator

Vermont Supreme Court

109 State Street

Montpelier, VT. 05609-0701

DEPARTMENT OF PUBLIC SAFETY

Once the contractor has been selected any members they have on site and that includes sub contractors must complete the attached form. The Vermont Criminal Information Center (VCIC) section of Public Safety **MUST** have these forms 2 weeks prior to the contractor starting work or appearing on site to start work. Any employee or sub-contractor that has not had this completed on them will not be authorized to work there or enter the site/building.

David Tifft
Fleet Administrator
Vermont Dept of Public Safety
394 Hegeman Avenue
Colchester, VT 05446
802-655-0748
David.Tifft@state.vt.us



Vermont Department of Public Safety

Building Access Request/Security Clearance/Signature Form

Please note: Applicant completes yellow sections. Supervisor completes pink section. Leave green section blank.

PERSONAL REQUIRED INFORMATION – Please fill out completely

Last Name		First Name		MI	Maiden/Alias Name	DOB (yyyy-mm-dd) _/_/
Employee #	Job Title	Department:	Division:	Work Location:	<input type="checkbox"/> Civilian <input type="checkbox"/> Sworn	
Date of Hire (yyyy-mm-dd) _/_/		Other states/countries in which you have lived:				
EMPLOYMENT STATUS: <input type="checkbox"/> Permanent <input type="checkbox"/> Part-Time <input type="checkbox"/> Retired <input type="checkbox"/> ID Only (no door access)		CARD TYPE: <input type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Cancellation		Last 4 Digits of SSN: XXX-XX-____		
Comments:						
Race	Height	Weight	Eye Color	Hair Color	Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female	

APPLICANT'S SIGNATURE

A faxed or photocopy of this consent form serves as an original copy.

By my signature below, I am asserting that the information above is accurate.

Furthermore, by my signature below, I consent to the process of a criminal history and vehicle records check by the Vermont Department of Public Safety. I understand that continued employment or work authorization may be denied as a result of such record checks.

With regard to criminal history information, I understand that I have the right to appeal the results of the criminal record check to the Vermont Criminal Information Center, Department of Public Safety, 103 South Main Street, Waterbury, Vermont, 05671-2101.

Applicant's signature (Please use felt pen in signature block to the right.)

→ → →

Date: _____

← ← ←

AUTHORIZED BUILDING ACCESS

- ☐ All VSP Buildings/All Real Estate Except Evidence Rooms (Default for sworn personnel)
☐ Work Place Only (Default for civilian personnel)
☐ Additional Access Requested - List Below (Requires supervisory approval):

(Supervisor's signature)

(Supervisor's printed name)

(Date)

CRIMINAL RECORD CHECK CONSENT FORM - CONFIDENTIALITY STATEMENT

Criminal record information from the Vermont Criminal Information Center is being released to the undersigned with the understanding that the information will be used solely for the purpose intended by law and will not be disclosed to any person. Unauthorized dissemination or use of criminal records is punishable by a fine of up to \$5,000 (20 V.S.A. §2056c(g)).

(Reviewer's signature)

(Reviewer's printed name)

(Date)

Purpose of Check:

- ☐ Employment
☐ Contractor
☐ Building Security

Card Type(s):

- ☐ BGS Card
☐ Westinghouse

Process Checks:

- ☐ User received card(s)?
☐ Submitted to BGS on _/_/____
☐ BGS Activated Card on _/_/____
☐ User returned old card(s)?
☐ Old Card(s) deactivated?

New ID Card Number(s):

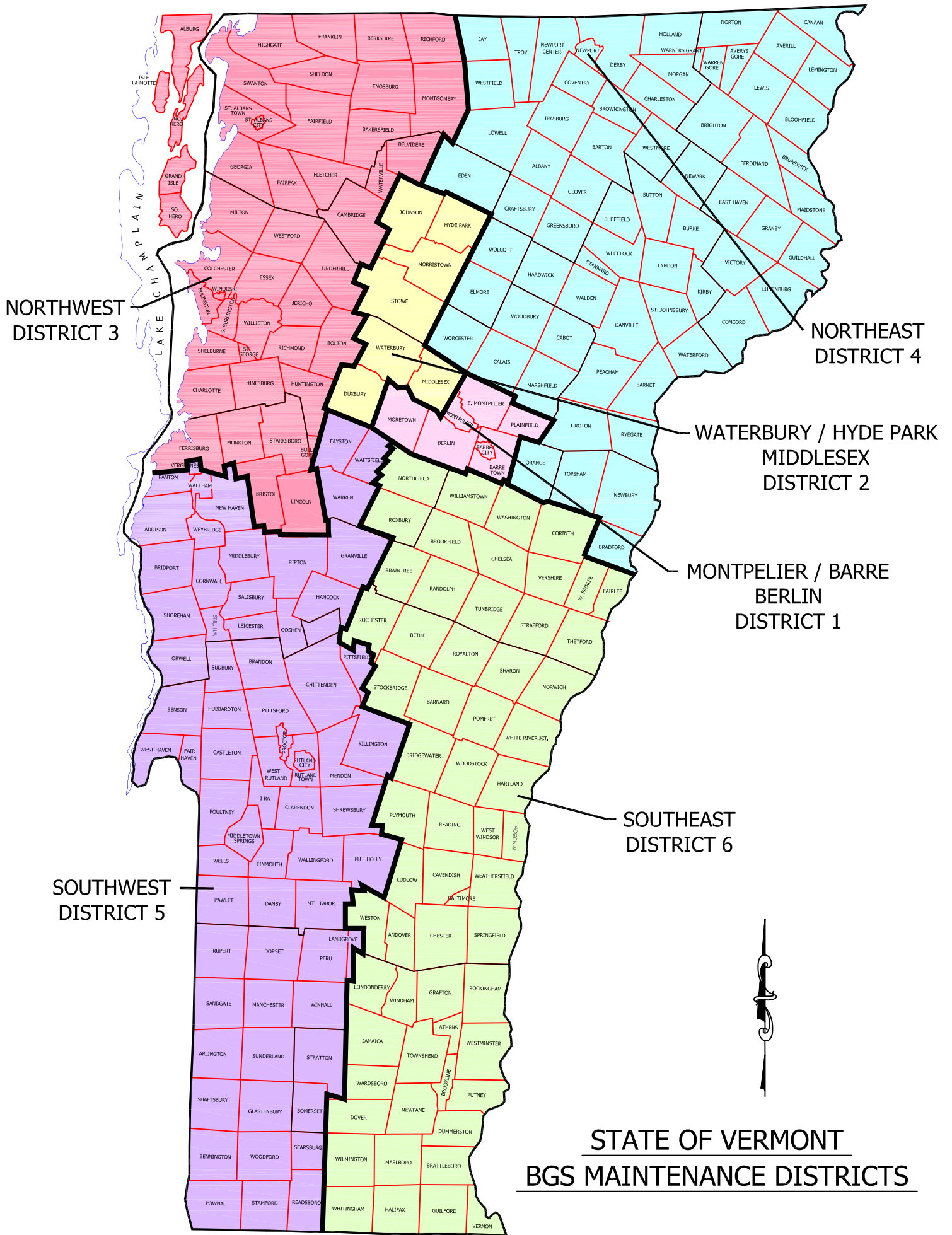
RF₁ _____

RF₂ _____

Old ID Card Number(s):

RF₁ _____

ATTACHMENT F



BIG E (W. SPRINGFIELD, MA) — 

ATTACHMENT G



EXHIBIT II End User Service Agreement SERVICES AND SUBSCRIPTION AGREEMENT

Effective Date: As of _____, 2019	
Greenlots: ZECO SYSTEMS, INC. a Delaware corporation	Subscriber: _____, a _____
Greenlot's Address and Contact Information: Address: 1111 Broadway 3rd floor Oakland, CA 94607 Attn: _____ Phone: 415 539 3881 Email: <u>info@greenlots.com</u> Fax: _____	Company's Address and Contact Information: Address: c/o _____ Phone: _____ Email: _____ Fax: _____

THIS SERVICES AND SUBSCRIPTION AGREEMENT (this "Agreement") is entered into as of this ____ day of __ 2019 by and between Greenlots and Subscriber. As used herein, Greenlots and Subscriber are each a "party" or collectively, "parties" to this Agreement. Capitalized terms used but not otherwise defined in the Special Terms and Conditions stated below shall have the meanings ascribed to such terms in the Standard Terms and Conditions ("Standard Terms") portion of this Agreement.

WHEREAS,

(A) Greenlots is a global manufacturer of turnkey charging networks for electric vehicles, including software and services, and trades commercially under the name "Greenlots". In connection with the operation of the Greenlots business, Greenlots also owns the "Greenlots SKY" software system with the features described in Annexure A (the "Licensed Software").

(B) Subscriber is an owner and/or operator of Charging Stations and wishes to register its Charging Stations (as defined below) on the Greenlots Charging Network and to avail itself of the Greenlots Charging Network Services (as defined below) in respect of such Charging Stations on the terms and subject to the conditions set out in this Agreement.

(C) To enable Subscriber to use the Greenlots Charging Network Services, Greenlots shall grant a non-transferable and non-exclusive license of the Licensed Software to Subscriber on the terms and subject to the conditions set out in this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt of which is acknowledged the parties agree to the following:

Special Terms and Conditions



I. **GREENLOTS RESPONSIBILITIES**

a. **Greenlots Responsibilities.** Subject to the terms and conditions of this Agreement, Greenlots agrees to (i) operate, maintain, administer and support the Greenlots Charging Network and (ii) provide the purchased Services to Subscriber and its Networked Charging Stations.

b. **License of Licensed Software.** In connection with its obligations under (I)(a) Greenlots hereby grants to Subscriber, and Subscriber hereby accepts, a non-transferable and non-exclusive right and license to use the Licensed Software in the Territory for the duration of the Term, together all rights, title and interests past, present and future, in and to the Licensed Software for the purposes of participating in the Greenlots Charging Network and using the Greenlots Services.

c. **Limitations.** Greenlots shall not be responsible for, and makes no representation or warranty with respect to, the following: (i) continued and uninterrupted availability of sufficient electrical power to any of Subscriber's Charging Stations and consequently any failure or interruption to the Greenlots Charging Network and the Greenlots Services; (ii) continued and uninterrupted availability of any wireless or cellular communications network or internet service provider network services necessary for the continued operation by Greenlots of the Greenlots Charging Network and/or the provision of the Greenlots Services; (iii) any Charging Stations that are not Networked Charging Stations; and/or (iv) any failure, malfunction or degradation of the Charging Station hardware and its embedded software.

d. **Non-Exclusive Basis.** The participation of Subscriber and its Networked Charging Stations and the provision of the Greenlots Services to Subscriber shall be on a non-exclusive basis and Greenlots shall, at all times and at any time, be entitled to permit similar participation and provide similar services to any other party, whether such party is a competitor of Subscriber or otherwise, without restriction on such terms as Greenlots may at its sole discretion determine without reference to Subscriber.

II. **SUBSCRIBER'S RESPONSIBILITIES.** Subscriber shall be responsible for: (a) notifying Greenlots of any new Charging Stations to be registered on the Greenlots Charging Network as Networked Charging Stations (which shall include providing Greenlots with specifications and descriptions in relation to each such Charging Station); (b) operating and maintaining the Networked Charging Stations in a safe manner and in compliance with all applicable laws and contractual obligations; (c) providing Greenlots with advance written notice of the relocation or decommissioning of any Networked Charging Stations or of Networked Charging Stations which are non-operational or not intended to be replaced or repaired by Subscriber; and (d) all invoicing and customer payment matters

III. **SERVICES.**

a. **Collection Services.** Where Subscriber levies charges on Customers and Greenlots is engaged to provide management, collection and/or processing services for such charges:

i. Subscriber shall have sole authority to determine and set in real-time the Session Fees (which shall include all applicable Taxes and Regulatory Charges, each as defined below) applicable to Subscriber's Networked Charging Stations.

ii. In exchange for Greenlots collecting Session Fees on behalf of Subscriber, Subscriber hereby authorizes Greenlots to deduct from all Session Fees collected (collectively, the "Deductions"): (1) a Collection and Processing Fee; and (2) to the extent required, applicable Taxes and Regulatory Charges. Greenlots shall remit the equivalent of the balance of the Session Fees net of the Deductions to Subscriber not more than 30 days after the end of each calendar quarter in which such Session Fees were collected to such account designated in writing by Subscriber.

iii. Collection and Processing Fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, but not limited to, value added, sales, local, city, state or federal taxes ("Taxes") or any fees or other assessments levied or imposed by any governmental regulatory agency ("Regulatory Charges"). Subscriber shall be responsible for the payment of all Taxes and Regulatory Charges incurred in connection with any Session Fees; provided that, Greenlots is solely responsible for all Taxes and Regulatory Charges assessable based on Greenlots' income, property and employees. Where Greenlots is required by law to collect and/or remit the Taxes or Regulatory Charges for which Subscriber is responsible, the appropriate amount shall be invoiced to Subscriber and deducted by Greenlots from Session Fees, unless Subscriber has otherwise provided Greenlots with a valid tax or regulatory exemption certificate or authorization from the appropriate taxing or regulatory authority.



b. Provision of Assistance, Training and Maintenance Services. Greenlots shall supply training, technical assistance and maintenance with respect to the Licensed Software to Subscriber, as set out in Annexure A and elsewhere in this Agreement (collectively, the “Services”).

c. Service Levels. Greenlots shall provide services and support according to the following terms:

i. Phone support for payment and technical issues shall be provided to Customers 24 hours a day, 365 days a year;

ii. Greenlots shall provide an on-call resource to Subscriber at all other times and shall provide appropriate email and phone contact information to ensure accessibility;

iii. Greenlots shall ensure that scheduled system downtime occurs only between the hours of 9PM to 5AM Pacific Standard Time to avoid disruption to Subscriber and Customers;

iv. Greenlots shall ensure that unscheduled downtime be responded to immediately and every reasonable effort be made to restore service; and

With respect to the Services and Service Levels, Subscriber acknowledges that some downtime may be attributed to Charging Station hardware and while Greenlots will promptly report and log the problem to the associated party; the duration of downtime in this instance is out of Greenlots’ control.

d. Non-Transferability. All Greenlots Services shall be non-transferable; provided that Greenlots Services subscribed for in relation to a Networked Charging Station that is to be de-commissioned may be transferred to a Networked Charging Station that is purchased by Subscriber to replace such de-commissioned Networked Charging Station.gre

IV. FEES.

a. Fees. In consideration of the Services provided hereunder, Subscriber shall pay Greenlots the following fees (collectively, the “Fees”):

i. license fees for the Licensed Software (“License Fees”) \$xxx as outlined in Greenlots quote to xxxx in United States Dollar, such license fees to be payable in advance for the Initial Term with payment to be made upon registration and activation of a Networked Charging Station on the Greenlots Charging Network. No pro-rating shall be available for any Networked Charging Stations which are decommissioned during the year; and,

ii. upon Subscriber commencing the levy of charging fees on Customers, a Collection and Processing Fee of \$0.50 or 5%, whichever is greater shall be paid by Subscriber to Greenlots for each Charging Session used by a Customer where a Session Fee applies, payment of which shall be set off against Session Fees collected by Greenlots, or in case of insufficient Session Fees, billed separately.

b. Adjustments to Pricing. Greenlots undertakes that there shall be no increase in the License Fees payable for each Networked Charging Station during the Initial Term. The parties agree that Greenlots shall be entitled to adjust the Collection and Processing Fee at its sole discretion in the event of any increase in processing fees charged by payment processing partners responsible for the collection of Customers’ payments.

c. Payment of License Fees. Subscriber agrees that:

i. Subscriber shall pay all License Fees within thirty (30) days of its receipt of an invoice with respect thereto. Except as otherwise specified herein, all Fees shall be quoted in and payable in US Dollars.

ii. If any invoiced Fees are not received by Greenlots by the due date, then such outstanding amount: (1) may accrue late interest at the rate of one and one-half percent (1.5%) of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower (“Late Payment Interest Rate”), from the date such payment was due until the date on which such payment is received by Greenlots in cleared funds, and (2) in the event Subscriber has not paid Fees within 30 days of the due



date, Greenlots may, at its sole discretion, impose additional conditions in connection with future renewals of any Greenlots Services and acceptance of purchase orders for additional Greenlots Services other than those set forth herein.

iii. If any amount owing by Subscriber under this Agreement is more than 30 days overdue, Greenlots may, without otherwise limiting Greenlots' rights or remedies available under law, terminate this Agreement, and/or suspend the use by Subscriber of the Greenlots Services until such amounts are paid in full.

V. TERM; TERMINATION.

a. Initial Term. This Agreement shall be valid for a period equivalent for the license fees paid commencing from the Effective Date, during which the access to the Greenlots Charging Network, the License and the subscription for the Greenlots Services shall be valid ("Initial Term").

b. Additional Terms. Unless either party gives the other party written notice, not later than 60 days prior to the last day of the Initial Term, of its intent to terminate this Agreement at the end of the Initial Term, this Agreement shall automatically renew for an additional term of one (1) calendar year (each such additional calendar year term to be referred to as an "Additional Term"). Either party may terminate this Agreement during any Additional Term by giving written notice to the other party at least 60 days prior to the last day of such current Additional Term or in such other manner as may be otherwise provided in this Agreement, failing which this Agreement shall again automatically be renewed for a subsequent Additional Term.

c. Early Termination for Cause by Greenlots.

i. Greenlots may terminate the license granted to Subscriber hereunder and terminate this Agreement immediately upon 5 Business Days' prior written notice to Subscriber, if:

1. An Insolvency Event has occurred in relation to Subscriber;
2. Subscriber breaches any material provision of this Agreement and fails to cure such breach within 30 days following Subscriber's receipt of written notice thereof from Greenlots; or
3. All of the following shall occur: (I) Subscriber is more than 60 days late in the payment of Fees or any other payments due and owing (and documented) to Greenlots; (II) Subscriber has received prior notices of such Fees and/or other payments from Greenlots and requests for payments therefore; and (III) Subscriber fails to cure such late payment within 7 days following such written notice from Greenlots.

ii. Upon any termination of this Agreement pursuant to V.c.i above, subject to the additional terms and conditions hereof, all rights in the Licensed Software granted to Subscriber hereunder shall automatically revert to Greenlots, and Subscriber shall have no further rights in, and shall immediately cease all use of, the Licensed Software. Subscriber shall also promptly return or destroy all documents (including copies), diskettes, tapes and other material (in whatsoever medium) held by Subscriber in relation to the Licensed Software to Greenlots upon written demand therefor by Greenlots. The failure of Greenlots to make any such demand initially shall not operate as a waiver by Greenlots of this provision.

d. Early Termination for Cause by Subscriber. Subscriber may terminate this Agreement immediately upon 5 Business Days' prior written notice to Greenlots, If Greenlots breaches any material provision of this Agreement and fails to cure such breach within thirty (30) days following Greenlots' receipt of written notice thereof from Subscriber.

VI. STANDARD TERMS; CONFLICTS. The Standard Terms that follow the signatures below are by this reference incorporated herein and made a part of this Agreement. Without limiting the generality of the foregoing, and notwithstanding anything to the contrary set forth in this Agreement, all of each party's obligations hereunder, including without limitation, each party's obligation to render services, grant any licenses, or to pay fees, are subject to the Standard Terms. In the event of any inconsistency or conflict between the provisions of the Standard Terms and the Special Terms, the latter shall control.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the date first above written.



SUBSCRIBER	GREENLOTS
_____, a _____	Zeco Systems, Inc., a Delaware corporation
By: _____	By: _____
Printed Name: _____	Printed Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

STANDARD TERMS

1. Definitions.

(a) **Definitions.** As used in this Agreement, the following terms have the following meanings:

“Business Day” means a day (other than a Saturday, Sunday or public holiday) on which banks in the United States of America are open for general banking business.

“Charging Port” means any charging connector that is able to charge an electric vehicle, regardless of plug type or standard. For purposes of license fee calculation, for Charging Stations with more than a single Charging Port, the Charging Port is only counted if it is able to charge an electric vehicle concurrently with another Charging Port on the same Charging Station.

“Charging Session” means a session during which a Customer is using Subscriber’s Networked Charging Station to charge his or her electric vehicle and which lasts for a continuous period of time commencing when a Customer has accessed such Networked Charging Station and ending when such Customer has terminated such access.

“Charging Station” means an electric vehicle charging station owned or leased by Subscriber.

“Collection and Processing Fees” means the fees charged by Greenlots for the management, collection and processing of Session Fees on behalf of Subscriber and the remittance of any balance to Subscriber.

“Customers” means drivers who avail themselves of charging and other services from any Networked Charging Station.

“Greenlots Services” means, collectively, the various software service offerings made available for subscription from time to time by Greenlots.

“Greenlots Intellectual Property” means collectively, the Licensed Software, the Greenlots Marks, the Greenlots Charging Network and the Greenlots Services.

“Greenlots Marks” means the various trademarks, service marks, names and designations used in connection with the Greenlots products and services, including, without limitation, the mark “Greenlots”.

“Insolvency Event” shall be deemed to have occurred, in relation to any person or entity, when such person or entity files, or consents to the filing against it of, a petition for relief under any bankruptcy or insolvency laws, makes an assignment for the benefit of creditors or consents to the appointment of a receiver,



liquidator, assignee, custodian, trustee or other official with similar powers over a substantial part of its property; or a court having jurisdiction over such person or entity or any of the property of such person or entity shall enter a decree or order for relief in respect thereof in any involuntary case under any bankruptcy or insolvency law, or shall appoint a receiver, liquidator, assignee, custodian, trustee or official with similar powers over a substantial part of the property of such person, or shall order the winding-up, liquidation or rehabilitation of the affairs of such, and such order of decree shall continue in effect for a period of sixty (60) consecutive days.

"Intellectual Property Rights" shall mean all intellectual and industrial property rights of whatever nature anywhere in the world and all rights pertaining thereto, whether recorded or registered in any manner, or otherwise, including without prejudice to the foregoing generality, patents, trademarks, registered designs (including applications for any of the same), copyright, design rights, semi-conductor topography rights, database and software rights, mask works, trade secrets, know-how, business names, trade names, brand names, domain names and all other legal rights anywhere in the world protecting such intangible property.

"Networked Charging Stations" means any Charging Stations that have been registered and activated on the Greenlots Charging Network. Each charge connector or charge port is considered as one Charging Station.

"Session Fees" means the fees set by Subscriber for a Charging Session, including any applicable Taxes and/or Regulatory Charges.

"Subscribed Services" means any Services subscribed for by Subscriber.

"Subscriber Data" means, collectively, all data contributed directly by Subscriber and which is owned by Subscriber, or licensed directly to Subscriber by any party other than Greenlots, prior to the inclusion of such data in the Licensed Software.

"Term" means (i) the Initial Term, and (ii) each Additional Term, unless this Agreement is terminated earlier pursuant to Article V of the Special Terms.

"Territory" means the territory where Subscriber has active operations.

2. Ownership of Intellectual Property

2.1 Validity and Ownership. Subscriber acknowledges and admits the validity of Greenlots' ownership, of all Intellectual Property Rights in relation to the Greenlots Intellectual Property, and agrees that it will not, directly or indirectly, challenge or contest the validity of the Greenlots Intellectual Property, or any registrations thereof and/or applications therefore in any jurisdiction, or the right, title and interest of Greenlots therein and thereto, nor will it claim or register any interest in the Greenlots Intellectual Property in any jurisdiction, other than the rights expressly granted hereunder.

2.2 Property of Greenlots. Subscriber acknowledges that (i) as between the parties, all Intellectual Property Rights in the Greenlots Intellectual Property are and will remain the exclusive property of Greenlots and (ii) as between the parties, all uses of the Greenlots Intellectual Property, except for its Use by Subscriber pursuant to this Agreement, shall inure solely to the benefit of Greenlots. Subscriber shall not at any time do or suffer to be done any act or thing that will in any way impair the rights of Greenlots in and to the Greenlots Intellectual Property. Nothing in this Agreement grants, nor shall Subscriber acquire hereby, any right, title or interest in or to the Greenlots Intellectual Property or any underlying or third-party Intellectual Property Rights inhering therein, or any goodwill associated therewith, other than those rights expressly granted hereunder. This Agreement shall not affect Greenlots' right to enjoin or obtain relief against any acts by third parties or trademark or patent infringement or unfair competition, or any other action that Greenlots may take to protect Greenlots' Intellectual Property Rights in the Territory.

2.3 Property of Subscriber. The parties agree that all Subscriber Data is and will remain the exclusive property of Subscriber and will inure solely to the benefit of Subscriber. Greenlots shall be granted such access to Subscriber Data: (a) as may be necessary to enable Greenlots to perform its obligations hereunder; (b) in order to respond to service or technical problems which may arise from time to time and at any time; and/or (c) otherwise at Subscriber's discretion. All data collected by Greenlots in connection with the operation of the Greenlots Charging Network shall be jointly owned by Greenlots and Subscriber, with both Parties retaining independent rights to use the data.

2.4 License. Greenlots shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable perpetual license to use or incorporate in the



Greenlots Charging Network and/or the Greenlots Services any suggestions, enhancement requests, recommendations, improvements or other feedback provided by Subscriber and/or Subscriber Authorized Users relating to any and all of the Greenlots Charging Network and the Greenlots Services.

3. No Assignment or Sublicenses

3.1 No Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the express written consent of the other party. Notwithstanding the foregoing either party may assign this agreement together with all rights and obligations hereunder, without consent of the other party, in connection with a merger, acquisition, corporate reorganization, or sale of any or substantially all of its assets provided the assignee agrees in writing to comply with all applicable provisions of the Agreement, including protecting Confidential Information. This Agreement shall not be assignable by Subscriber to any direct or indirect competitor of Greenlots engaging in developing electric vehicle charging hardware and/or software and any attempt to assign without such consent shall be void.

3.2 No Sub-Licensing. Except as otherwise set forth herein, the License, the Greenlots Services and the rights granted to Subscriber under this Agreement shall not be sub-licensed by Subscriber without the prior written authorization of Greenlots.

4. Limitation of Liability.

4.1 LIMITATION OF GREENLOTS' LIABILITY. EXCEPT AS EXPRESSLY SET FORTH HEREIN, ACCESS TO THE GREENLOTS CHARGING NETWORK, THE LICENSE AND THE GREENLOTS SERVICES ARE PROVIDED BY GREENLOTS WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT WILL GREENLOTS BE LIABLE TO SUBSCRIBER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES RESULTING FROM THE PARTICIPATION OF SUBSCRIBER IN THE GREENLOTS CHARGING NETWORK, THE EXERCISE OF THE LICENSE, THE USE OF THE LICENSED SOFTWARE OR THE GREENLOTS SERVICES, OR OTHERWISE ARISING OUT OF THIS AGREEMENT, WHETHER IN RELATION TO ANY BREACH OF ANY REPRESENTATIONS AND WARRANTIES EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, IN NO EVENT

WILL GREENLOTS' AGGREGATE LIABILITY TO SUBSCRIBER PURSUANT TO THIS AGREEMENT EXCEED THE TOTAL SUM OF ANY FEES RECEIVED BY GREENLOTS FROM SUBSCRIBER IN THE TWELVE CALENDAR MONTHS IMMEDIATELY PRIOR TO THE DATE ANY SUCH CLAIM IS MADE. FOR THE AVOIDANCE OF DOUBT, GREENLOTS SHALL OWE NO LIABILITY TO SUBSCRIBER OR ANY CONTRACTUAL COUNTERPARTIES OF SUBSCRIBER FOR ANY BREACH BY SUBSCRIBER OF ITS CONTRACTUAL OBLIGATIONS TO SUCH COUNTERPARTIES INCLUDING BUT NOT LIMITED TO, ANY FAILURE BY SUBSCRIBER TO COMPLY WITH ITS SERVICE LEVEL AGREEMENTS UNLESS SUCH LIABILITY ARISES AS A RESULT OF FRAUD OR GROSS NEGLIGENCE ON THE PART OF GREENLOTS.

4.2 Limits. Where the limitation of liability in Section 4.1 is prohibited or restricted under applicable law, then the liability of Greenlots under such circumstances shall be limited to the maximum extent permitted under such applicable law.

5. Subscriber's Representations and Warranties. Subscriber represents and warrants to Greenlots that: (a) it has the power and authority to enter into and be bound by this Agreement; (b) all Networked Charging Stations and any electric vehicle charging products used with such Networked Charging Stations have been properly installed and are operated in a duly authorized manner; (c) the electrical usage to be consumed by Subscriber's Networked Charging Stations will not violate or otherwise conflict with the terms and conditions of any applicable electrical purchase or other agreement including, without limitation, any lease, to which Subscriber is a party; and (d) it has not installed or attached Networked Charging Stations on or to infrastructure not owned by Subscriber without proper authority, or in a manner that will block any easement or right of way.

6. Subscriber's Covenants. Subscriber further undertakes to Greenlots that: (i) it will not remove, conceal or cover the Greenlots Marks or any other markings, labels, legends, trademarks, or trade names installed or placed on the Networked Charging Stations or any peripheral equipment for use in connection with the Networked Charging Stations; (ii) Subscriber shall comply with, and shall have responsibility for and cause its employees and agents accessing or using the Greenlots Charging Network to comply with, all of the rules, regulations and policies of Greenlots as may from time to time be notified by Greenlots to Subscriber (and the display or availability of any such rules, regulations and policies (and any variation or changes thereto) on any portal or service to which Subscriber has access, shall constitute due notice to Subscriber, its employees and agents); (iii) Subscriber shall be responsible for using the



Greenlots Services in compliance with applicable laws and this Agreement, and in particular, shall: (A) use commercially reasonable efforts to prevent unauthorized access to any Greenlots Services, (B) not sell, resell, license, rent, lease, transfer or grant access to the Greenlots Services to a third party, (C) not interfere with or disrupt the integrity of the Greenlots Charging Network, the Greenlots Services or any data contained therein, and (D) not attempt to gain unauthorized access to the Greenlots Charging Network or the Greenlots Services or their related systems or networks.

7. **Confidentiality.** Each party agrees to keep confidential the terms of this Agreement and all information, documents and materials, whether printed or oral, relating to this Agreement, the parties and the transactions contemplated hereunder ("**Confidential Information**") confidential and not to disclose such Confidential Information except:

(a) with the prior written consent of the other party;

(b) as may be required by applicable laws or by the rules of any stock exchange or other authority by which a party may be bound (in which case the disclosing party shall immediately notify the other party thereof);

(c) to its professional advisers, employees, officers or other representatives; and

(d) to any advisors and professional services providers which may be appointed by a party to give effect to the obligations of such party under this Agreement.

8. **Notices.** All notices, requests, demands and other communications given by any of the parties hereunder shall be in writing and shall be given only by personal delivery, registered mail or courier service or sent by facsimile transmission or electronic mail to the addresses and facsimile numbers set forth in the introductory paragraph of this Agreement, or to such other address or facsimile number as the parties may from time to time notify the others in writing. Any such communication shall be deemed duly given in the case of personal delivery and courier service upon delivery and receipt of written acknowledgement thereof, in the case of registered mail ten days after posting, in the case of facsimile transmission or electronic mail upon transmission and receipt of a satisfactory transmission transcript; *provided* that if such day is not a Business Day or such time not a normal

business hour then delivery shall be deemed to have occurred on the following Business Day.

9. **Governing Law; Venue.** This Agreement shall be governed by, and construed and enforced in accordance with the laws of the state of Delaware, without giving effect to any principles of conflict of laws. Any action or arbitration arising from this Agreement related thereto shall be commenced and maintained only in the State of Delaware. Each of the parties hereto consents to the jurisdiction and venue of the courts located there.

10. **Dispute Resolution.** Any dispute arising from this Agreement or related thereto shall be resolved by binding arbitration as provided by the rules of ADR Services, Inc. ("**ADR**"), and in the office of ADR, located in Wilmington, Delaware. The parties each expressly waive the right to a jury trial, and agree that the arbitration award shall be final and binding on the parties.

11. **Fees; Prevailing Parties.** The reasonable expenses incurred in any proceeding to compel arbitration or to confirm or enforce an arbitral award or any resulting judgment, including attorney's fees shall be paid to the prevailing party in such a proceeding. Each party shall bear its own expenses, including attorney's fees, incurred during arbitration.

12. **MISCELLANEOUS**

12.1 **No Partnership.** Nothing in this Agreement shall create a partnership or establish a relationship of principal and agent or any other fiduciary relationship between or among any of the parties.

12.2 **Remedy.** No remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy available at law, in equity, by statute or otherwise. Each and every other remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law in equity, by statute or otherwise. The election by any party to pursue one or more of such remedies shall not constitute a waiver by such party of the right to pursue any other available remedy. The parties agree that monetary damages may not be a sufficient remedy for the damage which would accrue to a party by reason of failure by any other party to perform certain of the obligations hereunder. Any such party shall, therefore, be entitled to seek injunctive relief, including specific performance, to enforce such obligations.



12.3 Costs and Expenses. The parties agree that unless expressly provided otherwise in this Agreement, each of the parties shall bear its own respective costs and expenses, legal or otherwise, reasonably incurred in relation to preparation, negotiation and execution of this Agreement and all ancillary documents.

12.4 Further Assurance. Each of the parties shall, and shall use its reasonable endeavors to procure that any necessary third parties shall, execute and deliver to the other party such other instruments and documents and take such other action as may be required to carry out, evidence and confirm the provisions of this Agreement.

12.5 Variations. No purported variations of this Agreement shall be effective unless made in writing by all the parties.

12.6 Severability of Provisions. If any term or provision in this Agreement shall be held to be illegal or unenforceable, in whole or in part, under any enactment or rule of law, such term or provision or part shall, to that extent, be deemed not to form part of this Agreement but the enforceability of the remainder of this Agreement shall not be affected.

12.7 No Waiver. A party's failure to insist on strict performance of any provision of this Agreement shall not constitute a waiver thereof or of any right or remedy for breach of a like or different nature. No waiver shall be effective unless made in writing and signed by a duly authorized officer of the party granting such waiver.

12.8 Counterparts. This Agreement may be entered into in any number of counterparts and by the parties on separate counterparts, each of which when executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.

12.9 Force Majeure. If either party hereto is materially hampered from performing hereunder by reason of any law, natural disaster, labor controversy, war or any similar event beyond a party's reasonable control, failure to perform shall not be deemed a breach of or default under this Agreement and neither party shall be liable to the other therefore.

12.10 Interpretation. References to Recitals, Sections and Annexures are, unless otherwise stated, to recitals and sections of, and annexures to, this

Agreement. References to any enactment shall be construed as references to (a) any enactment which that enactment has directly or indirectly replaced (whether with or without notification), and (b) that enactment as re-enacted, replaced or modified from time to time, whether before, on or after the date hereof.

12.11 Entire Agreement. This Agreement sets forth the entire agreement and understanding between the parties in connection with the license granted hereunder and the arrangements described herein and supersedes all prior oral and written agreements, memoranda, understandings and undertakings between the parties.

12.12 Successors. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and permitted

END OF STANDARD TERMS

ANNEXURE A

LICENSED SOFTWARE

The Licensed Software consists of an integrated Internet-based platform (SKY) that has bi-directional communication with Networked Charging Stations. The platform is made up of:

1. **A backend database**
2. **A front-end user interface for the Subscriber**
3. **A front-end user interface for the Customer**
4. **A mobile phone application for the Customer that is supported on Android and iOS operating systems. Support for additional operating systems may be added later at Greenlots' sole discretion**
5. **A payment collection and settlement system**
6. **A data collection and reporting system**
7. **A call center for Customer technical and payment support**

Together, the Licensed Software performs the following functions:

1. **Provides a directory of Charging Stations belonging to the Subscriber, including all pertinent information such as address, serial number, manufacturer, model, charging type and price for Customers, if applicable**
2. **Reports the status of Charging Stations whether they are in-use, faulted, available or temporarily unknown**
3. **Enables the Subscriber to set a price for Customers to use these Charging Stations**
4. **Provides a payment method for Customers to pay for use of these Charging Stations**
5. **Provides a payment processor which complies with Payment Card Industry ("PCI") Data Security Standard DSS") of Visa and MasterCard.**
6. **Collects usage and charging data from these Charging Stations and provides them to the Subscriber in either CSV or graphical format**
7. **Provides first level technical support to Customers and routes them to the Charging Station manufacturer for escalation**
8. **Provides downloadable usage reports on a daily, weekly, monthly or annual basis consisting of individual charge session data (user ID, station ID, start time, end time, total duration, total kWh and total revenue)**
9. **Provides a monthly statement report detailing total revenue collected from Session Fees and total Greenlots Fees applicable**

SERVICES AND SERVICE LEVELS

Greenlots shall provide services and support according to the following terms:

1. **Phone support for payment and technical issues shall be provided to Customers 24 hours a day, 365 days a year**
2. **Greenlots shall provide an on-call resource to the Subscriber at all other times and shall provide appropriate email and phone contact information to ensure accessibility**
3. **Greenlots shall ensure that scheduled system downtime occurs only between the hours of 9PM to 5AM Pacific Standard Time to avoid disruption to the Subscriber and Customers.**
4. **Greenlots shall ensure that unscheduled downtime be responded to immediately and every reasonable effort be made to restore service**
5. **The Subscriber acknowledges that some downtime may be attributed to Charging Station hardware and while Greenlots will promptly report and log the problem to the associated party; the duration of downtime in this instance is out of Greenlots' control**