

STATE OF VERMONT  
CONTRACT AMENDMENT

It is hereby agreed by and between the State of Vermont, Department of Buildings and General Services, Office of Purchasing & Contracting (the "State") and Auctions International, Inc., with a principal place of business in Aurora, NY (the "Contractor") that the contract between them originally dated as of November 1, 2016, Contract # 32756, as amended to date, (the "Contract") is hereby amended as follows:

- I. **Maximum Amount.** The maximum amount payable under the Contract, wherever such reference appears in the Contract, shall be changed from \$250,000.00 to \$312,000.00, representing an increase of \$62,000.00.
- II. **Contract Term.** The Contract end date, wherever such reference appears in the Contract, shall be changed from October 31, 2020 to October 31, 2021.

Taxes Due to the State. Contractor certifies under the pains and penalties of perjury that, as of the date this contract amendment is signed, the Contractor is in good standing with respect to, or in full compliance with a plan to pay, any and all taxes due the State of Vermont.

Child Support (Applicable to natural persons only; not applicable to corporations, partnerships or LLCs). Contractor is under no obligation to pay child support or is in good standing with respect to or in full compliance with a plan to pay any and all child support payable under a support order as of the date of this amendment.

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

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

This document consists of 1 page. Except as modified by this Amendment No. 3 all provisions of the Contract remain in full force and effect.

The signatures of the undersigned indicate that each has read and agrees to be bound by this Amendment to the Contract.

**STATE OF VERMONT**

**AUCTIONS INTERNATIONAL, INC.**

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Name:** Jennifer Fitch

**Name:** \_\_\_\_\_

**Title:** Acting Commissioner

**Title:** \_\_\_\_\_

**Date:** Buildings & General Services

**Date:** \_\_\_\_\_

# State of Vermont

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

# CONTRACT



**Supplier 0000150607**  
**Auctions International Inc**  
**11167 Big Tree Rd**  
**E Aurora NY 14052**  
**United States**

<b>Contract ID</b> 0000000000000000000000000032756	<b>Page</b> 1 of 3
<b>Contract Dates</b> 11/01/2016 to 10/31/2020	<b>Origin</b> CPS
<b>Description:</b> CPS-AUCTIONEER SERVICES	<b>Contract Maximum</b> \$250,000.00
<b>Buyer Name</b> Trevor R Lewis	<b>Buyer Phone</b> Approved

**Phone #:**

Line #	Item ID	Item Desc	UOM	Unit Price	Max Qty	Max Amt
1		ON-SITE AUCTIONEER SERVICES	PCT	0.01000	0.00	0.00
2		ON-LINE AUCTIONEER SERVICES	PCT	0.01000	0.00	0.00

SALES UP TO \$250,000 2.96%  
SALES OVER \$250,001 2.86%

SALES UP TO \$250,000 3.45%  
SALES OVER \$250,001 2.96%

1. Parties. This is a contract for services between the State of Vermont, Department of Buildings and General Services (hereafter called "State"), and Auctions International, with principal place of business in East Aurora, NY, (hereafter called "Contractor"). Contractor's form of business organization is a corporation. It is the contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, the contractor is required to have a Vermont Department of Taxes Business Account Number.
2. Subject Matter. The subject matter of this contract is services generally on the subject of providing Auctioneer services for the State of Vermont on an as needed basis. Detailed services to be provided by the contractor are described in Attachment A.
3. Maximum Amount. In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$250,000.00.
4. Contract Term. The period of contractor's performance shall begin on November 1, 2016 and end on October 31, 2018, with options to extend for two (2) additional one-year terms.
5. Prior Approvals. If approval by the Attorney General's Office or the Secretary of Administration is required, (under current law, bulletins, and interpretations), neither this contract nor any amendment to it is binding until it has been approved by either or both such persons.
  - Approval by the Attorney General's Office is required.
  - Approval by the Secretary of Administration is required.
  - Approval by the CIO/Commissioner DII is not required.
6. Amendment. This agreement represents the entire agreement between the parties; 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. Cancellation. This contract may be canceled by either party by giving written notice at least 30 days in advance.
8. Attachments. This contract consists of twelve (12) pages including the following attachments which are incorporated herein:
  - Attachment A - Specifications of Work to be Performed
  - Attachment B - Payment Provisions
  - Attachment C - "Standard State Provisions for Contracts and Grants" a preprinted form (revision date 07/01/2016)
9. Order of Precedence. Any ambiguity, conflict or inconsistency in the Contract Documents shall be resolved according to the following order of precedence:

- (1) Standard Contract
- (2) Attachment C (Standard Contract Provisions for Contracts and Grants)
- (3) Attachment A
- (4) Attachment B

# State of Vermont

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

# CONTRACT



**Supplier 0000150607**  
**Auctions International Inc**  
**11167 Big Tree Rd**  
**E Aurora NY 14052**  
**United States**

<b>Contract ID</b> 0000000000000000000032756	<b>Page</b> 2 of 3
<b>Contract Dates</b> 11/01/2016 to 10/31/2020	<b>Origin</b> CPS
<b>Description:</b> CPS-AUCTIONEER SERVICES	<b>Contract Maximum</b> \$250,000.00
<b>Buyer Name</b> Trevor R Lewis	<b>Buyer Phone</b>  <b>Contract Status</b> Approved

**Phone #:**

Line #	Item ID	Item Desc	UOM	Unit Price	Max Qty	Max Amt
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Contract # 32756

Amendment # 1

It is hereby agreed by and between the State of Vermont, Department of Buildings & General Services (the "State") and Auctions International, Inc., with a principal place of business in E. Aurora, NY (the "Contractor") that the contract between them originally dated as of 11/01/2016, Contract # 32756, as amended to date, (the "Contract") is hereby amended as follows:

I. Contract Term. The Contract end date, wherever such reference appears in the Contract, shall be changed from 10/31/2018 to 10/31/2019. The Contract Term may be renewed for one additional one-year period at the discretion of the State.

II. Attachment C, Standard State Provisions for Contracts and Grants. Attachment C is hereby deleted in its entirety and replaced by the Attachment C December 15, 2017 attached to this Amendment.

Taxes Due to the State. Contractor certifies under the pains and penalties of perjury that, as of the date this contract amendment is signed, the Contractor is in good standing with respect to, or in full compliance with a plan to pay, any and all taxes due the State of Vermont.

Child Support (Applicable to natural persons only; not applicable to corporations, partnerships or LLCs). Contractor is under no obligation to pay child support or is in good standing with respect to or in full compliance with a plan to pay any and all child support payable under a support order as of the date of this amendment.

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

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

This document consists of 11 pages. Except as modified by this Amendment No. 1, all provisions of the Contract remain in full force and effect.

AUCTIONS INTERNATIONAL POC INFORMATION:  
RUSS SCHERRER  
800-536-1401, EXT. 127  
STATE OF VERMONT  
CONTRACT AMENDMENT

Amendment 2

It is hereby agreed by and between the State of Vermont, Department of Buildings & General Services (the "State") and Auctions International, Inc., with a principal place of business in E. Aurora, NY (the "Contractor") that the contract between them originally dated as of November 1, 2016, Contract # 32756, as amended to date, (the "Contract") is hereby amended as follows:

I. Contract Term. The Contract end date, wherever such reference appears in the Contract, shall be changed from October 31, 2019 to October 31, 2020.

Taxes Due to the State. Contractor certifies under the pains and penalties of perjury that, as of the date this contract amendment is signed, the Contractor is in good standing with respect to, or in full compliance with a plan to pay, any and all taxes due the State of Vermont.

Child Support (Applicable to natural persons only; not applicable to corporations, partnerships or LLCs). Contractor is under no obligation to pay child support or is in good standing with respect to or in full

# State of Vermont

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

# CONTRACT



**Supplier 0000150607**  
**Auctions International Inc**  
**11167 Big Tree Rd**  
**E Aurora NY 14052**  
**United States**

<b>Contract ID</b> 0000000000000000000032756	<b>Page</b> 3 of 3
<b>Contract Dates</b> 11/01/2016 to 10/31/2020	<b>Origin</b> CPS
<b>Description:</b> CPS-AUCTIONEER SERVICES	<b>Contract Maximum</b> \$250,000.00
<b>Buyer Name</b> Trevor R Lewis	<b>Buyer Phone</b> Approved

**Phone #:**

Line #	Item ID	Item Desc	UOM	Unit Price	Max Qty	Max Amt
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compliance with a plan to pay any and all child support payable under a support order as of the date of this amendment.

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

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

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

This document consists of 3 pages. Except as modified by this Amendment No. 2, all provisions of the Contract remain in full force and effect.

### WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT

**By the STATE of VERMONT**

**By the CONTRACTOR**

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Email: \_\_\_\_\_

Email: \_\_\_\_\_

## ATTACHMENT A: SPECIFICATIONS OF WORK TO BE PERFORMED

Contractor shall provide subject of providing Auctioneer services for the State of Vermont on an as needed basis as follows:

### 1.1. ON- LINE AUCTIONS:

- 1.1.1. Contractor must be qualified and licensed, if applicable, to conduct on-line auctions
- 1.1.2. Auctions shall be conducted without any Buyer's Premium.
- 1.1.3. Contractor's on-line auction system.
  - 1.1.3.1. Format and receiving requirements for on-line bids.

**Auctions International, Inc. shall receive all bids for online auctions electronically. Interested bidders must register on the Contractor's website and accept the terms and conditions of membership. Newly registering bidders will be asked to enter their credit card information. A one-time \$10 fee will be charged to the registrants account, upon their first bid being placed (\$10 is only charged one-time). Bidders will then have the ability to enter their bid amounts on lots they are interested in. Bids may be placed in the next required increment (listed on the Contractor's website) or they may place a proxy. Proxy bids will be placed by the Contractor's software on the bidders behalf, incrementally keeping the bidder as the high bidder, until their maximum is reached. If no additional bidders place a bid against a proxy bid, the proxy bidder will be the high bidder at that dollar amount. (Proxy bid amount will not be considered as the high bid, unless another bidder bids against the proxy to that dollar amount.)**

- 1.1.3.2. Restrictions and or requirements for sales types.

**Currently there is only one restriction for sales types; firearms and ammunition are not allowed. The only requirements request for listing an auction are a minimum of 6 photos per lot, and a completed condition report (either hard copy or digitally online) and a copy of the title (if a register-able asset)**

- 1.1.3.3. Contractor shall make real-time bidding history available to the State, including bidders' registered ID and amount of bid.

- 1.1.4. The following options shall be made available:

- 1.1.4.1. Contractor shall specify Minimum starting amount
  - 1.1.4.2. Contractor shall not set any Reserve Price (item is sold absolute to highest bidder)
  - 1.1.4.3. Contractor shall not have any Hidden Reserve amount

- 1.1.5. Process for proxy bidding by any interested bidder who does not own a computer.

**It is understood that these types of auctions do normally require access to a computer. Contractor's software verifies the identity of bidders by cross referencing their registration address with their Credit Card number and the computers IP address. Contractor staff shall assist individuals without ownership of such a device, either by assisting bidders by helping them locate and utilize a public computer such as at a library, OfficeMax or the equivalent. Additionally, Contractor shall work with local Towns/Villages to arrange access to a computer for specified bidders. In the event that there is no way a bidder can access a computer, Contactor shall arrange an "in-house" account and bid on their behalf. This would include utilization of a power of attorney form and a credit card authorization form.**

- 1.1.6. Process for handling last minute bids and closing bids.

**Contractor's website utilizes "dynamic" end times. Contractor shall ensure that bids placed within the last 59 seconds of a lot closing, will cause the auction to be extended, placing the remaining time back at 59 seconds. When this occurs the auction will state "Bidding Extended." If no bid is placed and the countdown icon reaches 00:00, then the lot will close and no more bids will be able to be placed.**

1.1.7. Contractor audience:

**Contractor currently has 45,000+ registered bidders. Contractor shall ensure that all online auctions are posted to several online auction listing website, to gain maximum exposure; these websites are, but not limited to, the following: AuctionGuy.com, GlobalAuctionGuide.com, FarmAuctionGuide.com, and InternetAuctionList.com. Contractor shall also ensure that Select auctions, when requested by the State, are posted to AuctionZip.com.**

1.1.7.1. Registered on-line bidders.

**Contractor shall ensure that, as a minimum, auctions reach 45,000+ qualified, verified and active online bidders.**

1.1.8. Contractor marketing system:

1.1.8.1. General and targeted advertising methods and frequency.

**Contractor shall ensure that all online auctions are posted to several online auction listing website, to gain maximum exposure. At a minimum; AuctionGuy.com, GlobalAuctionGuide.com, FarmAuctionGuide.com and InternetAuctionList.com. Contractor shall also ensure that Select auctions, when requested by the State, are posted to AuctionZip.com.**

1.1.9. Contractor shall ensure that ensure advertising, press release or other material prepared and released in written or oral form by the contractor in connection with the services provided under this contract shall be approved by the state prior to release. Contractor shall send an e-mail broadcast to their on-line customer base notifying them of auctions at the time they are posted. This email broadcast shall include a "state group" of recipients.

1.1.10. The State shall not be responsible for expenses of the contractor unless specified in the contract.

**1.2. ON-SITE/PHYSICAL AUCTIONS:**

1.2.1. Contractor shall plan, set up, advertise and conduct the auction sales for the State for the disposal of automobiles, trucks and other surplus equipment and supplies at times specified by the State. Contractor shall do an audio recording of sale. Contractor will provide a P.A. system capable of a 360 degree radius.

1.2.2. Contractor shall provide all material and personnel necessary for advertising, setup, preview and conduct of the auction sale, except as provided (reference Section 1.4, State's obligation), including at least 2 people for setup of vehicles, sufficient personnel to expedite the closing of the auction sale.

1.2.3. Contractor shall advertise the auction in a timely and thorough manner so as to effectively promote the sale of state property, including the preparation, printing, and mailing of advertising brochures at least three weeks before the auction date. Advertising should include, but is not limited to the following newspapers: New York Times, Boston globe, Burlington Free Press, Rutland Herald, Times Argus, Press Republican (Plattsburg) and any applicable trade journals.

1.2.4. Contractor shall mail brochures to all parties on the list provided by the state. The entire cost of all advertising, including printing and mailing cost shall be paid by the contractor. Contractor shall provide at least 800 brochures for distribution to State Agencies, a minimum of three weeks before the date of the auction.

1.2.5. Contractor shall, within 15 days after the auction sale provide the State with a report of all advertising done for the sale and a list of the registered bidders and a report that contains, at a minimum, the following information:

- Vehicle ID
- Make
- Year
- Bidder number, name and address

Format for this report must be Microsoft Excel or text format that can be imported to Excel.

1.2.6. Contractor shall provide catering service for the auction. Caterer shall be licensed to do business in the State of Vermont. Contractor shall be responsible for cleanup of lot after auction. Contractor shall be responsible for all electrical hookups requiring other than 110 volt provided by the State. All hookups for electricity shall comply with State safety codes.

1.2.7. Contractor shall setup vehicles, equipment and supplies to be auctioned at the auction site at a time specified by the State; approximately one week before the auction date.

- 1.2.8. Contractor shall provide the personnel and materials necessary for potential buyers to preview auction items and pre-register for the auction on the day before the auction sale and at least two hours before the commencement of the sale on the auction date. Contractor shall be responsible for providing, placing and removal of portable restroom facilities. A minimum of three (3) port-a-lets are required, with one being handicap accessible.
  - 1.2.9. Contractors shall be responsible for any and all checks accepted at the sale.
  - 1.2.10. Buyers shall be provided the option of paying only 25% of the sale on the day of the auction. Contractor may collect the deposit at time of sale or at the close of the auction. Contractor shall be responsible for the collection of all monies due. Contractor shall inform depositors, and stipulates as a condition of receipt of deposit, that the item purchased must be removed by 3:00PM on the Wednesday following the auction, or the Buyer will be assessed a \$25.00 per day storage fee, per item.
  - 1.2.11. Contractor shall prevent items that are not paid for in full from being removed from the auction site during the day of the sale. Contractor shall post someone at the gate to prevent unpaid items from leaving the premises. Contractor shall provide purchasers with a bill of sale sufficient to register a vehicle as required by the Vermont Department of Motor Vehicles. A State representative shall have custody of the keys for the auction items and will surrender them only upon presentation of such a bill of sale.
  - 1.2.12. Contractor shall, at the close of the sale, turn over all records pertaining to the sale to the State representative for verification and a copy will be retained for the State's file. Contractor shall provide at a minimum the Lot #, Buyers #, and the sale price of all auction items.
  - 1.2.13. Contractor shall not require a deposit at time of registration or charge a buyer's premium.
  - 1.2.14. Vehicles from political subdivisions of the State of Vermont may be placed in the auctions at the same commission rate as bid to the state. Items from other sources may not be included in the auction without prior approval of the state.
  - 1.2.15. The date of the on-site/physical auction shall be mutually agreed upon by the State and Contractor.
- 1.3. CONTRACTOR'S OBLIGATIONS FOR ON-SITE/PHYSICAL AUCTIONS:**
- 1.3.1. Contractor shall conform to the following conditions.
  - 1.3.2. The State shall not be responsible for expenses of the contractor unless it is so specified below in the payment provisions.
  - 1.3.3. Any advertising, press release or other material prepared and released in written or oral form by the contractor in connection with the services provided under this contract shall be approved by the state prior to release.
  - 1.3.4. Responsibility for the manner in which the auction is conducted rests with the Contractor. However, a designated representative of the State shall supervise the sale and set up of the auction equipment and the decisions of that representative will be final, if and when any controversies arise.

## ATTACHMENT B: PAYMENT PROVISIONS

The State shall pay the Contractor an amount not to exceed \$250,000.00 as follows:

1. Contractor shall be paid at the following commission rates:

a. On-Line Auctioneer Services

Sales up to \$250,000	3.45%
Sales over \$250,001	2.96%

b. On-Site Auctioneer Services

Sales up to \$250,000	2.96%
Sales over \$250,001	2.86%

c. Dollar values above represent aggregate sales during any one auction.

2. ON-LINE AUCTIONS:

- a. Contractor shall provide payment in check form to the State of Vermont within fifteen business days after the bids close. Contractor assumes all liability for payment made from bidder. If winning bidder does not pay, the state will maintain ownership of the item until either the next most qualified bid is accepted by the state or the item is sold at a later date.
- b. Contractor shall provide proof of payment to the State of Vermont in the form of an email (Adobe PDF format attachment) or fax, of the Buyer's paid receipt(s). This proof of payment shall be for the release of the vehicle, keys and title to the Buyer. Buyers shall be solely responsible for removal of won vehicle(s) within the time specified by the State of Vermont (to be determined for each sale). The titles shall remain with the State until proof of payment is recorder and the State mails the title to the buyers. Pickup and payment terms shall be posted on each listing in the auction.
- c. The contractor shall provide the following bidder's activity in Excel or compatible format within fifteen days of the completion of each sale:
  1. Bidder number assigned
  2. Name
  3. Complete mailing address
  4. E-mail if captured
  5. Telephone number if captured
  6. Lot number
  7. Year/make/model/vin id
  8. Amount of sale
- d. Payments may be withheld in whole or in part in the event of failure by the Contractor to comply with the terms of the contract.

3. ON- SITE/PHYSICAL AUCTIONS:

- a. At the end of the sale, the Contractor and the representative of the State shall compare their tallies and reconcile their figures. The contractor shall then present a check to the State Representative for the total amount of the sale. Contractor shall be responsible for the collection of all outstanding monies due. At this time, the State shall turn over to the Contractor, all keys and titles for vehicles sold.



- b. The contractor shall render to the State a bill showing the gross auction receipts and commissions due. This invoice will be processed through the State of Vermont Finance Department and a check shall be mailed to the contractor.
- c. The Contractor shall, at least one day prior to the auction sale, furnish to the State either:
  - 1. A Bank Letter of Guarantee or a Standby Letter of Credit from the Contractor's bank guaranteeing the Contractor's check drawn to the order of the Treasurer, State of Vermont; such guarantee to be in effect until at least one week after the auction sale.
  - 2. Surety bonds in a form acceptable to the State to be in effect until at least one week after the auction sale.
  - 3. A cashier's certified check made payable to the Treasurer, State of Vermont. This check will be used as an offset against the "end of sale" check as provided under section 2.a.
  - 4. The amount of the bank letter/surety bond/cashier's check will be determined by the State a week prior to the auction date, based on the anticipated gross sales. The amount will not be larger than \$500,000 or smaller than \$100,000.
- d. Payments may be withheld in whole or in part in the event of failure by the Contractor to comply with the terms of the contract

4. Any additional services deemed necessary by the state must first be approved in advance by the state.

5. Invoices shall be submitted to the following address:

State of Vermont  
Department of Buildings and General Services  
2 Governor Aiken Ave.  
Montpelier, VT 05633-7001

**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)