

STATE OF VERMONT
PARTICIPATING ADDENDUM NO. 36018

Public Safety Communication Equipment
WASHINGTON NASPO VALUEPOINT MASTER AGREEMENT #05715

Nokia of America Corporation

1. **Parties.** This Participating Addendum is a contract between the **State of Vermont**, Department of Buildings and General Services, Office of Purchasing & Contracting (hereinafter "State" or "Vermont"), and **Nokia of America Corporation** a for-profit corporation with principal place of business in Murray Hill, New Jersey (hereinafter "Contractor"). 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 Participating Addendum is the purchase of Nokia Radio Equipment and services, pursuant the Washington NASPO ValuePoint (formerly WSCA-NASPO) State Cooperative Contract Number 05715 for Public Safety Communication Equipment-Radios (hereinafter the "Master Agreement"), which is hereby incorporated by reference and shall apply to purchases made under this Participating Addendum.
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 April 15, 2018 and end on June 30, 2021, unless terminated earlier in accordance with the terms of this Participating Addendum or the Master Agreement.
5. **Prior Approvals.** In accordance with current State law, bulletins, and interpretations, this Participating Addendum shall not be binding until it has been approved by the Vermont Attorney General's Office, the Secretary of Administration, and the State's Chief Information Officer.
6. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this Participating Addendum shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.
7. **Attachments.** This Participating Addendum consists of 15 pages including the following attachments which are incorporated herein and shall apply to the purchase of any products or services made under this Participating Addendum:
 - Attachment A: General Provisions of Contract
 - Attachment B: Payment Provisions
 - Attachment C: "Standard State Provisions for Contracts and Grants" effective July 1, 2016
8. **Order of Precedence.** Any ambiguity, conflict or inconsistency among the provisions which constitute this agreement shall be resolved according to the following order of precedence:
 - 1) This Participating Addendum (with these first two (2) pages being primary, followed next by Attachment C, then Attachment A, then Attachment B)
 - 2) The Master Agreement
9. **Entire Agreement.** This Participating Addendum and the Master Agreement (including all amendments and attachments thereto) constitute the entire agreement between the parties concerning the subject matter of this Participating Addendum and replaces any prior oral or written communications between the parties, all of which

are excluded. There are no conditions, understandings, agreements, representations or warranties, expressed or implied, that are not specified herein. This Participating Addendum may be modified only by a written document executed by the parties hereto.

By signing below, the Contractor agrees to offer the same products and/or services as on the Master Agreement, at prices equal to or lower than the prices on the Master Agreement.

IN WITNESS WHEREOF, the parties have executed this Participating Addendum as of the date of execution by both parties below.

The State of Vermont	Contractor: Nokia of America Corporation
By:	By:
Name:	Name: Eric W. Negley
Title:	Title: Commercial Contract Manager
Date:	Date:

Contractor: Nokia of America Corporation
By:
Name: Lynda Smith
Title: Commercial Contract Manager
Date:

ATTACHMENT A: GENERAL PROVISIONS OF CONTRACT

1. **Available Products & Services:** The following products and services listed in the Master Agreement are available for purchase under this Participating Addendum:
 1. Batteries
 2. Furniture, Dispatch Consoles
 4. Gateway Devices
 5. Microwave Radios
 6. Monitoring & Alarm
 7. Power Systems
 8. Test Equipment
 9. Towers

2. **Participation:** This Participating Addendum may be used by all departments, offices, institutions, and other agencies of the State of Vermont and counties (hereinafter "State Purchasers") according to the process for ordering and other restrictions applicable to State Purchasers set forth herein.

Political subdivisions of the State of Vermont under 29 V.S.A. § 902(a) and any institution of higher education chartered in Vermont and accredited or holding a certificate of approval from the State Board of Education (hereinafter "Additional Purchasers") may participate in this contract at the same prices, terms and conditions. Further, items furnished to Additional Purchasers will be billed directly to and paid for by the Additional Purchaser. Neither the State of Vermont nor its Commissioner of Buildings and General Services, personally or officially, assumes any responsibility or liability for Additional Purchasers.

3. **Reporting:** Contractor shall submit quarterly reports electronically in the same format as set forth under the Master Agreement, detailing the purchasing of all items under this Participating Addendum. The reports shall be submitted and sent as an attachment to SOV.ThePathForward@state.vt.us . Reports shall contain accurate descriptions of the products, goods or services procured, purchaser information, quantities procured and prices paid. This report shall include all sales under this Participating Addendum. Any exception to this mandatory requirement or failure to submit complete reports, or in the format required, may result in corrective action, up to and including termination for cause. Contractor's reporting shall state "no activity" for any month in which there is no activity during a quarterly reporting period.

Quarterly reports must be submitted in accordance with the following schedule:

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

4. **Primary Contacts:** The primary contact individuals for this this Participating Addendum are as follows (or their named successors):

Contractor

Name	Mr. Sean Brown
Address	35 Skyline Drive, Melrose, NY 12121
Telephone	(518) 268-0363
Fax	NA
E-mail	Sean.Brown@nokia.com

State of Vermont

Name	State of Vermont, Stephen Fazekas
Address	109 State Street, Montpelier, VT 05633-3001
Telephone	802/828-2210
Fax	802/828-2222
E-mail	Stephen.fazekas@vermont.gov

The Parties will keep and maintain current at all times a primary point of contact for administration of this Participating Addendum.

5. **Orders:** Any order placed by the State or an Additional Purchaser for a product or service available under this Participating Addendum (hereinafter "Purchase Order") shall be deemed to be a sale governed by the prices and other terms and conditions of this Participating Addendum, provided that the Master Agreement number and the Participating Addendum Number must appear on every Purchase Order placed under this Participating Addendum.

Purchase Orders may only be placed directly through Contractor or through a subcontractor of the Contractor that is both approved by Contractor and authorized by the State of Vermont (hereinafter "Reseller" or "Fulfillment Partner"). A Reseller shall not solicit or otherwise fulfill any Purchase Order unless the Reseller (i) is an approved Fulfillment Partner listed on Contractor dedicated (cooperative contract) website as an entity approved by Contractor, in accordance with Contractor's established qualifying criteria, to provide sales and service support to participants in the WSCA-NASPO Master Price Agreement on Contractor's behalf and (ii) has executed a separate agreement with the State that directly obligates Reseller to fulfill Purchase Orders in accordance with the terms and conditions set forth in this Participating Addendum and the Master Agreement.

Contractor may, in its sole discretion, add Fulfillment Partners at any time during the term of this Participating Addendum. Contractor may designate a minimum of two Fulfillment Partners and no set maximum number of Fulfillment Partners to provide sales and services support. Contractor, in its sole discretion, is not required to add, and may delete upon thirty (30) days written notice, any Fulfillment Partner who does not meet Contractor's established qualifying criteria, or where the addition of the entity would violate any state or federal law or regulation. Except as otherwise set forth in the Master Agreement, Contractor will not, directly or indirectly, restrict any Reseller's participation or ability to quote pricing for the State. Resellers shall not offer less favorable pricing discounts than the discounts established under the Master Agreement. However, a Reseller may offer any additional incremental discounts to the State or any Additional Purchaser, and such additional discounts, if offered, may be provided to the State or an Additional Purchaser in the discretion and at the sole legal obligation of the Reseller.

The Master Agreement number and the Participating Addendum Number must appear on every Purchase Order placed under this Participating Addendum.

- a. **Method of Ordering for State Purchasers:** For any and all purchases made by State Purchasers under this Participating Addendum, a Purchase Order shall be issued when purchases are made. Written Purchase Orders, including electronic orders, must be used to order items available under this Participating Addendum. Verbal orders shall not be accepted by Contractor or Contractor's Fulfillment Partners unless or until a confirming Purchase Order is issued. For the avoidance of doubt, each Order is a firm offer and must (i) identify the State by full name and address; (ii) itemize the quantity, part number and description of the Equipment that State desires to purchase, the Licensed Material (defined in Section 7 below) that State desires to license, and/or the Services that State desires to engage Contractor to perform; (iii) state the price of the itemized Products and Services determined under Section 3 of the Master Agreement (the "Price"), (iv) identify the "bill-to" address, (v) identify the "ship-to" address, (vi) set forth the requested delivery dates (and any shipping instructions) and/or performance dates, consistent with Contractor's standard published intervals, (viii) provide a State contact name and telephone number, and (ix) explicitly refer to the number of this Participating Addendum. State's "bill-to" and "ship-to" address must be located within the United States. All Orders are subject to review and written acceptance by Contractor. Each Order is subject only to the terms and conditions of this Participating Addendum and the applicable quotation. Terms and conditions contained in an Order, which are inconsistent with this Participating Addendum or applicable quotation, including any pre-printed terms and conditions on such Order, are ineffective and void, unless such other Order terms and conditions are mutually agreed upon by the parties.

This restriction is not applicable to Additional Purchasers.

- b. **State Notice to Contractor of a Grant for Federal Funds:** Prior to the State or Additional Purchasers placing a purchasing order with the Contractor where such purchase order is funded in whole or in part by Federal funds, State or Additional Purchasers shall notify Contractor 30 days in advance, in writing, so Contractor can confirm acceptance of the reporting terms set forth in Attachment C section 12.A.-B.
- c. **No Lease Agreements:** State Purchasers are prohibited from leasing under this Participating Addendum. This restriction is not applicable to Additional Purchasers.
- d. **Delivery:** Title and Risk of Loss remains with the Contractor until the product is properly delivered in accordance with this Participating Addendum as outlined in the Master Agreement Section 5.0 (beginning at page 9 of the Master Agreement) and Section 11 (at page 41 of the Master Agreement). Despite the foregoing, title to Licensed Material does not transfer to the State to a State Purchaser or to an Additional Purchaser and remains with Contractor and its licensors. Contractor shall ensure that shipments are securely and properly packed, according to accepted commercial practices, without extra charge for packing cases or other containers. Upon delivery, such containers will become the property of the State unless otherwise stated. Delivered goods that either do not conform to the specifications or are not in good condition upon receipt shall be replaced promptly by Contractor.

The State does not agree to reimburse Contractor for expenses except as may be specified in Attachment B to this Participating Addendum.

A Purchasing Entity shall determine whether all Products and Services delivered meet the Contractor's published specifications (a.k.a. "Specifications"). No payment shall be made for any Products or Services until the Purchasing Entity has accepted the Products or Services. The Purchasing Entity will make every effort to notify the Contractor within seven (7) business days following delivery of non-acceptance of a Product or Service. In the event that the Contractor has not been notified within 7 business days from delivery of Product or completion of Service, the Product and Services will be deemed accepted on the 8th business day after delivery of Product or completion of Services. This clause shall not be applicable if accepting testing and corresponding terms have been mutually agreed by both parties in writing.

- e. **Quality:** All products provided by Contractor to fulfill a Purchase Order under this contract will be new and unused, unless otherwise stated. Factory seconds or remanufactured products will not be accepted unless specifically requested by the State. All products provided by Contractor must meet all federal, state, and local standards for quality and safety requirements. Products not meeting these standards will be deemed unacceptable and returned to Contractor for credit at no charge to the State.
6. **Modifications to Licensor Documents.** To the extent the Master Agreement expressly requires a State Purchaser to execute a software license agreement or any one or more document, agreement or other instrument, regardless of format, as required by Contractor or Contractor's third party licensors ("Licensor") in connection with a State Purchaser's use of any product or service supplied to the State under this agreement ("Licensor Document"), such Licensor Documents are hereby modified and superseded as follows:
- a. Any requirement that the State defend or indemnify Licensor or otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or license verification costs of Licensor, is hereby deleted from the Licensor Document.
 - b. Any requirement that the State agree to binding arbitration or otherwise waive the State's right to a jury trial is hereby deleted from Licensor Documents.
 - c. Licensor agrees that any the Licensor Documents shall be governed by and construed in accordance with the laws of the State of Vermont and that any action or proceeding brought by either the State or Licensor in connection with this Contract shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit.
 - d. Nothing in the Licensor Documents shall constitute an implied or deemed waiver of the immunities, defenses, rights or actions arising out of State's sovereign status or under the Eleventh Amendment to the United States Constitution.
 - e. Any provision which defines obligations of the State to maintain the confidentiality of Licensor shall be subject to the laws of the State of Vermont.
 - f. Limitations or exclusions of liability shall not apply to State claims arising out of (i) Licensor's obligation to

indemnify the State for infringement; (ii) personal injury or damage to real or personal tangible property to the extent resulting from Licensor's negligence; or (iii) gross negligence, fraud or intentional misconduct of Licensor. The parties acknowledge and agree that limits of liability shall not apply to third party claims arising from the acts or omissions of a party in the performance of this Agreement.

- g. Licensor shall have no right to access State systems to audit the State use of Licensor's product. Upon request, and not more frequently than annually, the State shall provide Licensor with a certified report concerning the State's use of any software licensed for State use. Settlement payment shall be the exclusive remedy for any non-compliance.
- h. The State retains full right and title to data provided by the State and any State Purchaser and any data derived therefrom, including metadata (collectively, the "Customer Data"). Licensor shall not collect, access, or use user-specific Customer Data except as strictly necessary to fulfil Licensor's obligations to the State Purchaser. No information regarding a State Purchaser's use of the licensed product or service may be disclosed, provided, rented or sold to any third party for any reason unless required by law or regulation or by an order of a court of competent jurisdiction. This obligation shall survive in perpetuity.

This Participating Addendum and the Master Agreement shall in all cases take precedence over the Licensor Documents. Any ambiguity, conflict or inconsistency between the Licensor Documents and the terms of this Participating Addendum, or the Master Agreement, shall be resolved in accordance with this order of precedence.

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

7. **Rights in Software.** Notwithstanding anything to the contrary in this Participating Addendum and the Master Agreement, the Embedded Software and any software application program (in object-code form and excluding source code) that does not permanently reside on a computing device ("Non-Embedded Software") and any related documentation (collectively, "Licensed Material") are licensed to the State Purchaser and not sold. All rights, title and interest in and to the Licensed Material, including all intellectual property rights, remain vested in Contractor, its suppliers and licensors, and the State Purchaser is granted only a limited license to use the Licensed Material in conjunction with the equipment, as provided in this Section and in Section 31 of the Master Agreement (with respect to Embedded Software).

- a. **License to Non-Embedded Software.** Upon delivery of any Non-Embedded Software and subject to the State Purchaser's payment of the applicable fees for such Non-Embedded Software, Contractor hereby grants the State Purchaser a limited, nonexclusive, nontransferable license (a) to use those portions and features of the Non-Embedded Software for which Contractor has authorized the activation solely on or with the single unit or arrangement of equipment for the State Purchaser's internal use in the United States; and (b) to copy the Non-Embedded Software as reasonably necessary for backup and archival purposes provided the copies contain all of Contractor's proprietary notices contained in the original Non-Embedded Software. The State Purchaser acknowledges and agrees that (c) Contractor may have encoded within the software optional functionality, features and/or capacity, which may be accessed only through the purchase of the applicable license extension from Contractor at an additional price (no licenses are granted to such functionality, features and/or capacity unless the State Purchaser purchases the applicable license extension); and (d) the State Purchaser may need to obtain a new or additional application key from Contractor to use such software. This Section applies to all updates, upgrades, maintenance releases, revisions, and enhancements for the Non-Embedded Software.
- b. **Restrictions.** The State Purchaser shall not directly or indirectly: (a) modify, copy (other than as permitted above), transmit, alter, merge, decompile, disassemble, reverse engineer or adapt any Licensed Material or portion thereof; (b) encumber, time-share, rent or lease the rights granted herein; (c) manufacture, adapt, create derivative works of, localize, port or otherwise modify any Licensed Material or portion thereof; (d) disclose or otherwise make available any Licensed Material or portion thereof to any third party; (e) enable any software functionality, feature or capacity which Contractor licenses as a separate product, without Contractor's prior written consent; (f) take any action that may result in the software becoming subjected to the terms of a license that requires it to be (i) disclosed or distributed in source code form, (ii) licensed for the purpose of making derivative works, or (iii) redistributable at no charge; or (g) use any Licensed Material or portion thereof except in accordance with this Section and Section 31 of the Master Agreement.

- c. **FOSS.** If the Embedded Software or Non-Embedded Software contains free or open source software (FOSS) that is packaged separately or integrated with the Software, and to which third party license obligations apply, information will be available in the FOSS itself, on the website from which the download is available, or from Contractor upon State Purchaser's request, indicating the license under which such FOSS was released, and containing required acknowledgements, legends and/or notices. Unless otherwise dictated by a FOSS license (such as GPL, LGPL, and Affero GPL) that requires Contractor to grant the same rights to the parties to whom we distribute the FOSS, the State Purchaser's rights to use, copy, and further distribute (if applicable) the FOSS are governed by this license, and not by the FOSS license originally applicable to the FOSS. If State Purchaser modifies any FOSS then notwithstanding any other provisions to the contrary, Contractor will have no further liability or obligation to provide support, maintenance, warranty or indemnity with respect to the modified FOSS or any Contractor products with which the modified version of the FOSS interacts.

- d. **Additional License.** Certain Software may be delivered with its own specific license ("Additional License"). In such a case, the terms of the Additional License will be delivered to State Purchaser, such as in a separate license .txt file or as part of a separate click-to-accept agreement, and will govern use of the Software by State Purchaser to the extent Contractor does not have a right to supersede them. Contractor's licensors are third party beneficiaries of these license provisions (and those in the Master Agreement) with respect to their software and documentation.

ATTACHMENT B: PAYMENT PROVISIONS

1. **Payment Terms:** Net 30 from the date the State receives an error-free invoice with commercially reasonable full and complete supporting documentation.
2. **F.O.B. Delivered:** All equipment pricing is to include F.O.B. delivery to the ordering facility. No request for extra delivery cost will be honored.
3. **Pricing:** Product offerings and complete details of product pricing applicable to this PA are set forth in Appendix H of the Master Agreement and the Pricing Document which is maintained on-line at <http://naspovaluepoint.com/#/contract-details/74/contractor/455>

Contractor discounts are off the entire U.S. Global Price Lists as set forth in the PSS Discount Schedule. The discounts provided will remain valid for the Contract Term and will be applied as a discount off Contractor's then-current baseline Price List.

The discounts provided are floor discounts (minimum guarantees). Additional volume pricing is available and individual transactions may qualify for additional, incremental discounts/firm fixed pricing or incentives provided by Contractor's Authorized Resellers at their sole discretion. NASPO ValuePoint, the Participating States and/or the Participating Entities may also actively solicit Contractor's Authorized Resellers for deeper discounts than the minimum contract pricing as set forth in the Product and Services Discount Schedule. In any event, final transactional pricing shall be determined by the Authorized Resellers and not by Contractor; provided, however, that the minimum discounts set forth on the Cost Schedule are met.

4. **Invoicing:** Invoices shall be submitted 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. Contractor will issue invoices as follows: (i) for Products, upon shipment; (ii) for non-recurring Services, including engineering and installation Services, as such Services are completed; and (c) for recurring Services, including maintenance, technical support, and network management Services, upon commencement of such Services and thereafter on a quarterly basis at the beginning of each quarter.

**ATTACHMENT C: STANDARD STATE PROVISIONS
FOR CONTRACTS AND GRANTS
REVISED JULY 1, 2016**

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 the 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: [NEGOTIATED] 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. In the event the State withholds approval to settle any such claim, then the Party shall proceed with the defense of the claim but under those circumstances, the Party’s indemnification obligations shall be limited to the amount of the proposed settlement initially rejected by the State.

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 in the event that the State, its officers or employees become legally obligated to pay any damages or losses to the extent arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.

The Party agrees that in no event shall the terms of this Agreement nor any document required by the Party in connection with its performance under this Agreement obligate the State to defend or indemnify the Party or otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party except to the extent awarded by a court of competent jurisdiction.

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

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

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

- Premises – Operations
- Bodily Injury and Property Damage
- Products and Completed Operations
- Personal Injury and Advertising
- Injury
- 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

Automobile Liability: The Party shall carry automobile 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 Commercial General Liability (which includes third party Property Damage coverage) 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 Automobile 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 by the Party.

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 the Contract, 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. Federal Requirements Pertaining to Grants and Subrecipient Agreements:

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

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 the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, 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 the case that this Agreement is a Grant funded in whole or in part by Federal funds, in accordance with 2CFR 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.

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 the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- C. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- D. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

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 the Agreement is signed, he/she:

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

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

19. Sub-Agreements: [NEGOTIATED] 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, which shall not be unreasonably withheld. Party shall be responsible 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 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 23 ("Certification Regarding Use of State Funds"); Section 31 ("State Facilities"); and Section 32 ("Location of State Data").

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

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

25. Confidentiality: [NEGOTIATED] 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. Pursuant to 9 V.S.A. § 317(c)(9), the State acknowledges that Contractor's and its affiliated companies' and their respective licensors' trade secrets, meaning confidential business records or information, including any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information (collectively, "Contractor's Trade Secrets") are exempt from public inspection and copying. Contractor authorizes the State to use Contractor's Trade Secrets, which Contractor in its discretion may disclose or make available to the State, solely to exercise the State's rights and to perform its obligations under this Participating Addendum and the Master Agreement. The State shall hold and maintain all of Contractor's Trade Secrets in confidence for the sole and exclusive benefit of Contractor or

the affiliated company of Contractor who provided the Contractor's Trade Secrets or made them available to the State.

26. Force Majeure: [NEGOTIATED] 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 unless such strike or lock-out affects an entire region, nation or industry) ("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.

27. Marketing: [NEGOTIATED] 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, which shall not be unreasonably withheld.

28. Termination: In addition to any right of the State to terminate for convenience, the State may terminate this Agreement as follows:

- A. Non-Appropriation: [NEGOTIATED]** 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. Notwithstanding the aforementioned, Contractor shall be paid for goods and services accepted by the State prior to the effective date of the non-appropriation cancellation.
- 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. No Implied Waiver of Remedies:** A 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.

29. 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.

30. Termination Assistance: [NEGOTIATED] 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 mutually agreed upon transition assistance paid for 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.

31. 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.

32. Location of State Data: [NEGOTIATED] 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 continental United States, except with the express written permission of the State. The State acknowledges that Contractor and its affiliates are a well-established, multi-national group of companies with locations outside the State of Vermont and outside the United States of America. Accordingly, the Contractor and its affiliates may perform Services outside the State of Vermont and outside the United States of America. More particularly, Contractor and its affiliates expect to perform remote technical support Services from locations in the United States, Canada, and the United Kingdom where their technical support centers are located.

(End of Standard Provisions)