

STATE OF VERMONT  
PARTICIPATING ADDENDUM NO. 34360

TEMPORARY EMPLOYMENT SERVICES  
NEW MEXICO NASPO VALUEPOINT MASTER AGREEMENT NO. 50-000-15-00058- AA

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 22nd Century Technologies, Inc., a for-profit corporation with principal place of business in Somerset, NJ, (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 temporary employment services pursuant the New Mexico NASPO ValuePoint Master Agreement No. 50-000-15-00058- AA (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 \$500,000.00.
4. **Contract Term.** The period of Contractor's performance shall begin on September 1, 2017 and end on February 1, 2019 with an option to extend for three additional years upon mutual agreement of both parties, 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 Department of Human Resources and the Secretary of Administration.
6. **Agreement; Amendment.** This Participating Addendum and the Master Agreement (including all amendments and attachments thereto) represents the entire agreement between the parties. 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. **Termination for Convenience.** This contract may be terminated by the State at any time by giving written notice at least thirty (30) days in advance. In such event, Contractor shall be paid under the terms of this contract for all services provided to and accepted by the State prior to the effective date of termination.
8. **Attachments.** This Participating Addendum consists of 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
  - Attachment D: Additional Terms and Conditions
  - Attachment E: Cost Sheet
  - Attachment F: Temporary Work Request Form

9. **Order of Precedence.** Any ambiguity, conflict or inconsistency between the provisions which constitute this agreement shall be resolved according to the following order of precedence:

- 1) This Participating Addendum (including all Attachments)
- 2) The NASPO ValuePoint Master Agreement No. 50-000-15-00058- AA

10. **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 New Mexico NASPO ValuePoint Master Agreement No. 50-000-15-00058- AA, at prices equal to or lower than the prices on that contract.

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

Participating State:	Contractor: 22nd Century Technologies, Inc.
By: e-Signed by Christopher Cole on 2017-10-11 15:50:06 GMT	By: 
Name: Christopher Cole	Name: Kulpreet Singh
Title: BGS Commissioner	Title: Director-Sales
Date:	Date: 10/9/2017

## ATTACHMENT A: GENERAL PROVISIONS OF CONTRACT

Contractor shall provide on an as needed basis temporary employment services to locations statewide.

1. **Available Services:** The following services listed in the Master Agreement are available for purchase under this Participating Addendum:
  - a. **Administrative Support (including Office and Clerical)**, which includes occupations in which workers are responsible for day to day operations such as internal and external communication, recording and retrieval of data and/or information and other paperwork required in an office. May include but is not limited to: bookkeepers, messengers, clerk-typists, stenographers, court transcribers, hearing reporters, statistical clerks, dispatchers, license distributors, payroll clerks, office machine and computer operators, legal assistants, cashiers, and toll collectors.
  - b. **Commercial/Industrial Workers**, which includes occupations in which workers perform jobs which require special manual skill and a thorough and comprehensive knowledge of the processes involved in the work which is acquired through on-the-job training and experience or through apprenticeship or other formal training programs. Workers perform duties which result in or contribute to the comfort, convenience, hygiene or safety of the general public or the upkeep and care of buildings, facilities or grounds of public property. May include but is not limited to: mechanics and repairers, electricians, heavy equipment operators, stationary engineers, skilled machining occupations, carpenters, power plant operators, water and sewage treatment plant operators, service/maintenance. Workers in the following group may operate machinery: Chauffeurs, laundry and dry cleaning operatives, truck drivers, bus drivers, garage Laborers, custodial, gardeners and groundskeepers, refuse collectors, Construction laborers, park rangers (maintenance), farm workers (except managers), craft apprentices/trainees/helpers
  - c. **Healthcare Staffing/Services**, which includes Medical and Healthcare related service jobs including, but is not limited to, all classes of positions, the duties of which are to advise on, administer, supervise, or perform research or other professional and scientific work, subordinate technical work, or related clerical work in several branches of medicine, surgery, and dentistry or in related patient care services such as dietetics, nursing, occupational therapy, physical therapy, pharmacy, dietitians, doctors, psychologists, and registered nurses.
  - d. **Information Technology Professional Services**, which includes resources and facilities management, database planning and design, systems analysis and design, network services, programming, conversion and implementation support, network services project management, data/records management.
  - e. **Professional**, which includes occupations which require specialized and theoretical knowledge, usually acquired through college training or through work experience and be licensed or certified which provides comparable knowledge to college degree. May Include but is not limited to: personnel and labor relations workers, social workers, economists, lawyers, systems analysts, accountants, engineers, employment and vocational rehabilitation counselors, teachers, trainers or instructors, librarians, management analysts, surveyors and mapping scientists.
2. **Definitions:**
  - a. **"HIPPA"** requires compliance with the requirements of the Health Insurance Portability and Accountability Act of 1996, 45 C.F.R. 160, 162, and 164, as amended. In the event that the functions or activities include the involvement of Protected Health Information, the awarded vendor agrees to enter into a Business Associate Agreement with the individual using agency which is under the HIPPA regulations as required by 45 C.F.R. 164.504 (e).

- b. **Fully Loaded Labor Rate:** This rate contains every possible cost associated with a candidate, divided by the total number of hours worked by the candidate. For example, the cost may include the company's contribution to the candidate's pension plan; all benefit costs, payroll taxes, overtime, shift differential, and the base level of compensation. This rate is typically aggregated for entire classifications of candidates, so that (for example) the fully loaded labor rate for an average machine operator may be commonly available.
  - c. **"Hourly Rate"** means the proposed fully loaded maximum hourly rates that include travel, per diem, fringe benefits and any overhead costs for Contractor personnel, as well as Subcontractor personnel if appropriate.
  - d. **"Staff"** means any individual who is a full-time, part-time, or an independently contracted individual with the Awarded Offeror's company and not an employee of the State of Vermont or Participating Entities. Staff will not be provided employee benefits from the State agencies or political subdivisions.
3. Consistent with Section 5.7 of Contractor's proposal, candidates may be hired as a permanent employee of the State or Procuring Agency if, the Procuring Agencies and hiring processes have been complied with and if the candidate elects to accept employment with the State or Procuring Agency. Such occurrence will create no further obligation (financial or otherwise) on the part of the Procuring Agency.
4. **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.

5. **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@vermont.gov](mailto:SOV.ThePathForward@vermont.gov) . 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 30
July 1 - September 30	October 30
October 1 - December 31	January 30

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

Contractor

Name	22nd Century Technologies, Inc. Kulpreet Singh
Address	220 Davidson Avenue, Suite 118, Somerset NJ 08873
Telephone	888-998-7284

E-mail	<a href="mailto:govt@tscti.com">govt@tscti.com</a>
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State of Vermont

Name	State of Vermont, Brian Berini
Address	109 State Street, Montpelier, VT 05609-3001
Telephone	802/828-2217
Fax	802/828-2222
E-mail	<a href="mailto:brian.berini@vermont.gov">brian.berini@vermont.gov</a>

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

7. **Orders:** Any order placed by the State or an Additional Purchaser for services 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”). 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 NASPO ValuePoint 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 State Contract Number must appear on every Purchase Order placed under this Participating Addendum.

- a. **State Purchasers Responsibilities for Requesting Services:** Prior to contacting the Contractor, the Procuring Agency is responsible to define details of the request to include, but not be limited to:
- Number of individuals needed;
  - Job duties;
  - Equipment to be used;
  - Knowledge, skills and education and/or experience;
  - Computer software to be used;
  - Hours of work;
  - Expected length of assignment;
  - Job related attire;
  - Position location;
  - Procuring Agency contact person; and
  - Other pertinent job-related information.

Depending on the amount of detail required, it is recommended the Procuring Agency submit this information in writing via e-mail or facsimile to reduce the possibility of an inappropriate temporary assignment. The Temporary Work Request Form (Attachment F) should be used to ensure that requirements are correctly identified to the Contractor.

b. **Background checks:** The Procuring Agency is responsible for requesting additional background investigations beyond normal references prior to the temporary assignment.

- Should an additional background check be required due to the nature of the assignment, the Procuring Agency may be responsible for the cost of the additional checks.
- It is reasonable to expect employment eligibility and references will be required for all candidates; background checks for referrals by the Procuring Agency will be at the discretion of the Procuring Agency.
- Standard checks which would include employment eligibility and reference checks shall be at the cost of the Awarded Offeror (s).
- Other background checks will be at the discretion of each requesting Procuring Agency.
- Procuring Agencies reserve the right to request and conduct pre-employment background checks and drug testing prior to the potential candidates starting date.
- Procuring Agencies will limit their background checks and drug testing requirements to the same as required of their own permanent full-time employees holding the same or similar positions to be filled by the candidate.

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

d. **Performance Measures:**

- Contractor shall notify the Procuring Agency on availability within four (4) hours after a request is made for services that will commence within five (5) working days following the request;
- Contractor shall notify the Procuring Agency on availability within two (2) days after a request is made for services that will commence later than five (5) working days following the request;
- Contractor shall will confirm with the Procuring Agency the arrival of its Candidate by telephone within one-half (1/2) hour after scheduled arrival time.
- All temporarily assigned individuals will be appropriately dressed for the assignment and shall maintain a professional demeanor. Dress code policy is established by the individual agencies. Temporary Candidate must dress according to the requirements of the Procuring Agency requesting the assignment.
- Temporarily assigned individuals should be available for the entire length of the assignment; however, if a replacement is required, a qualified replacement must be provided within twenty-four (24) hours of notification, including weekends and holidays.
- If an employee is not meeting the State's expectations, the Contractor shall take steps to remedy the situation immediately. The Contractor shall counsel, replace or remove the employee when deemed

necessary.

- e. The Procuring Agency reserves the right to reduce the length of the temporary assignment and shall provide the Contractor with as much notification as possible.

## ATTACHMENT B: PAYMENT PROVISIONS

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

1. **Payment Terms:** Net 30 from the date the State receives an error-free invoice.
2. **Pricing:** For offerings and complete details of pricing, please refer to Attachment E – Cost Sheet on-line at: [https://s3-us-west-2.amazonaws.com/naspovaluepoint/1486582859\\_22nd%20Century%20Master%20Agreement%20Pricing\(2-8-17\).pdf](https://s3-us-west-2.amazonaws.com/naspovaluepoint/1486582859_22nd%20Century%20Master%20Agreement%20Pricing(2-8-17).pdf) . The following represents an overview of pricing:

As set forth in Attachment E, Contractors Administrative Services Fees is the percentage amount Contractor charges for the fulfillment of a position excluding the fully burdened labor rate. Contractors Administrative Service Fee is a not to exceed maximum percentage and may be negotiated at a lower percentage rate.

Category	Administrative Service Fee
Administrative Support (including Office and Clerical)	28%
Commercial/Industrial Workers	32%
Healthcare Staffing/Services	30%
Information Technology Professional Services	45%
Professional	34%

3. **Invoicing:** Invoices shall be submitted on the Contractor's or it's Resellers 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. Invoices must include the Purchase Order Number(s) for which the invoice is being submitted.
4. **Purchasing Card:** State purchasers may use the State Purchasing Card for the payment of invoices. Use of the Purchasing Card requires all required documentation applicable to the purchase. The Purchasing Card is a payment mechanism, not a procurement approach and, therefore, does not relieve departments from adhering to all procurement laws, regulations, policies, procedures, and best practices. This includes but is not limited to the application of all sales and use tax laws, rules and policies as applicable to the purchase.



**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:** 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 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:** 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.

*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 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:** 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 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:** 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.

**26. 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.

**27. 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.

**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:** 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. 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:** 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.

**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:** 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.

(End of Standard Provisions)

ATTACHMENT D  
ADDITIONAL TERMS AND CONDITIONS

Attachment C: Standard State Provisions for Contracts and Grants, Section 8. Insurance is amended by adding the following:

Regarding staffing services in the following categories, Party must provide professional liability coverage with the following:

- a. Healthcare Staffing/Services, which includes Medical and Healthcare related service jobs including, but is not limited to, all classes of positions, the duties of which are to advise on, administer, supervise, or perform research or other professional and scientific work, subordinate technical work, or related clerical work in several branches of medicine, surgery, and dentistry or in related patient care services such as dietetics, nursing, occupational therapy, physical therapy, pharmacy, dietitians, doctors, psychologists, and registered nurses.

Medical Malpractice Coverage: \$1,000,000 per claim / \$3,000,000 aggregate

- b. Information Technology Professional Services, which includes resources and facilities management, database planning and design, systems analysis and design, network services, programming, conversion and implementation support, network services project management, data/records management.

Cyber Liability Errors & Omissions Coverage: \$1,000,000 per claim / \$2,000,000 aggregate

- c. Professional, which includes occupations which require specialized and theoretical knowledge, usually acquired through college training or through work experience and be licensed or certified which provides comparable knowledge to college degree. May Include but is not limited to: personnel and labor relations workers, social workers, economists, lawyers, systems analysts, accountants, engineers, employment and vocational rehabilitation counselors, teachers, trainers or instructors, librarians, management analysts, surveyors and mapping scientists.

Professional Liability / Errors & Omissions Coverage: \$1,000,000 per claim / \$2,000,000 aggregate



**ATTACHMENT E**  
**COST SHEET**

**ATTACHMENT F**