



TO: Media and Publishing Companies  
FROM: Wendy Knight, Commissioner, Vermont Department of Tourism and Marketing  
DATE: September 11, 2017  
SUBJ: **Request for Proposals**  
Bid Title: *Vermont Life* magazine Publishing Services

The State of Vermont is requesting proposals from media/publishing businesses competent to provide magazine publishing services for *Vermont Life* magazine. The scope of work to be performed and the information that must be presented in your proposal are described in this Request for Proposals.

**One (1) hard copy and One (1) PDF Version on CD/DVD of your proposal must be submitted no later **November 17, 2017 at 4:00 PM EST** to:**

Steven Cook, Deputy Commissioner  
State of Vermont  
Agency of Commerce and Community Development  
One National Life Drive, Davis Bldg, 6<sup>th</sup> floor  
Montpelier, Vermont 05620-0501

The State reserves the right to accept or reject any or all bids.



## Request for Proposals

This is a Sealed Bid Response  
*Vermont Life* magazine Publishing Services

RFP Issuance Date: **September 11, 2017**

Bidder Questions Due by: **September 22, 2017 at 4:00 p.m. EST**

Questions concerning this request for proposals must be in writing (via mail or e-mail) and received by Wendy Knight AND Steven Cook by **September 22, 2017 at 4:00 p.m. EST**. Email addresses for Wendy and Steve are: [wendy.knight@vermont.gov](mailto:wendy.knight@vermont.gov) and [steven.cook@vermont.gov](mailto:steven.cook@vermont.gov) and the postal address for questions to be sent via post is below. The State will respond to written questions by **October 6, 2017**. Any responses will be in writing and posted on the State's website at [www.vermontbidsystem.com](http://www.vermontbidsystem.com). The State reserves the right to select which questions it will answer.

Proposal Due Date: **November 17, 2017 / 4:00 PM EST**

One (1) hard copy and One (1) PDF Version on CD/DVD of your proposal must be submitted no later **November 17, 2017 at 4:00 PM EST** to:

Steven Cook, Deputy Commissioner  
State of Vermont  
Agency of Commerce and Community Development  
One National Life Drive, Davis Bldg, 6<sup>th</sup> floor  
Montpelier, Vermont 05620-0501

The State reserves the right to accept or reject any or all bids. A selection committee consisting of assigned State staff will evaluate the proposals. If a person or firm is selected, a representative will be invited to negotiate a contract.



## Sealed Bid Instructions

All bids must be sealed and must be addressed to Steven Cook, Agency of Commerce and Community Development, State of Vermont, One National Life Drive, Davis Bldg, 6<sup>th</sup> floor, Montpelier, Vermont 05620-0501.

**BID ENVELOPES MUST BE CLEARLY MARKED 'SEALED BID' AND SHOW THE BID TITLE, PROPOSAL SUBMISSION DATE, AND NAME OF BIDDER.**

All bidders are hereby notified that sealed bids must be in the office of the Agency of Commerce and Community Development (ACCD) by the bid due date and time. Bidders are cautioned that it is their responsibility to originate the sending of bids in sufficient time to insure receipt by the State on or before the bid due date. Hand-carried bids shall be delivered to a representative of ACCD on or before the bid due date and time. Bids not in possession of ACCD by the due date and time will not be considered.

**FAXED BIDS:** FAXED bids will NOT be accepted.

**ELECTRONIC BIDS:** ELECTRONIC bids will NOT be accepted **as the sole form** of bid submission. One (1) PDF version of the proposal must be submitted along with one (1) hard copy of the proposal as specified on Page 1.

**IMPORTANT NOTE: All materials submitted as part of the proposal (e.g. samples of work) received by the State will not be returned.**

**Included:**

Request for Proposal

Attachment A – Price Quotation Form

Attachment B – Vermont Tax Certificate

Appendix I – Performance Measures (Example)

Acknowledgement of Attachment C – Standard State Provisions for Contracts and Grants

## A. INTRODUCTION

The Agency of Commerce and Community Development (ACCD) is issuing this Request for Proposals (RFP) to identify media parties interested in helping to maximize the benefit to the State of Vermont of *Vermont Life* magazine.

**MISSION:** *Vermont Life's* mission is to create an engaging online presence and publish a premier quality magazine filled with the best writing, illustration, art and photography Vermont has to offer. Every issue of *Vermont Life* celebrates Vermont's food, arts, entrepreneurship and outdoor recreation, and explores issues of contemporary interest to Vermonters and visitors to the state.

## B. BACKGROUND

*Vermont Life* is a thought-provoking, expertly designed quarterly magazine covering Vermont's people, places and culture. Stunning color photography and award-winning journalism make it the insider's guide to Vermont food, arts and recreation, as well as the source for a behind-the-scenes look at the state's creative economy and entrepreneurs.

Founded in 1946 and published by the State of Vermont, it is considered one of America's premier regional magazines.

### 1. Key Milestones

- In July 1994, *Vermont Life* Online was founded and was, we believe, the first regional magazine website in the world.
- In 2008, *Vermont Life* had 13 permanent employees, and up to seven temporary employees; we now have only seven permanent staff. During that time, we have also moved from offices on Baldwin Street to the state offices in the National Life Building, saving on rent. We have outsourced our product fulfillment in order to reduce expenses.
- Added a digital edition of the magazine and online advertising in 2012.
- Created new ad-driven newsletters in 2012.
- Partnered with the Department of Fish & Wildlife on a highly successful wildlife calendar in 2012.
- Dropped our artisan product catalog, reducing the need to buy and store inventory and instead added a revenue-generating advertising section called the Holiday Gift Guide in 2013. This switch allowed small-business owners to feature more goods and gave our readers more selection.
- Started utilizing social couponing for subscriptions and increased our use of social media for promotional purposes in 2013.
- Added two new lines of notecards to our catalog in 2014.
- Requested that other state departments utilize our publishing expertise to produce consumer-facing products in order to standardize the state's branding, resulting in the

award-winning Vermont Department of Fish & Wildlife 2017 Fishing Guide & Regulations.

## 2. Sales Trends and Income

- Achieved double-digit ad sales increases for our most recent Autumn and Summer issues:
  - SU16: \$56k
  - SU17: \$75k (34% growth year over year)
  - AU15: \$56k
  - AU16: \$74k (32% increase year over year)
- *Vermont Life* FY2016 Total Operating Revenue: \$1,169,547.00
- Income Sources
  - 28% Advertising
  - 41% Subscriptions
  - 22% Product Sales (Calendars & Notecards)
  - 9% Other (List rental, joint projects with other State Agencies)

## C. GOALS

The purpose of this RFP is to identify a professional media, publishing company, or other qualified entity (referred to with the terms Contractor, Vendor and/or Bidder in this RFP) interested in purchasing, partnering, entering into a licensing agreement, or otherwise working with the State of Vermont to maximize the State benefit of *Vermont Life* magazine, both financially and as a vehicle to promote Vermont to current and future residents and visitors. Preference will be given to bidders that maintain current *Vermont Life* staff and operations in Vermont.

## D. SCOPE OF WORK

The Agency of Commerce and Community Development is seeking the services of a media or publishing company or other qualified entity to do one or more of the following:

1. Purchase *Vermont Life* magazine as an operating enterprise, or purchase identifiable *Vermont Life* magazine; or
2. Enter into a licensing arrangement with the State of Vermont for *Vermont Life* magazine, its products, brand, website and social media networks; or
3. Enter into a partnership agreement with the State of Vermont to continue publication of *Vermont Life* magazine without additional State support and which has a high likelihood of positive revenue streams to the State; or
4. Where appropriate, enter into an agreement with the State of Vermont for other proposals for *Vermont Life*.

Any proposal shall include analysis of if, and/or how, existing *Vermont Life* debt might be reduced or eliminated.

## **E. NATURE OF THE CONTRACT**

The contract's maximum dollar value shall in no way represent a commitment to the Contractor for services or compensation. Payment to the Contractor will be only for acceptable services rendered in accord with the Payment Provisions specified in the Pricing section. Contract will include the substance described in further detail below in Sections F through M:

## **F. BASE CONTRACT TERMS**

1. **Contract Period:** Contracts arising from this request for proposal will be for a period of thirty-six (36) months, with the possibility of two (2) additional one-year periods at the State's sole discretion, but only as reduced to writing and as pre-approved by both parties.
2. **Contract Terms:** The selected vendor will sign a contract with the State to provide the items named in their responses, at the prices negotiated. Minimum support levels, as well as terms and conditions from this RFP and the vendor's response will become part of the contract. The contract will be subject to review throughout its term. The State will consider cancellation upon discovery that a vendor is in violation of any portion of the contract, including an inability by the vendor to provide the products, support and/or service offered in their response.

## **G. KEY ASPECTS**

### **1. RFP Corrections or Changes. The State reserves the right to:**

- Modify any date or deadline appearing in this RFP.
- Issue clarification notices, addenda, alternative RFP instructions, forms, and/or other relevant documentation.
- Waive any RFP requirement or instruction for all bidders if the State determines that the requirement or instruction was unnecessary, erroneous, or unreasonable.
- Extend the proposal submission deadline.
- Overlook or correct any clerical or mathematical errors occurring in this RFP.

Bidders shall notify the State immediately to report a known or suspected problem with this RFP. Bidders who fail to report a known or suspected problem with this RFP shall submit a proposal at their own risk.

### **2. Correction of Bidder Information. The State reserves the right to:**

- Request a bidder to submit additional documentation during or after the proposal evaluation process.
- Collect omitted documentation from bidders.

- Waive any immaterial deviation or defect as may be adjudged by the State in any proposal or allow the bidder to remedy such defects.
- Overlook, correct or require a bidder to remedy any obvious clerical or mathematical errors.

Bidder's failure to adhere to the State's requests may result in the bidder's proposal(s) being determined unresponsive and rejected from further consideration.

3. It is understood that no vendor will be compensated for the time spent in developing the bid proposal.
4. At the State's option, oral presentations by bidders may be required. Bidders will be notified if an oral presentation is required. Bidders may be requested to provide a presentation of the services offered in their proposal. Bidders are responsible for all costs associated with an oral presentation. The State will not compensate the Bidder.

Bidders should present complete, comprehensive proposals without relying on oral presentations, because the State reserves the right to award a contract without further discussions.

5. The successful Bidder will be required to provide periodic updates and financial statements to State staff on a schedule and in a manner agreed upon by the parties subsequent to contract negotiation.
6. At the State's request, the successful bidder may be invited to meet with State or Legislative officials.
7. Vendors should be aware that the State does not reimburse for in- or out-of-state travel.
8. The Contractor shall provide a single point of contact who will manage all aspects of the contract.
9. This successful Bidder may use subcontractors to provide certain services, but the State shall have the right to review and approve the subcontract agreements between the primary vendor and subcontractors before services are provided through such agreement. Authorization from the State for any subcontractor services is mandatory prior to contractor issuing any work to any subcontractor. The awarded vendor is fully responsible for all payments to subcontractors.
10. The selected vendor will be expected to enter into a contract negotiated with the State. The contract maximum dollar value shall in no way represent a commitment to the Contractor for services or compensation. The contract will be subject to review by the State throughout the contract term, including any amendments that are executed. The State will consider cancelation upon discovery that a vendor is in violation of any portion of the contract, including an inability by the vendor to provide the products, support and/or service offered in their response. The State will require the selected vendor to comply with applicable Vermont and federal contracting requirements and purchasing policies including, but not limited to, the provisions stated in the "Acknowledgement of Attachment C: Standard State Provisions" included in this RFP, which are not negotiable.

11. The selected vendor that signs the contract will be assigned work as needed. The amount of time and staff level needed for each job will be agreed upon in advance when the job is assigned. Any additional staff time required for the job due to errors or omissions by the vendor will be the responsibility of the vendor.
12. Cost is a significant factor in selecting successful vendors, but it is not necessarily the determining factor. A vendor's comparative superior experience and knowledge may result in a bid selection other than the lowest bid submitted.
13. Requirements of Selection Service Quality: Vendor's proposal must articulate in writing that they have the qualifications and expertise to perform the work required under this RFP.

## **H. CHARACTERISTICS REQUIRED OF SUCCESSFUL VENDOR**

1. Ability to provide comprehensive publishing services and to generate revenue from subscriptions and single copy sales.
2. Evidence of publishing experience, with a history of building effective, efficient paid subscription and single copy sales programs.
3. Knowledge of, and expertise in, publishing modeling, reporting, analysis and strategy.
4. Experienced personnel to support the publishing of a quarterly magazine.

## **I. ISSUES THAT MUST BE ADDRESSED IN THE PROPOSAL, REQUIRED CONTENT, AND REQUIRED DOCUMENTS**

The instructions and format for the submission of proposal information are designed to ensure the provision of data considered essential to the understanding and comprehensive evaluation of the Bidder's proposal. There is no intent to limit the content of the proposals, nor in any way to inhibit a presentation in other than the vendor's favor. The vendor may include such additional information or data as may be appropriate, or offer alternate solutions but should not exclude any portion requested in this document. All proposals should contain the following information:

1. **Identity of Preparer(s).** A statement identifying individuals who were involved in the preparation of the proposal as well as a single point of contact for clarification of information must be included.
2. **Background and Experience.** Provide a full description of your qualifications and experiences; primary areas of expertise within the described scope of work; biographies, resumes or credentials of the key personnel who would be assigned to manage and complete the work; history of your firm; a list of current and/or notable past experiences with magazine publishing; contemporary transformational media experience, and other experience relevant to the content of your proposal. If you plan to hire new staff for this project, please demonstrate your capacity to bring on and train new staff as needed.
3. **References.** Provide the names, address and phone numbers of at least three organizations, or individuals with whom you have transacted similar business in the last



24 months – preferably non-State of Vermont clients. You must include the names of contacts who can speak knowledgeably about the quality of your services and their experience working with you.

4. **Understanding of client.** Please explain your understanding of *Vermont Life* magazine, and how *Vermont Life* magazine can be used as an economic development and marketing tool for the State of Vermont.
5. **Firm's unique selling proposition.** Please explain why your company is different or better than others, and what makes your company the right fit for *Vermont Life* magazine and/or any future iteration of *Vermont Life* magazine and the State of Vermont.
6. **Project plan.** Please explain how you will provide the services described in the Scope of Work, including a proposed timeline.
7. **Budget.** Please submit a detailed budget that is both realistic and reasonable.
8. **Narrative.** Provide a point-by-point narrative that describes how the requirements of this Request for Proposal will be met. Specifically, your narrative should include:
  - Type of promotional activities proposed and a plan showing anticipated results (schedule of renewal, billing, gift, direct mail and insert card promotions and expected results, etc.).
  - Experience using circulation planning model.
  - Expertise working with fulfillment house providers.
  - Expertise driving subscriptions and single copy sales via digital and mobile sources.
  - Experience developing partnerships to drive subscriptions and single copy sales.
9. **Acknowledgement of Terms: Signed and dated Acknowledgment of Attachment C must be included with your proposal. Proposals received that do not include this document will not be considered.**
10. **Pricing:** Please indicate in your proposal any and all costs you wish the State to consider using the Pricing Quotation Form (Attachment A). The State reserves the right to structure other pricing arrangements outside of an hourly rate to fulfill marketing needs. For example, the State may have a specific project that the State would arrange a payment amount for regardless of the time it takes the contractor to complete the work to the State's satisfaction.
11. All questions should be answered in narrative format.
12. Please use a minimum 11-point type with reasonable spacing and margins.
13. Please answer the questions in the same order stated below, and label/begin your responses with the bold headings used below.

14. Where work samples are referenced, please do not embed them in the text of your proposal. Instead, please include them in appendices or attachments and provide appropriate references to page or section number.

**J. PERFORMANCE BASED CONTRACTING**

The contract awarded under this RFP will be a performance based contract, which will include adherence to specific performance structures by awarded contractor.

**K. PAYMENT PROVISIONS**

Vendor must provide an hourly rate for each type of service provided. A blended rate, merely identifying one hourly rate for all categories of services, may be proposed. Once a contract is executed, the State will reimburse Contractor only for pre-approved expenses. Bids must include detailed expenses, including costs, anticipated by the vendor. If a contract arises from this RFP, all pre-approved expenses must be documented with receipts, and Contractor will be required to bill the State for work performed at least once a month, and payment terms will be net 30. Contractor shall not buy materials and resell to the State at a profit. All costs for preparation and delivery of the bid proposal will be the sole responsibility of the bidder.

**L. CONFIDENTIALITY**

Contractors must agree to keep information related to the State and all related agencies and companies related to this contract confidential. The Contractor agrees not to publish, reproduce, or otherwise divulge such information in whole or in part, in any manner or form, or authorize or permit others to do so unless authorized in writing by the State. Contractor will take reasonable measures as are necessary to restrict access to information in Contractor's possession to those employees on his/her staff who must have the information to perform their job, and agrees to immediately notify, in writing, the State's authorized representative in the event Contractor determines, or suspects, confidential information has been inappropriately disseminated.

**M. ADDITIONAL PROVISIONS**

1. **Taxes.** The State of Vermont is exempt under 32 VSA Section 9743(1) from payment of any Vermont sales and use taxes.
2. **Governing Law.** All submissions and agreements shall be in conformance with and governed by applicable laws of the State of Vermont.
3. **Submission Expenses.**
  - Submission Preparation: No expenses associated with the preparation of the submission response shall be borne by the State.
  - Presentations and/or Demonstrations: No expenses shall be borne by the State for oral presentations or demonstrations made by the individual and/or firm.
4. **Discrimination.** The contractor will be required to agree to comply with all requirements of

Title 21, Chapter 5, Sub-chapter 6, Section 495A relating to fair employment practices.

5. **Tax Certification.** To meet the requirements of 32 V.S.A., Section 3113, no agency of the State may enter into, extend or renew any contract for the provision of goods, services or real estate space with any person unless such person first certifies, under the pains and penalties of perjury, that he or she is in good standing with the Vermont Department of Taxes. A person is in good standing when no taxes are due, if the liability for any tax that may be due is on appeal, or if the person is in compliance with a payment plan approved by the Commissioner of Taxes. In signing this submission, the bidder certifies under the pains and penalties of perjury that the company/individual 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 as of the date that this statement is made.
6. **Proprietary or Confidential Information.** Submissions, with the exception of any materials deemed confidential, will be open for public inspection after a contract is executed. The successful submission will be incorporated into the resulting contract and will be a matter of public record.

If the submission includes material that is considered by the bidder to be proprietary and confidential under Vermont's Access to Public Records laws in Title 1, Chapter 5 of the Vermont Statutes Annotated or any other provision of law, the bidder shall clearly designate the material as such, explaining why such material should be considered confidential. However, entire submissions cannot be designated confidential or proprietary. Price information will not be considered confidential or proprietary information.
7. **Advertising.** The name of the State of Vermont, its logo and coat of arms, its agencies, departments and divisions, its employees and their official state titles, and other entities may not be used by any business responding or by the selected firm to this RFP in advertising or press releases without the State of Vermont's express written consent.
8. **Statement of Rights.** The State reserves the right to accept or reject any and all submissions, with or without cause, and the individual and/or firm shall have no recourse. The State reserves the right to waive technicalities to assure the project provides the greatest benefit to the State.
9. **Submission Price or Best Final Offer.** Responses to this RFP will be considered firm for one hundred twenty (120) days after the closing date of submission.
10. **Non-Collusion.** The State of Vermont is conscious of and concerned about collusion. It must therefore be understood by all that, in signing bid and contract documents, they agree that the prices quoted have been arrived at without collusion and that no prior information concerning these prices has been received from or given to a competitive company. If there is sufficient evidence to warrant investigation of the bid/contract process by the Office of the Vermont Attorney General, all bidders must understand that this paragraph may be used as a basis for litigation.

11. **EXCLUSION REQUIREMENT:** This RFP is NOT open to consortia, partnerships, or strategic alliances comprised of multiple vendors. Respondents should be single entities that are currently capable of providing all services outlined in this RFP. Once under contract, vendor may use sub-contractors to provide certain services, but the State shall have the right to review and approve all sub-contract agreements between the awarded vendor and sub-contractors before services are provided through such agreement (see Attachment C). Authorization from the State for any sub-contractor services is mandatory prior to Contractor issuing any work to any sub-contractor. Awarded vendor is fully responsible for all payments to sub-contractors. The State does not pay a commission for services. Specifically, subcontract work shall be billed to the State at net. All expenses must be pre-approved by the State in writing to be reimbursable. The State does not reimburse for the purchase of alcohol.



**ATTACHMENT A: PRICE QUOTATION FORM**

***Vermont Life Magazine Publishing Services***

**Request for Proposals**

**This is a Sealed Bid Response**

**This form must accompany your bid proposal.**

BIDDER BUSINESS NAME/ADDRESS/PHONE/E-MAIL:

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Bidders may respond to one or all of the following bid options. Bidders must explain in detail their proposal under one or all of the options and include final offers or rates for service.

1. Purchase *Vermont Life* magazine as an operating enterprise, or purchase identifiable *Vermont Life* magazine; or
2. Enter into a licensing arrangement with the State of Vermont for *Vermont Life* magazine, it's products, brand, website and social media networks; or
3. Enter into a partnership agreement with the State of Vermont to continue publication of *Vermont Life* magazine without additional State support and which have a high likelihood of positive revenue streams to the State; or
4. Where appropriate, enter into an agreement with the State of Vermont for other proposals for *Vermont Life* magazine.

(End of Attachment A)



**APPENDIX I: PERFORMANCE MEASURES (Example only, subject to change)**

The Contractor will be evaluated on its service performance during and at the end of any awarded contract term, on the following performance, which may be subject to changed/adjusted as determined by the State.

<b>Performance Measures</b>			
	<b>Poor</b>	<b>Good</b>	<b>Excellent</b>
Successfully acquires and retains paid subscriptions.			
Successfully increases single copy magazine sales.			
Successfully meets all deadlines for magazine distribution.			
Demonstrates growth in gross magazine sales.			
Successfully creates and monitors results of direct mail.			
Successfully meets all deadlines related to publication development, acquisition and placement for each issue.			
Successfully increases profit from subscriptions.			
Successfully handles all communication and work with fulfillment house.			
Measure related to reduction or elimination of debt.			
Recognition from independent business or publishing organization			

(End of Appendix I)



## Acknowledgment of

### 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)

**I hereby acknowledge that I have read and understand all of the Attachment C: Standard State Provisions for Contracts and Grants, have had the opportunity to consult with legal counsel, and hereby state that my business and I agree to all of the same.**

\_\_\_\_\_  
**Duly Authorized Representative of bidding entity**

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