

AGREEMENT FOR INFORMATION TECHNOLOGY PRODUCTS AND SERVICES

This Agreement for Information Technology Products and Services (“Agreement”) is entered into by and between **ACS Enterprise Solutions, LLC**, a New York limited liability company (“ACS”), with offices located at 8600 Harry Hines Blvd., Suite 300, Dallas, TX 75235, and **Town of East Montpelier, VT**, a government entity (“Client”), with offices located at 40 Kelton Road, East Montpelier, VT 05651. ACS and Client (each individually a “party” and collectively the “parties”) agree as follows:

1. TERM

This Agreement will become effective on the date of full execution by the parties (the “Effective Date”) and shall continue for a period of five (5) calendar years, unless otherwise extended or terminated by the parties in accordance with the provisions of this Agreement (the “Term”). At the end of the Term, the parties agree that this Agreement shall automatically be renewed for additional five (5) year periods (each an “Extended Term”), subject to the termination provisions of this Agreement.

2. SERVICES

During the Term of the Agreement, and consistent with the terms and conditions set forth in herein, ACS will provide Client with the information technology products, software and materials (collectively, the “System”), and services (“Services”) described in the Statement of Work, annexed hereto as Schedule A.

3. PAYMENT

Client agrees to pay ACS for the System and Services in accordance with the payment provisions set forth in Schedule A. ACS shall submit an invoice to Client for each payment due, and Client agrees to pay each invoice within thirty (30) calendar days after receipt. The date of payment shall be the date the check is mailed, as evidenced by the postmark.

Specific types of expenses that will be reimbursed by Client are listed in Schedule A. ACS will bear sole responsibility for all other expenses incurred in connection with the delivery of the System and performance of the Services. Expenses will be listed in each invoice. Upon request, ACS will support a request for reimbursement of expenses (other than *per diem* allowances) with receipts or other reasonable documentation.

4. SALES AND USE TAXES

If Client is by law exempt from property taxes or sales and use taxes, those taxes will not be included in invoices submitted to the Client under to this Agreement. ACS may be considered a limited agent of the Client for the sole purpose of purchasing goods or services on behalf of the Client without payment of taxes from which Client is exempt. If ACS is required to pay taxes by determination of a proper taxing authority having jurisdiction over the Products or Services provided under this Agreement, Client agrees to reimburse the ACS for payment of those taxes.

5. DELIVERY AND ACCEPTANCE

ACS will arrange for delivery of the appropriate System components to the Client installation site(s), as set forth in Schedule A. Shipment of the hardware shall be F.O.B. to the receiving point at

each installation site. ACS will pay reasonable transportation and insurance charges for hardware delivered to the receiving point at each installation site. All requirements for acceptance and testing of the System or any System components shall be set forth in Schedule A.

6. CONFIDENTIALITY

With respect to information relating to Client's business which is confidential and clearly so designated ("Client Confidential Information"), ACS will instruct its personnel to keep such information confidential by using the same degree of care and discretion that they use with similar information of ACS which ACS regards as confidential. However, ACS shall not be required to keep confidential any information which: (i) is or becomes publicly available; (ii) is already in ACS' possession; (iii) is independently developed by ACS outside the scope of this Agreement; or (iv) is rightfully obtained from third parties. In addition, ACS shall not be required to keep confidential any ideas, concepts, methodologies, inventions, discoveries, developments, improvements, know-how or techniques developed by ACS in the course of its services hereunder.

Client agrees that ACS' methodologies, tools, ideas, concepts, know-how, structures, techniques, inventions, developments, processes, discoveries, improvements, proprietary data and software programs, and any other information identified as proprietary or confidential by ACS, which may be disclosed to the Client, are confidential and proprietary information ("ACS Confidential Information"). With respect to ACS Confidential Information, the Client shall keep such information confidential by using the same degree of care and discretion that it uses with similar information of its own which Client regards as confidential. However, Client shall not be required to keep confidential any information which: (i) is or becomes publicly available; (ii) is already in Client's possession; (iii) is independently developed by the Client outside the scope of this Agreement and without any reliance on ACS Confidential Information; or (iv) is rightfully obtained from third parties.

ACS and Client shall use each other's confidential information only for the purposes of this Agreement and shall not disclose such confidential information to any third party, other than as set forth herein, or to each other's employees, ACS' permitted subcontractors, or Client's permitted consultants on a need-to-know basis, without the other party's prior written consent.

7. PRODUCT AND SYSTEM OWNERSHIP AND USE RIGHTS

The System provided under this Agreement includes technical information, software programs, equipment, designs, specifications, drawings, documentation, reports, and other materials (individually and collectively "ACS Intellectual Property"). Client understands and agrees that all ACS Intellectual Property (including all software upgrades, modifications, and customizations) provided under this Agreement shall at all times remain the property of ACS. To the extent the System includes third-party software components provided by ACS as part of the System, such third-party software will be subject to the provisions the software licenses provided by those third-party software vendors. The provisions of this Section shall survive termination of this Agreement.

ACS hereby grants to Client a limited, non-exclusive, non-transferable, revocable license to use the ACS Intellectual Property included in the System solely for the internal operations of Client, and only during the Term of the Agreement. ACS represents and warrants that ACS possesses all rights necessary to effectuate the license set forth in this Section. The license granted under this Section does not include the right to grant sublicenses for the ACS Intellectual Property to any third party, including other persons, agencies, or other governmental entities that are not parties to this Agreement unless specifically set forth in Schedule A. Client and its employees and agents will not cause or permit reverse engineering of all or any portion of the ACS Intellectual Property; will not distribute, disclose, loan, market, rent, lease, or

otherwise transfer to any third party any portion of the ACS Intellectual Property without prior written authorization by ACS; and will not export any ACS software products in violation of federal export laws or regulations. The provisions of this Section shall survive termination of this Agreement.

8. OWNERSHIP, USE, AND RETURN OF DATA

All information, records, documents, files, data, and other items relating to the business of Client (including indexes, film, and other data created or acquired by use of the System), whether prepared by Client or ACS or otherwise coming into the possession of ACS in connection with performing the Services or otherwise during the term of this Agreement shall remain the exclusive property of Client. Client may duplicate on electronic media the data entered into the System. Client will retain ownership of all data created by the use of the System. Any requirement for data conversion shall be included in the Services set forth in Schedule A.

9. RESPONSIBILITY FOR DATA BACKUP

Prior to ACS providing the System, Client shall prepare and safeguard back-up copies of all data that will be used in connection with the System. Throughout the Term, Client will be responsible for backing up all data contained in the System on a regular basis (and in all cases, immediately prior to the provision of any warranty or maintenance Services) in accordance with standard industry back-up procedures, as modified by any instructions for data back-up provided by ACS. Under no circumstances will ACS be responsible for the loss of Client data or software.

10. PERFORMANCE AND SYSTEM WARRANTIES

ACS warrants that: (a) the Services will be performed in a professional and workmanlike manner in accordance with generally applicable industry standards; (b) during the Term, any component of the System furnished to Client under this Agreement will be free from material defects and errors that would prevent the documented operational features of the System from functioning when used properly under normal conditions and in accordance with the documentation and instructions for use provided by ACS; and (c) the System delivered by ACS will not infringe on any copyright, patent, trade secret, or other intellectual property rights or proprietary rights of any third party.

The limited System warranty provided pursuant to clause "b" in the preceding paragraph shall not cover, and shall be void as to (i) any System component on which maintenance has been performed by a third party that has not been authorized in writing by ACS; (ii) any System component that has been altered or modified by Client or any third party that has not been authorized to do so in writing by ACS; (iii) any System component that is damaged due to the negligence or misconduct of Client or any third party; (iv) any System component that has been damaged as a result of failure to operate the System in accordance with documentation or operating instructions provided by ACS; or (v) any failure due to a force majeure event or due to exposure to unusual physical or electrical stress. If any component of the System is believed to be defective, Client shall give ACS prompt written notice that identifies each defect with specificity. ACS will investigate and verify each reported defect. Upon verification by ACS of a reported defect, ACS shall (as determined by ACS in the sole discretion of ACS) repair, replace, or otherwise correct each verified defect at no cost to Client.

Neither party shall be responsible for delays or failures in performance as a result of limitations or problems inherent in the use of the Internet and electronic communications; force majeure events, including but not limited to Acts of God, war, terrorism, civil disturbance, labor dispute, weather, or climate change; or other cause beyond the reasonable control of a party.

THE LIMITED WARRANTIES SET FORTH IN THIS SECTION ARE MADE TO CLIENT EXCLUSIVELY AND ARE IN LIEU OF ALL OTHER WARRANTIES. ACS MAKES NO OTHER WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH REGARD TO ANY SYSTEM COMPONENTS OR THE SERVICES PROVIDED UNDER THIS AGREEMENT, IN WHOLE OR IN PART. ACS EXPLICITLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

11. TORT AND PROPERTY DAMAGE CLAIMS

Each party shall defend, indemnify, and hold harmless the other party (and its successors, officers, directors, and employees) from any and all liabilities, claims, and expenses of whatever kind and nature for injury to or death of any person or persons and for loss of or damage to any real or tangible personal property occurring in connection with or in any way incident to or arising under this Agreement, resulting in whole or in part from the negligent acts or omissions of the indemnifying party. The indemnified party shall promptly notify the indemnifying party, in writing, of any claim and shall reasonably cooperate with the indemnifying party in the defense and settlement of the claim. The provisions of this Section shall survive termination of this Agreement.

12. INSURANCE

If ACS performs any of the Services on Client premises, ACS agrees to maintain standard insurance coverage in accordance with its corporate policy. Upon request, ACS will provide evidence of coverage on a standard ACORD form certificate of insurance.

13. RISK OF LOSS OR DAMAGE TO HARDWARE

ACS will bear the risk of loss or damage to any System component while in transit to Client installation site(s). Client will bear all risk of loss or damage to any System component after delivery to the installation site(s), unless the loss or damage is due to the negligence or willful acts of ACS, its employees, agents, or representatives.

14. LIMITATIONS OF LIABILITY

EXCEPT FOR SERVICE FEES AND AMOUNTS EXPRESSLY DUE AND PAYABLE TO ACS HEREUNDER, IN NO EVENT SHALL EITHER PARTY TO THIS AGREEMENT BE LIABLE TO THE OTHER PARTY HEREUNDER FOR ANY CLAIMS, PENALTIES OR DAMAGES, WHETHER IN CONTRACT, TORT, OR BY WAY OF INDEMNIFICATION, IN AN AMOUNT EXCEEDING THE FEES OR OTHER CHARGES PAID BY CLIENT TO ACS DURING THE THREE (3) MONTHS PRECEDING THE CLAIM. UNDER NO CIRCUMSTANCES WILL EITHER PARTY TO THIS AGREEMENT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED AND BASED ON ANY THEORY OF LIABILITY.

15. TERMINATION OF THE AGREEMENT

If ACS materially breaches any of the terms and conditions set forth in this Agreement or fails to perform the obligations set forth in this Agreement and fails to cure the breach or failure within thirty (30) calendar days (or other reasonable period stated in the notice) after receipt of written notice specifying the basis for the breach or failure to perform, Client may terminate this Agreement. Termination by Client shall be effective upon delivery of final payment to ACS of all sums due under this Agreement to the effective date of the termination. Client agrees to discontinue use of all hardware, software, and other

ACS-owned materials no later than the effective date of termination and return the hardware, software, and other ACS-owned materials to ACS within thirty (30) calendar days after termination.

If Client materially breaches any of the terms and conditions set forth in this Agreement or fails to perform the obligations set forth in this Agreement and fails to cure the breach or failure within forty-five (45) calendar days (or other reasonable period stated in the notice) after receipt of written notice specifying the basis for the breach or failure to perform, ACS may terminate this Agreement for breach. Termination by ACS shall be effective upon written notice to Client. Client agrees to discontinue use of all hardware, software, and other ACS-owned materials no later than the effective date of termination and return the hardware, software, and other ACS-owned materials to ACS within thirty (30) calendar days after termination.

Either party may terminate this Agreement at the end of the Term or any Extended Term by providing sixty (60) calendar days written prior notice to the other party of the non-renewal of the Agreement.

This Agreement is subject to termination for convenience upon not less than thirty (30) days written notice to ACS if Client has failed to receive funds for the continued procurement of the Products or Services after every reasonable effort has been made by Client to secure the necessary funding and if no substitute arrangement is made by Client to obtain the same or similar Products or Services from another source.

16. RELATIONSHIP OF THE PARTIES

This Agreement shall not constitute, create, give effect to, or otherwise imply a joint venture, partnership, or business organization of any kind. ACS and Client are independent parties, and neither party shall act as an agent for or partner of the other for any purpose. Nothing in this Agreement shall grant to either party any right to make any commitments of any kind for or on behalf of the other party without the prior written consent of the other party. ACS shall not be restricted from providing products or performing services for others and shall not be bound to Client except as provided under this Agreement.

17. NOTICES TO PARTIES

Unless otherwise specified in this Agreement, all notices, requests, or consents required under this Agreement to be given in writing shall be transmitted by facsimile, hand delivered, or mailed (first class postage prepaid) to the person indicated below. Each party shall notify the other, in writing, of any change in the designated addressee or related information.

To ACS:

ACS Enterprise Solutions, LLC
8600 Harry Hines Blvd., Suite 300
Dallas, TX 75235

Attn: Hubert P. Auburn
Vice President

Telephone: 214-956-6365
Facsimile: 214-902-5058

To Client:

Town of East Montpelier
40 Kelton Road
East Montpelier, VT 05651

Attn: C. Bruce Johnson
Town Administrator

Telephone: 802-223-3313
Facsimile:

18. DISPUTE RESOLUTION

It is the intent of the parties that any disputes arising under this Agreement be resolved expeditiously, amicably, and at the level within each party's organization that is most knowledgeable about the relevant issues. The parties understand and agree that the procedures outlined in this Section are not intended to supplant the routine handling of inquiries and complaints through informal contact of the parties. Accordingly, for purposes of the procedures set forth in this Section, a "dispute" is a disagreement that the parties have been unable to resolve by the normal and routine channels ordinarily used for resolving problems. Pending the final disposition of a dispute other than a dispute arising out of the termination of this Agreement by either party, the parties shall, at all times, proceed diligently with the performance of this Agreement. Before either party seeks any remedies available at law, the parties shall sequentially follow the procedures set forth below:

- (a) The complaining party will notify the other party in writing of the reasons for the dispute, and the parties will work together to resolve the matter as expeditiously as possible. A formal written response will not be required, but the responding party may put its position in writing in order to clarify the issues or suggest possible solutions.
- (b) If the dispute remains unresolved fifteen (15) calendar days after the delivery of the complaining party's written notice, a senior representative of ACS and the Client (or a representative of Client who has authority to act to resolve the dispute) shall meet or participate in a telephone conference call within ten (10) business days of a request for the meeting or conference call by either party to resolve the dispute.
- (c) If the parties are unable to reach a resolution of the dispute after following these procedures, or if either party fails to participate when requested, then the parties may pursue any remedies available under this Agreement.

19. HEADINGS

The section headings used in this Agreement are merely for reference and have no independent legal meaning and impose no obligations or conditions on the parties.

20. SEVERABILITY

If all or part of any term or condition of this Agreement, or the application of any term or condition of this Agreement, is determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of the terms and conditions of this Agreement (other than those portions determined to be invalid or unenforceable) shall not be affected, and the remaining terms and conditions (or portions of terms or conditions) shall be valid and enforceable to the fullest extent permitted by law. If a judicial determination prevents the accomplishment of the purpose of this Agreement, the invalid term or condition (or portions of terms or conditions) shall be restated to conform to applicable law and to reflect as nearly as possible the original intention of the parties.

21. ASSIGNMENT

This Agreement shall be binding on the parties and each party's successors and assigns. ACS may assign or otherwise transfer this Agreement and any rights, duties, or obligations under this Agreement to a corporate parent, subsidiary, or affiliate of ACS. Any other attempt to make an assignment without prior written consent of the Client shall be void.

22. WAIVER OR FOREBEARANCE

Any delay or failure of either party to insist upon strict performance of any obligation under this Agreement or to exercise any right or remedy provided under this Agreement shall not be a waiver of that party's right to demand strict compliance, irrespective of the number or duration of any delay(s) or failure(s). No term or condition imposed on either party under this Agreement shall be waived and no breach by either party shall be excused unless that waiver or excuse of a breach has been put in writing and signed by both parties. No waiver in any instance of any right or remedy shall constitute waiver of any other right or remedy under this Agreement. No consent to or forbearance of any breach or substandard performance of any obligation under this Agreement shall constitute consent to modification or reduction of the other obligations or forbearance of any other breach.

23. INJUNCTIVE RELIEF

The parties recognize that a remedy at law for a breach of the provisions of this Agreement relating to proprietary and confidential information; the unauthorized use of any trademark, copyright, or other intellectual property of ACS; or solicitation of ACS employees or business customers may not be adequate for protection of ACS, and accordingly ACS shall have the right to seek injunctive relief to enforce the provisions of this Agreement, in addition to any other relief and remedies available.

24. CUMULATIVE REMEDIES

All remedies available to either party for breach of this Agreement by the other party are and shall be deemed cumulative and may be exercised separately or concurrently. The exercise of a remedy shall not be an election of that remedy to the exclusion of other remedies available at law or in equity.

25. SURVIVAL

Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement, will survive expiration or termination of this Agreement.

26. GOVERNING LAW

This Agreement shall be governed by, interpreted, construed, and enforced in accordance with the laws of the State of Vermont, without reference to the principles of conflict of laws. Lawsuits brought solely for injunctive relief may be brought in any court of competent jurisdiction.

27. ENTIRE AGREEMENT

The contents of this Agreement (including the Statement of Work and any other schedules or attachments to this Agreement that are referred to and incorporated in this Agreement by reference) constitute the entire understanding and agreement between the parties and supersede any prior agreements, written or oral, that are not specifically referenced and incorporated in this Agreement. The terms and conditions of this Agreement shall not be changed or modified except by written agreement signed by both parties.

IN WITNESS WHEREOF, the undersigned authorized representatives of ACS and the Client have executed this Agreement.

ACS Enterprise Solutions, LLC

By: 

Printed Name: Hubert P. Auburn

Title: Vice President

Date: 4/25/13

Town of East Montpelier, VT

By: 

Printed Name: C. Bruce Johnson

Title: Town Administrator

Date: 5/8/13

**SCHEDULE A
STATEMENT OF WORK**

This Statement of Work is incorporated in the Agreement for Products and Services (“Agreement”) by and between ACS Enterprise Solutions, LLC (“ACS”) and Town of East Montpelier, VT (“Client”).

A. SCOPE OF SERVICES

ACS RESPONSIBILITIES

ACS shall perform the following Services for Client:

1. One (1) additional full set of licenses for customer owned workstations.
2. Connection of Scanning/Cashiering/Indexing System to existing Town Fileserver.
3. Online system with Automated Fees and automatic assignment of book and page numbers and validation, Electronic Imaging and Indexing of Land Records with Public Inquiry.
4. All equipment as specified on the following page.
5. Archival approved microfilm created from your images.
6. 24# punched linen paper, and binders for Land book prints.
7. Monthly, year-to-date and yearly consolidated index prints included with service.
8. Index binders and tab sheets.
9. Index data conversion of current index.
10. Xerox will do all cabling required to connect all Xerox supplied equipment. (Customer is responsible for building network cabling and ports.)
11. Hardware maintenance throughout contract – 24 hr. replacement on system critical components.
12. Software maintenance throughout contract – including software modifications/enhancements and operating system maintenance / upgrades.
13. Single Source accountability for system hardware, software, supplies, procedures business knowledge, e-business, index prints, binders, and microfilm services.
14. Xerox Toll Free Support for all hardware and software support or E-mail support.
15. e-Supplies can be ordered at ACS.Supplies@acs-inc.com.
16. Customer Database has four (4) levels of data redundancy – 1) on primary server, 2) off-site backup, 3) on backup media, 4) paper index backup/microfilm of images.
17. Unlimited Training on system hardware, software and application.
18. Media for system backups and transmits.
19. Certified Operators in Xerox Data Center handling all customer data.
20. Certified Data Center.

CLIENT RESPONSIBILITIES

1. Computer paper for daily indexing use.
2. Toner Cartridges and Printer Ribbons.
3. Scanner pick rollers and pad assemblies.
4. Installation of electrical outlets (if required).
5. Installation of network cabling and ports.

HARDWARE

Component	Quantity	Description
Dell PowerEdge T110	1	Image and Data Base Server
Dell OptiPlex 9010 Small Form Factor w/ 23" LCD	2	Public Workstations
Dell OptiPlex 9010 Small Form Factor w/ 23" LCD	1	Cash Workstation
APG	1	Cash Drawer
Fujitsu 6230Z	1	Scanner
APC Back-UPS 550	1	UPS for Workstation
APC Back-UPS 1500	1	UPS for Server
APC SurgeArrest Performance	3	Surge Protectors
Cisco ASA 5505	1	Firewall Appliance
Dell PowerConnect 2808 Switch	1	Network Switch
Seagate 1 TB Hard Drive	1	External Hard Drive
Seagate 500 GB Hard Drive	6	External Hard Drives
Kingston 8 GB Flash Drive	5	Backup Flash Drives
IOGear USB KVM	1	KVM Switch
Hewlett Packard LaserJet P3015X DTN	1	Networked Laser Printer
CognitiveTPG Axiohm A760	1	Receipt Printer/Validator

SOFTWARE

Microsoft Server 2008R2
Microsoft Windows 7 Professional
McAfee Anti-virus
Symantec Ghost
Novastor Backup
PDF Factory Pro

B. ACCEPTANCE AND TESTING

Client shall have ten (10) business days after notification by ACS that the System is ready for acceptance to inspect and accept the System delivered and installed by ACS or decline to accept the System. If Client declines to accept all or any part of the System, Client will provide ACS a written description of the deficiencies and a reasonable opportunity to cure those deficiencies.

Client will indicate acceptance of the System in writing. However, if client fails to decline to accept the System and deliver a written list of deficiencies to ACS within ten (10) business days after receipt of notice of delivery, the System will be deemed to have been accepted by Client.

Client understands and agrees that minor defects (i.e, defects that do not inhibit the System from operating in substantial accordance with ACS specifications) shall not constitute grounds for declining to accept the System. Minor defects may be corrected in subsequent releases of the System provided by ACS as part of ongoing warranty or maintenance of the System.

C. PAYMENT AND RATES

ACS will invoice Town of East Montpelier, VT for the identified services based on the following price schedule:

20/20 Perfect Vision System \$685.00 per month for 60 months