

# STATE OF VERMONT



## REQUEST FOR PROPOSALS for an INDEPENDENT AUDITOR of VERMONT ENERGY EFFICIENCY UTILITY FUND

STATE OF VERMONT  
REQUEST FOR PROPOSALS  
FOR AN  
INDEPENDENT AUDITOR  
OF  
VERMONT ENERGY EFFICIENCY UTILITY FUND

RFP RELEASED ON: May 8, 2024

QUESTIONS ON RFP: May 22, 2024

PROPOSAL DUE DATE: May 29, 2024, by 2:30 PM

This RFP is issued by:

The State of Vermont  
Public Utility Commission

Proposals must be delivered by email to:  
Karen Hutchinson, Business Manager  
Vermont Public Utility Commission  
[Puc.businessmanager@vermont.gov](mailto:Puc.businessmanager@vermont.gov)

**Request for Proposals for Independent Auditor of  
Vermont Energy Efficiency Utility Fund**

The Vermont Public Utility Commission (“Commission”) is soliciting proposals from independent accounting firms to perform annual fiscal year audits of the financial statements of the Vermont Energy Efficiency Utility Fund (“EEU Fund”) for the fiscal year 2024, for the 12-months ending June 30, 2024, and for the fiscal year 2025, for the 12-months ending June 30, 2025.<sup>1</sup>

The primary responsibility of the contracted independent auditor will be to audit the accounts of the EEU Fund (including component units) in accordance with Generally Accepted Government Auditing Standards. The fiscal year audits are to be finalized and an audit opinion rendered on or before October 1 of each year. In addition to providing an audit report on the EEU Fund financial statements, the contracted auditor will be required to issue a written report on internal controls and compliance of the EEU Fund’s fiscal agents and the Regional Greenhouse Gas Initiative (“RGGI”) trustee. Requirements of the contract related to the work to be performed under the engagement and performance measures are set out in Attachment A to this RFP.

### **Organizational Structure**

The **Vermont Public Utility Commission** is a quasi-judicial body responsible for supervising the rates, quality of service, and overall financial management of Vermont utilities. The Commission also seeks to promote state utility policies that best serve the long-term interest of Vermont utility ratepayers with the goal of the provision of high-quality public utility service in Vermont at the lowest present-value life-cycle cost, including environmental and economic costs.

The **Vermont Department of Public Service** (“Department”) is responsible for performing the State of Vermont’s energy planning and public advocacy. It is an executive branch agency independent of the Commission and participates as the public advocate in proceedings before the Commission.

### **Background**

The EEU Fund is a designated ratepayer fund used to support energy efficiency programs. The monies in the EEU Fund are not available to meet the general obligations of the State. The EEU Fund was established pursuant to 30 V.S.A. § 209(d) to provide funding for electric, natural gas, and thermal-energy-and-process-fuels (“TEPF”) energy efficiency programs and services developed and administered by the Vermont Energy Efficiency Utilities (“EEUs”).

The EEU Fund consists of revenue from the energy efficiency charge on customer bills collected by electric and natural gas distribution utilities, revenue from EEU participation in the Forward Capacity Market, RGGI auction proceeds, and investment income. The total operating revenue of the EEU Fund for the 2022 fiscal year was approximately \$66.4 million. Funds collected through the EEU Fund are distributed to the EEUs to deliver electric, natural gas, and TEPF energy efficiency services to residential and business customers in Vermont.

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<sup>1</sup> Note that in any contract resulting from this request for proposals, the Commission may exercise an option to extend the term of the contract to include audits of the EEU Fund for fiscal years 2026 and 2027.

There are three EEU's: Vermont Energy Investment Corporation ("VEIC") operating as Efficiency Vermont, the City of Burlington Electric Department ("BED"), and Vermont Gas Systems, Inc. ("VGS").<sup>2</sup> Efficiency Vermont provides electric and TEPF efficiency services to all portions of the state except for BED's service territory. BED provides electric and TEPF efficiency services in its service territory. VGS provides natural gas efficiency services in its service territory. The EEU's each serve separately as fiscal agents, managing and disbursing EEU funds associated with their territories.

The contracted independent auditor will need to be familiar with the sources and uses of funds in the EEU Fund and relevant laws, orders, agreements, and other documents related to the EEU Fund and Vermont energy efficiency programs.

### *EEU Fund Sources and Uses*

Pursuant to 30 V.S.A. § 209, all electric and natural gas distribution utilities offering services to the citizens of Vermont are required to include on their customers' bills a volumetric charge known as the energy efficiency charge ("EEC"). The EEC is determined annually by the Commission. The electric and natural gas utilities are required to send the billed EEC amounts to the EEU Fund each month. There are currently 17 distribution utilities that contribute to and/or receive monies from the EEU Fund.

Efficiency Vermont and BED are authorized by statute to participate in the ISO-New England Forward Capacity Market ("FCM"). Demand resources may bid energy efficiency savings into the FCM, resulting in capacity payments. The capacity payments received by VEIC and BED for participation in the FCM are deposited into the EEU Fund. These funds may be used by the EEU's only for TEPF services.

The EEU Fund also receives proceeds related to Vermont's participation in RGGI. RGGI is a cooperative effort by several Northeastern and Mid-Atlantic states, including Vermont, to reduce carbon dioxide emissions. Central to the RGGI program is the implementation of a multi-state auction and cap-and-trade program. Vermont auction proceeds, after administrative expenses, are deposited into the EEU Fund. These funds are restricted to TEPF services.

The Commission also is authorized by statute to appoint a RGGI Trustee to receive, hold, bank, and sell tradable carbon credits created under the program. VEIC has been appointed by the Commission to serve as the RGGI Trustee. The RGGI Trustee receives Vermont's auction proceeds and transfers them to the EEU Fund.

More information regarding the EEU Fund and the EEU's (including program descriptions, relevant documents, and Commission orders) can be found on the Commission's website at <http://puc.vermont.gov/energy-efficiency-utility-program>.

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<sup>2</sup> VEIC, BED, and VGS have Orders of Appointment from the Commission to serve as EEU's.

## **Information Management**

The contracted independent auditor will provide the Commission with electronic copies of its reports and work papers upon request. Any information collected by the independent auditor pursuant to this contract must be made available to the Commission and its authorized employees and contractors upon request of the Commission or its staff.

If the independent auditor receives a request to disclose confidential information from a person or organization other than the Commission, the Vermont Department of Public Service (“Department”), or their authorized employees, the independent auditor must deny the request and inform the requester that such requests for the information may be filed at the Commission. The Commission will then determine whether the information should be disclosed.

The independent auditor must inform the Commission of any delay in the availability of information required from the Fiscal Agents to complete the audit as soon as possible in order to avoid delays in the completion of the audit.

## **Conflicts of Interest**

The independent auditor will not be permitted to engage in business activities that create a conflict of interest or appearance thereof with the performance of the audit. Accordingly, the independent auditor, its employees, and its subcontractor(s) will be required to promptly and fully inform the Commission of any business activities and/or relationships that a reasonable person, fully acquainted with the facts and circumstances, could reasonably conclude might unfairly disadvantage another party or involve a conflict of interest. The independent auditor, its employees, and its subcontractor(s) will be expected to abide by the Commission’s reasonable determination as to whether such activities or relationships fall within the terms of this Paragraph.

The independent auditor will be required to affirm that neither it, nor any of its personnel has or presently expects to have any beneficial, contractual, or business relationship with the Department, BED, VEIC, VGS, any Vermont electric distribution utility, or the fiscal agents for the EEU Fund that will be affected by any issues or matter it has been asked to evaluate. The independent auditor must further affirm that it and its personnel and subcontractor(s) will not develop, pursue, or engage in any such beneficial, contractual, or business relationships with the Department, BED, VEIC, VGS, any Vermont electric distribution utility, or the fiscal agents for the EEU Fund throughout the term of any contract with the Commission, and for six months thereafter, without the written permission of the Commission. During the term of the contract, the independent auditor, its employees, and its subcontractor(s) may not advocate before the Commission on behalf of any party on any substantive matter related to the EEUs.

## **Terms of Auditor’s Services**

All responses to this RFP must specify: (1) the personnel who would work on the audits, and the qualifications of those personnel; (2) the hourly rate of all personnel involved in the preparation of the report; (3) references from prior experience; and (4) a maximum dollar amount that the Independent Auditor would charge for the audits.

The contract for services must include the State Contract Provisions set forth in the State of Vermont Agency of Administration Bulletin 3.5, Appendix C, a copy of which is attached.

Responses will be evaluated by the Commission based on the following criteria:

- Responsiveness of the bid to the requirements of the RFP (25%);
- The related experience of the auditor with references (25%);
- The qualifications of the auditor and audit staff (25%); and
- The overall cost of the auditor's services (25%).

### **Questions Regarding the RFP**

Any questions regarding the RFP and its requirements must be submitted to Karen Hutchinson, Business Manager, via email ([puc.businessmanager@vermont.gov](mailto:puc.businessmanager@vermont.gov)) no later than Monday, April 8, 2024.

### **Deadlines for Responses**

Responses to this RFP must be submitted to Karen Hutchinson, Business Manager, via email ([puc.businessmanager@vermont.gov](mailto:puc.businessmanager@vermont.gov)) no later than Wednesday, April 24, 2024, at 4:30 p.m.

The Commission will review the responses and then select an independent auditor to contract with and conduct the audits.

Responses received will be considered public records, available for public inspection, after a final contract for these services has been executed.

### **State Rights**

The State of Vermont reserves the following rights with regard to this RFP:

- (a) To accept or reject any and all bids, in whole or in part, with or without cause in the best interest of the State;
- (b) To waive technicalities in submissions; (a technicality is a minor deviation from the requirements of an RFP that does not impact the substantive terms of the bid/RFP and can be considered without a material impact on the RFP process, etc.). A late bid is NOT considered a technicality.;
- (c) To conform the selection process, award and/or proposed contract language, at any time during the procurement, to comply with state or federal statute, regulation, or grant requirements;

- (d) To make purchases outside of the awarded Contracts where it is deemed in the best interest of the State; and
- (e) To obtain clarification or additional information.

## **ATTACHMENT A**

### **Scope of Work and Performance Measures**

The Vermont Public Utility Commission (the “Commission”) has appointed Vermont Energy Investment Corporation (“VEIC or “Efficiency Vermont”), the City of Burlington Electric Department (“BED”), and Vermont Gas Systems, Inc. (“VGS”) to serve as the fiscal agents in their respective territories for the Vermont Energy Efficiency Utility Fund (“EEU Fund”). Efficiency Vermont has also been appointed by the Commission to serve as the Regional Greenhouse Gas Initiative (“RGGI”) trustee.

The audits of the EEU Fund will include: (1) a review of deposits and disbursements of RGGI proceeds; (2) audits of the three EEUs’ use of their EEU funds; (3) audits of the remittances from the distribution utilities to the three EEU Funds; (4) supplemental schedules prepared per the Vermont Department of Finance & Management requirements with object level detail for use in the Statement of Revenues, Expenses, and Changes in Net Position, and Statement of Cash Flows prepared by the State’s auditors; and (5) an analysis and professional accountancy opinion letter addressing whether the EEU Fund constitutes funds that they should be reviewed using generally accepted accounting principles as applicable to governmental units using Governmental Accounting Standards Board standards or another non-governmental accounting standard.

#### **I. Audits to be performed**

The auditor selected by the Commission (the “Contractor”) will audit the financial statements of the EEU Fund for the fiscal year of 2024, ending June 30, 2024, and the fiscal year of 2025, ending June 30, 2025. If the Commission extends the contract, the audit will include fiscal years 2026 and 2027.

#### **II. Reports to be provided**

- a. For each fiscal year, the Contractor will issue an Independent Auditors’ Report on the financial statements in accordance with *Government Auditing Standards* and a Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*. The audits will be made in accordance with generally accepted accounting principles, financial accounting standards, and government auditing standards, and will include tests of the EEU Fund’s accounting records and other procedures necessary to enable the Contractor to express an opinion on both funds’ general purpose financial statements.
- b. If during an audit the Contractor becomes aware that the EEU Fund is subject to an audit requirement that is not encompassed in the terms of this engagement, the Contractor will communicate to the Commission and the Fiscal Agents that an audit in accordance with U.S. generally accepted auditing standards and the standards for



financial audits contained in *Government Auditing Standards* may not satisfy the relevant legal, regulatory, or contractual requirements.

- c. Accounting standards generally accepted in the United States provide for certain required supplementary information (RSI) to supplement the EEU Fund's basic financial statements. As part of Contractor's engagement, the Contractor will apply certain limited procedures to the EEU Fund's RSI in accordance with auditing standards generally accepted in the United States of America. These limited procedures will consist of inquiries of the Commission or the Fiscal Agents regarding the methods of preparing the information and comparing the information for consistency with the responses of the Commission or the Fiscal Agents to the Contractor's inquiries, the basic financial statements, and other knowledge Contractor obtained during its audit of the basic financial statements. Contractor will not express an opinion or provide any assurance on the information because the limited procedures do not provide the Contractor with sufficient evidence to express an opinion or provide any assurance.
- d. Contractor will express an opinion as to whether the basic financial statements of the EEU Fund are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles and report on the fairness of the additional information referred to in the RSI.
- e. Contractor will provide reports (that do not include an opinion) on internal control related to the financial statements and compliance with laws, regulations, and the provisions of contracts or grant agreements, noncompliance with which could have a material effect on the financial statements as required by Government Auditing Standards. The report on internal control and compliance will include a statement that the report is intended solely for the information and use of the Commission, other management representatives of the State of Vermont, and relevant legislative or regulatory bodies and is not intended to be and should not be used by anyone other than these specified parties.

### **III. Audit Procedures**

- a. Contractor's procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, tests of the physical existence of inventories as appropriate, and direct confirmation of receipts and receivables, cash balances, liabilities, and other items by correspondence with selected distribution utilities, creditors, banks, and other appropriate parties. The contractor may request written representations from the Fiscal Agents' attorneys as part of the engagement; any costs that the Fiscal Agents might incur in responding to this inquiry will not be borne by the Contractor. At the conclusion of each audit, Contractor will also request certain written representations from the Fiscal Agents about the financial statements and related matters.

- b. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, Contractor's audits will involve judgment about the number of transactions to be examined and the areas to be tested. Contractor will plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. However, because of the concept of reasonable assurance and because Contractor will not perform a detailed examination of all transactions, there is a risk that material errors, irregularities, or illegal acts, including fraud or defalcations, may exist and not be detected by Contractor. Contractor will advise the Commission and the Fiscal Agents, however, of any matters of that nature that come to its attention.
- c. The Commission will cooperate fully with the Contractor in connection with the audit. The Commission, through the Fiscal Agents, will provide Contractor with the basic information required for the audit. The Fiscal Agents are responsible for the accuracy and completeness of that information. The Contractor recognizes the confidential nature of the quasi-judicial deliberations of the Commission and its staff and agrees to respect and protect the confidentiality of any information the Contractor receives from the Commission or the Fiscal Agents that bears on those deliberations. The contractor must inform the Commission of any delay in the availability of information required from the Fiscal Agents to complete the audits as soon as possible in order to avoid delays in the completion of the audits.
- d. Contractor will use generally accepted accounting principles, financial accounting standards and government auditing standards that will include tests of the accounting records and other procedures Contractor considers necessary in order to enable Contractor to express an opinion on the EEU Fund's general purpose financial statements.
- e. Contractor will plan its audits using a risk-based approach after gaining an understanding of the EEU Fund and the Fiscal Agents' management thereof, including all internal controls. The Contractor will use inquiries of the Commission or the Fiscal Agents, analytical procedures, and observation and inspection to make this assessment. Contractor will consider risks to classes of accounts or account groups at the assertion level and plan its audits to address those risks, based on Contractor's assessment of materiality, using analytical and substantive procedures. The nature, timing, and extent of Contractor's procedures will be based on Contractor's original risk assessment and Contractor's evaluation of the sufficiency and appropriateness of the audit evidence obtained in order to reduce the risk of material misstatement to an acceptably low level.
  - i. Contractor's audits will include obtaining an understanding of the EEU Fund and the Fiscal Agents' management thereof, including internal controls, sufficient to assess the risks of material misstatement of the

financial statements and to design the nature, timing, and extent of further audit procedures. Tests of controls may be performed to test the effectiveness of certain controls that Contractor considers relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from illegal acts and other noncompliance matters that have a direct and material effect on the financial statements. Contractor's tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in Contractor's report on internal control issued pursuant to *Government Auditing Standards*.

- ii. As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, Contractor will perform tests of the EEU Fund's compliance with the provisions of applicable laws, regulations, contracts, agreements, and grants. However, the objective of Contractor's audit will not be to provide an opinion on overall compliance and Contractor will not express such an opinion in its report on compliance issued pursuant to *Government Auditing Standards*.
  - iii. During the audits, Contractor will communicate to the Commission and the Fiscal Agents all matters related to internal control that are required to be communicated under AICPA professional standards and *Government Auditing Standards*.
- f. The audit must recognize that the EEU Fund includes deposits from multiple sources and disbursements to multiple entities, including deposits of proceeds from the RGGI auctions. Contractor understands the proceeds from the RGGI auctions are not immediately recognized as revenue due to the Commission's process for determining administrative costs associated with RGGI program implementation.

#### **IV. Performance measures**

- a. The Commission will consider the following performance measures when evaluating the Contractor's performance under this contract:
  - i. Whether the Contractor submits each audit by the contract deadline.
  - ii. Whether the Contractor provides well-written, clear, and thorough audits.
- b. Contractor must provide the Commission with a comprehensive status report of its audit work at least once during each audit period to facilitate completion of the audits in a timely manner in accordance with the following schedule:
  - August 19, 2024, deadline for Status Report on the Audit for fiscal year 2024;

- August 18, 2025, deadline for the Status Report on the Audit for fiscal year 2025.
- c. Contractor must submit each completed audit to the State in accordance with the following schedule:
- October 1, 2024, deadline for the Audit for fiscal year 2024;
  - October 1, 2025, deadline for the Audit for fiscal year 2025.

These deadlines assume that Contractor has received all information necessary to conduct the audits and has taken reasonable measures to receive the information in a timely manner. The Contractor must inform the Commission of any delay in the availability of information required from the Fiscal Agents to complete the audits as soon as possible in order to avoid delays in the completion of the audits.

**PRICE QUOTATION FORM**

A. Bidder selected will be compensated on a time and material basis. Please indicate the following:

- (1) Fees for staff time, showing the level of staff to be assigned, titles, and hourly rates;
- (2) Travel expenses, including estimated transportation costs, lodging and subsistence, including all-in costs to attend meetings in Vermont, or, alternatively, a statement that the entire scope of work can be performed virtually; and
- (3) Description of all overhead and other costs that may be billed.
- (4) Maximum dollar amount that would be charged for the audits.

B. Hourly Labor Rates:

Service Category/Title of Positions	Hourly Rate
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$

C. Travel expenses:

Travel Expense	Rate
	\$
	\$
	\$

D. Description of all overhead and other costs:

E. Maximum dollar amount that would be charged for the audits: \_\_\_\_\_

Name of Bidder: \_\_\_\_\_

Signature of Bidder: \_\_\_\_\_ Date: \_\_\_\_\_

**ATTACHMENT C: STANDARD STATE PROVISIONS FOR CONTRACTS AND GRANTS****REVISED DECEMBER 7, 2023**

**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. Where an authorized individual is either required to click-through or otherwise accept, or made subject to, any electronic terms and conditions to use or access any product or service provided hereunder, such terms and conditions are not binding and shall have no force or effect. Further, any terms and conditions of Party’s invoice, acknowledgment, confirmation, or similar document, shall not apply, and any such terms and conditions on any such document are objected to without need of further notice or objection.

**3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial:** This Agreement will be governed by the laws of the State of Vermont without resort to conflict of laws principles. 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 regarding its performance under this Agreement. Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

**4. Sovereign Immunity:** The State reserves all immunities, defenses, rights, or actions arising out of the State’s sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State’s immunities, defenses, rights, or actions shall be implied or otherwise deemed to exist by reason of the State’s entry into this Agreement.

**5. No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the State withhold any state or Federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.

**6. Independence:** The Party will act in an independent capacity and not as officers or employees of the State.

**7. Defense and Indemnity:**

- A.** 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.
- B.** 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.
- C.** The Party shall indemnify the State and its officers and employees if the State, its officers, or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.
- D.** Notwithstanding any contrary language anywhere, in no event shall the terms of this Agreement or any document furnished by the Party in connection with its performance under this Agreement obligate the State to (1) defend or indemnify the Party or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys’ fees, collection

costs or other costs of the Party or any third party.

**8. Insurance:** During the term of this Agreement, Party, at its expense, shall maintain in full force and effect the insurance coverages set forth in the Vermont State Insurance Specification in effect at the time of incorporation of this Attachment C into this Agreement. The terms of the Vermont State Insurance Specification are hereby incorporated by reference into this Attachment C as if fully set forth herein. A copy of the Vermont State Insurance Specification is available at: <https://aoa.vermont.gov/Risk-Claims-COI>.

**9. Reliance by the State on Representations:** All payments by the State under this Agreement will be made in reliance upon the accuracy of all representations made by the Party in accordance with this Agreement, including but not limited to bills, invoices, progress reports, and other proofs of work.

**10. False Claims Act:** Any liability to the State under the Vermont False Claims Act (32 V.S.A. § 630 et seq.) 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. Use and Protection of State Information:**

- A. As between the State and Party, "State Data" includes all data received, obtained, or generated by the Party in connection with performance under this Agreement. Party acknowledges that certain State Data to which the Party may have access may contain information that is deemed confidential by the State, or which is otherwise confidential by law, rule, or practice, or otherwise exempt from disclosure under the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq. ("Confidential State Data").
- B. With respect to State Data, Party shall:
  - i. take reasonable precautions for its protection;
  - ii. not rent, sell, publish, share, or otherwise appropriate it; and
  - iii. upon termination of this Agreement for any reason, Party shall dispose of or retain State Data if and to the extent required by this Agreement, law, or regulation, or otherwise requested in writing by the State.
- C. With respect to Confidential State Data, Party shall:
  - i. strictly maintain its confidentiality;
  - ii. not collect, access, use, or disclose it except as necessary to provide services to the State under this Agreement;
  - iii. provide at a minimum the same care to avoid disclosure or unauthorized use as it provides to protect its own similar confidential and proprietary information;
  - iv. implement and maintain administrative, technical, and physical safeguards and controls to protect against any anticipated threats or hazards or unauthorized access or use;
  - v. promptly notify the State of any request or demand by any court, governmental agency or other person asserting a demand or request for Confidential State Data so that the State may seek an appropriate protective order; and
  - vi. upon termination of this Agreement for any reason, and except as necessary to comply with subsection B.iii above in this section, return or destroy all Confidential State Data remaining in its possession or control.
- D. If Party is provided or accesses, creates, collects, processes, receives, stores, or transmits Confidential State Data in any electronic form or media, Party shall utilize:
  - i. industry-standard firewall protection;
  - ii. multi-factor authentication controls;
  - iii. encryption of electronic Confidential State Data while in transit and at rest;
  - iv. measures to ensure that the State Data shall not be altered without the prior written consent of the State;
  - v. measures to protect against destruction, loss, or damage of State Data due to potential environmental hazards, such as fire and water damage;

- vi. training to implement the information security measures; and
  - vii. monitoring of the security of any portions of the Party's systems that are used in the provision of the services against intrusion.
- E. No Confidential State Data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside the United States, except with the express written permission of the State.
- F. Party shall notify the State within twenty-four hours after becoming aware of any unauthorized destruction, loss, alteration, disclosure of, or access to, any State Data.
- G. State of Vermont Cybersecurity Standard Update: Party confirms that all products and services provided to or for the use of the State under this Agreement shall be in compliance with State of Vermont Cybersecurity Standard Update in effect at the time of incorporation of this Attachment C into this Agreement. The State of Vermont Cybersecurity Standard Update prohibits the use of certain branded products in State information systems or any vendor system, and a copy is available at: <https://digitalservices.vermont.gov/cybersecurity/cybersecurity-standards-and-directives>
- H. In addition to the requirements of this Section 12, Party shall comply with any additional requirements regarding the protection of data that may be included in this Agreement or required by law or regulation.

**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 this 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, and shall include this provision in all subcontracts for work performed in Vermont. 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. Offset:** The State may offset any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any offset of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided in 32 V.S.A. § 3113.

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

**17. Taxation of Purchases:** All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

**18. Child Support:** (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date this Agreement is signed, Party is not under an obligation to pay child support or is in good standing with respect to or in full compliance with a plan to pay any and all child support payable under a support order. 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), as amended by Section 17 of Act No. 142 (2010) and by



Section 6 of Act No. 50 (2011).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 (“False Claims Act”); Section 11 (“Whistleblower Protections”); Section 12 (“Confidentiality and Protection of State Information”); Section 14 (“Fair Employment Practices and Americans with Disabilities Act”); Section 16 (“Taxes Due the State”); Section 18 (“Child Support”); Section 20 (“No Gifts or Gratuities”); Section 22 (“Certification Regarding Debarment”); Section 30 (“State Facilities”); and Section 32.A (“Certification Regarding Use of State Funds”).

**20. No Gifts or Gratuities:** Party shall not give title or possession of anything of substantial value (including property, currency, travel, and/or education programs) to any officer or employee of the State during the term of this Agreement.

**21. Regulation of Hydrofluorocarbons:** Party confirms that all products provided to or for the use of the State under this Agreement shall not contain hydrofluorocarbons, as prohibited under 10 V.S.A. § 586.

**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: <https://bgs.vermont.gov/purchasing-contracting/debarment>.

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

**24. Vermont Public Records Act:** Party acknowledges and agrees that this Agreement, any and all information obtained by the State from the Party in connection with this Agreement, and any obligations of the State to maintain the confidentiality of information are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 *et seq.*

**25. Force Majeure:** Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lockouts) (“Force Majeure”). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

**26. Marketing:** Party shall not use the State’s logo or otherwise refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.

**27. Termination:**

- A. Non-Appropriation:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel this Agreement at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement 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 Agreement immediately, and the State shall have no obligation to pay Party from State revenues.
- B. Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party’s notice or such longer time as the non-breaching party may specify in the notice.
- C. Termination Assistance:** Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

**28. Continuity of Performance:** In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.

**29. No Implied Waiver of Remedies:** Either party's delay or failure to exercise any right, power, or remedy under this Agreement shall not impair any such right, power, or remedy, or be construed as a waiver of any such right, power, or remedy. All waivers must be in writing.

**30. State Facilities:** If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party's performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to, and use of, State facilities, which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

**31. Requirements Pertaining Only to Federal Grants and Subrecipient Agreements:** If this Agreement is a grant that is funded in whole or in part by Federal funds:

- A. Requirement to Have a Single Audit:** The Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the Federal Audit Clearinghouse within nine months. If a single audit is not required, only the Subrecipient Annual Report is required. A Single Audit is required if the subrecipient expends \$750,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.
- B. Internal Controls:** In accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework" issued by the Committee of Sponsoring Organizations of the Treadway Commission.
- C. Mandatory Disclosures:** In accordance with 2 CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

**32. Requirements Pertaining Only to State-Funded Grants:**

- A. Certification Regarding Use of State Funds:** If Party is an employer and this Agreement is a State-funded grant in excess of \$1,000, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.
- B. Good Standing Certification (Act 154 of 2016):** If this Agreement is a State-funded grant, Party hereby represents: (i) that it has signed and provided to the State the form prescribed by the Secretary of Administration for purposes of certifying that it is in good standing (as provided in Section 13(a)(2) of Act 154) with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets, or otherwise explaining the circumstances surrounding the inability to so certify; and (ii) that it will comply with the requirements stated therein.

(End of Standard Provisions)