



Office of the State Treasurer  
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Montpelier VT 05609-3001 [fax] 802-828-2222  
<http://bgs.vermont.gov/purchasing>

## **SEALED BID REQUEST FOR PROPOSAL**

### **Retiree Health Savings Program Recordkeeping and Third-Party Administrator Services**

**ISSUE DATE:** February 16, 2024  
**QUESTIONS DUE BY:** March 1, 2024 @ 4:30pm  
**RFP RESPONSES DUE BY:** March 22, 2024 @ 4:30pm

**PLEASE BE ADVISED THAT ALL NOTIFICATIONS, RELEASES, AND ADDENDUMS ASSOCIATED WITH THIS RFP WILL BE POSTED AT:**

<http://www.bgs.state.vt.us/pca/bids/bids.php>

**THE STATE WILL MAKE NO ATTEMPT TO CONTACT INTERESTED PARTIES WITH UPDATED INFORMATION. IT IS THE RESPONSIBILITY OF EACH BIDDER TO PERIODICALLY CHECK THE ABOVE WEBPAGE FOR ANY AND ALL NOTIFICATIONS, RELEASES AND ADDENDUMS ASSOCIATED WITH THIS RFP.**

**STATE CONTACT:** Kyle Emerson  
**E-MAIL:** [kyle.emerson@vermont.gov](mailto:kyle.emerson@vermont.gov)

**USE SUBJECT: RETIREE HEALTH SAVINGS RECORDS & ADMIN**

## 1. OVERVIEW:

- 1.1. **SCOPE AND BACKGROUND:** Through this Request for Proposal (RFP) the Vermont Municipal Employees Retirement Systems and Vermont State Treasurer's Office (hereinafter the "State") are seeking to establish contracts with one or more companies that can provide Recordkeeping and Third-Party Administrator Services for a Municipal Retiree Health Savings Plan.
- 1.2. **CONTRACT PERIOD:** Contracts arising from this RFP will be for a period of **five years** with an option to renew for up to two additional 2-year periods. The State anticipates the start date will be July 1, 2024.
- 1.3. **SINGLE POINT OF CONTACT:** All communications concerning this RFP are to be addressed in writing to the State Contact listed on the front page of this RFP. Actual or attempted contact with any other individual from the State concerning this RFP is strictly prohibited and may result in disqualification.
- 1.4. **QUESTION AND ANSWER PERIOD:** Any vendor requiring clarification of any section of this RFP or wishing to comment on any requirement of the RFP must submit specific questions in writing no later than the deadline for question indicated on the first page of this RFP. Questions may be e-mailed to the point of contact on the front page of this RFP. Questions or comments not raised in writing on or before the last day of the question period are thereafter waived. At the close of the question period a copy of all questions or comments and the State's responses will be posted on the State's web site <http://www.bgs.state.vt.us/pca/bids/bids.php> Every effort will be made to post this information as soon as possible after the question period ends, contingent on the number and complexity of the questions.
- 1.5. **CHANGES TO THIS RFP:** Any modifications to this RFP will be made in writing by the State through the issuance of an Addendum to this RFP and posted online at <http://www.bgs.state.vt.us/pca/bids/bids.php> . Modifications from any other source are not to be considered.

## 2. DETAILED REQUIREMENTS / DESIRED OUTCOMES:

### 2.1. General Information

The State invites proposals from qualified firms to provide administration, recordkeeping, and education services, for the Municipal RHS Plan – a retirement health reimbursement arrangement – consistent with the terms set forth in the attached document labeled Appendix 5: Governmental Affiliate-Funded Retiree Health Reimbursement Arrangement (Plan Document).

The Municipal RHS Plan was funded during a time when the VMERS defined benefit retirement system was funded at a level greater than 100%, with benefits provided to individuals who were members at the time of funding. Future contributions are not expected at this time.

Basic financial statistics related to this plan are as follows. Numbers are as of 12/31/2023.

- Total Plan Assets: \$12.7 million
- Number of Participants: 3,344 (comprised of 1,266 Active and 2,078 Terminated)

### 2.2. Services Requested

The State seeks to secure a contract(s) from a bidder(s) that can offer full third-party administration and recordkeeping services to the Plan. Specifically, the State expects the successful bidder to provide custodial trustee services, plan administration and recordkeeping services, and participant communication and education services. The State also expects the successful bidder to provide plan regulatory compliance services, reporting, and investment management services. These services are expected to be provided at a level commensurate with the Plan Document set forth in the Appendix.

### 2.3. Requirements Related to Conflicts of Interest and Independence

Bidders shall identify all existing or potential conflicts of interest that would prevent the bidder from fully performing the tasks described in this RFP. Such disclosure will be a continuing requirement subsequent to award of a Contract and for the life of the Contract.

In all matters relating to work required by the State the bidder shall remain free from personal and external impediments to independence, and verify its organization is independent and will maintain an independent attitude and appearance with respect to the services required.

## 2.4. Insurance Coverage

The Contractor shall maintain an errors and omissions insurance policy, which provides a prudent amount of coverage for the negligent or willful acts or omissions of any shareholder, employee or agents thereof. The Contractor shall also maintain policies pursuant to the State's Standard Contract provisions as defined in Attachment C of Exhibit I.

## 3. **GENERAL REQUIREMENTS:**

- 3.1. **COSTS/PRICING:** Please provide your fee inclusive of all professional and out-of-pocket expenses (out-of-pocket expenses include but are not limited to travel, communications, production and other office expenses) for services outlined in this RFP. The fee may be stated as: an asset based fee, a per-participant fee, or a combination of the two.

**NOTE: The technical and cost proposals should be included as separate PDF documents in your firm's transmittal e-mail and labeled: "[Your Firm's Name] Technical Proposal" and "[Your Firm's Name] Cost Proposal." Cost information is NOT to be provided in any part of the bidder's Technical Proposal.**

- 3.2. Bidders must price the terms of this solicitation at their best pricing. Any and all costs that Bidder wishes the State to consider must be submitted for consideration.

3.2.1. Prices and/or rates shall remain firm for the initial term of the contract. The pricing policy submitted by Bidder must (i) be clearly structured, accountable, and auditable and (ii) cover the full spectrum of materials and/or services required.

3.2.2. **Cooperative Agreements.** Bidders that have been awarded similar contracts through a competitive bidding process with another state and/or cooperative are welcome to submit the pricing in response to this solicitation.

## 3.3. **BEST AND FINAL OFFER:**

3.3.1. **Best and Final Offer (BAFO).** At any time after submission of Responses and prior to the final selection of Bidder(s) for Contract negotiation or execution, the State may invite Bidder(s) to provide a BAFO.

3.3.1.1. The state reserves the right to request BAFOs from only those Bidders that meet the minimum qualification requirements and/or have not been eliminated from consideration during the evaluation process.

3.3.2. **Evaluation of Responses and Selection of Bidder(s).** The State shall have the authority to evaluate Responses and select the Bidder(s) as may be determined to be in the best interest of the State and consistent with the goals and performance requirements outlined in this RFP.

- 3.4. **WORKER CLASSIFICATION COMPLIANCE REQUIREMENTS:** In accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54), Bidders must comply with the following provisions and requirements.

3.4.1. **Self Reporting:** For bid amounts exceeding \$250,000.00, Bidder shall complete the appropriate section in the attached Certificate of Compliance for purposes of self-reporting information relating to past violations, convictions, suspensions, and any other information related to past performance relative to coding and classification of workers. The State is requiring information on any violations that occurred in the previous 12 months.

3.4.2. **Subcontractor Reporting:** For bid amounts exceeding \$250,000.00, Bidders are hereby notified that upon award of contract, and prior to contract execution, the State shall be provided with 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). This requirement does not apply to subcontractors providing supplies only and no labor to the overall contract or project. This list **MUST** be updated and provided to the State as additional subcontractors are hired. A sample form is available online at

<http://bgs.vermont.gov/purchasing-contracting/forms>. **The subcontractor reporting form is not required to be submitted with the bid response.**

**3.5. EXECUTIVE ORDER 05-16: CLIMATE CHANGE CONSIDERATIONS IN STATE PROCUREMENTS:**

For bid amounts exceeding \$25,000.00 Bidders are requested to complete the Climate Change Considerations in State Procurements Certification, which is included in the Certificate of Compliance for this RFP.

After consideration of all relevant factors, a bidder that demonstrates business practices that promote clean energy and address climate change as identified in the Certification, shall be given favorable consideration in the competitive bidding process. Such favorable consideration shall be consistent with and not supersede any preference given to resident bidders of the State and/or products raised or manufactured in the State, as explained in the Method of Award section. But, such favorable consideration shall not be employed if prohibited by law or other relevant authority or agreement.

**3.6. METHOD OF AWARD:** Awards will be made in the best interest of the State. The State may award one or more contracts and reserves the right to make additional awards to other compliant bidders at any time if such award is deemed to be in the best interest of the State. All other considerations being equal, preference will be given first to resident bidders of the state and/or to products raised or manufactured in the state, and then to bidders who have practices that promote clean energy and address climate change, as identified in the applicable Certificate of Compliance.

**3.6.1. Evaluation Criteria:** Consideration shall be given to the Bidder's project approach and methodology, qualifications and experience, ability to provide the services within the defined timeline, cost, and/or success in completing similar projects, as applicable, and to the extent specified below. The Office of the State Treasurer will conduct a fair and impartial evaluation of the proposals received in response to this RFP.

Fees and compensation will be an important factor in the evaluation of responses. However, the Office of the State Treasurer is not required to select the low-cost bidder, but may select the bid that demonstrates the "best value" overall, including proposed alternatives, and that meets the objectives of this RFP. The Office of the State Treasurer reserves the right to negotiate a change in any element of contract performance or cost identified in the RFP. The factors to be used by the Treasurer's Office in evaluating the proposals will include, but are not limited to, the following:

Evaluation of Proposals
<b>A. RFP Understanding</b> Approach Clarity Creativity of proposal Responsiveness to Scope of Services and ability to provide requested services
<b>B. General Experience and Qualifications of Firm</b> Experience Assigned personnel Any other resources assigned to State
<b>C. Cost</b>

The Office of the State Treasurer reserves the right to seek clarification of any proposal submitted, request oral presentations and to select the proposal considered to best promote the public interest.

The State of Vermont is conscious of and concerned about collusion. It should therefore be understood by all that in signing the 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.

**3.7. STATEMENT OF RIGHTS:** The State of Vermont reserves the right to obtain clarification or additional information necessary to properly evaluate a proposal. Vendors may be asked to give a verbal

presentation of their proposal after submission. Failure of vendor to respond to a request for additional information or clarification could result in rejection of that vendor's proposal. To secure a project that is deemed to be in the best interest of the State, the State reserves the right to accept or reject any and all bids, in whole or in part, with or without cause, and to waive technicalities in submissions. The State also reserves the right to make purchases outside of the awarded contracts where it is deemed in the best interest of the State.

3.8. **CONTRACT TERMS:** The selected bidder(s) will be expected to sign a contract with the State, including the Standard Contract Form and Attachment C as attached to this RFP for reference. If IT Attachment D is included in this RFP, terms may be modified based upon the solution proposed by the Bidder, subject to approval by the Agency of Digital Services.

3.8.1. **Business Registration.** To be awarded a contract by the State of Vermont a bidder (except an individual doing business in his/her own name) must be registered with the Vermont Secretary of State's office <https://sos.vermont.gov/corporations/registration/> and must obtain a Contractor's Business Account Number issued by the Vermont Department of Taxes <http://tax.vermont.gov/> .

3.8.2. The contract will obligate the bidder to provide the services and/or products identified in its bid, at the prices listed.

3.8.3. **Payment Terms.** Percentage discounts may be offered for prompt payments of invoices; however, such discounts must be in effect for a period of 30 days or more in order to be considered in making awards.

3.8.4. **Quality.** If applicable, all products provided under a contract with the State will be new and unused, unless otherwise stated. Factory seconds or remanufactured products will not be accepted unless specifically requested by the purchasing agency. All products provided by the contractor must meet all federal, state, and local standards for quality and safety requirements. Products not meeting these standards will be deemed unacceptable and returned to the contractor for credit at no charge to the State.

3.9. **CONTRACT NEGOTIATION:** Upon completion of the evaluation process, the State may select one or more bidders with which to negotiate a contract, based on the evaluation findings and other criteria deemed relevant for ensuring that the decision made is in the best interest of the State. In the event State is not successful in negotiating a contract with a selected bidder, the State reserves the option of negotiating with another bidder, or to end the proposal process entirely.

4. **CONTENT AND FORMAT OF RESPONSES:** The content and format requirements listed below are the minimum requirements for State evaluation. These requirements are not intended to limit the content of a Bidder's proposal. Bidders may include additional information or offer alternative solutions for the State's consideration. However, the State discourages overly lengthy and costly proposals, and Bidders are advised to include only such information in their response as may be relevant to the requirements of this RFP.

The bidder is encouraged to include additional information or data as may be appropriate or to offer alternate solutions. However, the bidder should not exclude from its proposal any portion requested in this document. Proposals that vary materially from this prescribed format may be judged non-compliant and withdrawn from consideration. The bidder should also list any potential conflicts of interest including an explanation.

Bidders are to organize their proposals into **two separate PDF documents** comprising five parts with a cover letter and other administrative information as follows:

<b>PDF Document 1: Technical Proposal</b>	
Part I – Administrative	Cover page Cover Letter as described below Tax Certificate Table of Contents
Part II	Bidder Information
Part III	Technical Approach
Part IV	Bidder References
<b>PDF Document 2: Cost Proposal</b>	
Part V	Cost

The purpose of requiring separate documents is to enable an evaluation of the technical merits of bidders' proposals separate from and prior to an analysis of costs. The following subsections describe the required content of the bidder's proposal.

#### 4.1. **Bidder's Proposal Part I -Administrative Section**

In addition to the cover page and table of contents, the items that need to appear in the Administrative Section of the proposal are described below.

##### 4.1.1. **COVER LETTER:**

- 4.1.1.1. **Confidentiality.** To the extent your bid contains information you consider to be proprietary and confidential, you must comply with the following requirements concerning the contents of your cover letter and the submission of a redacted copy of your bid (or affected portions thereof).
- 4.1.1.2. The successful response will become part of the contract file and will become a matter of public record, as will all other responses received. If the response includes material that is considered by the bidder to be proprietary and confidential under the State's Public Records Act, 1 V.S.A. § 315 et seq., the bidder shall submit a cover letter that clearly identifies each page or section of the response that it believes is proprietary and confidential. The bidder shall also provide in their cover letter a written explanation **for each marked section** explaining why such material should be considered exempt from public disclosure in the event of a public records request, pursuant to 1 V.S.A. § 317(c), including the prospective harm to the competitive position of the bidder if the identified material were to be released. Additionally, the bidder must include a redacted copy of its response for portions that are considered proprietary and confidential. Redactions must be limited so that the reviewer may understand the nature of the information being withheld. It is typically inappropriate to redact entire pages, or to redact the titles/captions of tables and figures. Under no circumstances can the entire response be marked confidential, and the State reserves the right to disqualify responses so marked.
- 4.1.1.3. **Exceptions to Contract Terms and Conditions.** If the bidder wishes to propose an exception to any terms and conditions set forth in the Standard Contract Form and its attachments, such exceptions must be included in the cover letter to the RFP response. Failure to note exceptions when responding to the RFP will be deemed to be acceptance of the State contract terms and conditions. If exceptions are not noted in the response to this RFP but raised during contract negotiations, the State reserves the right to cancel the negotiation if deemed to be in the best interests of the State. Note that exceptions to contract terms may cause rejection of the proposal.

##### 4.1.2. **BIDDER INFORMATION**

- 4.1.2.1. **General** - In this section, the bidder shall provide basic information about its firm and staff, including the following:
  - 4.1.2.1.1. Name, address, e-mail address, telephone numbers of contact person in the firm submitting the proposal and of the location from which this service will be provided.
  - 4.1.2.1.2. Please provide a description of the ownership and structure of the firm, which includes the parent company and any affiliated companies, joint ventures and/or business partners.
  - 4.1.2.1.3. Are any near-term changes to the firm's corporate or organizational structure anticipated? If yes, please specify.
  - 4.1.2.1.4. Please list all office locations and the number of individuals working in each office. Please specify which office would be the primary relationship office.
  - 4.1.2.1.5. List the owners of the firm (from largest to smallest with respect to ownership) and their ownership percentages. Please include individuals and all other entities.

4.1.2.1.6. Please list all principals of the firm and their backgrounds, credentials and certifications.

4.1.2.1.7. Please provide the most recently completed audited financial statements for your firm.

4.1.2.2. **Bidder Qualifications** – The bidder must demonstrate a history of providing the desired services with a minimum of five years of experience.

4.1.3. **TECHNICAL APPROACH** – This part of the bidder’s proposal shall address the following:

4.1.3.1. **Section 1 – Summary/Overview.** This should include a statement in the bidder’s own words of the overall nature of the services requested in this RFP and a narrative of how it will provide the requested services identified in the RFP. The narrative should address all services outlined in the “Scope of Services” and should be prepared simply and economically, providing a straightforward and concise description of the bidder’s philosophy, services and qualifications. If a Bidder intends to use subcontractors, the Bidder must identify in the proposal the names of the subcontractors, the portions of the work the subcontractors will perform, and address the background and experience of the subcontractor(s), as above.

4.1.3.2. **Section 2 – Questions.** Please provide a full and concise response to the following questions.

**4.1.3.2.1. Company Background**

4.1.3.2.1.1. Please describe your firm’s background and history in providing services requested herein.

4.1.3.2.1.2. Provide a broad overview of your firm, including a functional description of any parent, affiliated or subsidiary company, and any business partners. Provide an organization chart of your firm and describe the working relationships between each component and your consulting group.

4.1.3.2.1.3. Does your firm have a written Code of Conduct, Ethics Policy or Conflict of Interest Policy? Please include copies of each.

4.1.3.2.1.4. Please disclose in full detail anything that may create a conflict or appearance of a conflict of interest. Please include any financial investment by you or your firm in any underwriting activity and any joint venture, partnership or similar arrangement for any product or service with any underwriter.

4.1.3.2.1.5. Within the last five years, has your organization or an officer or principal been involved in any business litigation, legal, regulatory or other proceedings? If so, please provide an explanation and indicate the current status or disposition.

4.1.3.2.1.6. Please describe the level of coverage for errors and omissions insurance and any fiduciary or professional liability insurance your firm carries. List the insurance carrier(s) supplying the coverage.

**4.1.3.2.2. Management Summary**

4.1.3.2.2.1. What is the underlying philosophy of your firm in administering health savings and/or retirement accounts? What are your particular strengths?

4.1.3.2.2.2. What percentage of your revenues is derived from administering health savings and/or retirement accounts? What other services does your firm provide?

4.1.3.2.2.3. Please identify the percentage of revenue your firm generated from the following sources over the most recently completed fiscal year. The chart must reflect 100% of all revenue.

4.1.3.2.2.3.1. government retirement plans (defined benefit, defined contribution, hybrid)

4.1.3.2.2.3.2. non-government retirement plans (defined benefit, defined contribution, hybrid)

4.1.3.2.2.3.3. government subsidized health insurance plans

4.1.3.2.2.3.4. non-government subsidized health insurance plans

4.1.3.2.2.3.5. government health savings and/or retirement accounts

4.1.3.2.2.3.6. non-government health savings and/or retirement accounts

4.1.3.2.2.3.7. other recordkeeping and/or consulting activities

4.1.3.2.2.3.8. other (describe on additional page)

**4.1.3.2.2.4. Recordkeeping and Administering Health Savings and/or Retirement Accounts**

4.1.3.2.2.4.1. Describe in detail your process for administering health savings and/or retirement accounts.

4.1.3.2.2.4.2. Please provide a list of current and previous (within the last five years) government clients. Provide as well the approximate number of participants and amount of assets for each government plan client.

4.1.3.2.2.4.3. Please provide sample reports and reporting timeframes, including links to any plan sponsor portals.

4.1.3.2.2.4.4.

**4.1.4. REFERENCES.** Provide the names, addresses, and phone numbers of at least three companies with whom you have transacted similar business in the last 12 months. You must include contact names who can talk knowledgeably about performance.

4.1.4.1. Please list all clients who have hired your firm for financial advisory services during the past three years, including name, title and telephone number of contact.

4.1.4.2. Please provide contact information requested above for three references from current clients similar to the State of Vermont in size and sophistication. Include the length of time during which services were performed; and a description of the specific services provided.

4.1.4.3. Please list all clients who have terminated your relationship during the past three years, and their reasons for doing so. Please include the name, title and telephone number of contact.

**4.2. PRICING:** Bidders shall submit their pricing information in the Price Schedule attached to the RFP. Bidders may be required to submit pricing information separate from their bid package if specifically required above.

**4.3. CERTIFICATE OF COMPLIANCE:** This form must be completed and submitted as part of the response for the proposal to be considered valid.

**5. SUBMISSION INSTRUCTIONS:**



5.1. **CLOSING DATE:** Bids must be emailed to [sov.thepathforward@vermont.gov](mailto:sov.thepathforward@vermont.gov) by March 22, 2024 @ 4:30pm.  
**USE SUBJECT: RETIREE HEALTH SAVINGS RECORDS & ADMIN**

Emails received after this date or not included the above title in the subject line will not be considered.  
You will receive confirmation of receipt within one business day of submission.

6. **ATTACHMENTS:**

- 6.1. Standard State Contract Form
- 6.2. Attachment C: Standard State Contract Provisions
- 6.3. Attachment D: Other Provisions for IT Professionals
- 6.4 Exhibit 5, 5A- Current RHS Scope of Work
- 6.4. Certificate of Compliance
- 6.5. Worker Classification Compliance Requirement; Subcontractor Reporting Form

## STANDARD CONTRACT FOR SERVICES

1. **Parties.** This is a contract for services between the State of Vermont, \_\_\_\_\_ (hereinafter called “State”), and \_\_\_\_\_, with a principal place of business in \_\_\_\_\_, (hereinafter called “Contractor”). Contractor’s form of business organization is \_\_\_\_\_. It is Contractor’s responsibility to contact the Vermont Department of Taxes to determine if, by law, Contractor is required to have a Vermont Department of Taxes Business Account Number.

2. **Subject Matter.** The subject matter of this contract is services generally on the subject of \_\_\_\_\_. Detailed services to be provided by Contractor are described in Attachment A.

3. **Maximum Amount.** In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$\_\_\_\_\_.00.

4. **Contract Term.** The period of Contractor’s performance shall begin on \_\_\_\_\_, 20\_\_ and end on \_\_\_\_\_, 20\_\_.

5. **Prior Approvals.** This Contract shall not be binding unless and until all requisite prior approvals have been obtained in accordance with current State law, bulletins, and interpretations.

5A. **Sole Source Contract for Services.** This Contract results from a “sole source” procurement under State of Vermont Administrative Bulletin 3.5 process and Contractor hereby certifies that it is and will remain in compliance with the campaign contribution restrictions under 17 V.S.A. § 2950.

6. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.

7. **Termination for Convenience.** This contract may be terminated by the State at any time by giving written notice at least thirty (30) days in advance. In such event, Contractor shall be paid under the terms of this contract for all services provided to and accepted by the State prior to the effective date of termination.

8. **Attachments.** This contract consists of \_\_\_ pages including the following attachments which are incorporated herein:

Attachment A - Statement of Work

Attachment B - Payment Provisions

Attachment C – “Standard State Provisions for Contracts and Grants”

Attachment D - IT Provisions for Professional Services

Additional attachments may be lettered as necessary

9. **Order of Precedence.** Any ambiguity, conflict or inconsistency between the documents comprising this contract shall be resolved according to the following order of precedence:

- (1) Standard Contract
- (2) Attachment D (IT Provisions for Professional Services)
- (3) Attachment C (Standard State Provisions for Contracts and Grants)
- (4) Attachment A
- (5) Attachment B

List other attachments, if any, in order of precedence

**WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT**

By the State of Vermont:

By the Contractor:

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTACHMENT A – STATEMENT OF WORK**

The Contractor shall: \_\_\_\_\_

## ATTACHMENT B – PAYMENT PROVISIONS

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

1. Prior to commencement of work and release of any payments, Contractor shall submit to the State:
  - a. a certificate of insurance consistent with the requirements set forth in Attachment C, Section 8 (Insurance), and with any additional requirements for insurance as may be set forth elsewhere in this contract; and
  - b. a current IRS Form W-9 (signed within the last six months).
2. Payment terms are **Net 30** days from the date the State receives an error-free invoice with all necessary and complete supporting documentation.
3. Contractor shall submit detailed invoices itemizing all work performed during the invoice period, including the dates of service, rates of pay, hours of work performed, and any other information and/or documentation appropriate and sufficient to substantiate the amount invoiced for payment by the State. All invoices must include the Contract # for this contract.
4. Contractor shall submit invoices to the State in accordance with the schedule set forth in this Attachment B. Unless a more particular schedule is provided herein, invoices shall be submitted not more frequently than monthly.
5. Invoices shall be submitted to the State at the following address: \_\_\_\_\_
6. The payment schedule for delivered products, or rates for services performed, and any additional reimbursements, are as follows: \_\_\_\_\_

**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)

ATTACHMENT D  
INFORMATION TECHNOLOGY PROFESSIONAL SERVICES  
TERMS AND CONDITIONS (rev. 01/12/2024)

**1. OWNERSHIP AND LICENSE IN DELIVERABLES**

**1.1 Contractor Intellectual Property.** Contractor shall retain all right, title and interest in and to any work, ideas, inventions, discoveries, tools, methodology, computer programs, processes and improvements and any other intellectual property, tangible or intangible, that has been created by Contractor prior to entering into this Contract (“Contractor Intellectual Property”). Should the State require a license for the use of Contractor Intellectual Property in connection with the development or use of the items that Contractor is required to deliver to the State under this Contract, including Work Product (“Deliverables”), the Contractor shall grant the State a royalty-free license for such development and use. For the avoidance of doubt, Work Product shall not be deemed to include Contractor Intellectual Property, provided the State shall be granted an irrevocable, perpetual, non-exclusive royalty-free license to use any such Contractor Intellectual Property that is incorporated into Work Product.

**1.2 State Intellectual Property.** The State shall retain all right, title and interest in and to (i) all content and all property, data and information furnished by or on behalf of the State or any agency, commission or board thereof, and to all information that is created under this Contract, including, but not limited to, all data that is generated under this Contract as a result of the use by Contractor, the State or any third party of any technology systems or knowledge bases that are developed for the State and used by Contractor hereunder, and all other rights, tangible or intangible; and (ii) all State trademarks, trade names, logos and other State identifiers, Internet uniform resource locators, State user name or names, Internet addresses and e-mail addresses obtained or developed pursuant to this Contract (collectively, “State Intellectual Property”).

Contractor may not use State Intellectual Property for any purpose other than as specified in this Contract. Upon expiration or termination of this Contract, Contractor shall return or destroy all State Intellectual Property and all copies thereof, and Contractor shall have no further right or license to such State Intellectual Property.

Contractor acquires no rights or licenses, including, without limitation, intellectual property rights or licenses, to use State Intellectual Property for its own purposes. In no event shall the Contractor claim any security interest in State Intellectual Property.

**1.3 Work Product.** All Work Product shall belong exclusively to the State, with the State having the sole and exclusive right to apply for, obtain, register, hold and renew, in its own name and/or for its own benefit, all patents and copyrights, and all applications and registrations, renewals and continuations thereof and/or any and all other appropriate protection. To the extent exclusive title and/or complete and exclusive ownership rights in and to any Work Product may not originally vest in the State by operation of law or otherwise as contemplated hereunder, Contractor shall immediately upon request, unconditionally and irrevocably assign, transfer and convey to the State all right, title and interest therein.

“Work Product” means any tangible or intangible ideas, inventions, improvements, modifications, discoveries, development, customization, configuration, methodologies or processes, designs, models, drawings, photographs, reports, formulas, algorithms, patterns, devices, compilations, databases, computer programs, work of authorship, specifications, operating instructions, procedures manuals or other documentation, technique, know-how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection), that is specifically made, conceived, discovered or reduced to practice by Contractor, either solely or jointly with others, pursuant to this Contract. Work Product does not include Contractor Intellectual Property or third party intellectual property.

To the extent delivered under this Contract, upon full payment to Contractor in accordance with Attachment B, and subject to the terms and conditions contained herein, Contractor hereby (i) assigns to State all rights in and to all Deliverables, except to the extent they include any Contractor Intellectual Property; and (ii) grants to State a perpetual, non-exclusive, irrevocable, royalty-free license to use for State’s internal business purposes, any Contractor Intellectual Property included in the Deliverables in connection with its use of the Deliverables and, subject to the State’s obligations with respect to Confidential Information, authorize others to do the same on the State’s behalf. Except for the foregoing license grant, Contractor or its licensors retain all rights in and to all Contractor Intellectual Property.

The Contractor shall not sell or copyright a Deliverable without explicit permission from the State. If the Contractor is operating a system or application on behalf of the State of Vermont, then the Contractor shall not make information entered into the system or application available for uses by any other party than the State of Vermont, without prior authorization by the State. Nothing herein shall entitle the State to pre-existing Contractor Intellectual Property or Contractor Intellectual Property developed outside of this Contract with no assistance from State.

## **2. CONFIDENTIALITY AND NON-DISCLOSURE; SECURITY BREACH REPORTING**

**2.1** For purposes of this Contract, confidential information will not include information or material which (a) enters the public domain (other than as a result of a breach of this Contract); (b) was in the receiving party’s possession prior to its receipt from the disclosing party; (c) is independently developed by the receiving party without the use of confidential information; (d) is obtained by the receiving party from a third party under no obligation of confidentiality to the disclosing party; or (e) is not exempt from disclosure under applicable State law.

**2.2 Confidentiality of Contractor Information.** The Contractor acknowledges and agrees that this Contract and any and all Contractor information obtained by the State in connection with the performance of this Contract are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq. The State will not disclose information for which a reasonable claim of exemption can be made pursuant to 1 V.S.A. § 317(c), including, but not limited to, trade secrets, proprietary information or financial information, including any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to the Contractor, and which gives the Contractor an opportunity to obtain business advantage over competitors who do not know it or use it.

The State shall immediately notify Contractor of any request made under the Access to Public Records Act, or any request or demand by any court, governmental agency or other person asserting a demand or request for Contractor information. Contractor may, in its discretion, seek an appropriate protective order, or otherwise defend any right it may have to maintain the confidentiality of such information under applicable State law within three business days of the State's receipt of any such request. Contractor agrees that it will not make any claim against the State if the State makes available to the public any information in accordance with the Access to Public Records Act or in response to a binding order from a court or governmental body or agency compelling its production. Contractor shall indemnify the State for any costs or expenses incurred by the State, including, but not limited to, attorneys' fees awarded in accordance with 1 V.S.A. § 320, in connection with any action brought in connection with Contractor's attempts to prevent or unreasonably delay public disclosure of Contractor's information if a final decision of a court of competent jurisdiction determines that the State improperly withheld such information and that the improper withholding was based on Contractor's attempts to prevent public disclosure of Contractor's information.

The State agrees that (a) it will use the Contractor information only as may be necessary in the course of performing duties, receiving services or exercising rights under this Contract; (b) it will provide at a minimum the same care to avoid disclosure or unauthorized use of Contractor information as it provides to protect its own similar confidential and proprietary information; (c) except as required by the Access to Records Act, it will not disclose such information orally or in writing to any third party unless that third party is subject to a written confidentiality agreement that contains restrictions and safeguards at least as restrictive as those contained in this Contract; (d) it will take all reasonable precautions to protect the Contractor's information; and (e) it will not otherwise appropriate such information to its own use or to the use of any other person or entity.

Contractor may affix an appropriate legend to Contractor information that is provided under this Contract to reflect the Contractor's determination that any such information is a trade secret, proprietary information or financial information at time of delivery or disclosure.

### **3. SECURITY OF STATE INFORMATION.**

**3.1 Security Standards.** To the extent Contractor has access to, processes, handles, collects, transmits, stores or otherwise deals with State Data, the Contractor represents and warrants that it has implemented and it shall maintain during the term of this Contract the highest industry standard administrative, technical, and physical safeguards and controls consistent with NIST *Special Publication 800-53* (version 4 or higher) and *Federal Information Processing Standards Publication 200* and designed to (i) ensure the security and confidentiality of State Data; (ii) protect against any anticipated security threats or hazards to the security or integrity of the State Data; and (iii) protect against unauthorized access to or use of State Data. Such measures shall include at a minimum: (1) access controls on information systems, including controls to authenticate and permit access to State Data only to authorized individuals and controls to prevent the Contractor employees from providing State Data to unauthorized individuals who may seek to obtain this

information (whether through fraudulent means or otherwise); (2) industry-standard firewall protection; (3) encryption of electronic State Data while in transit from the Contractor networks to external networks; (4) measures to store in a secure fashion all State Data which shall include multiple levels of authentication; (5) dual control procedures, segregation of duties, and pre-employment criminal background checks for employees with responsibilities for or access to State Data; (6) measures to ensure that the State Data shall not be altered or corrupted without the prior written consent of the State; (7) measures to protect against destruction, loss or damage of State Data due to potential environmental hazards, such as fire and water damage; (8) staff training to implement the information security measures; and (9) monitoring of the security of any portions of the Contractor systems that are used in the provision of the services against intrusion on a twenty-four (24) hour a day basis.

**3.2 Security Breach Notice and Reporting.** The Contractor shall have policies and procedures in place for the effective management of Security Breaches, as defined below, which shall be made available to the State upon request.

In addition to the requirements set forth in any applicable Business Associate Agreement as may be attached to this Contract, in the event of any actual security breach or reasonable belief of an actual security breach the Contractor either suffers or learns of that either compromises or could compromise State Data (a “Security Breach”), the Contractor shall notify the State within 24 hours of its discovery. Contractor shall immediately determine the nature and extent of the Security Breach, contain the incident by stopping the unauthorized practice, recover records, shut down the system that was breached, revoke access and/or correct weaknesses in physical security. Contractor shall report to the State: (i) the nature of the Security Breach; (ii) the State Data used or disclosed; (iii) who made the unauthorized use or received the unauthorized disclosure; (iv) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and (v) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. The Contractor shall provide such other information, including a written report, as reasonably requested by the State. Contractor shall analyze and document the incident and provide all notices required by applicable law.

In accordance with Section 9 V.S.A. §2435(b)(3), the Contractor shall notify the Office of the Attorney General, or, if applicable, Vermont Department of Financial Regulation (“DFR”), within fourteen (14) business days of the Contractor’s discovery of the Security Breach. The notice shall provide a preliminary description of the breach. The foregoing notice requirement shall be included in the subcontracts of any of Contractor’s subcontractors, affiliates or agents which may be “data collectors” hereunder.

The Contractor agrees to fully cooperate with the State and assume responsibility at its own expense for the following, to be determined in the sole discretion of the State: (i) notice to affected consumers if the State determines it to be appropriate under the circumstances of any particular Security Breach, in a form recommended by the AGO; and (ii) investigation and remediation associated with a Security Breach, including but not limited to, outside investigation, forensics, counsel, crisis management and credit monitoring, in the sole determination of the State.

The Contractor agrees to comply with all applicable laws, as such laws may be amended from time to time (including, but not limited to, Chapter 62 of Title 9 of the Vermont Statutes and all

applicable State and federal laws, rules or regulations) that require notification in the event of unauthorized release of personally-identifiable information or other event requiring notification.

In addition to any other indemnification obligations in this Contract, the Contractor shall fully indemnify and save harmless the State from any costs, loss or damage to the State resulting from a Security Breach or the unauthorized disclosure of State Data by the Contractor, its officers, agents, employees, and subcontractors.

#### **4. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES**

**4.1 General Representations and Warranties.** The Contractor represents, warrants and covenants that:

- (i) The Contractor has all requisite power and authority to execute, deliver and perform its obligations under this Contract and the execution, delivery and performance of this Contract by the Contractor has been duly authorized by the Contractor.
- (ii) There is no pending litigation, arbitrated matter or other dispute to which the Contractor is a party which, if decided unfavorably to the Contractor, would reasonably be expected to have a material adverse effect on the Contractor's ability to fulfill its obligations under this Contract.
- (iii) The Contractor will comply with all laws applicable to its performance of the services and otherwise to the Contractor in connection with its obligations under this Contract.
- (iv) The Contractor (a) owns, or has the right to use under valid and enforceable agreements, all intellectual property rights reasonably necessary for and related to delivery of the services and provision of the services as set forth in this Contract; (b) shall be responsible for and have full authority to license all proprietary and/or third party software modules, including algorithms and protocols, that Contractor incorporates into its product; and (c) none of the services or other materials or technology provided by the Contractor to the State will infringe upon or misappropriate the intellectual property rights of any third party.
- (v) The Contractor has adequate resources to fulfill its obligations under this Contract.
- (vi) Neither Contractor nor Contractor's subcontractors has past state or federal violations, convictions or suspensions relating to miscoding of employees in NCCI job codes for purposes of differentiating between independent contractors and employees.

**4.2 Contractor's Performance Warranties.** Contractor represents and warrants to the State that:

- (i) Each and all of the services shall be performed in a timely, diligent, professional and skillful manner, in accordance with the highest professional or technical standards applicable to such services, by qualified persons with the technical skills, training and experience to perform such services in the planned environment.
- (ii) Any time software is delivered to the State, whether delivered via electronic media or the internet, no portion of such software or the media upon which it is stored or delivered will have any type of software routine or other element which is designed to facilitate unauthorized access to or intrusion upon; or unrequested disabling or erasure of; or unauthorized interference with the operation of any hardware, software, data or peripheral equipment of or utilized by the State. Without limiting the generality of the

foregoing, if the State believes that harmful code may be present in any software delivered hereunder, Contractor will, upon State's request, provide a new or clean install of the software. Notwithstanding the foregoing, Contractor assumes no responsibility for the State's negligence or failure to protect data from viruses, or any unintended modification, destruction or disclosure.

- (iii) To the extent Contractor resells commercial hardware or software it purchased from a third party, Contractor will, to the extent it is legally able to do so, pass through any such third party warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will not relieve the Contractor from Contractor's warranty obligations set forth herein.

**5. REMEDIES FOR DEFAULT.** In the event either party is in default under this Contract, the non-defaulting party may, at its option, pursue any or all of the remedies available to it under this Contract, including termination for cause, and at law or in equity.

## **6. TERMINATION**

**6.1.** Contractor shall reasonably cooperate with other parties in connection with all services to be delivered under this Contract, including without limitation any successor provider to whom State Data, State Intellectual Property or other State information and materials are to be transferred in connection with termination. Contractor shall assist the State in exporting and extracting any and all State data, in a format usable without the use of the Services and as agreed to by State, at no additional cost. Any transition services requested by State involving additional knowledge transfer and support may be subject to a contract amendment for a fixed fee or at rates to be mutually agreed upon by the parties.

If the State determines in its sole discretion that a documented transition plan is necessary, then no later than sixty (60) days prior to termination, Contractor and the State shall mutually prepare a Transition Plan identifying transition services to be provided.

**6.2. Return of Property.** Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to State all State Intellectual Property and State Data (including without limitation any Deliverables for which State has made payment in whole or in part), that are in the possession or under the control of Contractor in whatever stage of development and form of recordation such State property is expressed or embodied at that time.

**7. DESTRUCTION OF STATE DATA.** At any time during the term of this Contract within thirty days of (i) the State's written request or (ii) termination or expiration of this Contract for any reason, Contractor shall securely dispose of all copies, whether in written, electronic or other form or media, of State Data according to National Institute of Standards and Technology (NIST) approved methods, and certify in writing to the State that such State Data has been disposed of securely. Further, upon the relocation of State Data, Contractor shall securely dispose of such copies from the former data location according to National Institute of Standards and Technology (NIST) approved methods and certify in writing to the State that such State Data has been disposed of securely. Contractor shall comply with all reasonable directions provided by the State with respect to the disposal of State Data.



8. **SOV Cybersecurity Standard Update 2023-01:** Contractor 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 2023-01*, which prohibits the use of certain branded products in State information systems or any vendor system that is supporting State information systems, and is available on-line at:

<https://digitalservices.vermont.gov/cybersecurity/cybersecurity-standards-and-directives>

## EXHIBIT 5

### Governmental Affiliate-Funded Retiree Health Reimbursement Arrangement

This GA ("Exhibit") sets forth the terms and conditions relating to Health Reimbursement Arrangement recordkeeping services to be provided by \_\_\_ Affiliate-funded Health Reimbursement Arrangement ("GA-funded HRA") of the State of Vermont ("State") under the agreement between State and \_\_\_ ("Agreement") dated February 1, 2018 for the provision of non-discretionary recordkeeping services to the State's Municipal Retiree Health Savings Plan. By signing the Agreement, State and Contractor specifically acknowledge Section D of this Exhibit 5 (permitting provision of services through subcontractors, stating that Contractor has subcontracted provision of Health Reimbursement Arrangement recordkeeping services to \_\_\_ and further stating the responsibility of Contractor for the provision of services by its subcontractors). By signing the Agreement, State represents that it has established the GA-funded HRA and that it is an organization described in Section 115 of the Internal Revenue Code of 1986, as amended.

As used in the Agreement, "State" shall also mean any agent, representative or designee the State authorizes to act for it with Contractor and "Contractor" shall also mean any agent, designee or subcontractor the Contractor authorizes to act for it.

#### A. Recordkeeping Services.

1. Contractor will provide the services detailed below to State's GA-funded HRA. Contractor will work with State to transition the GA-funded HRA from State's prior provider to Contractor.
2. Services to be provided to State under this Exhibit will transition by February 1, 2018.
3. Contractor shall provide to State (or the Employees electing the GA-funded HRA) those GA-funded HRA services described in Exhibit A.

##### a. Nature of Services.

- i. Administrative Services Only. State understands and agrees that Contractor's sole function under this Exhibit is to act as recordkeeper or provide other administrative services in accordance with the terms of this Exhibit. Under the terms of this Exhibit, Contractor does not render investment advice, is not the "plan administrator," trustee or a fiduciary, as these terms or other analogous terms may be defined under applicable state, local, or federal law, and does not provide legal, tax or accounting advice with respect to the creation, adoption or operation of the GA-funded HRA or the Trust. Contractor is not an insurer or guarantor of any benefits provided under the GA-funded HRA and in no event, will Contractor be obligated to use any of its own funds to provide benefits under the GA-funded HRA. Providing adequate funding for benefits and expenses due under, or in connection, with the GA-funded HRA is the sole responsibility of the State.
- ii. Discontinuance of Services Inconsistent with Role. If, based on changes in the applicable regulatory structure or the interpretation of the regulatory structure, there is a reasonable likelihood that any service being, or to be, provided under this Exhibit by Contractor could constitute a discretionary function and thereby subject Contractor to classification as a "fiduciary" under applicable state, local, or federal law

with respect to the GA-funded HRA, and such service could not be restructured in a manner that would not subject Contractor to classification as a “fiduciary” under applicable state, local, or federal law, then Contractor, upon reasonable notice to State may decline to thereafter provide that service. The failure to provide any such service shall not constitute a breach of Contractor’s obligations under this Exhibit.

- iii. Compliance Responsibility. State may offer to its employees a GA-funded HRA as described in the regulations underlying Internal Revenue Code of 1986, as amended, (the “Code”) § 105 and 106. State is solely responsible for ensuring that the GA-funded HRA comply with all applicable provisions of the Code and any applicable federal, state, and local laws governing the GA-funded HRA. Contractor is responsible for ensuring that the services are provided in a manner compliant with all applicable provisions of the Code and any applicable federal, state, and local laws governing the services.
  - iv. Reliance Upon Data. All services provided by Contractor hereunder shall be based on information supplied by State or any other designee or agent of State (as designated by State). State acknowledges that the timely provision of accurate, consistent and complete GA-funded HRA Data in the format specified by Contractor is essential to its delivery of services, and State is responsible for ensuring such timely and accurate data is delivered in the approved format. For these purposes, “GA-funded HRA Data” means all data and records supplied to Contractor, obtained by Contractor or produced by Contractor (based on data or records supplied to, or obtained by, Contractor) about performing the services pursuant to this Exhibit. GA-funded HRA Data include current Participant names, addresses, status and contribution amounts.
- b. Data in Electronic Format. State agrees that administrative, contribution and recordkeeping data shall be provided in an electronic format as communicated to State and will be updated as required for proper processing. If the data is not submitted in an electronic format or if the format of the data requires additional translation, formatting or cleansing, Contractor reserves the right to approve or refuse such submission and to charge additional data-handling fees as required.
  - c. Reliance Upon Persons Designated by State. State will provide names and other information for persons authorized to take actions for or provide information on behalf of the GA-funded HRA or the Trust. Until notified of a change, Contractor may reasonably rely upon this information and may act upon instructions received from and/or on information provided by these named persons. Contractor has the right to assume that those persons continue to be authorized unless notified otherwise in writing.
  - d. Customer Service.
    - i. Customer Service Representatives. Contractor shall make available a general customer call center. Contractor shall handle questions regarding Contractor’s Participant portal usage, GA-funded HRA features, and debit card usage. For GA-funded HRA accounts, customer service representatives will be available at a toll-free telephone number 24 hours a day, 7 days a week (except for emergency closings) to assist Participants. Contractor reserves the right to change the customer

service representatives' hours of availability upon reasonable notice to the State.

- ii. Contractor shall manage escalation calls. Participants may escalate calls to a Contractor supervisor. If issues cannot be handled by the supervisor, they shall be escalated to the Director of Customer Service.
  - iii. Contractor shall adjust staffing levels to maintain service standards.
  - iv. Included in the call center is a standard IVR unit. Contractor shall make an IVR available to provide Participants with account balance information without the need to contact a live operator. In this context, "standard" means Contractor-branded and sharing the same toll-free number, script and menu options as other Contractor clients.
  - v. Contractor shall make its customer service center ready to process paper mail related to the services described in this Exhibit.
  - vi. Contractor shall provide access to a Participant website. Such website shall allow Participants online account access for distribution or reimbursement requests and for review of account information, including account balance, transaction history and claim submission.
  - vii. Contractor shall provide real-time internet access to Participants' accounts.
  - viii. Internet Services. Contractor will provide access to Contractor Contractor's website as described in Section 3(e) of this Exhibit to allow Participants and State to access certain account information and for Participants to file claims.
  - ix. Participant Statement of Account. Participants will have access to their accounts through Contractor Contractor's website as described in Section 3(e) of this Exhibit.
- e. Internet Services / Basic Benefits Portal System Services.
- i. Participants can access the Participant portal of Contractor's subcontractor via Single Sign-on from the Contractor's Participant website. However, returning to Contractor's Participant website from such Participant portal will require reauthentication of user credentials. Additionally, site-specific authentication of user credentials is required to access the investment management portion of Contractor's Participant portal.
  - ii. Participant portal of Contractor's Subcontractor Contractor will provide Participants with access to the Participant portal system of Contractor's subcontractor. This system will allow online claim filing. The Participant will also have online access to the following:
    - Real-time history of claim submission and payment process;
    - Account management with transaction history and account balance;
    - Contribution data, and

- Education tools.

4. Plan Administration.

a. Contractor agrees to review and acknowledge its capability to administer the necessary services in accordance with the Plan document provided by State.

b. Contractor will establish a State and Participant record on its record keeping platform which directly correspond to the State and individual Participant records established and maintained by Contractor. Contractor will provide the services outlined in this Exhibit to Contractor, State and Participants.

c. State Set Up and Participant Enrollment:

i. State setup and configuration to be handled by Contractor.

ii. Addition of new State will be facilitated through the Contractor implementation manager.

iii. Contractor will create corresponding individual accounts for Participants who are enrolled in their employer's GA-funded HRA.

iv. Contractor will send Participants a welcome kit including the Healthcare Payment Card (if applicable), Card packet and instructions on how to file claims.

v. Contractor will provide marketing/communications support to Contractor and State for Participant level communications.

vi. Contractor will provide State collateral including Participant web portal, letters and healthcare payment cards.

vii. Contractor will support and work with Contractor when a new State desires the conversion of an existing GA-funded HRA with another administrator to Contractor.

d. Contractor State Dashboard

i. State administrators can access via Single Sign-on from the Sponsor website of Contractor's subcontractor. However, returning to Contractor's Sponsor website from the State Dashboard of Contractor's subcontractor will require reauthentication of user credentials. Additionally, site-specific authentication of user credentials is required to access the investment management portion of State Dashboard of Contractor's subcontractor.

ii. Standard reports are available within the employer dashboard portal. Standard reports include but are not limited to:

- Claim Reports
  - Paid claims
  - Claims needing documentation
  - Rejected claims requiring payback
  - Rejected claims written off

- Account Balance and Administrative Reports
  - Participant accounts
  - Demographic data
  - Participation accounts utilization and forfeitures
  - Service level results
  - Participant accounts
  - Group audit – expanded
  - Group audit
  - File Error Reports
  
- Funding and Contribution Reports
  - Contribution invoice funding details
  - Comprehensive – Contribution invoice funding details
  - Payroll reconciliation details
  - Comprehensive – payroll reconciliation details
  - Contributions for an employer
  - Contributions reduced for employer caps
  - Contribution invoice discrepancies
  - Contribution invoice rejections
  - Missed contribution

Customized ad hoc reports are also available upon request at additional cost as shown in Attachment B.

- e. Participant Dashboard. Participants can access via Single Sign-on from the Contractor's Participant website with 24 x 7 real-time access to:
- Review claims history
  - Submit online requests for reimbursement
  - Review the status of claims
  - Access Frequently Asked Questions
  - Health education and decision support tools on the portal
  - Link (no Single Sign-on) back to Contractor's website
- f. Entitlement and Claims Administration Processes. The following chart outlines the joint responsibilities for various administration processes related to entitlement and claims process:

Item	Comment
Definition of Qualified Expenses	<ul style="list-style-type: none"> <li>• Definition of qualified expenses will be determined during State setup at Implementation.</li> <li>• Qualified expenses are defined under IRS Section 213(d).</li> <li>• Upon plan set up a State may elect to choose to define eligible expenses that may be excluded from coverage under the plan.</li> </ul>
Demographic Data	<ul style="list-style-type: none"> <li>• State will send initial census and census changes to Contractor.</li> </ul>
Plan enrollment	<ul style="list-style-type: none"> <li>• State will pass enrollment record to Contractor.</li> </ul>
Termination, vesting and entitlement	<ul style="list-style-type: none"> <li>• State will calculate vesting.</li> <li>• State will calculate and process forfeitures.</li> <li>• State will pass entitlement indicator on enrollment record.</li> </ul>
Death/Divorce/QDRO	<ul style="list-style-type: none"> <li>• State will manage the process in cases of death, divorce or a QDRO.</li> <li>• Generally, all benefits remain in the name of the</li> </ul>

	original Participant although benefits may be payable for claims submitted for eligible entitled individuals including spouses or other dependents.
Rehire	<ul style="list-style-type: none"> <li>State will notify Contractor to shut off claims activation of the account.</li> </ul>
Eligibility for making claims	<ul style="list-style-type: none"> <li>State will control entitlement via enrollment record.</li> <li>Contractor will pay claims only for those who are entitled up to the amount of the available balance.</li> </ul>
Available Balance	<ul style="list-style-type: none"> <li>State may send account balance to Contractor to signify accounts in an accumulation stage; no claims activity is allowed. State will send available account balance or available account status to Contractor to signify accounts are active for use. Contractor will process claims based on the available account balance.</li> </ul>
Card Distribution	<ul style="list-style-type: none"> <li>Contractor will send the Participant a Healthcare Payment Card after State sends the indicative data on the file. The card will be mailed to the address on file at State and supplied to Contractor.</li> </ul>
Returned Card packet	<ul style="list-style-type: none"> <li>Contractor will notify client if a card packet is returned as undeliverable.</li> <li>State will coordinate with Contractor to verify the correct mailing address of other necessary disposition related to the address on file.</li> </ul>
Dependent Cards	<ul style="list-style-type: none"> <li>Participants may request additional cards online or by calling customer service.</li> </ul>
Substantiation	<ul style="list-style-type: none"> <li>Contractor will auto-substantiate where possible using IIAS – in-store inventory control systems.</li> <li>Manual and online claims will be substantiated by Contractor claims representatives.</li> </ul>
Lost/Stolen Card	<ul style="list-style-type: none"> <li>Upon notification, Contractor will cancel and reissue the card to the Participant at no additional cost.</li> </ul>
Online Claims	<ul style="list-style-type: none"> <li>Participant may enter unlimited claims online.</li> <li>Contractor will adjudicate claim, request additional information if required and approve or deny claim accordingly.</li> </ul>
Dependents	<ul style="list-style-type: none"> <li>Participants will enter dependent detail as they submit claims for eligible dependents.</li> </ul>
Reimbursement	<ul style="list-style-type: none"> <li>Contractor will mail checks/process direct deposits.</li> </ul>
Correspondence	<ul style="list-style-type: none"> <li>Contractor will correspond with Participant directly regarding needs for additional documentation and claims denials.</li> </ul>
Ineligible expenses	<ul style="list-style-type: none"> <li>Contractor will contact the Participant to repay the plan for ineligible expenses.</li> <li>If the ineligible claim is not repaid, the Healthcare Payment Card will be suspended.</li> <li>If not repaid, ineligible claims will be deducted from future approved claims.</li> </ul>
Claims Appeal Process	<ul style="list-style-type: none"> <li>If Participant appeals a denied claim, Contractor will complete the claims appeal form and forward to State</li> </ul>

	<p>administrator/State for decision.</p> <ul style="list-style-type: none"> <li>• Contractor will also notify State if the appeal process proceeds to the final step prior to contacting the plan administrator.</li> </ul>
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- g. Statements. Contractor is responsible for sending periodic Participant statements.
- h. Investments (Neither Contractor is not responsible for the selection of investments).
1. Calculation of interest and market gain/loss on transactions – Contractor is responsible for all investment related aspects of the GA-funded HRA with investment options.
  2. Investment platform (Life-cycle funds, transfers, allocations etc.) – Contractor will manage the investment products or administrative aspects related to investments.
  3. Investment information and funds transfers – Contractor will manage the investment products or administrative aspects related to investments.
- i. Out of Scope. Contractor is not a Fiduciary, State, Trustee or Custodian. Although not an exhaustive list, the following items have been specifically identified as performed by other parties and/or the State and are outside of Contractor's and/or Contractor's responsibility. There may be other items or customizations not specifically addressed within this Exhibit also considered out of scope.

Item	Comment
GA tax Filing	<ul style="list-style-type: none"> <li>• State is responsible for filing GA 1024 applications, 990 tax reporting if any</li> </ul>
Participant tax reporting for ineligible claims or Domestic Partner claims	<ul style="list-style-type: none"> <li>• State is responsible for tax reporting.</li> </ul>
Self-service Demographic changes	<ul style="list-style-type: none"> <li>• Contractor will not process demographic changes from Participants directly.</li> <li>• State will maintain and supply Contractor with a census file.</li> </ul>
Entitlement Rules	<ul style="list-style-type: none"> <li>• Contractor will not determine entitlement to benefits under the GA-funded HRA. State will supply Contractor with entitlement status.</li> </ul>
Vesting and Forfeitures	<ul style="list-style-type: none"> <li>• State will determine the vesting or forfeiture of account balances.</li> <li>• Contractor will close accounts identified as closed on the Enrollment file.</li> </ul>
Leave of Absence	<ul style="list-style-type: none"> <li>• State will manage leaves of absence.</li> </ul>
EE and ER Contribution Processing	<ul style="list-style-type: none"> <li>• State will administer employer or employee contributions.</li> <li>• State will process contributions and send updated balance to Contractor.</li> </ul>



Final Determination of an Appeal	<ul style="list-style-type: none"> <li>• Contractor will coordinate the appeals process at the inception for the initial appeal.</li> <li>• State shall be responsible for final determination of claim eligibility.</li> </ul>
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5. Participant Accounts. Contractor agrees to provide the following services with respect to GA-funded HRA Participant ("Participant(s)") accounts:
  - a. Allocation of account assets to those investment funds made available under the GA-funded HRA in accordance with Participant direction;
  - b. Maintenance of individual accounts reflecting amounts contributed; income, gain, or loss credited; and amounts disbursed as benefits;
  - c. Provision of electronic quarterly reports to Participants and to State of the status of Participants' individual accounts within thirty (30) days after the close of each quarter. For clarity, electronic quarterly statements will be sent to Participants, but Participants may log into their account and opt for mailed statements. If this option is selected, the Participant account will be charged an additional fee of \$0.50 per month.
  
6. Communication to Participants. Contractor agrees to communicate information to Participants regarding their rights and elections under the GA-funded HRA.
  
7. Claim Processing.
  - a. Contractor will process and adjudicate requests for disbursements in accordance with the terms of the GA-funded HRA Plan document and standards set forth under applicable law, including IRS guidelines concerning eligible medical expenses. Contractor will: (i) receive disbursement requests and supporting documentation and verify the eligibility of persons submitting the requests; (ii) review the requests and supporting documentation, and make an initial determination of the disbursement, if any, to which a Participant is entitled; (iii) arrange prompt disbursement, using funds released from the applicable Participant account; and (iv) correspond with Participants and providers of services to obtain information necessary to adjudicate disbursement requests. Disbursements may be made via checks, direct deposits, or direct payment to the provider of service.
  - b. Contractor will make the initial determination regarding any requests for disbursements by a Participant. State will decide all levels of appeal of any previously denied reimbursement request that is filed by a Participant in accordance with the claims review process.
  - c. If it is determined that a claim is subsequently found to be unsubstantiated or include an ineligible expense, Contractor will send a letter to the Participant, and in addition, will send reminder notifications to Participants monthly until such amounts are collected from Participants or until the account has been closed (and Contractor may initially offset such ineligible expense against future eligible expenses). Contractor will provide information needed for tax reporting by State. Contractor will provide an electronic data file with an overpayment report identifying the Participants and amounts to enable State to collect directly.

8. Customer Service. Contractor shall provide customer service representatives available at a toll-free telephone number 24 hours a day, 7 days a week (except for emergency closings) to assist Participants.

**B. Duty to Furnish Information.**

1. State agrees to furnish directly to Contractor such information as is necessary for Contractor to carry out its responsibilities with respect to the GA-funded HRA, including information needed to allocate individual Participant accounts to investment funds, and information as to the employment status of Participants, and Participant ages, addresses, beneficiaries and other identifying information (including tax identification numbers).
2. Contractor will provide account information in reports, statements, or accountings.
3. Reliance Upon State Directions, GA-funded HRA Data and GA-funded HRA Document. All services shall be provided based on information supplied by the State, a GA-funded HRA Participant, beneficiary of a GA-funded HRA Participant or employee of the State (collectively "Participant") (where the GA-funded HRA provides for Participant direction). The State agrees and acknowledges it is solely responsible to timely provide or confirm accurate, consistent and complete GA-funded HRA data, GA-funded HRA terms, and instructions in the format specified by Contractor, which Contractor will rely upon to deliver its services. Contractor shall be under no obligation to perform any services until it receives such information and shall not be responsible for any error arising from its reasonable reliance on such information. For these purposes, "GA-funded HRA data" means all data and records supplied to Contractor, obtained by Contractor or Contractor, or required to perform the services. Contractor shall provide services in conformance with the terms of the most recent signed GA-funded HRA document provided to Contractor, including any amendments thereto or any written explanations or interpretations of GA-funded HRA terms provided by the State. Any matters requiring interpretation of GA-funded HRA terms or the exercise of discretion will be submitted to the State for review and direction, and Contractor shall be under no obligation to take any further action until it receives the requested direction from the State.

**C. Compensation.**

In consideration for the services provided hereunder, State shall pay Contractor a per participant fee in accordance with Attachment B; provided, however, that notwithstanding the introductory text of Section 5.B of Attachment B, the per participant fee will be collected on Contractor's behalf by Contractor's subcontractor by a direct charge to participant accounts. In addition, if State directs Contractor to provide the optional services described in Attachment B, State shall pay Contractor optional service fees in accordance with Attachment B. Information regarding Fund Fees and other costs associated with administering mutual funds, refer to the fund prospectus and relation information.

In connection with the operation of its business activities, Contractor acknowledges that they may be entitled to certain fees from the mutual funds made available to Participants pursuant to Contractor's separate agreements with the various Funds, including, but not limited to "12b-1 fees," shareholder servicing fees, and sub-transfer agency fees ("Fund Fees"). Contractor shall be entitled to any Fund Fees earned with regard to any Fund. Contractor will allocate the Fund Fee for each Fund among the accounts of Participants invested in the Fund in a manner proportionate to the Participant's interest in the Fund. To the extent feasible, this crediting of Fund Fees to Participant accounts may be reflected as a net reduction of the Participant Monthly Fee. Fund Fees are subject to change without Contractor's consent based on the policies of the Funds. Contractor will not be responsible to audit the amounts received attributable to Participants' accounts. Any increases or decreases in Fund Fees by the Fund or a change in the Fund menu will result in a corresponding adjustment to the credit made to applicable Participant accounts. For additional information regarding Fund Fees and other costs associated with administering mutual funds, refer to the fund prospectus and

relation information.

- D. Use of Agents or Subcontractors. Contractor may perform any of the services described in this Exhibit through agents and subcontractors selected by Contractor. Contractor shall reasonably supervise any such agent or subcontractor, and the retention of agents or subcontractors shall not relieve Contractor of its duties hereunder. State specifically acknowledges that Contractor has subcontracted provision of Health Reimbursement Arrangement recordkeeping services to ConnectYourCare LLC
- E. Contractor Not Legal Counsel. State understands and agrees that it shall review with its legal and/or tax counsel all documents and information provided to it by Contractor and that State shall consult such counsel on any questions concerning State's responsibilities under this Exhibit, the GA-funded HRA documents, and the legal sufficiency of any documents so provided. State understands that neither Contractor, Contractor nor any of Contractor's other affiliates are permitted to provide State with legal or tax advice or otherwise engage in the practice of law. State acknowledges that it will not rely on any documents or information provided as if it were legal or tax advice, and Contractor shall not be liable for any legal or tax consequences resulting from such reliance.
- F. Notice of Errors; Correction of Errors; Improvements. All information supplied to State or Participant will be deemed correct if notice of discrepancies is not given to Contractor by the Participant or State within ninety (90) days of issuance of the report statement, confirmation, or other information. After that period, Contractor will correct transactional errors reflected on these statements, but will not be liable for consequential damages due to any errors not reported within that period.

Additionally, Contractor reserves the right to correct administrative errors or make improvements from time to time, without prior approval of the State, in order to facilitate the accuracy of the services, facilitate the competitiveness of the services, correct flaws in the services, or to otherwise satisfy business or operational needs.

- G. Term; Termination; Successor Contractor.
- a. Term. The term of this Exhibit shall commence on the Effective Date and continue until January 31, 2023 (the "Initial Term"), unless terminated earlier as provided in Section G(2). After the Initial Term, this Exhibit shall automatically extend for additional periods of one (1) year each (a "Renewal Term") unless either Party gives the required written notice of termination prior to the end of the then-current term. Any such notice by State must be received by Contractor at least 180 days prior to the end of the then-current term.
1. Termination. Either party may terminate this Exhibit by providing written notice at least 180 days prior to the end of the Initial Term or 180 days prior to each subsequent Renewal Term. Such notice shall be deemed to have been received three (3) days after mailing in the U.S. mail or immediately upon receipt if delivered to the address set forth in Section M of this Exhibit. The notice period may be waived by the party entitled to the notice.
- b. Run-Out Period. If the Exhibit is terminated at the end of the plan year, Contractor will, for the ninety (90) day period immediately following the date of termination ("Run-Out Period"), continue to administer claims for expenses incurred in the previous year in the manner described in this Exhibit. If the Exhibit is terminated mid-plan year, Contractor will, for the ninety (90) day period following the date of termination, facilitate the conversion to State's new administrator ("Conversion Period"). Upon expiration of the

- c. Run-Out Period or Conversion Period, all obligations of Contractor to administer claims or perform any other services under this Exhibit shall cease. No run-out services shall be performed for COBRA accounts, if applicable. State shall pay the fees associated with such Run-Out Period services or Conversion Period services as listed in Attachment B.
  - d. Transition Assistance. Upon termination, the Parties agree that Contractor shall have no further duty or responsibility to provide services to State under this Exhibit except as provided in Section G(3) of this Exhibit. However, Contractor will use reasonable efforts to transfer all relevant non-proprietary information concerning the GA-funded HRA that Contractor deems necessary for future operations, in Contractor's standard format, to State or to a successor service provider. Any unforeseeable or unusual costs or expenses incurred by Contractor in effecting this transfer shall be paid by State unless waived in writing by Contractor. State agrees that Contractor may charge reasonable fees for the provision of requested records or reports that Contractor previously provided. Although Contractor does not decide appeals on behalf of State, Contractor may charge a reasonable fee for research related to future appeals of claims adjudicated while Contractor was administrator. The final appeal of claims is solely the duty of State.
- H. Notices. Any notice or other communication required under this Exhibit shall be in writing and shall be delivered personally, sent by certified, registered or express mail, postage prepaid. Any such notice shall be deemed received when so delivered personally, or, if mailed, three (3) business days after the date of deposit in the U.S. mail, as follows:

If to Contractor:

If to State:

State of Vermont  
109 State Street  
Montpelier, VT 05609

- I. Construction. This Exhibit is the result of negotiation by both Parties, and, therefore, no claim shall be made to construe any portion of the Exhibit against either Party based on such Party's participation in the negotiating thereof.
- J. Representations and Warranties.
  - a. Contractor Representations and Warranties. Contractor represents and warrants that: (i) Contractor has the requisite authority to execute, deliver and perform this Exhibit; (ii) no contractual obligations exist that would prevent Contractor from entering into this Exhibit, or performing its obligation under either Agreement; (iii) Contractor has all material licenses and permits from all applicable regulatory authorities required for it to lawfully

engage in the business in which it is engaged, including without limitation the activities contemplated by this Exhibit; (iv) Contractor has the legal right to use all trademarks, service marks or other intellectual property that Contractor uses in performance of the services, except that Contractor makes no representation or warranty with respect to any trademark, service mark or other intellectual property supplied by State; (v) the GA-funded HRA-related documents furnished by Contractor, and Contractor's services to implement the GA-funded HRA comply in all material respects with applicable federal, state, and local law; and (vi) to the best of its knowledge and belief, upon the advice of its legal counsel, Contractor's performance of services for State does not bring Contractor within the definition of "Covered Entity" under HIPAA and its implementing regulations as of the Effective Date of this Exhibit.

- b. State Representations and Warranties. State represents and warrants that: (i) State has the requisite authority to execute, deliver and perform this Exhibit; (ii) no contractual obligations exist that would prevent State from entering into this Exhibit; (iii) State and its Affiliates have all material licenses and permits from all applicable regulatory authorities required for them to lawfully perform their obligations as set forth in this Exhibit and the Exhibit attached hereto; and (iv) State has the legal right to use all trademarks, service marks or other intellectual property that State uses in connection with its business.
  - c. Disclaimer of Warranties. EXCEPT AS EXPRESSLY PROVIDED IN THIS EXHIBIT, INCLUDING THE APPLICABLE EXHIBITS, CONTRACTOR AND CLIENT MAKE NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PURPOSE. CONTRACTOR'S AND CLIENT'S OBLIGATIONS SHALL BE SUBJECT TO THE LIMITATION OF LIABILITY PROVISIONS OF SECTION I OF THIS EXHIBIT.
- K. Personnel. Contractor shall assign an account manager reasonably acceptable to, and as agreed upon by the State. Any personnel employed by the State within 90 days prior to the date of this Exhibit may not be employed by the Contractor without the express consent of the State, or until after this Exhibit has been fully and satisfactorily performed.
- L. Entire Exhibit. This Exhibit consists of this document and the Exhibit A attached hereto.
- M. Passwords. In connection with electronic access to accounts and transactions, Participants will be assigned (and the Participant may then change) a unique number, code or other sequence (a "Password"). The State acknowledges that Contractor will hold each Participant responsible for the use and protection of the Password, and for monitoring their accounts. State agrees Contractor is not responsible for direct or indirect losses or damages arising from the unauthorized use of a Password occurring before it is notified that a Password is compromised, unless such unauthorized use is the result of Contractor's negligence or willful misconduct.
- N. Intellectual Property. Nothing contained in this Exhibit shall confer to State any property rights, proprietary interest, copyright or license in Contractor assets or technology, including, without limitation, the software, written materials, screen formats, or report formats used or developed to provide the services. State acknowledges that such assets and technology constitute copyrighted material, trade secrets or proprietary information of substantial value to Contractor. and/or. State agrees it shall treat the foregoing as proprietary to Contractor and that it shall not divulge any such proprietary information to any person or organization except as expressly permitted hereunder or as required by law. Notwithstanding this provision, all Plan data, Participant data, State information and any other materials pertaining to the Plan provided to Contractor shall remain the State's property.

- O. Severability. If any term or provision of this Exhibit or its application to any person or circumstances will, to any extent, be invalid or unenforceable, the remainder of this Exhibit, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected. Each term and provision of this Exhibit will be valid and enforceable to the fullest extent permitted by law.
- P. Governing Law. This Exhibit shall be governed by and construed in accordance with the laws of Vermont applicable to agreements made and to be performed entirely within Vermont, except the choice of law rules.
- Q. Third Party Beneficiaries. The provisions of this Exhibit are solely for the benefit of the Parties hereto and their affiliates and are not intended to confer upon any person except the Parties hereto any rights or remedies herein.
- R. Change in Custodian. Upon prior written notice to State, a new custodian may be substituted for the existing custodian. Such substitution shall not alter the obligations of Contractor or State under this Exhibit.
- S. Forces Beyond Contractor's Control. Contractor will take commercially reasonable steps to prevent and to recover from disruptive events that are beyond its control. However, Contractor shall not be liable for any default or delay in the performance of services if the default or delay is primarily caused, directly or indirectly, by a force or party beyond the reasonable control of Contractor, including (but not limited to):
- a. Fire, flood, elements of nature or other acts of God;
  - b. Any outbreak or escalation of hostilities, war, riots or civil disorders in any country;
  - c. Any act or omission of the other party or any governmental authority;
  - d. Nonperformance of an unaffiliated third party; or
  - e. Failures or fluctuations in telecommunications, power supply, mechanical difficulties with information storage and retrieval systems, or other equipment.
- T. Writing and Signature: Electronic Transactions. Except for the actual execution of this Exhibit or unless otherwise explicitly required by law, any requirement for a writing (including an enrollment, exchange or distribution request, instruction, form, administrative notices, or agreement) or a signature in this Exhibit, or in the performance of services under it (collectively referred to as "Communications"), may be rendered in any form (including electronic means) that: (i) can reasonably be expected to be accessible to the parties needing to send or receive it, (ii) is convertible into an accurate physical record of the Communication, and (iii) where appropriate, is designed to test or confirm the identity or authority of the Communication's sender. Contractor reserves the right to specify the form in which Communications relating to Plan operations are made, including limiting them to electronic means, and will notify the State and, if necessary, any affected Participants of the addresses, telephone numbers, Internet addresses, etc. which may be used for these contacts. If the Plan uses an individually designed plan document, the State is responsible for assuring that the Plan document does not bar electronic or other non-traditional means of recording and authenticating actions in connection with Plan operations.

## Exhibit 5A

### Employer-Sponsored Account Responsibilities and Obligations

This Exhibit A is made by and between Contractor and State and is hereby incorporated into the Exhibit executed between the Parties.

This Exhibit A sets forth the responsibilities and obligations of each Party with respect to GA-funded HRAs created and administered pursuant to the Exhibit.

1. **Enrollment and Communications.** Contractor will provide its standard enrollment kit with standard forms and notices necessary to implement the GA-funded HRA administration, all in electronic format. Customized enrollment and communication materials may be provided at additional cost, as more fully described in Attachment B. Contractor will be reimbursed for costs incurred when using design and production facilities outside of Contractor, these costs to be State-reviewed and approved in advance.
  - a) **State Implementations.** Contractor shall use reasonable efforts to implement any State with a GA-funded HRA within thirty (30) days of notice from Contractor. State may utilize Contractor's Consumer Directed Healthcare ("CDH") Express self-service web-based tools or may transfer data via automated data file exchange.
    - i) In connection with automated data file exchange, Contractor will provide the following:
      1. Standard data and formatting specifications to State in order for State to transmit and receive data files to and from Contractor.
      2. Test data file exchange with each State.
    - ii) The charges for the foregoing implementation services are set forth in Attachment B.
2. **Compliance with Applicable Governing Law.** State is solely responsible for all GA-funded HRA documents and for ensuring that the GA-funded HRA complies with all applicable provisions of the Internal Revenue Code and any applicable state and local laws governing the GA-funded HRA. Contractor will provide basic GA-funded HRA information, such as Participant counts, that is readily available on its systems to assist State with complying with the requirements of the Code.
3. **Administration and Recordkeeping.**
  - a) **Participant Accounts.** Contractor will establish Participant accounts for each GA-funded HRA Participant for whom it receives complete enrollment information. Contractor is not responsible for determining if such GA-funded HRA Participants are eligible under the terms of the GA-funded HRA.
  - b) **Participant Files.** Contractor maintains electronic records for all Participants for whom Participant accounts have been established.
  - c) **Claims Processing.**
    - i) **Reimbursement or Distribution Requests.** Contractor shall facilitate the following methods for reimbursement from GA-funded HRAs.

1. Debit Card Purchases. Contractor shall process all debit card transactions for the GA-funded HRA daily.
  2. Website Reimbursement or Distribution Requests. Contractor shall make reimbursements based on reimbursement requests initiated through the Contractor Participant portal. Contractor shall also accept reimbursement requests sent by mail but not those sent via email or voicemail. The default form of reimbursement is a live check issued to the Participant. Where the Participant has provided Contractor with approval to direct deposit into his or her bank account, an ACH credit to the Participant's designated bank account will be made.
  3. Ordering of Reimbursement Distribution. The ordering of reimbursement distributions shall be: *first*, approved debit card transactions, and *second*, completed Contractor Participant portal/mailed in requests. The transactions are processed on a "first-in, first-out" basis.
- ii) Review of Claims. Contractor will review claims in accordance with standards set forth under applicable law, including IRS guidelines concerning eligible expenses, and Department of Labor claims procedure regulations. State retains the authority to decide appeals. Contractor shall have no discretionary authority with respect to the processing of claims under the GA-funded HRA as such claims shall be processed in accordance with the framework of policies, interpretations, rules, practices and procedures, established by State for the GA-funded HRA. Contractor's services under this Exhibit are solely ministerial and non-discretionary in nature.
- iii) Payment of Claims. Contractor will process claims within five (5) business days of the date Contractor receives a claim request from a Participant. Checks, if applicable, will be issued within two (2) scheduled weekly check payment cycles, upon receipt of claims in good order. Claims are in "good order" when the reimbursement request contains all pertinent information, including information required to substantiate the claim. Contractor will not reimburse a Participant's claim unless the Participant has sufficient funds in his/her GA-funded HRA at the time the claim is submitted. If the Participant does not have sufficient funds in his/her GA-funded HRA at the time the claim is submitted, the reimbursement request will be held by Contractor and processed in accordance with the time frame described in this paragraph starting with the date that such funds are available.
- iv) Unsubstantiated Claims/Ineligible Expenses. If a Participant is not able to substantiate a claim, or if payment for an expense is advanced through the debit card and subsequently deemed ineligible for reimbursement, Contractor will offset against future contributions, and if necessary, attempt to collect these amounts from the Participant. Where Contractor is unsuccessful, State will be responsible for collecting such amounts. Contractor will make data available to the State that identifies the employees and amounts to enable State to deduct an amount equal to the unsubstantiated or ineligible reimbursement from the Participant's paycheck or to add to the Participant's taxable wages, as allowed by state law.
- d) Adjudication. If applicable, Contractor shall be responsible for determining whether an expense is a medical expense under the Code. Such adjudication shall be made in accordance with the Code, the regulations thereunder, and any IRS rulings, notices, and advisories (such as Revenue Rulings 2003-43 and 2003-102). Contractor will process and adjudicate requests for disbursements in accordance with the terms of the applicable



plan document and standards set forth under applicable law. Contractor will: (i) receive disbursement requests and supporting documentation; (ii) review the requests and supporting documentation and make an initial determination of the disbursement, if any, to which the Participant is entitled; (iii) arrange prompt disbursement using funds available for distribution as provided in subsection 3(f) of this Exhibit A below; and (iv) correspond with Participants to obtain information necessary to adjudicate disbursement requests. Contractor will make the initial determination regarding any requests for disbursements by a Participant. State will decide all levels of appeal of any denied reimbursement request that is filed by a Participant.

If it is determined that a claim is subsequently found to be unsubstantiated or includes an ineligible expense, Contractor will send a letter to the Participant and will send reminder notifications to Participants on a regular basis (and Contractor may initially offset such ineligible expenses against future eligible expenses). Contractor will provide information to State needed for tax reporting by State. Contractor will provide an electronic data file with an overpayment report identifying the Participant and amounts to enable State to collect directly from the Participant.

e) Amount Available for Distribution.

i) GA-funded HRAs. If applicable, subject to Section 3(f)(ii) of this Exhibit A below, if the amount requested for distribution exceeds the available balance in a Participant's account, the request shall be paid to the extent of the available balance, or denied in the case of debit card transactions. In the event of a partial payment, Contractor will pend the amount of the distribution not paid and pay when the Participant's available balance allows.

ii) All HRAs. If applicable, in all cases, the amount distributed to a Participant or authorized for any Participant's debit card transaction shall not exceed the balance of actual funds provided by the relevant State in accordance with Section 5 of this Exhibit A below.

f) Reports. Contractor will provide State with the ability to produce GA-funded HRA-level reports utilizing the information maintained on its recordkeeping system. Standard reports will summarize all transactions that occurred for each Participant and report new enrollees within the specified time period.

i) If applicable and where not prohibited by HIPAA, IRS or other regulations or guidelines, Contractor shall make available to State for download via the Contractor Employer Dashboard the following reports:

1. Participant Accounts- displays contributions, deposits, claims, fees, funds available and account balances.
2. Weekly Claims Detail- provides listing of all paid claims supporting the weekly invoices and ACH transfers.
3. Claims Needing Documentation- provides a listing of all claims that are still in need of appropriate documentation. These can be either claims already paid using the Contractor payment card or reimbursement requests made online or through the mail.
4. Rejected Claims Requiring Refunds- provides a listing of all claims that have been rejected or partially rejected. Reasons for rejection include

ineligible expenses and dates of service outside the plan year parameters. These claims require a refund to the plan.

5. Paid Claims- identifies all paid claims for a specific time period.

- ii) If applicable, subject to the provisions of the Exhibit, Contractor reserves the right to modify the list and content of reports. Reports will have plan year-to-date information where appropriate.

4. **Plan Document.** Maintenance of a document consistent with the GA-funded HRA operations and all legal requirements is the responsibility solely of State.

- a) **Maintenance of Documents.** Contractor will provide a sample plan document to State if requested. Contractor will use reasonable best efforts to provide updates to State in a timely manner after changes in the law and regulation. State will inform Contractor of changes it desires to the GA-funded HRA prior to the time Contractor is expected to implement those changes.
- b) **Preparation of Amendments.** The preparation of amendments, other documentation, or systems changes to implement amendments are included at no additional cost.

5. **Contractor Healthcare Payment Card.** Contractor will provide Participants with a healthcare payment card integrated with the Participant's account. The payment card will allow the Participant's account balance to automatically transfer to the payment card. The payment card can be used at any eligible merchant provided the merchant has properly configured the merchant code to identify itself correctly. Cardholders are subject to the terms and conditions described in the cardholder agreement, which will be provided with the payment card.

a) **Debit Card Services.**

- i) If applicable, Contractor shall engage First Data Resources ("FDR") to provide debit card related services on a stored value card platform for the GA-funded HRA as more particularly described in that certain Health Care Card Service Agreement dated as of December 21, 2005, between Contractor and FDR (the "FDR Service Agreement").
- ii) If applicable, Contractor (through FDR) shall provide Participants with two (2) debit cards integrated with the Participant's GA-funded HRA. The debit cards shall allow the Participant's available GA-funded HRA account balance. Additional cards shall be provided to Participants upon request for an additional fee.
- iii) If applicable, Contractor (through FDR) shall generate and mail debit cards for new enrollments within ten (10) business days of receipt of complete information about the Participant as noted in the "ConnectYourCare Interface Design Guide for Census, Enrollment & Contributions" document. Contractor shall process reports for stolen cards and requests for replacements within one (1) business day, and mail replacement cards within ten (10) business days of receipt of complete information.
- iv) If applicable, on a daily basis, Contractor shall, or shall cause its processors to, transmit and process all debit card transactions in accordance with this Exhibit, Visa Rules and applicable law, and shall provide all legally required debit card transaction notices and periodic statements.

## CERTIFICATE OF COMPLIANCE

For a bid to be considered valid, this form must be completed in its entirety, executed by a duly authorized representative of the bidder, and submitted as part of the response to the proposal.

- A. **NON COLLUSION:** Bidder hereby certifies 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 Attorney General, bidder understands that this paragraph might be used as a basis for litigation.
- B. **CONTRACT TERMS:** Bidder hereby acknowledges that is has read, understands and agrees to the terms of this RFP, including Attachment C: Standard State Contract Provisions, and any other contract attachments included with this RFP.

- C. **FORM OF PAYMENT:** Does Bidder accept the Visa Purchasing Card as a form of payment?

\_\_\_ Yes \_\_\_ No

- D. **WORKER CLASSIFICATION COMPLIANCE REQUIREMENT:** In accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54), the following provisions and requirements apply to Bidder when the amount of its bid exceeds \$250,000.00.

**Self-Reporting.** Bidder hereby self-reports the following information relating to past violations, convictions, suspensions, and any other information related to past performance relative to coding and classification of workers, that occurred in the previous 12 months.

Summary of Detailed Information	Date of Notification	Outcome

**Subcontractor Reporting.** Bidder hereby acknowledges and agrees that if it is a successful bidder, prior to execution of any contract resulting from this RFP, Bidder will 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), and Bidder will provide any update of such list to the State as additional subcontractors are hired. Bidder further acknowledges and agrees that the failure to submit subcontractor reporting in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54) will constitute non-compliance and may result in cancellation of contract and/or restriction from bidding on future state contracts.

E. Executive Order 05 – 16: Climate Change Considerations in State Procurements Certification

**Bidder certifies to the following (Bidder may attach any desired explanation or substantiation. Please also note that Bidder may be asked to provide documentation for any applicable claims):**

1. Bidder owns, leases or utilizes, for business purposes, space that has received:
- Energy Star® Certification
  - LEED®, Green Globes®, or Living Buildings Challenge<sup>SM</sup> Certification
  - Other internationally recognized building certification:
- 

2. Bidder has received incentives or rebates from an Energy Efficiency Utility or Energy Efficiency Program in the last five years for energy efficient improvements made at bidder's place of business. Please explain:
- 

3. Please Check all that apply:
- Bidder can claim on-site renewable power or anaerobic-digester power ("cow-power"). Or bidder consumes renewable electricity through voluntary purchase or offset, provided no such claimed power can be double-claimed by another party.
  - Bidder uses renewable biomass or bio-fuel for the purposes of thermal (heat) energy at its place of business.
  - Bidder's heating system has modern, high-efficiency units (boilers, furnaces, stoves, etc.), having reduced emissions of particulate matter and other air pollutants.
  - Bidder tracks its energy consumption and harmful greenhouse gas emissions. What tool is used to do this? \_\_\_\_\_
  - Bidder promotes the use of plug-in electric vehicles by providing electric vehicle charging, electric fleet vehicles, preferred parking, designated parking, purchase or lease incentives, etc..
  - Bidder offers employees an option for a fossil fuel divestment retirement account.
  - Bidder offers products or services that reduce waste, conserve water, or promote energy efficiency and conservation. Please explain:
- 
- 

4. Please list any additional practices that promote clean energy and take action to address climate change:
- 
- 
-

**F. Acknowledge receipt of the following Addenda:**

Addendum No.: \_\_\_\_\_ Dated: \_\_\_\_\_

Addendum No.: \_\_\_\_\_ Dated: \_\_\_\_\_

Addendum No.: \_\_\_\_\_ Dated: \_\_\_\_\_

Bidder Name: \_\_\_\_\_ Contact Name: \_\_\_\_\_

Address: \_\_\_\_\_ Fax Number: \_\_\_\_\_

\_\_\_\_\_  
Telephone: \_\_\_\_\_

\_\_\_\_\_  
E-Mail: \_\_\_\_\_

By: \_\_\_\_\_ Name: \_\_\_\_\_  
Signature of Bidder (or Representative) (Type or Print)

**END OF CERTIFICATE OF COMPLIANCE**

RFP/PROJECT:  
DATE:

**WORKER CLASSIFICATION COMPLIANCE REQUIREMENT**

**Self Reporting  
Form 1 of 1**

**This form must be completed in its entirety and submitted as part of the response for the proposal to be considered valid.**

The Department of Buildings and General Services in accordance with Act 54, Section 32 of the Acts of 2009 and for total projects costs exceeding \$250,000.00, requires bidders comply with the following provisions and requirements.

Bidder is required to self report the following information relating to past violations, convictions, suspensions, and any other information related to past performance relative to coding and classification for worker's compensation. The state is requiring information on any violations that occurred in the previous 12 months.

Summary of Detailed Information	Date of Notification	Outcome

**WORKER CLASSIFICATION COMPLIANCE REQUIREMENT:** Bidder hereby certifies that the company/individual is in compliance with the requirements as detailed in Act 54, Section 32 of the Acts of 2009.

Date: \_\_\_\_\_

Name of Company: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Address: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

Phone Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

Fax Number: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Signature (Bid Not Valid Unless Signed)\*

(Type or Print)

\*Form must be signed by individual authorized to sign on the bidder's behalf.

**WORKER CLASSIFICATION COMPLIANCE REQUIREMENT****Subcontractor Reporting Form**

**This form must be completed in its entirety and submitted prior to contract execution and updated as necessary and provided to the State as additional subcontractors are hired.**

The Department of Buildings and General Services in accordance with Act 54, Section 32 of the Acts of 2009 and for total project costs exceeding \$250,000.00 requires bidders to comply with the following provisions and requirements.

Contractor is required to provide a list of subcontractors on the job along with lists of subcontractor's subcontractors and by whom those subcontractors are insured of workers. Include additional pages if necessary. This is not a requirement for subcontractor's providing supplies only and no labor to the overall contract or project.

<b>Subcontractor</b>	<b>Insured By</b>		<b>Subcontractor's Sub</b>	<b>Insured By</b>

Date: \_\_\_\_\_

Name of Company: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Address: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

Phone Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

Fax Number: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Failure to adhere to Act 54, Section 32 of the Acts of 2009 and submit Subcontractor Reporting: Worker Classification Compliance Requirement will constitute non-compliance and may result in cancellation of contract and/or forfeiture of future bidding privileges until resolved.

Send Completed Form to: Office of Purchasing & Contracting  
133 State Street, 5<sup>th</sup> Floor  
Montpelier, VT 05633-8000  
Attention: Contract Administration