



STATE OF VERMONT  
OFFICE OF THE ATTORNEY GENERAL  
109 STATE STREET  
MONTPELIER, VT  
05609-1001

August 19, 2024

Chris Carlson  
Troutman Pepper Hamilton Sanders LLP  
1001 Haxall Point  
Richmond, Virginia 23219

Via Email Only: [chris.carlson@troutman.com](mailto:chris.carlson@troutman.com)

Re: Vermont Public Records Request

Dear Chris,

I write in response to your recent public records request, received August 12, 2024. You requested documents relating to The Vermont Attorney General's Office Consumer Protection Division hiring of outside counsel.

Specifically, you requested:

1. Documents that identify cases in which the State has hired private counsel in consumer protection matters that will:
  - a. identify the types and subject matter of the cases;
  - b. the firms hired in those cases;
  - c. whether counsel was hired on an hourly or contingency fee basis;
  - d. provide information on the current status of those cases, including any recovery by the State and any payments to outside counsel; and
  - e. provide policies regarding the retention and supervision of outside counsel.
2. Contracts for services entered into between that State and outside counsel.
3. Documents related to the selection of outside counsel including:
  - a. requests for proposals; and
  - b. bidding process documents.
4. The State's website or other location where the State's outside counsel contracts are publicly accessible.

Pursuant to your phone conversation with our Paralegal Jacob Metivier, please find documents responsive to your request which we are able to provide within the 30 minute window which will incur no charge to your firm.

If you feel information or records have been withheld in error, you may appeal to the Deputy Attorney General in writing at:

Robert McDougall  
Deputy Attorney General  
Office of the Attorney General  
109 State Street  
Montpelier, VT 05609-1001

Thank you for contacting the Vermont Attorney General's Office.

Sincerely,

/s/ Justin Kolber  
Justin Kolber  
Chief  
Environmental and Public Protection Division

**1. Parties**

This is a contract for services between the State of Vermont, Office of the Attorney General (hereafter called “State”) and The Cicala Law Firm, PLLC, with a principal place of business in Dripping Springs, Texas, (hereafter called “Contractor”). Contractor’s form of business organization is a professional limited liability company. It is the contractor’s responsibility to contact the Vermont Department of Taxes to determine if, by law, the contractor is required to have a Vermont Department of Taxes Business Account Number.

**2. Subject Matter**

The subject matter of this contract is services generally on the subject of legal services. Detailed services to be provided by the 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 15% of recovery net of reimbursed expenses, with such contingency fee capped at \$50,000,000.00.

**4. Contract Term**

The period of Contractor’s performance shall begin on May 10, 2024, and end on May 10, 2029.

**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.

**6. Amendment**

This contract represents the entire agreement between the parties; 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 18 pages including the following attachments which are incorporated herein:

- Attachment A – Specifications of Work to be Performed
- Attachment B – Payment Provisions
- Attachment C – “Standard State Provisions for Contracts and Grants” (revision date December 2023)
- Attachment D – Other Provisions
- Attachment E – Contractor’s Standard Hourly Rates

**9. Order of Precedence**

Any ambiguity, conflict or inconsistency in the Contract Documents shall be resolved according to the following order of precedence:

- 1) Standard Contract
- 2) Attachment D
- 3) Attachment C (Standard Contract Provisions for Contracts and Grants)
- 4) Attachment A
- 5) Attachment B
- 6) Attachment E

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

**By the State of Vermont:**

Date: 7/24/2024

Signature:   
Signed by: CAEC462E4F0645A...

Name: Sarah London

Title: Chief Assistant Attorney General

**By the Contractor:**

Date: 7/24/2024

Signature:   
DocuSigned by: A0A9132711FD4A2...

Name: Joanne Cicala

Title: Managing Partner

(Remainder of page intentionally left blank)

**ATTACHMENT A  
SPECIFICATIONS OF WORK TO BE PERFORMED**

The purpose of this contract is for The Cicala Law Firm PLLC, to provide the State of Vermont, Office of the Attorney General (“AGO”) with legal services, further described below and as set forth herein. Without limitation, Contractor shall assist and support the AGO's investigation and potential litigation against pharmacy benefit managers (“PBMs”), and related entities' unfair and deceptive actions relating to pharmaceutical pricing. The work to be performed consists of assisting the AGO in conducting the investigation, determining what claims will be brought, drafting the complaint, conducting affirmative and defensive discovery, taking and defending depositions, motions practice, potential settlement negotiations, and preparing for and conducting any trial that proceeds, and if necessary, appellate briefing and argument. The AGO, at all times, will direct the litigation in all respects, including but not limited to, whether and when to initiate litigation, against who actions will be taken, and the claims to be brought in said litigations, whether and when to file dispositive or other motions, approval and rejection of all settlement offers, and the amount and types of damages and injunctive relief to be sought.

**CONTRACT REPRESENTATIVES**

Primary contact for the Contractor will be Joanne Cicala, Managing Partner, The Cicala Law Firm, PLLC.

Primary contacts for the State of Vermont will be Jill Abrams, Assistant Attorney General & Director of the Consumer Protection and Antitrust Unit, and Merideth Chaudoir, Assistant Attorney General.

**SERVICES PROVIDED**

Contractor shall provide legal services to the State of Vermont with respect to investigation, preparation, filing, prosecution, and appeal of civil claims and/or actions for damages, penalties, injunctions, and other legal recovery and/or relief relating to PBMs, and related entities' unfair and deceptive acts and practices in violation of Vermont's consumer protection and antitrust laws.

Contractor shall appear for the State of Vermont and assist the AGO in the conduct of any litigation involving PBMs, and related entities as provided for herein (“Litigation”). Specifically, Contractor shall report to and be subject to supervision of the AGO in the conduct of Litigation. Contractor shall consult with the AGO, which shall retain control over decision-making, and have final authority over all aspects of Litigation. Contractor shall assist in Litigation under the direction of the AGO.

All briefs and other materials to be filed with any court shall first be approved by the AGO and provided in draft form in a timely manner for review. Regular status meetings will be held as requested by the AGO or Contractor.

Examples of the legal services Contractor shall provide to the AGO shall include the following:

1. Investigate and assess claims against PBMs, and related entities.
2. Prepare and prosecute litigation against potential liable parties.
3. Assist in all phases of the investigation and litigation, including but not limited to:
  - a. preparing complaint(s), filing complaint(s), service of summons;
  - b. drafting motions and responses to motions, including discovery, pretrial, and dispositive motions as appropriate;

- c. drafting and responding to discovery requests propounded on the State of Vermont or AGO and to the defendants and any third parties;
  - d. reviewing, analyzing, and tracking documents obtained in discovery;
  - e. handling discovery disputes and other discovery matters;
  - f. taking depositions, defending depositions, preparing witnesses for depositions;
  - g. identifying experts to testify on behalf of the State of Vermont;
  - h. preparing witnesses for trial testimony;
  - i. representing the State of Vermont in trial or any settlement negotiations;
  - j. representing the State of Vermont in any appeal of any judgment or verdict rendered in the action, and if applicable, any remand from appeal; and
  - k. coordinating litigation with other states and the federal government to promote, to the extent beneficial, a unified approach to litigation.
4. Advise the AGO on the conduct of the case and on strategy and tactics for each phase of the case.
5. Respond to public records requests: Outside entities may send public records requests to the AGO regarding this matter. As requested by the AGO, Contractor shall provide resources to scan, search, redact, and produce responsive documents to the extent Contractor may have collected and maintained such documents from the AGO for purposes of the Litigation. In appropriate circumstances the AGO may need to assert and defend certain exempt materials from production.
6. Perform related tasks as reasonably needed to facilitate the goals and objectives of the investigation and anticipated litigation.
7. Achieve deadlines for deliverables as determined by the AGO.

#### **PERFORMANCE MANAGEMENT**

Contractor and the AGO shall meet on a regular basis on all matters related to the Litigation.

**ATTACHMENT B  
PAYMENT PROVISIONS**

In consideration of the services provided by the Contractor, the State shall pay Contractor a sum not to exceed 15% contingency fee against recovery net of reimbursed expenses, but in no event shall the total contingency fee exceed \$50 million. The maximum dollar amount payable under this contract is not intended to guarantee any amount of payment under this contract. The Contractor acknowledges that nothing in this contract shall be construed as requiring the State to request the Contractor to provide services. The Contractor will be paid at the allowable billable rates for products or services actually delivered or performed as specified in Attachment A, and expenses as stated below up to the maximum allowable amount.

1. Prior to commencement of work and release of any payments, Contractor shall submit to the State 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.
2. Invoices must be rendered on Contractor's standard billhead or official letterhead and must include a unique identifier (invoice #) as well as the Contract # for this Contract. Invoicing must contain a detailed itemization of all work performed and expenses incurred during the invoice period, including dates of service, and any other information and/or documentation appropriate and sufficient to substantiate the amount invoiced for payment by the State.

Payment terms shall be **Net 30** days from the date the State receives an error-free invoice with all necessary and complete supporting documents.

Contractor shall electronically submit invoicing on a quarterly basis to the State at the email addresses noted below. Contractor's first quarterly invoice is due no later than October 1, 2024.

jill.abrams@vermont.gov  
Merideth.Chaudoir@vermont.gov

3. **PAYMENT:**

a. **Contingency Fee.**

This is a contingency fee contract. The parties have agreed to 15% of any recovery net of reimbursed expenses, but in no event shall the total contingency fee exceed \$50 million. If there are multiple or phased recoveries, costs and attorney's fees shall be paid at the time the State recovers funds from any individual defendant or target.

b. **Non cash recoveries.**

Recoveries shall include cash recoveries plus substantial non-cash recoveries, whether awarded by settlement or final judgment in any legal action. "Non cash recoveries" means the fair market value of any property delivered to the State, any services rendered for the State's benefit, and any other non-cash benefit received from the defendants in a settlement or final judgment of a case where the Contractor performs services under this Contract. The value of said non-cash recoveries shall be discounted to net present value.

If any substantial non-cash recovery is awarded in a final judgment or obtained in settlement, the State of Vermont shall provide Contractor with its estimate of the value of the non-cash recovery. The Contractor shall promptly respond in writing, indicating whether the Contractor accepts said estimate. If the parties disagree as to the fair market value of any non-monetary property or services, they shall obtain an appraisal from an appraiser on which they agree, and such appraised value shall be deemed the fair market value of any non-

monetary property or services under this agreement. The cost of such appraisal shall be paid for by Contractor and such cost will not be recoverable under this Contract.

In no event will the State be required to pay legal fees or expenses out of any fund other than the monies recovered from defendants or other targets (or their insurers, agents, or other representatives) arising from the legal actions brought or the threat of legal action to be brought pursuant to this Contract.

**c. Expenses.**

Expenses incurred by both the Contractor and AGO, shall be reimbursed from any recovery. Reimbursed expenses shall be deducted prior to calculating the amount of recovery to determine the contingency fee identified above. Except as otherwise specified in this Contract, there shall be no reimbursement to Contractor in absence of a recovery for the State of Vermont. In the event of a recovery by the State of Vermont, the State shall reimburse Contractor's expenses, for Contractor's actual out of pocket costs for those items identified below. Contractor shall not charge any mark-up, interest or other administrative expense for the expenses identified below.

**i. Advancement of Expenses and Costs**

Contractor shall advance all litigation costs, expenses, and disbursements, including expert witness fees and costs, deposition costs, and document production. The State of Vermont shall not advance payment for any services rendered or costs, expenses, or disbursements incurred. Contractor's agreement to advance all costs, expenses, and disbursements, as well as its agreement to defer fees while any and all Litigation (including appeals) is pending, has been taken into consideration in establishing the Fee Schedule. The State of Vermont shall not be liable for any such costs, expenses and/or disbursements if there is no recovery from the Litigation.

**ii. Expenses/Format**

Should a recovery be obtained by the State of Vermont, Contractor shall be reimbursed for certain non-labor expenses and costs only as set forth in Section d below. Contractor shall not seek reimbursement of expenses or costs incurred by other attorneys or firms separately retained by Contractor in delegation of its duties.

All expenses shall be itemized to include the following information: (1) name of the attorney incurring the expense; (2) a legible copy of a receipt documenting the expense, and (3) a detailed description of the expense. No reimbursement shall be made for "miscellaneous" listings or for expenses missing any of the three requirements listed above.

**iii. Receipts**

All receipts shall be retained for at least three (3) full years following the later of the Termination Date of this contract or satisfaction of all payment terms resulting from any recovery, and shall be made available to the State of Vermont upon request or as otherwise set forth herein.

**iv. Maximum Reimbursement**

Unless otherwise expressly approved by the AGO in writing prior to invoicing, the following permitted expenses shall be reimbursed only in accordance with Section b, above, and only as follows:

**1. Experts**

Contractor shall be reimbursed for retention of outside experts or consultants, including fees and other reasonable costs, only when expressly authorized by the AGO. Except as otherwise expressly set forth herein, Contractor shall not be reimbursed for retention of in-house experts or other in-house legal support staff.



**2. Travel**

Contractor's travel expenses approved by the State shall be reimbursed in a manner consistent with the State of Vermont's Travel Policies.

**3. Photocopying/Document Imaging**

In-house photocopying/document imaging (including faxing, scanning, and color copies) shall be reimbursed at Contractor's actual expense, not to exceed five cents (\$0.05) per copy and is to be itemized on the invoice as "photocopies, document images, faxes, or scanned pages" (number of copies @ rate per copy/image). Reasonable amounts for outside photocopying/document imaging shall be reimbursed at actual cost if receipts are provided.

**4. Priority/Overnight Mail**

Charges for priority or overnight mail and courier services shall be reimbursed only if a reasonable basis exists for using the service and only if receipts for the expense are provided. In no event shall Contractor be reimbursed for the cost of sending invoices or status reports to the AGO by overnight or priority mail services.

**5. Secretarial Overtime, Telecommunications, and Electronic Research Services**

There shall be no reimbursement for secretarial/administrative services, telecommunications, and electronic research services.

**6. Other Expenses**

Actual costs shall be reimbursed for certain extraordinary expenses including transcripts, deposition costs, document management and trial technology services provided by external vendors or consultants, witness fees, subpoena service, and postage when itemized with receipts, and for other disbursements that are reasonable and necessary to the prosecution of the State's claims and mutually agreed upon by the parties. Routine expenses such as office supplies, word processing, or secretarial costs are not reimbursable. Contractor shall obtain the AGO's approval before incurring any individual expense exceeding Two Thousand and 00/100 Dollars (\$2,000.00), provided, that Contractor may be reimbursed for categories of expenses which individually or collectively exceed \$2,000.00 (e.g., transcripts of depositions) with advance AGO approval of such expense categories.

**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:** 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.
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:** 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.
- 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. 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:** 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.

**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  
OTHER PROVISIONS**

1. **Legal Services.** Contractor will be providing legal services under this contract. Contractor agrees that during the term of this contract he or she will not represent anyone in a matter, proceeding, or lawsuit against the State of Vermont or any of its agencies or instrumentalities. After termination of this contract, Contractor also agrees that he or she will not represent anyone in a matter or proceeding, or lawsuit substantially related to this Contract.
2. **Confidentiality.** Except as otherwise authorized by the State or its representative, Contractor agrees to keep confidential all information received by Contractor in connection with this Contract with respect to (i) the State and all related agencies and companies and (ii) any application or examination submitted to Contractor for review. Other than the reports submitted to the State, the Contractor agrees not to publish, reproduce, or otherwise divulge such information in whole or in part, in any manner or form or authorize or permit others to do so, unless permitted to do so by the State or its representative. Contractor will take reasonable measures as are necessary to restrict access to information in the Contractor's possession to those employees on his/her staff who must have the information on a "need to know" basis. Contractor agrees to immediately notify, in writing, the State's authorized representative in the event Contractor determines or has reason to suspect a breach of this requirement. If Contractor believes that aforementioned confidential information has become publicly available in circumstances where disclosure was not authorized, it will notify the State and discuss an appropriate response with the State. If Contractor is required by law to disclose any confidential information, it will, to the extent practicable, notify the State of the disclosure request and discuss an appropriate response with the State. The foregoing provisions of this Section 1 do not apply, however, to documents or information that are the subject of discovery requests in litigation contemplated under this agreement, or the disclosure of which is reasonably required to ensure that Contractor can effectively represent the State with respect to the subject matter of this Contract in connection with litigation proceedings, in dealings with defendants or other targets pursuant to this Contract.

As set forth in Attachment C above, both parties acknowledge and agree that this Agreement and any and all information obtained by the State from the Contractor in connection with this Agreement are subject to the State of Vermont Public Records Act, 1 V.S.A. § 315 et seq. The State will, however, endeavor to protect all attorney-client communications and attorney work product from disclosure under the applicable exceptions to the Act.

3. **No Action Against the State.** Contractor will be providing legal services under this contract. Contractor agrees that during the term of this Contract, it will not represent any person or entity in a matter, proceeding, or lawsuit against the State of Vermont or any of its agencies or instrumentalities. Contractor also agrees that after termination of this Contract, it will not represent any person or entity in a matter, proceeding, or lawsuit substantially related to this Contract.
4. **Professional Liability Insurance.** Before commencing work on this Contract and throughout the term of this Contract, Contractor shall procure and maintain professional liability insurance for any and all services performed under this Contract, with a minimum coverage of \$5,000,000 per occurrence.
5. **Scope of Appointment.**
  - a. The Attorney General shall have final authority over all aspects of Litigation. Moreover, the Attorney General has the unfettered right to appoint one or more designated assistants (the "Designated Assistant") to oversee Litigation which appointment the Attorney General may modify at will. For the purposes of Litigation, until further notice is given, the Designated Assistant shall be Jill Abrams, Assistant Attorney General and Director of Consumer Protection and Antitrust. In the event that no Designated Assistant is named, all references herein to the Designated Assistant shall be deemed to refer to the Deputy Attorney General.



- b. Contractor shall coordinate the provision of counsel with the Designated Assistant and other personnel of the AGO, and such others as the Attorney General may appoint as outside counsel. All briefs and other material which may be filed with any court shall first be provided electronically to the AGO in draft form in a reasonable and timely manner for review and shall be approved by the AGO. The Attorney General shall retain veto power over any decisions made by Contractor. Regular status meetings will be held as requested by Contractor or the AGO.
- c. Contractor shall only communicate with State of Vermont officers or employees through the AGO unless otherwise agreed to by the AGO. Contractor shall provide sufficient resources, including attorneys, paralegals, and other professional resources, to prosecute Litigation in accordance with the Vermont Rules of Professional Conduct and consistent with the requirements of complex litigation.
- d. Counsel for any defendant subject to Litigation for which the AGO has retained Contractor may contact the Designated Assistant directly without first consulting Contractor.

**6. Assignment and Delegation of Work.**

- a. Contractor may assign legal work to those individuals set forth in Contractor's response to the AGO's Request for Proposal (the "RFP Response") or referenced in Attachment E hereto, or any individual employed by Contractor. Contractor may assign or delegate work to other attorneys, legal professionals, or firms only with the advance written approval of the AGO.

All attorneys, legal professionals, or firms to whom Contractor may delegate work under this Section must have qualifications and experience to perform the work requested and shall work under the supervision and control of Contractor. All attorneys, legal professionals or firms who work on this case shall follow and apply the highest professional standards. If the AGO becomes dissatisfied with the work product or the working relationship with any individual that works pursuant to this Contract, the AGO may request in writing the replacement of any and all such individuals and Contractor shall grant such request.

Although delegation may be permitted as provided herein, delegation shall not relieve Contractor of any responsibility or liability for the work performed hereunder. No provision of this section shall be construed to allow Contractor to subcontract with, hire, or retain any law firm, other than the lawyers referenced in Attachment E, without the prior written consent of the AGO.

- b. In the event that Contractor delegates work to other attorneys, legal professionals, or firms, as approved by the AGO, the compensation of such firms shall be a matter beyond the scope of this Contract to be negotiated in writing between Contractor and those firms prior to the commencement of any work by such firms, and shall be paid entirely by Contractor. A copy of such compensation agreement shall be provided electronically to the AGO. The State of Vermont shall not be liable for any fees, compensation or expenses to be paid to other firms retained by Contractor to serve as co-counsel or provide other services to Contractor. Contractor agrees to indemnify, defend, and hold harmless the State of Vermont against any claim for reimbursement of fees, costs, or expenses asserted by any firm retained by Contractor. Contractor moreover will include a provision in any agreement with a sub-contractor under which the sub-contractor agrees to release and hold harmless the State of Vermont against any claim for reimbursement of fees, costs or expenses. Contractor shall be responsible for all of Contractor's business expenses, including, but not limited to, employees' wages and salaries, insurance of every type and description, and all business and personal taxes, including income and Social Security taxes and contributions for Workers' Compensation and Unemployment Compensation coverage, if any.

**7. Case Management**

- a. The AGO will serve as local counsel and play an active role in managing any Litigation, including but not limited to participating in regular strategy discussions, reviewing discovery and filings, and other matters.
- b. Contractor shall be required to provide status, lodestar, and expense reports, as well as significant case updates regarding any aspect of the investigation and Litigation. Contractor shall submit monthly status reports and updates to the Designated Assistant, or such more frequent reports and updates as Litigation developments may suggest or as requested by the Designated Assistant. Contractor shall submit quarterly lodestar and expense reports to the Designated Assistant. Failure to timely provide such reports and updates may result in forfeiture of Contractor's compensation.

At a minimum, significant case updates must include a description of the current status of Litigation, any significant events that have occurred since the previous update, and a prospective analysis of any significant future events.

Reports shall be sent electronically to the Designated Assistant at: [jill.abrams@vermont.gov](mailto:jill.abrams@vermont.gov) and/or such other addresses as the AGO may hereafter designate.

- c. Contractor shall consult, by telephone or email, with the Designated Assistant as soon as possible on all matters that may be of substantial legal significance, controversial, high profile, or otherwise noteworthy. Without limitation to the above, Contractor shall give timely written notice to the Designated Assistant of the scheduled date for any of the following, if applicable:
    - i. Pleadings;
    - ii. Discovery deadlines or cutoffs, including deposition dates;
    - iii. Dispositive motions;
    - iv. Court decisions and rulings;
    - v. Schedule for hearings, conferences, or other court appearances;
    - vi. Trials;
    - vii. Appeal or notice of an appeal;
    - viii. Settlement negotiation or other alternative dispute resolution efforts; and
    - ix. Upon the filing of any pleading or the receipt of any communication from a court, Contractor shall timely provide electronic notification and a time-stamped copy of such filing to the Designated Assistant.
  - d. The AGO shall have full, immediate, and unrestricted access to the work product of Contractor (or any other individual or entity that has been delegated duties under this Contract) during the term of this Contract. Upon termination of this Contract, Contractor shall without further request and at no cost to the State, turn over to the State all files related to the work performed under this Contract.
  - e. Contractor represents and warrants none of its attorneys or those other professionals that have been assigned legal work in this case are debarred, suspended, or otherwise ineligible to enter into this Agreement with the State of Vermont. Contractor shall immediately notify the AGO if any disciplinary actions are brought against it or any of its attorneys assigned work in this matter in any jurisdiction.
8. The Attorney General in his full discretion shall approve both the initiation of Litigation on behalf of the State of Vermont and any settlement. Contractor understands and agrees that the initiation of Litigation on behalf of the State of Vermont and all settlements must receive the prior approval of the Attorney General. Contractor shall confer with the Designated Assistant early and regularly with regard to the prospects of settlement. Decisions

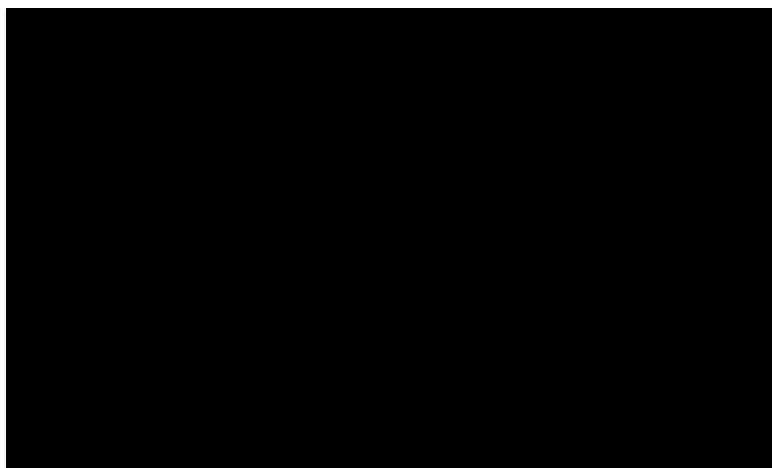
regarding settlement of the case shall be reserved exclusively to the discretion of the Attorney General and his Designated Assistant.

Contractor shall timely notify the Designated Assistant of any settlement conferences to allow the Designated Assistant to participate as warranted. Without limitation, Contractor agrees to confer with the AGO about the following matters when applicable:

- a. Confidentiality provisions in settlement agreements;
  - b. Indemnification provisions;
  - c. Release language; and
  - d. Naming of the State of Vermont, including any of any of its agencies, instrumentalities, officers or employees, as a party.
9. It is important that the AGO receives early notice of potential or actual appeals, for or against, the State of Vermont. Therefore, Contractor shall give notice via email, as soon as possible, to the Designated Assistant upon the receipt of a dispositive decision in any court, receipt of a Notice of Appeal, or the existence of any intent of Contractor to appeal a decision arising out of Litigation.
10. Contractor agrees to adhere to Vermont's Public Records Act, 1 V.S.A. § 315 et seq., and maintain all public records in accordance with Vermont law, including documentation of all expenses, disbursements, charges, credits, underlying receipts and invoices, and other financial transactions that concern the provision of such attorney services. Contractor shall consult with and obtain the approval of the AGO before responding to any public records request. Moreover, Contractor shall not disclose any information obtained in performing its services hereunder in violation of any state or federal law including, but not limited to, the Family Education Rights and Privacy Act ("FERPA") and/or the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") as the same may be amended or modified from time to time.
11. Contractor nor any partner, associate, employee, or any other person assisting with the work contemplated by this Contract shall publish any material, including online publications, or speak to or otherwise communicate with any representative of a television station, radio station, newspaper, magazine, website, or any other media outlet concerning the work outlined or contemplated by this Contract without first obtaining approval of the Designated Assistant and/or the Deputy Attorney General. This Contract specifically prohibits any right or ability on the part of Contractor to speak on behalf of the State of Vermont to any member of the news media. Provided, however, the restrictions in this Section 6 shall not apply to any professional or other publication of (i) the fact that Contractor is representing or has represented the State of Vermont as to a specific matter (the "Representation"), once any Litigation has been filed, and (ii) the nature of the Representation.

**ATTACHMENT E  
CONTRACTOR'S STANDARD HOURLY RATES<sup>1</sup>**

The following hourly rates shall apply to Contractor's attorneys and staff, for purposes of attorney's fees and lodestar calculations:



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<sup>1</sup> Rates may be adjusted only upon mutual agreement of the parties.

STATE OF VERMONT  
OFFICE OF THE ATTORNEY GENERAL

REQUEST FOR PROPOSAL OF LEGAL SERVICES

I. INTRODUCTION

The Vermont Attorney General’s Office (AGO) has statutory authority to investigate and enforce against “unfair or deceptive acts or practices in commerce.” 9 V.S.A. § 2453. Meta Platforms, Inc. (“Meta”), owns and operates Instagram (“IG”), one of the world’s largest social media platforms in terms of users and annual revenue. Unfortunately, IG presents serious harms to the mental and physical health of its users.<sup>1</sup> In fact, IG, along with other social media platforms, is increasingly understood by researchers as a significant tributary to the teen mental health epidemic currently gripping America.<sup>2</sup>

The AG has concern that Meta promotes IG to young users and intentionally addicts young users to IG despite knowledge that IG, and compulsive use it, are substantially harmful to the mental and physical health of young users; publicly misrepresents the known risks and harms of IG to young users; and undertakes these business practices in order to maximize its own profit. The AG has similar concerns regarding Meta’s operation of Facebook.

The AGO may retain outside counsel to assist and support its investigation and potential litigation against Meta in relation to IG and potentially FB’s harms to Vermont youth. The work to be performed consists of assisting the AGO in conducting the investigation, determining what claims will be brought, drafting the complaint, conducting affirmative and defensive discovery, taking and defending depositions, motions practice, potential settlement negotiations, preparing for and conducting any trial that proceeds, and, if necessary, appellate briefing and argument. The AGO, at all times, will direct the litigation in all respects, including but not limited to, whether and when to initiate litigation, against whom actions will be taken, the claims to be brought in said litigation, whether and when to file dispositive or other motions, approval and rejection of all settlement offers, and the amount and type of damages, penalties, and/or injunctive relief to be brought. The AGO intends to serve as local counsel and play an active role

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<sup>1</sup> See, e.g., Haidt, J., Rausch, Z., & Twenge, J. (ongoing). *Social media and mental health: A collaborative review*. Unpublished manuscript, New York University, available at [tinycloud.com/SocialMediaMentalHealthReview](https://tinycloud.com/SocialMediaMentalHealthReview) (last visited, July 14, 2023).

<sup>2</sup> See, e.g., Surgeon General Advisory on the “Effects Social Media Has on the Mental Health of Youth,” available at <https://www.hhs.gov/about/news/2023/05/23/surgeon-general-issues-new-advisory-about-effects-social-media-use-has-youth-mental-health.html> (last visited, July 14, 2023).

in managing and working on the case, including participating in regular strategy discussions, research for filings, drafting of filings, depositions, reviewing discovery, and other matters.

## **II. SCOPE OF SERVICES**

Examples of work which the AGO might require of outside counsel include the following:

1. Investigate and assess claims against Meta for the harms IG and potentially Facebook causes to young IG/FB users.
2. Prepare and prosecute litigation against Meta (and all relevant corporate defendants).
3. Assist in all phases of the investigation and litigation, as directed by the AGO, including but not limited to:
  - a) preparing complaint(s), filing complaint(s), service of summons;
  - b) drafting motions and responses to motions, including discovery, pretrial, and dispositive motions as appropriate;
  - c) drafting and responding to discovery requests propounded on the State of Vermont or AGO and to the defendants and any third parties;
  - d) reviewing, analyzing, tracking, and managing documents obtained in discovery;
  - e) handling discovery disputes and other discovery matters;
  - f) taking depositions, defending depositions, preparing witnesses for depositions;
  - g) identifying and retaining experts to assist and testify on behalf of the State of Vermont;
  - h) preparing witnesses for trial testimony;
  - i) representing the State of Vermont in trial or any settlement negotiations;
  - j) representing the State of Vermont in any appeal of any judgment or verdict rendered in the action, and if applicable, any remand from appeal;
  - k) coordinating litigation with other states and the federal government to promote, to the extent beneficial, a unified approach to litigation.
4. Advise the AGO on the conduct of the case and on strategy and tactics for each phase of the case.
5. Respond to public records requests. Outside entities may send public records requests to the AGO regarding this matter. The AGO will require resources in place to scan, search, redact, and produce responsive documents. In appropriate circumstances, the AGO may need to assert and defend certain exempt materials from production.
6. Perform related tasks as reasonably needed to facilitate the goals and objectives of the investigation and anticipated litigation.
7. Achieve deadlines for deliverables as determined by the AGO.

### III. SELECTION CRITERIA

In the selection of counsel, the AGO seeks:

- Counsel that does not already represent an individual, class or public entity *other than another state* in a similar matter against a social media company;
- Exceptional subject matter, trial, and appellate legal skills and experience;
- Knowledge and leadership in the legal areas associated with the investigation and anticipated litigation involving social media platforms;
- Extensive experience with consumer protection laws and complex litigation;
- Proven ability to manage a team of lawyers and support staff to ensure efficient and effective operations to achieve the goals of the investigation and anticipated litigation;
- The capacity to assign multiple attorneys and support staff to facilitate the goals of investigation and anticipated litigation;
- An excellent reputation within the legal community and beyond;
- A willingness to work under the direction of and in close collaboration with the AGO;
- No conflicts of interest, as determined by the State; for example, conflicts that would be difficult to waive or would raise questions about loyalty to the State of Vermont's interests; and
- Reasonable and competitive fee arrangements, including the financial capacity to sustain an investigation, litigation, and appeal. Outside counsel will undertake the investigation, litigation, and appeal on a contingency basis. The fee to be earned shall be a function, in part, of litigation milestones. The State of Vermont will owe counsel's fees and costs only if counsel secures a monetary recovery for the State of Vermont. Counsel shall not receive reimbursement for expenses incurred in the investigation, litigation, and appeal related to any defendant against whom counsel does not recover a settlement or judgment.

The AGO intends on opening negotiations with the applicant that the AGO determines has a reasonable likelihood of being awarded a contract based on the proposal, interview, and any supplemental submissions. It is anticipated that the proposed contract will be based upon the form attached to this Request for Proposals (RFP). Negotiations will focus on any weaknesses or deficiencies in the proposal as well as cost and pricing.

A written contract with the selected law firm(s) will require approval by the Deputy Attorney General, an Independent Review Panel, and the Secretary of Administration.

### IV. PROPOSAL FORMAT

The proposal should include the following information:

1. A description of the firm's proposed litigation strategy for a Consumer Protection Act enforcement action against Meta for IG's harms to young users in Vermont, including in light of anticipated 1<sup>st</sup> Amendment and Communications & Decency Act Section 230 defenses.

2. A description of the firm's areas of expertise and experience, including experience with the matters identified in this RFP.
3. Please include the specific identity and experience of the individual attorney or attorneys who would be providing services under the contract. Applicants should present a team of attorneys that have significant experience in complex civil and relevant subject-matter litigation. Full disclosure of all attorneys and staff who are not directly employed with the firm shall be disclosed. Attach copies of resumes of each member of the proposed team in your response to this RFP.
4. Identify whether your firm has been through significant developments in the past five years, such as a change in ownership or restructuring. Also, please identify whether you anticipate any significant changes within the next five (5) years.
5. An expression of willingness to work under the direction of and in close collaboration with the AGO on this matter.
6. A description of the existence of any possible conflicts of interest, including any lawsuits and disputes where the firm represents interests adverse to the State of Vermont; a representation that the firm will not represent any person or entity in a matter that would be adverse to or against the State of Vermont or any of its agencies or instrumentalities.; and a representation as to other clients the firm represents in the subject area of this RFP. In addition, applicants, including any equity owners of the firm, will identify whether they have previously made campaign contributions to the current Attorney General or otherwise registered lobbyists or lobbyist employers with the State of Vermont.
7. Please report any professional sanctions or other pending or threatened governmental or regulatory proceedings which would have an adverse impact on the firm or any member of the firm. Please also include an explanation and indicate the current status or disposition.
8. Within the last five (5) years, has your firm, or a partner or attorney in your firm, been involved in litigation or other legal proceedings about legal services provided by your firm, partner, or attorney? If so, please provide an explanation and indicate the current status or disposition.
9. Please provide your proposed contingency fee arrangement including, but not limited to, allocation of expenses and costs. This proposal should also include information about your firm's financial capacity to sustain complex and protracted litigation on a contingency fee basis.
10. Please provide the names and contact information of three (3) references, including at least one (1) governmental client.

**Please be aware that the State of Vermont is subject to the Access to Public Records Act. 1 V.S.A. § 315 et. seq. As a consequence, though the State would intend to assert any appropriate privileges, the State cannot necessarily assure the confidentiality of an RFP response.**



## **V. OTHER**

### **Statement of Rights**

To secure assistance that is deemed to be in the best interest of the State, the AGO 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.

### **Requirements for Submission**

If interested in serving the AGO in the capacity described above, please submit an electronic copy of the proposal no later than the close of business on May 31, 2024 to Merideth Chaudoir Assistant Attorney General, Office of the Attorney General, at [merideth.chaudoir@vermont.gov](mailto:merideth.chaudoir@vermont.gov). All proposals must have the e-mail heading: “**SMP Litigation**”.

Proposals received after the submission deadline will not be considered.

### **Proposal Inquiries**

Questions concerning this request for proposals should be sent in writing to: Merideth Chaudoir, Assistant Attorney General at [merideth.chaudoir@vermont.gov](mailto:merideth.chaudoir@vermont.gov).

Anticipated Schedule

1. Responses due to RFP	May 31, 2024
2. Invitations for interviews issued	June 7, 2023
3. Interviews concluded	June 21, 2023
4. Review panel oversight completed	June 28, 2023
5. Contract awarded	July 10, 2023 <sup>3</sup>

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<sup>3</sup> Contract contingent upon successful negotiation of terms and approval by the Secretary of Administration.