

# **REQUEST FOR PROPOSAL (RFP)**

## **FLU VACCINATION CLINICS**



**STATE OF CONNECTICUT  
OFFICE OF THE STATE COMPTROLLER  
55 ELM STREET  
HARTFORD, CT 06106-1775**

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## **I. STATEMENT OF OBJECTIVES**

In accordance with Section 5-259 of the Connecticut General Statutes, the Office of the State Comptroller (“OSC”) is soliciting proposals from entities interested in providing seasonal flu vaccination clinics for state employees and retirees at various work locations in the State of Connecticut. The cost of such services for those enrolled in the state employee health plans may be billed directly to the State of Connecticut via roster billing or similar mechanism. For those not enrolled in the state employee plans, services will be billed directly to the employee or retiree or billed to the participant’s medical carrier.

The Comptroller intends to authorize the selected applicants to provide Flu Vaccination services to State employees, dependents and retirees under stipulated terms and conditions for a period from September 1, 2016 and expiring August 30, 2019. The contract will include a clause that reserves the right to renew the contract for up to two additional one-year periods at the conclusion of the contract term. This right will be exercised solely at OSC’s discretion. The State reserves the right to award or reject any and all proposals in whole or in part, to waive technical defects, irregularities and omissions if, in its judgment, the best interest of the State will be served. All proposals will be kept sealed and safe until the deadline for submission has passed.

## **II. BACKGROUND**

The State of Connecticut health plans have approximately 55,000 state employees and 45,000 retirees enrolled in coverage. Active employees, retirees, and their enrolled dependents may take advantage of the flu vaccination clinics. Under the State of Connecticut health plans, the flu vaccinations are considered a Preventive Care Benefit. Under certain circumstances, flu vaccinations may also be provided by the Pharmacy Benefit Provider, Caremark at CVS Pharmacies and Minute Clinics.

During the 2015-2016 flu season the current vendor conducted 127 flu shot clinics throughout the state and administered approximately 7500 vaccinations. The 2015-2016 Clinic Schedule is attached for informational purposes as Exhibit 1.

## **III. PROPOSAL SUBMISSION REQUIREMENTS**

- A. Contractors must adhere to all requirements outlined in this RFP. Failure to do so will result in rejection of the RFP response.
- B. The Contractor shall submit an original plus eight (8) copies of its proposal in loose-leaf binders. Hard copies must also be accompanied by an electronic copy on a CD or DVD. Proposals shall be submitted to:

STATE OF CONNECTICUT  
Office of the State Comptroller  
Business Services Office  
State of Connecticut  
55 Elm Street, Room 301  
Hartford, CT 06106  
ATTN: RFP – Flu Shot Clinics

Vendors with questions regarding the proposal must submit them in writing addressed to the Office of the State Comptroller at [osc.rfp@ct.gov](mailto:osc.rfp@ct.gov) no later than **Friday, May 20, 2016 by 2:00 p.m.** Answers to those questions will be provided on the OSC website <http://www.osc.ct.gov/vendor/rfp.html> by **Friday, May 27, 2016**. Except as called for in this RFP, from the date of release of this RFP until the right to negotiate a contract is awarded as a result of this RFP, any communication with personnel employed by the Comptroller's Office, members of the Health Care Cost Containment Committee, and RFP committee members about the RFP are prohibited until the successor bidder is selected. All communications must be directed to the dedicated e-mail address: [osc.rfp@ct.gov](mailto:osc.rfp@ct.gov).

- C. Final responses must be in writing and received by **2:00 PM on Monday, June 13, 2016**. Vendor interviews, if required, will take place on or around June 23, 2016. It is anticipated that the State will make a decision by June 30, 2016.
- D. Freedom of Information Act and Confidential Information. All proposals submitted in response to this RFP will become the sole property of the State and subject to the terms of the Connecticut Freedom of Information Act (FOIA) and its corresponding rules, regulations and interpretations. Those particular sentences, paragraphs, pages or sections that the bidder believes are proprietary or confidential in nature, and therefore exempt from disclosure under the FOIA, must be specifically identified as such. If the bidder indicates that certain documentation is submitted in confidence, by specifically and clearly marking said documentation as **CONFIDENTIAL**, the Division will endeavor to keep said information confidential to the extent permitted by law. The Division however, has no obligation to initiate, prosecute or defend any legal proceeding or to seek a protective order or other similar relief to prevent disclosure of any information that is sought pursuant to a FOIA request.

The bidder shall have the burden of establishing the FOIA exemption in any proceeding where it is an issue. In no event shall the Division or the State have any liability for the disclosure of any documents in its possession which the State or the Division believes are required to be disclosed pursuant to the FOIA or other requirements of law. Note that the Office of the State Comptroller will reject any proposals marked in their entirety as confidential or proprietary.

**Copies on a CD ROM (Redacted)**: Any vendor that claims its proposal contains confidential information that is exempt from disclosure under the Freedom of

Information Act shall submit two (2) copies of a CD-ROM of its entire proposal (including all attachments) in a form compatible with Microsoft WORD, current version, with: (1) all confidential and propriety information redacted; (2) a description of those particular sentences, paragraphs, pages or sections that the bidder believes are exempt from disclosure under the FOIA; and (3) an explanation and rationale sufficient to justify each exemption. Should the Division receive a FOIA request for the proposal; the Division will provide a copy of the CD containing the redacted proposal. Failure to provide a redacted CD will signify the bidder's agreement that all submitted information may be disclosed pursuant to the FOIA.

E. The contractor is expected to respond to each of the following:

1. **Title Page**

A title page indicating the date, subject, name of the Contractor, central office address and the local office address (if a local office will be performing the contracted services), and the mailing address, e-mail address, telephone number, and FEIN, as well as the name, title, telephone number and email address of the Contractor's contact person for the purpose of clarifying any information submitted.

2. **Organizational Structure**

A general description of the Contractor's organization, including the legal structure (corporation, partnership, franchise, etc.), the number of professional and support staff employed, and the primary business functions (benefits consulting, actuarial consulting, asset management, insurance provider, etc.).

3. **Contractor Experience/Description**

A description of the Contractor that will provide the requested flu vaccination clinics including the Contractor's experience specific to the services requested in this RFP, along with the relevant experience of the staff/principal(s) who would be assigned to this project. List all comparable governmental agencies, corporations, and organizations that the staff members designated for the engagement of services sought by this RFP have provided these services to within the past two (2) years, specifying those with a unionized workforce. In addition, the listing should include the number of years that the Contractor has been retained by comparable governmental agencies, corporations, and organizations to provide such services. Contractors are encouraged to identify other experience, factors, or strengths that they possess which may assist the State in its selection process.

4. **Financials**

Each Contractor must provide detailed information on the financial standing of their organization proposing to offer the flu vaccination clinic, and, where applicable, its

most recent financial ratings from the independent rating agencies, such as A.M. Best Company, Standard & Poors and Moody's.

5. **Vaccination Clinic Description**

Each submission must contain a complete description of the features of the flu vaccination clinic being offered. This description must specifically address the requirements listed below:

- a) Description of Clinic's staffing and administration process.
- b) Describe the credentials for staff administering the flu vaccinations.
- c) List of all requirements and supplies necessary to operate the clinic (i.e. size of room, tables, chairs, etc.).
- d) Any minimum or maximum number of participants at each location.
- e) Describe the vaccines to be offered.
- f) Describe scheduling and communications.

6. **References**

Provide the names, addresses, and phone numbers of three past and present customers who can serve as references. References should include managers and union officials who have worked directly with the Contractor in engagements similar to the scope of the work proposed in the RFP.

7. **Computer Systems**

Each submission will provide a description of any computer system the Contractor will be using in connection with billing or scheduling.

8. **Data Security**

Contractor must describe its data security protocols to protect confidential information and prevent data breaches, inclusive of procedures reflecting compliance with Public Act 15-142.

9. **Subcontracts**

Identify the subcontractor(s), if any, to be utilized in meeting the service requirements of the RFP and a listing of the specific tasks to be assigned to the subcontractor(s).

10. **Recommended Work Plan**

Provide a statement of the Contractor's capacity to provide each of the deliverables specified in this RFP within the expressed time frame.

#### **11. Sole or Multi-Vendor Arrangement**

Each response must clearly stipulate whether its terms are applicable to a sole vendor arrangement (meaning one Contractor would be selected to administer the Program) or a multi-vendor environment (meaning more than one Contractor would be selected), or both. Where a Contractor is agreeable to participating in both a sole vendor arrangement and a multi-vendor environment, indicate clearly the resultant impact, if any, on its fee schedule.

#### **12. Contract Term**

For purposes of this RFP, it is anticipated that the contract term will run from September 1, 2016 to August 31, 2019, with the possibility of a two one-year extensions at the option of the Office of the State Comptroller.

#### **13. Financial Terms**

Proposals should include fees that are guaranteed for a period of no less than three-years beginning September 1, 2016 through August 31, 2019. The State will have the option to extend the contract annually for up to two additional one-year periods. Therefore, the State requests that you provide fee proposals for the two additional one-year time periods. If you are proposing fees, rates or maximum increases for the two optional one-year extension periods of September 1, 2019 and September 1, 2020, please illustrate them accordingly.

#### **14. Sales and Marketing**

The Office of the State Comptroller will launch an initiative throughout the State of Connecticut, in conjunction with other state agencies to advise employees, retirees and dependents of the availability of on-site flu vaccination clinics. The program objective is to provide flu vaccinations to state employees, retirees and dependents beginning with the 2016-17 flu season and to highlight the benefits of preventive care.

The State of Connecticut would welcome viewing sample materials that Contractor can offer to enhance outreach efforts to employees, retirees and dependents. Materials provided may include brochures, letters, web site links, and presentations. Please note that any sales and marketing fees should be rolled into the pricing structure.

Samples may include any relevant publications, reports, policy and procedural recommendations, and memoranda from previous similar engagements that the Contractor transmits to clients on a regular basis concerning the scope of work proposed in this RFP.

15. **Acknowledgement**

Each proposal must contain the Contractor's acknowledgement that it accepts as final the determinations of the State Comptroller.

16. **Reporting**

Each Contractor will be expected to provide ongoing reporting relative to the services offered for participating employees and retirees.

17. **Web Site**

Each Contractor must specify and include samples of any proposed State-specific web site relative to the service(s) offered.

18. **Conflict of Interest**

Disclose any current or past (within the last ten years) business relationships which may pose a conflict of interest.

19. **Regulatory Issues**

Disclose any regulatory problems experienced in the past ten years.

20. **Authorized Agent**

An authorized agent for the Contractor with authority to negotiate and contractually bind the Contractor must sign the proposal; such individual's title, mailing address, e-mail address and telephone number must also be provided.

21. **Executive Summary**

At the contractor's option, an Executive Summary may be included with the Proposal.

22. **Required Forms**

a) Agency Vendor Form (SP-26NB), available at:  
[http://das.ct.gov/Purchase/Info/Vendor\\_Profile\\_Form\\_\(SP-26NB\).pdf](http://das.ct.gov/Purchase/Info/Vendor_Profile_Form_(SP-26NB).pdf)

b) W-9 Form, available at: <http://www.irs.gov/pub/irs-pdf/fw9.pdf>

c) **"BizNet"**

The Connecticut Department of Administrative Services ("DAS") requires that all firms seeking to do business with the State create a business profile on the DAS



Business Network (“BizNet”) system. Additional required forms as described below must be submitted to or on file with the Biznet system by the deadline for submission of proposals. Paper or electronic copies need not be provided with the submission to the Comptroller's office.

Firms create an account on BizNet by using the following link:

<https://www.biznet.ct.gov/AccountMaint/Login.aspx>.

Once your firm creates an account, login and select “CT Procurement” and then “Company Information” for access. If you experience difficulty establishing or otherwise managing your firm's account, please call DAS at 860-713-5095.

DAS has implemented the requirement to create a BizNet account to make doing business with the State of Connecticut more business friendly. One benefit to using BizNet is that it eliminates certain redundancies, such as the former requirement to complete and submit forms even though the forms had been recently submitted in response to another Request for Proposals.

In addition to eliminating redundancy, BizNet has automated the completion and submission of required Ethics Affidavits and Non Discrimination forms. Firms must now upload these forms electronically to their BizNet account and update them on an annual basis, rather than submitting paper copies with each proposal. Firms will have the ability to view, verify and update their information by logging in to their BizNet account, prior to submitting responses to an RFP.

#### **i. Ethics Certifications**

The following Ethics Forms must be signed, dated, notarized, uploaded or updated on BizNet. To obtain these forms, you must login to Biznet and follow the instructions referenced above.

- OPM Ethics Form 1: Gift & Campaign Contribution Certification;
- OPM Ethics Form 5: Consulting Agreement Affidavit;
- OPM Ethics Form 6: Affirmation of Receipt of State Ethics Laws Summary
- OPM Ethics Form 7: Iran Certification

For information on how to complete these forms, please access the Office of Policy and Management website by using the following link:

[http://www.ct.gov/opm/cwp/view.asp?a=2982&q=386038&opmNAV\\_GID=1806](http://www.ct.gov/opm/cwp/view.asp?a=2982&q=386038&opmNAV_GID=1806)

#### **ii. Non-Discrimination Certification**

Choose one (1) of the forms listed below that applies to your business. Complete and upload or update the form on Biznet annually. To obtain a copy of these forms, you must login to Biznet and follow the instructions referenced above.

- Form A: Representation by Individual (Regardless of Value); or
- Form B: Representation by Entity (Valued at \$50,000 or less); or

- Form C: Affidavit by Entity (Valued at \$50,000 or more); or
- Form D: New Resolution by Entity; or
- Form E: Prior Resolution by Entity

For information on how to complete these forms, please access the Office of Policy and Management website by using the following link:

[http://www.ct.gov/opm/cwp/view.asp?a=2982&q=390928&opmNAV\\_GID=1806](http://www.ct.gov/opm/cwp/view.asp?a=2982&q=390928&opmNAV_GID=1806)

### **iii. Commission on Human Rights and Opportunities (“CHRO”) Contract Compliance Monitoring Report.**

The CHRO Contract Compliance Monitoring Report must be completed in BizNet and updated as necessary. You must login to Biznet and follow the Instructions referenced above.

For information on how to complete these forms you may contact Diane Comeau at [Diane.Comeau@ct.gov](mailto:Diane.Comeau@ct.gov) for assistance.

For information about how to upload the Ethics Affidavits and Non-Discrimination forms please access the following page.

<http://das.ct.gov/images/1090/Upload%20Instructions.pdf>

## **IV. QUESTIONNAIRE**

The Contractor is expected to respond to the following:

1. How long has your organization been administering Flu Vaccination Clinics?
2. How many groups and individuals does your organization currently service in the State of Connecticut?
3. How many groups and individuals does your organization currently cover nationally?
4. Provide a detailed description of the services and any limitation in either hours of operation or location of proposed services that would affect the applicant’s ability to provide the services.
5. Provide a detailed description on your ability and approach to delivering the service.
6. Provide detailed information on past performance.
7. During the 2015-2016 flu season how many vaccinations did your organization administer?
8. Document the applicant’s business history and experience.

9. Describe all vaccines that applicant proposes to make available at flu clinics.
10. Describe your pricing proposal.
  - a. Are fees quoted guaranteed for the initial 36-month policy period?
  - b. Will fees be guaranteed for each succeeding full twelve-month period?
  - c. If you are proposing fees or maximum increases for the two optional one-year extension periods of September 1, 2019 and September 2020, please illustrate them accordingly.
11. Does your organization participate with the following medical carriers: Anthem Blue Cross Blue Shield and Oxford/United Healthcare?
12. Describe any minimum and maximum number of vaccines applicant would require for an on-site clinic.
13. During what period of time would you recommend that flu shot clinics be conducted?
14. Attach sample communications materials.

## V. STANDARD CONTRACT TERMS AND CONDITIONS

Be advised that the State has certain contract requirements. *Contractors responding to this RFP must adhere to the Comptroller's contract requirements, as set forth in a sample contract attached hereto as Exhibit 2, and must affirmatively state their willingness to adhere to these terms and conditions in a transmittal letter appended to their proposal response.*

1. **Timing and Sequence** - All timing and sequence of events resulting from this RFP will ultimately be determined by the State.
2. **Stability of Proposed Prices** - Any price offerings from Contractors must be valid for a period of [insert term]/
3. **Oral Agreements** - Any alleged oral agreement or arrangement made by a Contractor with any agency or employee will be superseded by the written agreement.
4. **Amending or Canceling Requests** - The State reserves the right to amend or to cancel this RFP prior to the due date and time, if such action is deemed to be in the best interest of the State.
5. **Rejection for Default or Misrepresentation** - The State reserves the right to reject the proposal of any Contractor that is in default of any prior contract or for misrepresentation.

6. **State's Clerical Errors in Awards** - The State reserves the right to correct inaccurate awards resulting from its clerical errors.
7. **Rejection of Qualified Proposals** - Proposals are subject to rejection in whole or in part if they limit or modify any of the terms and conditions and/or specifications of the RFP.
8. **Changes to Proposal** - No additions or changes to the original proposal will be allowed after submittal. While changes are not permitted, clarification at the request of the State may be required at the Contractor's expense.
9. **Collusion** - By responding to this RFP, the Contractor implicitly states that the proposal is not made in connection with any competing Contractor submitting a separate response to the RFP, and is in all respects fair and without collusion or fraud. It is further implied that the Contractor did not participate in the RFP development process, had no knowledge of the specific contents of the RFP prior to its issuance, and that no employee of the agency participated directly or indirectly in the Contractor's proposal preparation.
- No Contractor or Contractor's representative may contact an employee of the State or their representatives regarding their proposal until final selections have been made. Until such time as final selections are made, any such contact will be considered collusion under the "Terms and Conditions" herein and may be grounds for disqualification of the Contractor's proposal.
10. **"Not to Exceed" Quotations** – All cost estimates will be considered as "not to exceed" quotations.
11. **Contractor's Conference** - There will be no Contractors' conference.
12. **Additional Contract Provisions:** The contract with the State will require the following provisions:

The contract shall be governed by, construed, and enforced in accordance with the laws and court decisions of the State of Connecticut without giving effect to its principles of conflicts of laws. Under no circumstances may State contract contain limited liability and/or binding arbitration provisions. The State will not indemnify a Contractor or waive its sovereign immunity.

At all times, Contractor shall utilize approved, qualified personnel necessary to perform the services under this Agreement.

Contractor shall advise the State promptly, in writing, of any labor related occurrence known to Contractor involving Contractor's employees which may reasonably be expected to affect Contractor's performance of services under this agreement. Notwithstanding such occurrence, the Contractor shall at all times

assign competent personnel/staff to perform the services contracted for under this agreement. If at any time the State in its sole discretion determines that the personnel/staff assigned to perform the services under this agreement is incompetent, dishonest or uncooperative, State reserves the right to request that Contractor reassign personnel/staff and arrange for an employee(s) or subcontractor(s) satisfactory to State to provide the services otherwise performable by the Contractor hereunder.

Contractor shall review any requests by State to reassign personnel/staff. In requesting such reassignment of personnel/staff, State shall give thirty days (30) notice to Contractor of State's desire for such reassignment. Contractor will then have fifteen (15) days to investigate the situation and attempt, if it so desires, to resolve the situation to the mutual satisfaction of the parties. Should the parties not reach a mutual resolution, then fifteen (15) days thereafter, or thirty (30) days from the date of the notice of reassignment, the State may terminate this agreement by providing written notice.

## **VI. EVALUATION OF PROPOSALS**

Each Proposal will be evaluated by a screening committee against the following criteria to determine which Contractor is most capable of implementing the State's requirements.

1. The benefit of the service to State employees.
2. The price or rate of the product or service including the competitiveness of proposed cost.
3. The skill, ability, competence and integrity of the Contractor and Contractor's personnel to deliver such service, including the Contractor's understanding of the project and its purpose and scope, as evidenced by the proposed approach and the level of effort.
4. The past performance of the Contractor. In considering past performance, the Comptroller will evaluate the skill, ability and integrity of the applicant in terms of the applicant's fulfillment of past contract obligations, and experience or lack thereof in delivering the same or similar products and services.
5. At the Comptroller's option, presentation to a screening committee.
6. Any other information the Comptroller deems necessary.

**VII. SELECTION SCHEDULE**

May 13, 2016	Release of RFP by OSC
May 20, 2016	Questions, if any, due by 2:00 p.m. @osc.rfp@ct.gov
May 27, 2016	OSC provides e-mail response to questions received
June 13, 2016,	Proposals due at OSC by 2:00 p.m.
June 14-17, 2016	Reading and Scoring of Proposals
June 23, 2016	Finalist Interviews at OSC's discretion
June 30, 2016	Contract Award

**ATTACHMENT 1**  
**SAMPLE CONTRACT**

**AGREEMENT**

**BY AND BETWEEN**

**THE STATE OF CONNECTICUT, OFFICE OF THE STATE COMPTROLLER**

**AND**

\_\_\_\_\_  
Pursuant to Connecticut General Statutes Sections \_\_\_\_\_, this Agreement (the “**Agreement**”) is made and entered into as of \_\_\_\_\_, 2015 by and through the State of Connecticut (the “**State**”) Office of the State Comptroller (the “**Comptroller**”) and \_\_\_\_\_ (the “**Contractor**,” and together with the Comptroller and the State, the “**Parties**”).

WHEREAS, the Comptroller issued a Request for Proposal (the “**RFP**”) on \_\_\_\_\_, to [DESCRIPTION OF RFP]; and

WHEREAS, the Contractor was selected pursuant to the RFP process and has agreed to provide services to the Comptroller related [DESCRIPTION OF SERVICES TO BE PROVIDED] as described herein;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, intending to be legally bound, the Comptroller and the Contractor, hereby agree as follows:

**1. DEFINITIONS.**

[INSERT DEFINED TERMS]

**2. TERM OF AGREEMENT.**

- A. The term of this Agreement begins \_\_\_\_\_, 2015 (the “**Effective Date**”), and shall expire the on \_\_\_\_\_, or extended by the mutual agreement of the Parties as described in subsection (b), below.
- B.
- C. The Parties may agree to extend the Term of the Agreement for a period not to exceed one (1) year. Any such extension, and related cost and/or pricing, shall be agreed upon by the Parties and set forth in a written amendment to this Agreement.

**3. SCOPE OF SERVICES.**

[INSERT SCOPE OF SERVICES]



#### **4. PAYMENT TERMS AND BILLING.**

##### **A. Payment**

The Comptroller shall pay Contractor for Services actually performed and completed in an amount not to exceed \_\_\_\_\_ DOLLARS (US\$ \_\_\_\_\_.00) in the manner set forth in Exhibit\_\_\_ (“Payment Schedule”), and Contractor shall accept such payment as full compensation for any direct costs or expenses incurred by the Contractor.

##### **B. Billing [STANDARD]**

- (i) Unless otherwise specified in the Agreement, payment shall be due within forty-five (45) days after Comptroller’s receipt of a properly completed, undisputed invoice. Invoices shall include detailed information for Services delivered and performed.
- (ii) In conformity with Connecticut General Statutes §41-72, the Comptroller shall notify the Contractor within ten (10) business days of receiving an invoice, in writing, of any disputed charges under this Agreement for which the Comptroller is withholding payment and describe, in reasonable detail, the reason for such withholding. In no event shall the Comptroller withhold disputed payments or set off, in aggregate, any amounts in excess of five percent (5%) of the total value of this Agreement. Upon resolution of the dispute, any disputed amounts owed Contractor will be paid with interest, in accordance with Connecticut General Statutes §11-5, at the rate of the lesser of one and one-half percent (1.5%) per month or the highest rate allowed by law, calculated from the date the amounts were originally due.
- (iii) For all Services to be provided by the Contractor and any Approved Subcontractors, if any, the Comptroller shall not be obligated to pay any amounts in addition to the charges payable to the Contractor under this Agreement unless such amounts are covered by a Change Order.

[INSERT FOR LEGAL SERVICES CONTRACT

- (iv) The Comptroller agrees to compensate the Contractor for Services solely in accordance with the following hourly rate schedule:

[INSERT HOURLY RATE SCHEDULE]

- (v) The above rates shall be charged only for actual time spent rendering such Services; the Contractor shall not “round off” time. The time spent rendering Services shall be billed to a tenth of an hour within any single workday. The Comptroller shall not be charged for any other time expended by the Contractor during travel, overnight stays, or the like associated with the performance of the Services.

- (vi) Billings are to be on a monthly basis. The billings must contain, at a minimum, a detailed description of the work performed, the date of the performance, the actual time spent performing the work, the name and position of the person(s) rendering the Service and the rate charged for the Service. The monthly bill must also be accompanied by a summary of time and charges billed for each attorney and paralegal itemized on the invoice.
- (vii) Upon request from the Comptroller, the Contractor must submit a summary memorandum describing how the Service rendered furthered the resolution of the matter and the current status of the matter.
- (viii) The Comptroller agrees to reimburse the Contractor for actual, necessary and reasonable out-of-pocket disbursements and expenses, including filing fees, court costs, computerized research (at cost), commercial messenger and delivery service (at cost) expert witnesses, consultants, mediators, investigative services, long distance telephone calls, and transcript or deposition costs.
- (ix) The Comptroller shall not reimburse the Contractor for any overhead related expenses, including, but not limited to, duplicating, secretarial, facsimile (other than long distance telephone line charges), clerical staff, library staff, proofreading staff, meals and in-state transportation costs unless they are otherwise approved by the Comptroller.
- (x) The Contractor shall be reimbursed for reasonable expenses for transportation, parking and reasonable lodging and meals associated with interstate travel, specifically excluding first class airfare, as approved in advance by the Comptroller. Reimbursable interstate travel shall not include travel to meet with staff of the Comptroller and all such meetings shall be conducted in Hartford, Connecticut, unless otherwise specified by the Comptroller.
- (xi) The Contractor shall not be compensated for time spent on background or elementary legal research or any legal training without prior written consent of the Comptroller. Charges for legal research must be accompanied by a detailed description setting forth the purpose of the research and summarizing its nature. Any written material produced as a result of such research shall be available to the Comptroller at on or before the third business day following the date of his written request. The Comptroller shall make the final decision in all disputes to this Agreement under this subsection.
- (xii) The Contractor shall not be compensated for time spent in consultation with any other attorney or other employee of the Comptroller concerning the administration of this Agreement and/or issues relating to billing. Unless otherwise authorized by the Comptroller, compensation for communication between or among attorney's and/or staff within the Contractor's firm is limited to the time and billing rate of the most senior attorney or staff member participating in the communication. These charges must be accompanied by a detailed description setting forth the purpose of the communication and summarizing its

details. The Comptroller shall make the final determination, it his sole discretion, as to the adequacy of such description.

(xiii) Absent the consent of the Comptroller or his designee, the Contractor shall not be compensated for the attendance or participation of more than one attorney representing the State at or during any meeting, conference or proceeding, in person or otherwise, in any forum, in connection with performing the Services. Where more than one attorney has attended or participated in any such meeting, conference or proceeding without the consent of the Comptroller or his designee, the Contractor shall be compensated only for the time of the most senior attorney in attendance or participating.

(xiv) The Contractor shall not be compensated for the performance of paralegal or clerical type duties performed by an attorney. Paralegal duties or clerical duties include, by way of example and not limitation, routine proofreading of pleadings and other correspondence, preparation of trial or closing binders or notebooks, photocopying and coordinating the schedules of others.

(xv) The Comptroller shall approve for payment all undisputed fees and costs, as soon as the documentation can properly be processed in accordance with the usual State practice.

(xvi) Maximum payment under this Agreement shall not exceed \_\_\_\_\_ (\$\_\_\_\_\_) over the term of the Agreement. ]

#### C. Taxes

To the extent applicable, each Party will be responsible for its own income taxes, employment taxes, and property taxes. The Parties will cooperate in good faith to minimize taxes to the extent legally permissible. The State of Connecticut is exempt from Federal Excise, State and Local Sales Taxes. Each Party will provide to the other Party any resale exemption, multiple points of use certificates, treaty certification and other exemption information reasonably requested by the other Party. The Comptroller will reimburse Contractor for any deficiency relating to taxes that are the Comptroller's responsibility under this Agreement.

### **5. CONTRACTOR RESPONSIBILITIES.**

Contractor shall, in addition to any other responsibilities described in this Agreement, perform the following coincident with performance of this Agreement:

A. Be responsible for the Contractor work force and its subcontractors as they interact with State employees, and other contractors present at the work site. Employment disputes which are caused by Contractor's employees' presence on the work site, or other action under the control of Contractor shall be quickly resolved by Contractor. Employment disputes amongst the work force of Contractor or its subcontractors shall not be deemed sufficient cause to any claim by Contractor for additional compensation for loss or

damage nor shall such disputes be deemed sufficient reason to relieve Contractor from any of its obligations under this Agreement.

- B. Contractor's work shall be accomplished by Contractor at a minimum disruption or interruption to the State's normal business operation. Contractor's responsibility to perform the Services shall be in conformity with the provisions of this Agreement and shall not be confined or limited to the normal business hours of the State.
- C. Contractor shall be responsible for its obligations under this Agreement whether or not Contractor performs them. Further, the Comptroller shall consider Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from this Agreement. Contractor is totally responsible for adherence by the Approved Subcontractor(s) to all applicable provisions of the Agreement.
- D. Contractor shall keep itself fully informed of and shall, at all times, observe and comply with all ordinances, regulations, laws, orders and decrees applicable to its business operations as a Systems Integrator.
- E. Provide timely staffing of qualified individuals in accordance with the terms of this Agreement.
- F. Perform its obligations as set forth in in this Agreement in accordance with the time frames set forth for completion of those obligations.
- G. Obtain consent from third parties with whom the Contractor has a contractual relationship for purposes of providing Services under this Agreement, if the Parties agree it is required for Comptroller to perform its obligations hereunder.
- H. Be responsible for the relationships with third parties with whom Contractor has a contractual relationship for purposes of providing Services under this Agreement, and make commercially reasonable efforts to have those parties cooperate with the State.

## **6. COMPTROLLER RESPONSIBILITIES.**

Coincident with Contractor's performance of this Agreement, the Comptroller shall, in addition to the responsibilities described in the Exhibits and elsewhere in this Agreement, perform the following tasks:

- A. Be responsible for the Comptroller work force as they interact with Contractor employees and Approved Subcontractors present at the work site. Employment disputes which are caused by the Comptroller's employees or other action under the control of Comptroller shall be quickly resolved by the Comptroller.
- B. Supply on-site personnel of the Contractor with suitable office space, desks, storage, furniture, and other normal office equipment support, adequate computer resources, telephone and facsimile service, postage, copying, secretarial support, word processing,

and general office supplies which may be necessary in connection with the Contractor's performance of the Services hereunder. No bailment shall be created and no interest or obligation shall be conferred upon the Contractor regarding the Comptroller's property or the property of the Comptroller's employees, agents, vendors, or other contractors, beyond the limited right to use such property in furtherance of this Agreement. All such property, regardless of its physical location or use, shall be deemed to be in the care, custody and control of the Comptroller.

- C. Provide timely staffing of qualified individuals in accordance with the terms of this Agreement and its Exhibits as needed for the successful completion of the Project.
- D. Perform its obligations as set forth in the Agreement in accordance with the time frames set forth for completion of those obligations.
- E. Obtain consent from third parties with whom the Comptroller has a contractual relationship if the Contractor notifies the Comptroller it is required for Contractor to perform its obligations hereunder.
- F. Be responsible for third parties with whom the Comptroller has a contractual relationship and make reasonable efforts to have those parties cooperate with the Contractor.

## **7. REPRESENTATIONS AND WARRANTIES.**

The Contractor represents and warrants to the Comptroller that:

- A. it is duly and validly existing under the laws of its respective states of organization and authorized to conduct business in the State of Connecticut in the manner contemplated by the Agreement. Further, as appropriate, it have taken all necessary action to authorize the execution, delivery and performance of the Agreement and have the power and authority to execute, deliver and perform its obligations under the Agreement;
- B. it will comply with all State and Federal laws and municipal ordinances governing Contractor and its business operations;
- C. the execution, delivery and performance of the Agreement will not violate, be in conflict with, result in a breach of or constitute (with or without due notice and/or lapse of time) a default under any indenture, agreement, document or other instrument to which it is a party or by which it may be bound;
- D. they are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any governmental entity;
- E. as applicable it has not to the best of its knowledge, information and belief, within the three years preceding the Agreement, in any of their current or former jobs, been convicted of, or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a

transaction or contract with any governmental entity. This includes, but is not limited to, violation of Federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

- F. it is not presently indicted for or otherwise criminally or civilly charged by any governmental entity with commission of any of the offenses listed above;
- G. they have disclosed whether one or more contracts with any governmental entity have been Terminated for Cause or Default that would adversely impact the Contractor's ability to perform under this Agreement within the three years preceding the Effective Date of this Agreement;
- H. they have not improperly or illegally paid or agreed to pay any entity or person any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of the Agreement or any assignments made in accordance with the terms of the Agreement;
- I. they are able to perform under the Agreement using their own resources or the resources of a party who is an Approved Subcontractor;
- J. the Contractor shall exercise commercially reasonable efforts to obtain in a written contract all of the representations and warranties in this section from any Approved Subcontractor and will notify the Comptroller in writing if such representation and warranties are not included in a written contract with any Approved Contractor providing Services under this Agreement.

## **8. APPROVAL OF CONTRACTOR KEY PERSONNEL AND SUBCONTRACTORS.**

### **A. Contractor Key Personnel.**

Each of the Contractor Key Personnel shall work in the role assigned to him or her as set forth in Exhibit\_\_\_\_ ("**Key Personnel**") as such Exhibit may be modified from time to time by mutual agreement of the Parties to meet the requirements of this Agreement. The Comptroller shall have the right to interview, as deemed necessary, and participate in the selection of the Contractor Key Personnel, and Contractor shall not designate any Contractor Key Personnel without the prior written consent of the Comptroller which consent shall not be unreasonably withheld. However, pending the Comptroller's approval of an individual proposed by Contractor to be a Contractor Key Personnel, Contractor may designate an individual to serve in that position on an interim basis. Key Personnel shall be assigned to this Project for the Key Personnel Assignment Term, as set forth in Exhibit\_\_\_\_ ("Key Personnel"), or until their assignment is complete, whichever is earlier.

### **B. Key Personnel Assignment Term.**

Key Personnel shall remain assigned to the Project for the period equal to work required of said Key Personnel as set forth in Exhibit \_\_\_\_ (“**Key Personnel Assignment Term**”). During the Key Personnel Assignment Term, Contractor shall not, without the prior written consent of the Comptroller, which consent shall not be unreasonably denied, reassign that individual except: (i) if Contractor and the Comptroller mutually determine that the individual has failed to adequately perform his or her duties; or (ii) if the function or position is no longer required under the provisions of this Agreement; or (iii) if reasons exist that are beyond Contractor’s commercially reasonable ability to control.

C. Replacement of Key Personnel.

If any one of the Contractor Key Personnel is reassigned in accordance with the provisions above; becomes incapacitated; ceases to be employed by Contractor; or leaves the Project for any reason beyond Contractor’s reasonable control and therefore becomes unable to perform the functions or responsibilities assigned to him or her, Contractor shall promptly replace such person with another qualified person approved by the Comptroller.

D. Comptroller Right to Review Subcontractors.

The Comptroller reserves the right to review Subcontractors for this Agreement and all such approved subcontractors shall be Approved Subcontractors, and to request that Contractor replace Approved Subcontractors who are found at any time to be reasonably unacceptable.

E. Contractor's Continuing Obligation Regarding Subcontractors.

Contractor shall have the continuing obligation to identify all of its Approved Subcontractors and, upon request, which shall not be unreasonably made by the Comptroller nor unreasonably denied by the Contractor, shall provide the Comptroller with copies of its contracts (financial terms redacted) with Approved Subcontractors.

F. Objections to Assignment of Personnel or Subcontractors.

In the event either the Comptroller or the Contractor has an objection to the assignment of personnel or a subcontractor, the Comptroller or the Contractor shall file the objection in writing with the reasons enumerated. The Comptroller and the Contractor shall jointly consult on corrective action and handle objections on a case-by-case basis. This provision shall not be deemed to give the Comptroller the right to require Contractor to terminate any Contractor employee or Approved Subcontractor; it is intended to give the State only the right to recommend that Contractor discontinue using an employee or Approved Subcontractor in the performance of Services rendered under this Agreement.

**9. AGREEMENT AMENDMENTS.**

No amendment to or modification or other alteration of the Agreement shall be valid or binding upon the Comptroller unless made in writing, signed by both Parties and, if applicable as solely determined by Comptroller and evidenced by Comptroller's inclusion of the appropriate signature block, approved by the Connecticut Attorney General.

#### **10. ASSIGNMENT.**

The Contractor shall not assign any of its rights or obligations under the Agreement, voluntarily or otherwise, in any manner without the prior written consent of the Comptroller which consent shall not be unreasonably withheld. The Comptroller may void any purported assignment in violation of this section and declare the Contractor in breach of Agreement. Any Termination by the Comptroller for a breach is without prejudice to the Comptroller's or the State's rights or possible Claims.

#### **11. TERMINATION.**

- A. Notwithstanding any provisions in this Agreement, the Comptroller, through a duly authorized employee, may terminate the Agreement whenever the Comptroller makes a written determination that such Termination is in the best interests of the State. The Comptroller shall notify the Contractor in writing of termination pursuant to this section, which notice shall specify the effective date of termination and the extent to which the Contractor must complete its existing performance obligations under the Agreement prior to such date.
- B. Upon receipt of a written notice of Termination from the Comptroller, the Contractor shall cease operations as the Comptroller directs in the notice, and take all actions that are necessary or appropriate, or that the Comptroller may reasonably direct, for the protection and preservation of the Records, as this term is defined in the Indemnification Section of this Agreement. Except for any work which the Comptroller directs the Contractor to perform in the notice prior to the effective date of Termination, and except as otherwise provided in the notice, the Contractor shall terminate or conclude all existing subcontracts and purchase orders and shall not enter into any further subcontracts, purchase orders or commitments.
- C. The Comptroller shall, within forty-five (45) days of the effective date of termination, reimburse the Contractor for Services rendered by the Comptroller in accordance with this Agreement, and all actual and reasonable costs incurred after termination in completing those portions of the Services which the notice required the Contractor to complete. However, the Contractor is not entitled to receive and the Comptroller is not obligated to tender to the Contractor any payments for anticipated or lost profits. Upon request by the Comptroller, the Contractor shall assign to the Comptroller, or any replacement contractor which the Comptroller designates, all subcontracts, purchase orders and other commitments, deliver to the Comptroller all Comptroller Records and other information pertaining to its performance of the Services as necessary to facilitate the Comptroller or a third party to take over the provisioning of Services, and remove from State premises, whether leased or owned, all of Contractor's property, equipment,



waste material and rubbish related to its performance of the Services, all as the Comptroller may request.

- D. Upon termination of the Agreement, all rights and obligations shall be null and void, so that no Party shall have any further rights or obligations to any other Party, except with respect to the sections which survive termination. All representations, warranties, agreements and rights of the Parties under the Agreement shall survive such termination to the extent not otherwise limited in the Agreement and without each one of them having to be specifically mentioned in the Agreement.
- E. Termination of the Contract pursuant to this section shall not be deemed to be a breach of contract by the Comptroller.

## **12. BREACH.**

If either Party breaches the Agreement in any material respect, the non-breaching Party shall provide written notice of such breach to the breaching Party and afford the breaching Party an opportunity to cure the breach within thirty (30) days from the date that the breaching Party receives such notice. Such right to cure period shall be extended if the non-breaching Party is satisfied that the breaching Party is making a good faith effort to cure but the nature of the breach is such that it cannot be cured within the right to cure period. The notice may include an effective Agreement termination date if the breach is not cured by the stated date and, unless otherwise modified by the non-breaching Party in writing prior to the termination date; no further action shall be required of any Party to effect the termination as of the stated date. If the notice does not set forth an effective Agreement termination date, then the non-breaching Party may terminate the Agreement by giving the breaching Party no less than thirty (30) days prior written notice.

## **13. WAIVER.**

- A. No waiver of any breach of the Agreement shall be interpreted or deemed to be a waiver of any other or subsequent breach. All remedies afforded in the Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided in the Agreement or at law or in equity.
- B. A Party's failure to insist on strict performance of any provision of the Agreement shall only be deemed to be a waiver of rights and remedies concerning that specific instance of performance and shall not be deemed to be a waiver of any subsequent rights, remedies or breach.

## **14. INDEMNIFICATION.**

- A. For the purposes of this section the following terms are defined as follows:
  - (i) "Claims" means all actions, suits, claims, demands, investigations, and proceedings of any kind, open, pending or threatened, whether mature, unmatured, contingent, known or unknown, at law or in equity, in any forum.

- (ii) “Contractor Agent” means the Contractor’s members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees, or any one of them or any other person or entity with whom the Contractor is in privity of an oral or written contract and the Contractor intends for such person or entity to perform under the Agreement in any capacity.
  - (iii) “Records” means all working papers and such other information and materials as may be accumulated by the Contractor or Contractor Agents in performing the Agreement, including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries and correspondence, kept or stored in any form.
- B. The Contractor shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, successors and assigns from and against any and all:
  - (i) Claims arising, directly or indirectly, in connection with the Agreement, including acts of commission or omission (collectively, the Acts) of the Contractor or Contractor Agents; and
  - (ii) Liabilities, damages, losses, costs and expenses, including but not limited to, attorney’s and other professionals’ fees, arising, directly or indirectly, in connection with Claims, Acts or the Agreement.
- C. The Contractor’s obligations under this section to indemnify, defend and hold harmless against Claims includes Claims concerning confidentiality of any or all of the proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or un-copyrighted compositions, secret processes, patented or unpatented inventions or articles furnished or used in the performance of this Agreement.
- D. The Contractor shall reimburse the State for any and all damages to the real or personal property of the State caused by Acts of the Contractor or any Contractor Agents. The State shall give the Contractor reasonable notice of any such Claims.
- E. This section shall survive the Termination of the Agreement and shall not be limited or expanded by reason of any insurance coverage.

## **15. FORUM AND CHOICE OF LAW.**

The Parties deem the Agreement to have been made in the City of Hartford, State of Connecticut. Both Parties agree that it is fair and reasonable for the validity and construction of the Agreement to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the

purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Contractor waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

#### **16. FORCE MAJEURE.**

The Comptroller and the Contractor shall not be excused from their obligation to perform in accordance with the Agreement except in the case of Force Majeure events and as otherwise provided for in the Agreement. In the case of any such Force Majeure exception, the nonperforming Party shall give immediate written notice to the other, explaining the cause and probable duration of any such nonperformance. Upon receipt of notice of failure or delay in performance caused by the Force Majeure, performance time shall be considered extended for at least a period of time equivalent to the time lost as a result of any such delay.

#### **17. ADVERTISING.**

The Contractor shall not refer to sales to the State for advertising or promotional purposes, including, but not limited to, posting any material or data on the Internet, without the Comptroller's prior written approval. Use of Contractor's name or logos, including a response to any public or media inquiries, are subject to Contractor's consent.

#### **18. AMERICANS WITH DISABILITIES ACT.**

The Contractor shall be and remain in compliance with the Americans with Disabilities Act of 1990 ("Act"), to the extent applicable, during the Term of the Agreement. The Comptroller may terminate the Agreement if the Contractor fails to comply with the Act.

#### **19. DISCLOSURE OF CONTRACTOR PARTIES LITIGATION.**

The Contractor shall require that all Contractor Parties, as appropriate, disclose to the Contractor, to the best of their knowledge, any Claims involving the Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to perform fully under the Agreement, no later than ten (10) Days after becoming aware of any such Claims. Disclosure shall be in writing.

#### **20. ENTIRETY OF AGREEMENT.**

The Agreement is the entire agreement between the Parties with respect to its subject matter, and supersedes all prior agreements, proposals, offers, counteroffers and understandings of the

Parties, whether written or oral. The Agreement has been entered into after full investigation, neither Party relying upon any statement or representation by the other unless such statement or representation is specifically embodied in the Agreement.

## **21. EXHIBITS.**

All exhibits referred to in and attached to this Agreement are incorporated in this Agreement by such reference and shall be deemed to be a part of it as if they had been fully set forth in it.

## **22. EXECUTIVE ORDERS.**

This Agreement is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of the Agreement as if they had been fully set forth in it. The Agreement may also be subject to Executive Order No. 7C of Governor M. Jodi Rell, promulgated July 13, 2006, concerning contracting reforms and Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services, in accordance with their respective terms and conditions. If Executive Orders 7C and 14 are applicable, they are deemed to be incorporated into and are made a part of the Agreement as if they had been fully set forth in it. At the Contractor's request, the Client COMPTROLLER or DAS shall provide a copy of these orders to the Contractor.

## **23. NON DISCRIMINATION AND AFFIRMATIVE ACTION PROVISIONS**

(a) For purposes of this Section, the following terms are defined as follows:

- (i) "Commission" means the Commission on Human Rights and Opportunities;
- (ii) "Contract" and "contract" include any extension or modification of the Contract or contract;
- (iii) "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor;
- (iv) "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose.
- (v) "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;

- (vi) "good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;
- (vii) "marital status" means being single, married as recognized by the state of Connecticut, widowed, separated or divorced;
- (viii) "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders;
- (ix) "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes § 32-9n; and
- (x) "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

For purposes of this Section, the terms "Contract" and "contract" do not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, (2) a quasi-public agency, as defined in Conn. Gen. Stat. Section 1-120, (3) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in Conn. Gen. Stat. Section 1-267, (4) the federal government, (5) a foreign government, or (6) an agency of a subdivision, agency, state or government described in the immediately preceding enumerated items (1), (2), (3), (4) or (5).

(b)(1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the Contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or

physical disability, including, but not limited to, blindness, unless it is shown by the Contractor that such disability prevents performance of the work involved; (2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the Commission; (3) the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers' representative of the Contractor's commitments under this section and to post copies of the notice in conspicuous places available to employees and applicants for employment; (4) the Contractor agrees to comply with each provision of this Section and Connecticut General Statutes §§ 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes §§ 46a-56, 46a-68e and 46a-68f; and (5) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the provisions of this Section and Connecticut General Statutes § 46a-56. If the contract is a public works contract, the Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works projects.

(c) Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.

(d) The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.

(e) The Contractor shall include the provisions of subsection (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

(f) The Contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.

(g)(1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation; (2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (3) the Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes § 46a-56; and (4) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor which relate to the provisions of this Section and Connecticut General Statutes § 46a-56.

(h) The Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes § 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

## **24. ETHICS LAW SUMMARY.**

Pursuant to the requirements of section 1-101qq of the Connecticut General Statutes, the summary of State ethics laws developed by the State Ethics Commission pursuant to section 1-81b of the Connecticut General Statutes is incorporated by reference into and made a part of this Agreement as if the summary had been fully set forth in this Agreement.

## **25. CAMPAIGN CONTRIBUTION RESTRICTIONS.**

Pursuant to the requirements of Connecticut General Statutes §9-612(g)(2), as amended by P.A. 10-1, the authorized signatory to this Agreement expressly acknowledges receipt of the

State Elections Enforcement Commission's ("SEEC") notice advising State contractors of State campaign contribution and solicitation prohibitions, and will inform its Contractor Parties of the contents of the notice.

## **26. WORKERS' COMPENSATION.**

Contractor agrees to carry sufficient workers' compensation and liability insurance with a company, or companies, licensed to do business in Connecticut, and furnish certificates if required.

## **27. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT.**

(a) If the Contactor or Contractor Parties is a Business Associate under the requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Contractor or Contractor Parties must comply with all terms and conditions of this Section of the Agreement. If the Contractor or Contractor Parties is not a Business Associate under HIPAA, this Section of the Agreement does not apply to the Contractor or Contractor Parties for this Agreement.

(b) The Contractor or Contractor Parties is required to safeguard the use, publication and disclosure of information on all applicants for, and all clients who receive, services under the Agreement in accordance with all federal and state law regarding confidentiality applicable to Contractor or Contractor Parties, which includes but is not limited to HIPAA, more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E; and

(c) The Client COMPTROLLER is a "covered entity" as that term is defined in 45 C.F.R. § 160.103; and

(d) The Contractor or Contractor Parties, on behalf of the Client COMPTROLLER, performs functions that involve the use or disclosure of "individually identifiable health information," as that term is defined in 45 C.F.R. § 160.103; and

(e) The Contractor or Contractor Parties is a "business associate" of the Department, as that term is defined in 45 C.F.R. § 160.103; and

(f) The Contractor or Contractor Parties and the Client COMPTROLLER agree to the following in order to secure compliance with the HIPAA, the requirements of Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the HITECH Act), (Pub. L. 111-5, sections 13400 to 13423), and more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E.

(g) Definitions. For the purposes of this Section of the Agreement:

- (1) "Breach" shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. §17921(1)).'



- (2) "Business Associate" shall mean the Contractor or Contractor Parties.
- (3) "Covered Entity" shall mean the Client COMPTROLLER.
- (4) "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 C.F.R. § 164.501.
- (5) "Electronic Health Record" shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. §17921(5)).
- (6) "Individual" shall have the same meaning as the term "individual" in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative as defined in 45 C.F.R. § 164.502(g).
- (7) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.
- (8) "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, limited to information created or received by the Business Associate from or on behalf of the Covered Entity.
- (9) "Required by Law" shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.103.
- (10) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- (11) "More stringent" shall have the same meaning as the term "more stringent" in 45 C.F.R. § 160.202.
- (12) "This Section of the Agreement" refers to the HIPAA Provisions stated herein, in their entirety.
- (13) "Security Incident" shall have the same meaning as the term "security incident" in 45 C.F.R. § 164.304.
- (14) "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. part 160 and part 164, subpart A and C.
- (15) "Unsecured protected health information" shall have the same meaning as the term as defined in § 13402(h)(1)(A) of HITECH. Act. (42 U.S.C. §17932(h)(1)(A)).

(h) Obligations and Activities of Business Associates.

- (1) Business Associate agrees not to use or disclose PHI other than as permitted or required by this Section of the Agreement, as directed by the Covered Entity, or as Required by Law.
  - (2) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for in this Section of the Agreement.
  - (3) Business Associate agrees to use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic protected health information that it creates, receives, maintains, or transmits on behalf of the Covered Entity.
  - (4) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by Business Associate in violation of this Section of the Agreement.

- (5) Business Associate agrees to report to Covered Entity any use or disclosure of PHI in its possession not provided for by this Section of the Agreement or any security incident of which it becomes aware provided that notice is hereby deemed given for Unsuccessful Security Incidents and no further notice of such Unsuccessful Security Incidents will be given. “Unsuccessful Security Incidents” include but are not limited to firewall pings and other broadcast attacks, port scans, unsuccessful log-on attempts, denial-of-service attacks, and any combination of the foregoing that do not result in unauthorized access, acquisition, use or disclosure of PHI.
- (6) Business Associate agrees to insure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate, on behalf of the Covered Entity, agrees to the same restrictions and conditions that apply through this Section of the Agreement to Business Associate with respect to such information.
- (7) Business Associate agrees to provide access, at the request of the Covered Entity, and in the time and manner agreed to by the parties, to PHI in a Designated Record Set maintained by Business Associate, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524.
- (8) Business Associate agrees to make any amendments to PHI in a Designated Record Set maintained by Business Associate that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of the Covered Entity, and in the time and manner agreed to by the parties.
- (9) Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by, Business Associate on behalf of Covered Entity, available to the Secretary during normal business hours in a manner reasonably designated by the Secretary, for purposes of the Secretary determining Covered Entity’s compliance with the Privacy Rule. Upon reasonable advance written notice to Business Associate that Covered Entity is subject to an investigation by the Secretary regarding the Covered Entity’s compliance with the Privacy Rule, subject to any applicable privileges and if permitted by law, Business Associate agrees to make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by, Business Associate on behalf of Covered Entity, available to the Covered Entity in a reasonable time and manner agreed to by the parties during Business Associate’s normal business hours, for purposes of the Secretary determining Covered Entity’s compliance with the Privacy Rule.
- (10) Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.
- (11) Business Associate agrees to provide to Covered Entity, in a time and manner agreed to by the parties, information collected in accordance with clause h. (10) of this Section of the Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §

164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder. Business Associate agrees that at the Covered Entity's direction to provide an accounting of disclosures of PHI directly to an individual in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.

(12) Business Associate agrees to comply with applicable Connecticut state law that is more stringent than the Privacy Rule but only to the extent that the Privacy Rule does not preempt the Connecticut law.

(13) Business Associate agrees to comply with the requirements of the HITECH Act relating to privacy and security that are applicable to the Covered Entity pursuant to the requirements of 45 C.F.R. sections 164.504(e), 164.308, 164.310, 164.312, and 164.316.

(14) In the event that an individual requests that the Business Associate (a) restrict disclosures of PHI; (b) provide an accounting of disclosures of the individual's PHI; or (c) provide a copy of the individual's PHI in an electronic health record, the Business Associate agrees to notify the covered entity, in writing, within five (5) business days of the request.

(15) Business Associate agrees that it shall not directly or indirectly receive any remuneration in exchange for the sale of PHI as defined in 45 C.F.R. § 164.502(a)(5)(ii)(B) of an individual without (1) the written approval of the covered entity, unless receipt of remuneration in exchange for PHI is expressly authorized by this Agreement and (2) the valid authorization of the individual, except for the purposes provided under section 13405(d)(2) of the HITECH Act, (42 U.S.C. § 17935(d)(2)) and in any accompanying regulations.

(16) Obligations in the Event of a Breach

(A) The Business Associate agrees that, following the discovery of a breach of unsecured protected health information, it shall notify the Covered Entity of such breach in accordance with the requirements of section 13402 of HITECH (42 U.S.C. § 17932(b) and the provisions of this section of the Agreement.

(B) Such notification shall be provided by the Business Associate to the Covered Entity without unreasonable delay, and in no case later than 30 days after the breach is discovered by the Business Associate, except as otherwise instructed in writing by a law enforcement official pursuant to section 13402 (g) of HITECH (42 U.S.C. § 17932(g)). A breach is considered discovered as of the first day on which it is, or reasonably should have been, known to the Business Associate. The notification shall include the identification and last known address, phone number and email address of each individual (or the next of kin of the individual if the individual is deceased) to the extent such information is reasonably available to Business Associate whose unsecured protected health information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed in a manner not consistent with this Agreement and the Privacy Rule and Security Rule during such breach.

(C) The Business Associate agrees to include in the notification to the Covered Entity at least the following information:

1. A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known.

2. A description of the types of unsecured protected health information that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code).

4. A detailed description of what the Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches.

5. Whether a law enforcement official has advised either verbally or in writing the Business Associate that he or she has determined that notification or notice to individuals or the posting required under section 13402 of the HITECH Act would impede a criminal investigation or cause damage to national security and contact information for said official to the extent that Business Associate is legally permitted to disclose such information.

(D) Business Associate agrees to provide appropriate staffing and have established procedures to ensure that individuals informed by the Covered Entity of a breach by the Business Associate have the opportunity to ask questions and contact the Business Associate for additional information regarding the breach. Costs of such contact procedures will be borne by the Contractor or Contractor Parties.

(E) Business Associate agrees that, in the event of a breach caused by the negligent actions of Business Associate and failure to comply with laws applicable to it, it has the burden to demonstrate that it has complied with all notifications requirements set forth above, including evidence demonstrating the necessity of a delay in notification to the Covered Entity.

(i) Permitted Uses and Disclosure by Business Associate.

(1) General Use and Disclosure Provisions Except as otherwise limited in this Section of the Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

(2) Specific Use and Disclosure Provisions.

(A) Except as otherwise limited in this Section of the Agreement, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

(B) Except as otherwise limited in this Section of the Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(C) Except as otherwise limited in this Section of the Agreement, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

(j) Obligations of Covered Entity.

- (1) to obtain in writing any individual's consent, authorization, and other permissions that may be necessary or required by applicable laws in order to transfer or disclose the PHI to Business Associate
- (2) Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices of Covered Entity, in accordance with 45 C.F.R. § 164.520, or to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- (3) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- (4) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

(k) Permissible Requests by Covered Entity.

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity, except that Business Associate may use and disclose PHI for data aggregation, and management and administrative activities of Business Associate, as permitted under this Section of the Agreement.

(l) Term and Termination.

(1) Term. The Term of this Section of the Agreement shall be effective as of the date the Agreement is effective and shall terminate when the information collected in accordance with clause h. (10) of this Section of the Agreement is provided to the Covered Entity and all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

(2) Termination for Cause upon either Party's (non-breaching party) knowledge of a material breach by the other Party, the non-breaching Party shall either:

- (A) Provide a thirty (30) day opportunity for the breaching Party to cure the breach and terminate the Agreement if Business Associate does not cure the breach within the cure period; or
- (B) Immediately terminate the Agreement if a Party has breached a material term of this Section of the Agreement and cure is not possible; or
- (C) If neither termination nor cure is feasible, the non-breaching Party shall report the violation to the Secretary as required under HIPAA.

(3) Effect of Termination.

- (A) Except as provided in (l)(2) above, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity,

or created or received by Business Associate on behalf of Covered Entity. Business Associate shall also provide the information collected in accordance with clause h. (10) of this Section of the Agreement to the Covered Entity within ten business days of the notice of termination. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Except as set forth in Section 3(B) below, Business Associate shall retain no copies of the PHI.

(B) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon documentation by Business Associate that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Section of the Agreement to such PHI and limit further uses and disclosures of PHI to those purposes that make return or destruction infeasible, for as long as Business Associate maintains such PHI. Infeasibility of the return or destruction of PHI includes, but is not limited to, requirements under state or federal law that the Business Associate maintains or preserves the PHI or copies thereof.

(m) Miscellaneous Provisions.

(1) Regulatory References. A reference in this Section of the Agreement to a section in the Privacy Rule means the section as in effect or as amended.

(2) Amendment. The Parties agree to take such action and shall reasonably cooperate as is necessary to amend this Section of the Agreement from time to time as is necessary for Covered Entity to comply with requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 provided, however, that if a change represents a material Change in Services, the Parties will address it utilizing the change control procedures set forth in Section 8 of this Agreement.

(3) Survival. The respective rights and obligations of the Parties shall survive the termination of this Agreement.

(4) Effect on Agreement. Except as specifically required to implement the purposes of this Section of the Agreement, all other terms of the Agreement shall remain in force and effect.

(5) Construction. This Section of the Agreement shall be construed as broadly as necessary to implement and comply with the Privacy Standard. Any ambiguity in this Section of the Agreement shall be resolved in favor of a meaning that complies, and is consistent with, the Privacy Standard.

(6) Indemnification. The Business Associate shall indemnify, defend and hold harmless the Covered Entity for all civil penalties imposed on the Covered Entity by the Secretary or equivalent State entity pursuant to HIPAA or HITECH and regulations promulgated thereunder, in each case, to the extent that such civil penalties arise from the unauthorized use or disclosure of PHI to the extent attributable to Business Associate.

## **28. WHISTLE BLOWING.**

This Agreement may be subject to the provisions of Section 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of the Contractor takes or threatens to take any personnel action against any employee of the

Contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public Comptroller or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of such statute, the Contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of this Agreement. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with subsection (f) of such statute, each large state contractor, as defined in the statute, shall post a notice of the provisions of the statute relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the Contractor.

## **29. NOTICE.**

All notices, demands, requests, consents, approvals or other communications required or permitted to be given or which are given with respect to this Agreement (for the purpose of this section collectively called "Notices") shall be deemed to have been effected at such time as the notice is placed in the U.S. mail, first class and postage prepaid, return receipt requested, or, placed with a recognized, overnight express delivery service that provides for a return receipt. All such Notices shall be in writing with a copy of the same faxed or emailed to the receiving Party's Project Manager, and shall be addressed as follows:

If to the Comptroller:

State of Connecticut, Office of the State Comptroller  
55 Elm Street  
Hartford, CT 06106-1775  
Attention: \_\_\_\_\_

If to the Contractor:

[CONTRACTOR]  
[ADDRESS]  
[Attention: \_\_\_\_\_]

## **30. INSURANCE.**

Before commencing performance of Services, the Contractor shall maintain at its own cost and expense for the Term of the Agreement, the following insurance as described in this section. Contractor shall assume any and all deductibles in the described insurance policies. Any failure to comply with the claim reporting provisions of the policy shall not affect coverage provided to the State.

- A. Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. Coverage shall include Premises and

Operations, Independent Contractors, Products and Completed Operations, Contractual Liability and Broad Form Property Damage coverage. If a general aggregate is used, the general aggregate limit shall apply separately to the work covered by this Agreement or the general aggregate limit shall be twice the occurrence limit.

- B. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury. Coverage extends to owned, hired and non-owned automobiles. If the Contractor does not own an automobile, but one is used in the performance of the Services, then only hired and non-owned coverage is required. If a vehicle is not used in the performance of the Services, then automobile coverage is not required.
- C. Workers' Compensation and Employers Liability: Statutory coverage in compliance with the Compensation laws of the State of Connecticut. Coverage shall include Employer's Liability with minimum limits of \$100,000 each accident, \$500,000 Disease–Policy limit, \$100,000 each employee.
- D. Professional Liability: The Contractor shall secure and maintain, at no cost or expense to the State, a professional liability insurance policy in a form acceptable to the Comptroller in the minimum amount of ten million dollars (\$10,000,000.00) with a deductible not to exceed fifty thousand dollars (\$50,000.00). The policy shall insure the Contractor against damages and costs resulting from negligent acts, errors or omissions in the work performed by the Contractor on and after the effective date of, and under the terms of, this Agreement. The Contractor may, at its election, obtain a policy containing a maximum of fifty thousand dollars (\$50,000.00) deductible clause, but if so, the Contractor shall be liable, as stated above herein, to the extent of the deductible amount.
- E. Contractor agrees to furnish to the State a “Certificate of Insurance” in conjunction with all insurance required by this Agreement, fully executed by an insurance company or companies or insurance broker, for the insurance policies required herein, which policies or policy shall be in accordance with the terms of said Certificate of Insurance.

### **31. HEADINGS.**

The headings given to the sections in the Agreement are inserted only for convenience and are in no way to be construed as part of the Agreement or as a limitation of the scope of the particular section to which the heading refers.

### **32. NUMBER AND GENDER.**

Whenever the context so requires, the plural or singular shall include each other and the use of any gender shall include all genders.

### **33. FURTHER ASSURANCES.**

The Parties shall provide such information, execute and deliver instruments and documents and take such other actions, all as may be required by law or reasonably requested by the other



Party which are not inconsistent with the provisions of this Agreement and which do not involve the vesting of rights or assumption of obligations other than those provided for in the Agreement, in order to give full effect to the Agreement and to carry out the intent of the Agreement.

### **34. AUDIT AND INSPECTION OF PLANTS, PLACES OF BUSINESS AND RECORDS.**

- A. The State and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State's Attorney and their respective agents, may, during normal business hours and subject to Contractor's standard security protocols, inspect and examine all of the parts of the Contractor's and Contractor Parties' plants and places of business which are used in the performance of this Agreement. In no event shall any audit permitted under this Agreement be conducted by a Contractor competitor.
- B. The Contractor shall maintain, and shall require each of its Approved Subcontractors to maintain, accurate and complete Contractor Records in accordance with generally accepted accounting principles. The Contractor shall make, and require its Approved Subcontractors to make, those records required to support invoiced amounts and verify compliance with the terms of this Agreement ("Contractor Records"), available during normal business hours for audit and inspection by the State and its agents.
- C. The State shall make all requests for any audit or inspection in writing and shall provide the Contractor with at least forty-eight (48) hours' notice prior to the requested audit and inspection date. If the State suspects fraud or other abuse, or in the event of an emergency, the State is not obligated to provide any prior notice.
- D. All audits and inspections shall be at the State's expense.
- E. The Contractor shall keep and preserve or cause to be kept and preserved all of its and Contractor Records until three (3) years after the latter of (i) final payment under this Agreement, or (ii) the expiration or earlier termination of this Agreement, as the same may be modified for any reason. The State may request an audit or inspection in accordance with the terms of this Agreement at any time during this period. If any Claim or audit is started before the expiration of this period, the Contractor shall retain or cause to be retained all Contractor Records until all Claims or audit findings have been resolved. Contractor Records shall be and remain Contractor Proprietary Information.
- F. The Contractor shall exercise commercially reasonable efforts to cooperate fully with the State and its agents in connection with an audit or inspection. Following any audit or inspection, the State may conduct and the Contractor shall exercise commercially reasonable efforts to cooperate with an exit conference.
- G. The Contractor shall incorporate this entire Section verbatim into any contract or other agreement that it enters into expressly for purposes of providing Services under this Agreement, with any Contractor Party.

### **35. CONTINUED PERFORMANCE.**

If reasonably practical, both Parties shall continue to perform their obligations under the Agreement while any dispute concerning the Agreement is being resolved.

### **36. SEVERABILITY.**

If any term or provision of the Agreement or its application to any person, entity or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder of the Agreement or the application of such term or provision shall not be affected as to persons, entities or circumstances other than those as to whom or to which it is held to be invalid or unenforceable. Each remaining term and provision of the Agreement shall be valid and enforced to the fullest extent possible by law.

### **37. PROPRIETARY INFORMATION.**

- A. In connection with the Services provided under this Agreement, the Comptroller and the Contractor each may be given access to information that relates to the other Party's past, present and future research, development, business activities, products, services, and technical knowledge (hereinafter "**Proprietary Information**"). Notwithstanding the foregoing, the term "Proprietary Information" will not include any information that identifies or directly relates to natural persons ("**Personal Data**"), and the terms of this Section and other provisions of this Agreement generally applicable to Proprietary Information will not be deemed to apply to Personal Data unless specifically stated otherwise.
- B. Each Party's Proprietary Information will remain the confidential information of that Party except as otherwise expressly provided in this Agreement. The Parties agree that they shall each protect the Proprietary Information of the other Party in the same manner as it protects its own Proprietary Information of like kind but with not less than reasonable care. Proprietary Information shall include, but is not limited to, all information clearly marked as "Proprietary" or in such other manner which gives notice of its proprietary or confidential nature, or is identified as such at the time it is disclosed (either orally or in writing), or contains information that a reasonable person in like circumstance would understand to be confidential.
- C. Each Party may disclose relevant aspects of the other Party's Proprietary Information to its employees, Affiliates, Approved Subcontractors and agents to the extent such disclosure is reasonably necessary for the performance of its obligations, or the enforcement of its rights, under this Agreement; provided, however, that such Party will be responsible for its employees, Affiliates, Approved Subcontractors or agents' compliance with these confidentiality provisions.
- D. Neither Party will (i) make or use any copies of the Proprietary Information of the other except as contemplated by this Agreement; or (ii) acquire any right in or assert any lien against the Proprietary Information of the other; or (iii) sell, assign, lease or otherwise commercially exploit the Proprietary Information of the other Party. Neither Party may

withhold the Proprietary Information of the other Party or refuse for any reason (including due to the other Party's actual or alleged breach of this Agreement) to promptly return to the other Party its Proprietary Information (including copies thereof) if requested to do so. Upon expiration or termination of this Agreement and completion of a Party's obligations under this Agreement, each Party will, at the request of the other Party, (and except as otherwise provided in this Agreement) return or destroy, as the other Party may direct, all documentation in any medium that contains or refers to the other Party's Proprietary Information, and retain no copies. Subject to the foregoing confidentiality obligations, either Party may retain copies of the Proprietary Information of the other Party to the extent required for (i) in the case of Accenture, compliance with applicable professional standards or quality assurance purposes and (ii) in the case of the COMPTROLLER, as required to give effect to any licensing rights of Accenture Intellectual Property as set forth herein.

E. Proprietary Information shall not include information which:

- (i) is or becomes a part of the public domain through no act or omission of the receiving Party;
- (ii) was in the receiving Party's lawful possession prior to the disclosure and had not been obtained by the receiving Party either directly or indirectly from the disclosing Party;
- (iii) is (to the receiving Party's knowledge) lawfully disclosed by a third party without restriction on disclosure;
- (iv) is independently developed by the receiving Party;
- (v) is disclosed by operation of law, or is required to be disclosed by law, rule or regulation, subpoena, summons, or order of a court of competent jurisdiction, or by a regulatory oversight agency, pursuant to the following: if the receiving Party receives a subpoena or other validly issued administrative or judicial process requesting Proprietary Information of the disclosing Party, it will promptly notify the disclosing Party of such receipt and tender to the disclosing Party the defense of such subpoena or process. If requested by the disclosing party, the receiving Party will reasonably cooperate (at the expense of the disclosing Party) in opposing such subpoena or process. Unless the subpoena or process is timely limited, quashed or extended, the receiving Party will then be entitled to comply with such request to the extent permitted by law; or,
- (vi) is Personal Data, which is separately defined and addressed in Section 51 below and other provisions of this Agreement generally applicable to Proprietary Information shall not be deemed to apply to include Personal Data.

F. Nothing contained in this Section will be construed as obligating a Party to disclose its Proprietary Information to the other Party, or as granting to or conferring on a Party,

expressly or impliedly, any rights or license to the Proprietary Information of the other Party.

### **38. FREEDOM OF INFORMATION.**

The Comptroller will afford due regard to the Contractor's request for the protection of proprietary or confidential information which the Comptroller receives. However, all materials associated with the Agreement are subject to the terms of the Connecticut Freedom of Information Act ("FOIA") and all corresponding rules, regulations and interpretations. If a FOIA request is made for materials or information that is Proprietary Information Comptroller will provide the Contractor with an opportunity to provide a written rationale in accordance with FOIA as to why the requested information should not be furnished pursuant to FOIA. In making such a request, the Contractor may not merely state generally that the materials are proprietary or confidential in nature and not, therefore, subject to release to third parties. Those particular sentences, paragraphs, pages or sections that the vendor believes are exempt from disclosure under the FOIA must be specifically identified as such. Convincing explanation and rationale sufficient to justify each exemption consistent with the FOIA must accompany the request. The rationale and explanation must be stated in terms of the prospective harm to the competitive position of the Contractor that would result if the identified material were to be released and the reasons why the materials are legally exempt from release pursuant to the FOIA. Comptroller agrees to furnish only that portion of the Proprietary Information that Comptroller is legally required to furnish. To the extent that any other provision or part of the Agreement, conflicts or is in any way inconsistent with this section, this section controls and shall apply and the conflicting provision or part shall not be given effect. If the Contractor indicates that certain documentation is submitted in confidence, by specifically and clearly marking said documentation as "**CONFIDENTIAL,**" the Comptroller will endeavor to keep said information confidential to the extent permitted by law. The Comptroller, however, has no obligation to initiate, prosecute or defend any legal proceeding or to seek a protective order or other similar relief to prevent disclosure of any information that is sought pursuant to a FOIA request. The Contractor shall have the burden of establishing the availability of any FOIA exemption in any proceeding where it is an issue. In no event shall the Comptroller or the State have any liability for the disclosure of any documents or information in its possession which the Comptroller reasonably believes are required to be disclosed pursuant to the FOIA or other requirements of law.

### **39. PERSONAL DATA.**

- A. Each Party will exercise commercially reasonable efforts not to disclose any Personal Data to the other Party and to restrict the other Party's access to its Personal Data, but if a Party is given access to the other Party's Personal Data, the receiving Party will protect such Personal Data using a reasonable standard of care. If Contractor requires access to Personal Data in connection with this Agreement or any amendments thereto, the Comptroller shall expressly identify the type of files and data which shall comprise Personal Data and which shall be accessed and/or processed by Contractor under this Agreement, and the means and circumstances by which it will be accessed or processed.

The Comptroller shall use commercially reasonable efforts to restrict Contractor's access to Personal Data to that described in this Agreement. In addition to the restrictions on use of Personal Data expressly provided for herein, the State and Comptroller alone will determine the purposes for which and the manner in which all Personal Data processed by Contractor will be processed under any applicable data privacy laws and regulations in connection with this Agreement.

- B. Contractor is a data processor on behalf of the State under this Agreement. In that capacity, Contractor will:
- (i) process State Personal Data only on written instructions of the State and to the extent reasonably necessary for the performance of this Agreement;
  - (ii) not disclose State Personal Data to any person except as required or permitted by this Agreement or with the State's prior written consent; and
  - (iii) implement commercially reasonable technical and organizational measures, including any additional measures specified by the State in advance and in writing, to protect State Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, and against all other unlawful forms of processing. The State will be responsible for the sufficiency of such policies and safeguards. However, to the extent such additional technical and organizational measures have not been established by the State, Contractor will maintain safeguards no less rigorous than those maintained by Contractor for its own similar personal data.
- C. Contractor may retain archival copies of State Personal Data, upon approval by the Comptroller, to the extent reasonably necessary to verify Contractor's compliance with this Agreement. Contractor will identify such data to the Comptroller at the time such archival copies are established.
- D. Contractor may, as a result of this Agreement and its dealings with the Comptroller, come to possess Personal Data in relation to the Comptroller and the Comptroller's employees, directors, officers and other representatives. Contractor may receive such data from such persons, the Comptroller, or from other sources (for example, published or publicly available directories); and some limited data may be recorded indirectly by internal security and communication systems or by other means (for example, visitor logs maintained by security officials at Contractor's offices). Subject to compliance with the applicable data protection and data privacy legislation, Contractor may use and disclose such data for purposes connected with this Agreement and for the relevant purposes specified in the Accenture Data Privacy Policy (a copy of which is available on request) provided such policy is in compliance with applicable data privacy laws and the scope of such processing is directly related to the provision of services to the State or Accenture's dealings with the State or Accenture's internal business purposes. In particular, Accenture may for these purposes transfer such data to other Accenture entities around the world in compliance with the applicable data protection and data privacy legislation.

#### **40. INTERPRETATION.**

The Agreement contains numerous references to statutes and regulations. For purposes of interpretation, conflict resolution and otherwise, the content of those statutes and regulations shall govern over the content of the reference in the Agreement to those statutes and regulations.

#### **41. CONFIDENTIAL INFORMATION; PROTECTION; BREACH.**

- A. **“Confidential Information”** shall mean any name, number or other information that may be used, alone or in conjunction with any other information, to identify a specific individual including, but not limited to, such individual's name, date of birth, mother's maiden name, motor vehicle operator's license number, Social Security number, employee identification number, employer or taxpayer identification number, alien registration number, government passport number, health insurance identification number, demand deposit account number, savings account number, credit card number, debit card number or unique biometric data such as fingerprint, voice print, retina or iris image, or other unique physical representation. Without limiting the foregoing, Confidential Information shall also include any information that the Board classifies as “confidential” or “restricted.” Confidential Information shall not include information that may be lawfully obtained from publicly available sources or from federal, state, or local government records which are lawfully made available to the general public.
- B. **“Confidential Information Breach”** shall mean an instance where an unauthorized person or entity accesses Confidential Information in any manner, including but not limited to the following occurrences: (1) any Confidential Information that is not encrypted or protected is misplaced, lost, stolen or in any way compromised; (2) one or more third parties have had access to or taken control or possession of any Confidential Information that is not encrypted or protected without prior written authorization from the State; (3) the unauthorized acquisition of encrypted or protected Confidential Information together with the confidential process or key that is capable of compromising the integrity of the Confidential Information; or (4) if there is a substantial risk of identity theft or fraud to the client, the Contractor, the Board or State.
- C. Contractor and Contractor Parties, at their own expense, have a duty to and shall protect from a Confidential Information Breach any and all Confidential Information which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with current industry standards.
- D. Each Contractor or Contractor Party shall implement and maintain a comprehensive data security program for the protection of Confidential Information. The safeguards contained in such program shall be consistent with and comply with the safeguards for protection of Confidential Information, and information of a similar character, as set forth

in all applicable federal and state law and written policy of the Board or State concerning the confidentiality of Confidential Information. Such data-security program shall include, but not be limited to, the following:

- (i) A security policy for employees related to the storage, access and transportation of data containing Confidential Information;
  - (ii) Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept;
  - (iii) A process for reviewing policies and security measures at least annually;
  - (iv) Creating secure access controls to Confidential Information, including but not limited to passwords; and
  - (v) Encrypting of Confidential Information that is stored on laptops, portable devices or being transmitted electronically.
- E. The Contractor and Contractor Parties shall notify the Department and the Connecticut Office of the Attorney General as soon as practical, but no later than twenty-four (24) hours, after they become aware of or suspect that any Confidential Information which Contractor or Contractor Parties possess or control has been subject to a Confidential Information Breach.
- F. If a Confidential Information Breach has occurred, the Contractor shall, within three (3) business days after the notification, present a credit monitoring and protection plan to the Connecticut Commissioner of Administrative Services, the Board and the Connecticut Office of the Attorney General, for review and approval.
- (i) Such credit monitoring or protection plan shall be made available by the Contractor at its own cost and expense to all individuals affected by the Confidential Information Breach.
  - (ii) Such credit monitoring or protection plan shall include, but is not limited to reimbursement for the cost of placing and lifting one (1) security freeze per credit file pursuant to Connecticut General Statutes § 36a-701a.
  - (iii) Such credit monitoring or protection plans shall be approved by the State in accordance with this Section and shall cover a length of time commensurate with the circumstances of the Confidential Information Breach.
- G. The Contractors' costs and expenses for the credit monitoring and protection plan shall not be recoverable from the Board, any State of Connecticut entity or any affected individuals.

- H. The Contractor shall incorporate the requirements of this Section in all subcontracts requiring each Contractor Party to safeguard Confidential Information in the same manner as provided for in this Section.

#### **42. SOVEREIGN IMMUNITY.**

The Parties acknowledge and agree that nothing in the RFP or the Agreement shall be construed as a modification, compromise or waiver by the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the State or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of the Agreement. To the extent that this section conflicts with any other section, this section shall govern.

#### **43. NON-SOLICITATION.**

Contractor and the Comptroller agree that neither Party shall directly or indirectly solicit for employment any employee of the other Party. This clause shall remain in effect during the term of this Agreement and for a period of one year after the Term of this Agreement, unless prior written consent of the other Party is first obtained. Notwithstanding the foregoing, this Section will not apply to employees who independently respond to indirect solicitations (i.e., general newspaper advertisements and internet postings).

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IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives with full knowledge of and agreement with its terms and conditions.

[CONTRACTOR]

STATE OF CONNECTICUT  
OFFICE OF THE STATE COMPTROLLER

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

Name:

Title:

Date:

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

Name: Kevin Lembo

Title: Comptroller

Date:

Approved as to form:

\_\_\_\_\_  
State of Connecticut  
Attorney General's Office  
Date: \_\_\_\_\_