

**AGREEMENT BETWEEN THE STATE OF CONNECTICUT BY AND THROUGH THE OFFICE OF
THE STATE COMPTROLLER AND YALE NEW HAVEN HEALTH SERVICES CORPORATION**

This Agreement (“Contract or Agreement”) is made and entered into as of the 11 day of May 2020, by and among the Office of the Connecticut State Comptroller, with offices located at 165 Capitol Avenue, Hartford, CT 06106, on behalf of the State of Connecticut, hereinafter referred to as “OSC”, “Comptroller” and/or “State”, and Yale New Haven Health Services Corporation, Inc. acting on behalf of Bridgeport Hospital, Greenwich Hospital, Lawrence + Memorial Hospital Inc., LMW Healthcare Inc., d/b/a Westerly Hospital, Yale New Haven Hospital, Inc. and/or Northeast Medical Group, Inc., hereinafter referred to as “YNHHS” and/or “Contractor”. (Each may be referred to as “Party” or together as the “Parties”).

RECITALS

WHEREAS, on March 10, 2020, Governor Lamont declared a public health emergency to bolster Connecticut’s efforts to contain Novel Coronavirus Disease 2019 (COVID-19) and has taken several emergency actions in response to the COVID-19 outbreak; and

WHEREAS, on April 27, 2020, the State of Connecticut, acting through the Department of Administrative Services, issued a request for proposals for implementation of a comprehensive approach to widespread, high volume testing in Connecticut for the presence of COVID-19 infection by testing for SARS-CoV-2 virus and/or antibodies using protocols as defined by the Food and Drug Administration (FDA); and

WHEREAS, on May 3, 2020, the Office of the Governor and the Department of Administrative Services, assigned responsibility to the Office of the State Comptroller to enter into contracts on behalf of the State with vendors selected to provide such services, to facilitate payment and to implement testing of identified populations, including employees and other groups covered under group hospitalization and medical and surgical benefits procured by the Comptroller under Conn.Gen.Stat. 5-259; and

WHEREAS, Comptroller is empowered, pursuant to Section 3-112 of the Connecticut General Statutes to enter into such contractual agreements as may be necessary to discharge such duties and to support the statewide response to this health emergency; and

WHEREAS, YNHHS was as a successful bidder pursuant to the RFP process and has agreed to provide the Services on the terms stated herein,

NOW, THEREFORE, for good and sufficient consideration, the receipt and sufficiency of which the parties acknowledge, and intending to be legally bound, the parties agree as follows:

SECTION 1

CONTRACT PERIOD

This Agreement shall begin effective May 11, 2020 and shall expire on May 11, 2021, unless the parties, by mutual agreement, agree to extend this Contract for an additional one-year period.

SECTION 2

DEFINITIONS

Whenever the following terms or phrases are used in this Agreement, they shall have the following meaning unless the context clearly requires otherwise:

- A. Agreement or Contract: The agreement, as of its Effective Date, between the Contractor and the State at the Proposal price.
- B. Cancellation: An end to the Contract effected pursuant to a right which the Contract creates due to a breach.
- C. Claims: 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.
- D. Contractor: A person or entity who submits a Proposal and who executes a Contract.
- E. Contractor Parties: A 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 oral or written contract and the Contractor intends for such other person or entity to Perform under the Contract in any capacity.
- F. Day: All calendar days other than Saturdays, Sundays and days designated as national or State of Connecticut holidays upon which banks in Connecticut are closed.
- G. Force Majeure: Events that materially affect the cost of the Goods or Services or the time schedule within which to Perform and are outside the control of the party asserting that such an event has occurred, including, but not limited to, labor troubles unrelated to the Contractor, failure of or inadequate permanent power, unavoidable casualties, fire not caused by the Contractor, extraordinary weather conditions, disasters, riots, acts of God, insurrection, war or pandemic, that (1) results in an outbreak at Contractor's facilities or among its staff that would render performance impossible or (2) an increase in the cost of testing supplies by more than 20 percent that would render Contractor's reasonable economic assumptions in entering into the Contract substantially invalid.

- H. Goods or Services: Goods, Services or both, and which include, without limiting this definition, supplies, materials, as specified in the Request for Proposals and set forth in Exhibit in Exhibit A.
- I. Proposal: A submittal in response to a Request for Proposals.
- J. Records: All working papers and such other information and materials as may have been accumulated by the Contractor in performing the Contract, 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.
- K. Request for Proposals: A State request inviting proposals for Goods or Services.
- L. State: The State of Connecticut, the Office of the State Comptroller and any office, department, board, council, commission, institution or other agency of the State.
- M. Termination: An end to the Contract prior to the end of its term whether effected pursuant to a right which the Contract creates or for a breach.

SECTION 3

NOTICE OF CHANGE AND TERMINATION

- A. Any request for written notice under this Agreement shall be made in the manner set forth in this section. The parties may change their respective addresses for notices under this paragraph upon prior written notification to the other. Unless otherwise expressly provided to the contrary, any notice provided under this Agreement shall be in writing and may be delivered personally or by certified or registered mail. All notices shall be effective if delivered personally, or by certified or registered mail, to the following addresses:

Comptroller:

Office of the State Comptroller
165 Capital Avenue
Hartford, CT 06106
Attention: Natalie Braswell, General Counsel

Contractor:

Yale New Haven Health Services Corporation
Legal & Risk Services Department
789 Howard Avenue, CB230
New Haven, CT 06510
Attention: General Counsel

Fax: 203 (203) 688-3162

With a copy to:

Yale New Haven Health Services Corporation
789 Howard Avenue
New Haven, CT 06510
Attention: Deremius Williams, Vice President Payer Strategy and Innovation

B. Termination, Cancellation and Expiration.

1. Notwithstanding any provisions in this Contract, Comptroller, through a duly authorized employee, may Terminate the Contract whenever the Comptroller makes a written determination that such Termination is in the best interests of the State by providing at least sixty (60) calendar days' written notice of Termination to Contractor pursuant to this section.
2. Notwithstanding any provisions in this Contract, the Comptroller, through a duly authorized employee, may, after making a written determination that the Contractor has breached the Contract, Cancel the Contract in accordance with the provisions in the Breach section of this Contract.
3. If for any reason, the Contractor shall fail to fulfill in a timely manner and proper manner its obligations under this Agreement, the Comptroller shall thereupon have the right to terminate this Agreement by giving written notice to the Contractor of such termination and the reason therefore specifying the effective date thereof at least thirty (30) days before the effective date of such termination. In such event, all records and data prepared by the Contractor under this Agreement shall become available for audit. The Contractor shall not be relieved of liability to the Comptroller for damages sustained by the Comptroller by virtue of any breach of the Agreement by the Contractor, and the Comptroller may withhold any payments to the Contractor for the purposes of set-off until such time as the exact amount of damages to the Comptroller is determined.
4. The Comptroller shall send the notice of Termination or Cancellation via certified mail, return receipt requested, to the Contractor at the most current address which the Contractor has furnished to Comptroller for purposes of correspondence, or by hand delivery. Upon receiving such notice from Comptroller, the Contractor shall immediately discontinue all services affected in accordance with the notice, undertake all commercially reasonable efforts to mitigate any losses or damages, and deliver to the Comptroller all Records. The Records are deemed to be the

property of Comptroller and the Contractor shall deliver them to Comptroller no later than thirty (30) days after the Termination, Cancellation or Expiration of the Contract or fifteen (15) days after the Contractor receives a written request from Comptroller for the Records. The Contractor shall deliver those Records that exist in electronic, magnetic or other intangible form in a non-proprietary format, such as, but not limited to, ASCII or .TXT.

5. Upon receipt of a written notice of Termination or Cancellation from the Comptroller, the Contractor shall cease operations as directed by the Comptroller 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 goods and any other property. Except for any work which the Comptroller directs the Contractor to Perform in the notice prior to the effective date of Termination or Cancellation, 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.
6. In the case of any Termination or Cancellation, Comptroller shall, within forty-five (45) days of the effective date of Termination or Cancellation, reimburse the Contractor for its Performance rendered and accepted by the Comptroller in addition to all actual and reasonable costs incurred after Termination or Cancellation in completing those portions of the Performance which the Contractor was required to complete by the notice. 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 Comptroller, the Contractor shall assign to the Agency, or any replacement contractor which the Comptroller designates, all subcontracts, purchase orders and other commitments, deliver to Comptroller all Records and other information pertaining to its Performance, as Comptroller may request.
7. Breach. If either party breaches the Contract in any 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 ten (10) business days from the date that the breaching party receives such notice. Any other time provided for in the notice shall trump such ten (10) business days. 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 Contract 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 Contract Termination date, then the non-breaching party may Terminate the Contract by giving the breaching party no less than twenty-four (24) hours' prior written notice. If the Comptroller believes that the Contractor has not performed according to the Contract, the Comptroller may withhold payment in whole or in part and Contractor may cease performance pending resolution of the Performance issue, provided that the Comptroller notifies the Contractor in writing prior to the date that the payment would have been due in accordance with Exhibit B.

For breach or violation of any of the provisions in the section concerning Representations and Warranties, the Comptroller may Cancel the Contract in accordance with its terms and revoke any consents to assignments.

8. Upon Termination, Cancellation or Expiration of the Contract, 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, Cancellation or Expiration of the Contract. All representations, warranties, agreements and rights of the parties under the Contract shall survive such Termination, Cancellation or Expiration to the extent not otherwise limited in the Contract and without each one of them having to be specifically mentioned in the Contract.
9. Force Majeure. Neither party hereto shall be considered in default in the performance of its obligations hereunder (other than its obligation to make any payment of money hereunder), or be liable in damages or otherwise for any failure or delay in performance which is beyond the reasonable control of the party claiming excuse hereunder, for a Force Majeure.

SECTION 4

SPECIFICATION OF SERVICES

- A. During the Term contractor shall perform the Services (collectively, "Contractor Services") as described in its response to the Request for Proposal and set forth in more detail in Exhibit A, attached hereto. Such Services consist of setting up sample collection sites or facilities, storing and transporting of test samples from collection sites to Contractor's facilities, processing collection samples and reporting test results to the Department of Public Health, to Comptroller and other stakeholders, as directed and as permitted by state and federal rules and regulations.
- B. Emergency Standby for Services. If any Federal or State official, having authority to do so, declares an emergency or the occurrence of a natural disaster within the State of Connecticut, Comptroller may request Services on an expedited and prioritized basis. Upon receipt of such a request the Contractor shall make all necessary and appropriate

commercially reasonable efforts to reallocate its staffing and other resources in order to give primary preference to Performing this Contract ahead of or prior to fulfilling, in whole or in part, any other contractual obligations that the Contractor may have. The Contractor is not obligated to make those efforts to Perform on an expedited and prioritized basis in accordance with this paragraph if doing so will make the Contractor materially breach any other contractual obligations that the Contractor may have

SECTION 5

COMPTROLLER'S RESPONSIBILITIES.

- A. During the Term of this Agreement, Comptroller shall facilitate communications among other State agencies and groups involved in the coronavirus response effort, assist with coordination of sample collection, allocate samples to Contractor to meet anticipated test volume, and take all reasonable efforts to provide Contractor with relevant information needed to provide the Services contemplated.
- B. The Parties agree to take all reasonable actions necessary to consummate Performance of the Services contemplated by this Agreement and will promptly cooperate with and furnish information to any party necessary in connection with any such requirements imposed upon such other party.
- C. Comptroller has estimated various testing requirements to be provisioned over the term of this Agreement. Contractor has provided estimates of its anticipated capacity to collect samples and complete testing. Contractor understands and agrees that such planning estimates do not represent any minimum or maximum purchase obligations/commitments on the part of Comptroller under this Agreement

SECTION 6

COST AND SCHEDULE OF PAYMENTS

- A. The State shall pay Contractor for Services actually performed and completed in the manner set forth in **Exhibit B**, and Contractor shall accept such payment as full compensation for any direct costs or expenses incurred by the Contractor.

SECTION 7

OTHER CONDITIONS

- A. Entire Agreement. This Agreement, together with all Exhibits, embodies the entire agreement between the Comptroller and the Contractor on matters specifically addressed herein. The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein. This Agreement shall supersede all prior written agreements between the parties and their predecessors. The Contractor's proposal response was used as determinative in the request for proposal process that resulted in this Agreement.

- B. Amendment. This Agreement may be amended by agreement of the parties. Formal written amendment of the Agreement is required for extensions to the final date of the Agreement period, modification of terms and conditions specifically stated in the original Agreement and any prior amendments, including but not limited to: revisions to the cost of service, the Agreement's objectives, services or plans, due dates for reports, completion of objectives or services, and any other Agreement revisions determined to be material by the State. No changes, amendments or modifications of any terms or conditions of the Agreement shall be valid unless reduced to writing and signed by both parties and where applicable approved by the Office of the Attorney General.
- C. Independent Contractor. Contractor represents that it is fully experienced and properly qualified to perform the services provided for herein, and that it is properly licensed, equipped, organized, and financed to perform such services. Contractor shall act as an independent Contractor in performing this Agreement, maintaining complete control over its employees and all of its subcontractors. Contractor shall furnish fully qualified personnel to perform the services under this Agreement. Contractor shall perform all services in accordance with its methods, subject to compliance with this Agreement and all applicable laws and regulations. It is acknowledged that services rendered by the Contractor to the Comptroller hereunder do not in any way conflict with other contractual commitments with or by the Contractor. If applicable, Contractor shall deliver copies of any and all current license(s) and registration(s) relating to the services to be performed under this Agreement to the Comptroller, at the time of the execution of this Agreement, as evidence that such are in full force and effect.
- D. Forum and Choice of Law.
1. The Agreement shall be deemed 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 this Agreement that it 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.
 2. The Contractor agrees that the sole and exclusive means for the presentation of any claims against the State arising from this Agreement shall be in accordance with Chapter 53 of the Connecticut General Statutes (Claims Against the State) and the Contractor further agrees not to initiate legal proceedings in any State or Federal Court in addition to, or in lieu of, said Chapter 53 proceedings.
 3. 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.

4. The Contractor shall provide written notice to the State of any litigation that relates to the services directly or indirectly financed under this Agreement or that has the potential to impair the ability of the Contractor to fulfill the terms and conditions of this Agreement, including but not limited to financial, legal or any other situation which may prevent the Contractor from meeting its obligations under the Agreement.

E. Labor and Performance

1. At all times, Contractor shall utilize approved, qualified personnel and any Comptroller- approved subcontractors necessary to perform the services under this Agreement. Contractor shall advise the Comptroller promptly, in writing, of any labor dispute or anticipated labor dispute or other labor related occurrence known to Contractor involving Contractor's employees or subcontractors which may reasonably be expected to affect Contractor's performance of services under this Agreement. The Comptroller may then, at its option, ask Contractor to arrange for a temporary employee(s) or subcontractor(s) satisfactory to the Comptroller to provide the services otherwise performable by Contractor hereunder. The Contractor will be responsible to the Comptroller for any economic detriment caused the Comptroller by such subcontract arrangement.
2. Contractor shall, if requested to do so by the Comptroller, reassign from the Comptroller's account any employee or authorized representatives whom the Comptroller, in its sole discretion, determines is incompetent, dishonest, or uncooperative.
3. Contractor shall Perform the Services consistent with applicable laws and industry standard and shall pay for all permits, licenses and fees required in connection with such Performance.
4. Contractor shall adhere to all Contractual provisions ensuring the confidentiality of Records that the Contractor has access to and are exempt from disclosure under the State's Freedom of Information Act or other applicable law.
5. Contractor hereby warrants that all Services provided under this Contract shall be Performed in a professional manner consistent with or exceeding the standards of the applicable industry.

- F. Conflicts, Errors, Omissions, and Discrepancies. In case of conflicts, discrepancies, errors, or omissions among the various parts of this Agreement, any such matter shall

be submitted immediately by Contractor to the Comptroller for clarification. The Comptroller shall issue such clarification within a reasonable period of time. Any services affected by such conflicts, discrepancies, errors, or omissions which are performed by Contractor prior to clarification by the Comptroller shall be at Contractor's risk.

G. Indemnity and Limitation of Liability

1. The Contractor shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all Claims arising, directly or indirectly, (1) from the acts of commission or omission (collectively, the "Acts") of the Contractor or Contractor Parties in connection with performance of the Contract; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims arising, directly or indirectly, from the Acts in connection with performance of the Contract. The Contractor shall use counsel reasonably acceptable to the State in carrying out its obligations under this section. The Contractor's obligations under this section to indemnify, defend and hold harmless include claims concerning confidentiality of any part of or all of the Contractor's bid proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the Performance.
2. The Contractor shall not be responsible for indemnifying or holding the State harmless from any liability arising due to the negligence of the State or any other person or entity acting under the direct control or supervision of the State.
3. The Contractor shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of the Contractor or any Contractor Parties. The State shall give the Contractor reasonable notice of any such claims.
4. The Contractor's duties under this section shall remain fully in effect and binding in accordance with the terms and conditions of the Contract, without being lessened or compromised in any way, even where the Contractor is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims and/or where the State is alleged or is found to have contributed to the Acts giving rise to the Claims.
5. The rights provided in this section for the benefit of the State shall encompass the recovery of attorneys' and other professionals' fees expended in pursuing a Claim against a third party.
6. Neither party shall be liable for consequential, special, punitive, or incidental damages, or lost profits from any cause.

7. This section shall survive the Termination of the Contract and shall not be limited by reason of any insurance coverage.

H. Insurance.

1. Before commencing Performance, Contractor at its sole expense shall obtain and maintain at its own cost and expense for the duration of the Contract and during the time that any provisions survive the term of the Contract, the insurance coverage set forth below. Contractor shall assume any deductibles in the described insurance policies.

Coverage: Minimum Amounts and Limits

2. Contractor shall maintain sufficient general liability insurance to satisfy its obligations under this Contract. The amount of coverage under such policy shall be no less than \$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 project or the general aggregate limit shall be twice the occurrence limit.
3. Contractor shall name the State as an additional insured on the general liability policy and shall provide a certificate of insurance to the Comptroller prior to the effective date of the Contract. The Contractor shall not begin Performance until the delivery of the certificate of insurance to the Comptroller.
4. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury. Coverage extends to owned, hired and non-owned automobiles. If Contractor does not own an automobile, but one is used in the execution of the contract, then only hired and non-owned coverage is required. If a vehicle is not used in the execution of the contract then automobile coverage is not required.
5. 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.
6. Umbrella Liability: Excess/umbrella liability insurance in the amount of \$5,000,000 per occurrence. Aggregate limits in excess of the required underlying insurance must be maintained. Umbrella coverage must indicate the existing underlying insurance coverage and name State of Connecticut as an additional insured.
7. None of the requirements contained herein as to types, limits, and approval of insurance coverage to be maintained by Contractor is intended to and shall not in any way limit or qualify the liabilities and obligations assumed by Contractor under this Agreement.

8. Contractor shall deliver Certificates of Insurance relating to all of the above referenced coverages to the Comptroller at the time of the execution of this Agreement as evidence that policies providing such coverage and limits of insurance are in full force and effect, which Certificate shall provide that no less than thirty (30) days advance notice will be given in writing to the Comptroller prior to cancellation, termination or alteration of said policies of insurance.

I. Quality Surveillance and Examination of Records

1. All services performed by Contractor shall be subject to the inspection and approval of the Comptroller at all times, and Contractor shall furnish all information concerning the services.
2. The Comptroller or its representatives shall have the right at reasonable hours to examine any books, records, data and other documents of Contractor or its subcontractors pertaining to work performed under this Agreement and shall allow such representatives free access to any and all such books and records. The Comptroller will give the Contractor at least thirty (30) days' notice of such intended examination. At the Comptroller's request, the Contractor shall provide the Comptroller with hard copies of or other electronic media containing any data or information in the possession or control of the Contractor which pertains to the Comptroller's business under this Agreement. The Contractor shall incorporate this paragraph verbatim into any Agreement it enters into with any subcontractor providing services under this Agreement.
3. The Contractor shall retain and maintain accurate records and documents relating to performance of services under this Agreement for a minimum of three (3) years after the final payment by the Comptroller and shall make them available for inspection and audit by the Comptroller.

J. Non-Waiver.

1. None of the conditions of this Agreement shall be considered waived by the Comptroller or the Contractor unless given in writing. No such waiver shall be a waiver of any past or future default, breach, or modification of any of the conditions of this Agreement unless expressly stipulated in such waiver.
2. In no event shall the making by the Comptroller of any payment to the Contractor constitute or be construed as a waiver by the Comptroller of any breach of covenant, or any default on the part of the Contractor which may then exist, and the making of any such payment by the Comptroller while any such breach or default exists shall in no way impair or prejudice any right available to the Comptroller in respect to such breach or default.

- K. Promotion. Unless specifically authorized in writing by the Comptroller, the Contractor shall have no right to use, and shall not use, the name of the State of Connecticut, its officials or employees, the seal of the Comptroller, or the seal of the State:
1. In any advertising, publicity, promotion; nor
 2. To express or imply any endorsement of the Contractor's products or services; nor
 3. To use the names of the Comptroller, its officials or employees or the Comptroller seal or Comptroller's seal in any manner (whether or not similar to uses prohibited by subparagraphs 1 and 2 above), except as only to deliver in accordance with this Agreement such items or Services as are hereby contracted by the Comptroller, provided however, the use of the State seal shall require specific and express permission from the Secretary of the State.
- L. Survival. The rights and obligations of the parties, which by their nature survive termination or completion of the Agreement, including but not limited to those set forth herein in sections relating to Indemnity, Nondisclosure, Promotion, and Confidentiality of this Agreement, shall remain in full force and effect.
- M. Sovereign Immunity. Notwithstanding any provisions to the contrary contained in this Agreement, it is agreed and understood that the State of Connecticut shall not be construed to have waived any rights or defenses of sovereign immunity which it may have with respect to all matters arising out of this Agreement.
- N. Assignment. This Agreement shall not be assigned by either party without the express prior written consent of the other.
- O. Severability. If any part or parts of this Agreement shall be held to be void or unenforceable, such part or parts shall be treated as severable, leaving valid the remainder of this Agreement notwithstanding the part or parts found to be void or unenforceable.
- P. Headings. The titles of the several sections, subsections, and paragraphs set forth in this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Agreement.
- Q. Third Parties. The Comptroller shall not be obligated or liable hereunder to any party other than the Contractor.
- R. Contractor Certification. The Contractor certifies that the Contractor has not been convicted of bribery or attempting to bribe an officer or employee of the Comptroller, nor has the Contractor made an admission of guilt of such conduct which is a matter of record. The Contractor on its own behalf and on behalf of its Affiliates shall also provide, no later than 30 days after receiving a request by the State's contracting authority, such information as the State may require to ensure, in the State's sole determination, compliance with the provisions of the State Contracting Standards Act.

- S. Counterparts/Facsimile. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same Agreement and shall become effective when one or more counterparts has been signed by each Party and delivered to the other Party, it being understood that each Party need not sign the same counterpart. This Agreement may be executed and delivered by email or facsimile and upon such delivery the email or facsimile signature will be deemed to have the same effect as if the original signature had been delivered to the other Party. The original signature copy shall be delivered to the other Party by express overnight delivery. The failure to deliver the original signature copy and/or the non-receipt of the original signature copy shall have no effect upon the binding and enforceable nature of this Agreement.
- T. Summary of State Ethics Laws. 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 1-8b of the Connecticut General Statutes is incorporated by reference and made a part of the Agreement as if the summary had been fully set forth herein.
- U. Incorporation of Certifications and Affidavits. The following Certifications and Affidavits as listed below have been executed by PBM and submitted to the Department of Administrative Services via the DAS Business Network. Such Certifications and Affidavits will be incorporated by reference into and made a part of the Agreement as if fully set forth herein:
1. Gift & Campaign Contribution Certification (OPM Ethics Form 1)
 2. Consulting Agreement Affidavit OPM (Ethics Form 5).
 3. Affirmation of receipt of State Ethics Laws Summary (OPM Ethics Form 6).
 4. Iran Certification (OPM Ethics Form 7).
 5. Certification of Non-Discrimination: pursuant to Public Act 07-245 and Public Act 07-142.
 6. By signing this Agreement, Contractor acknowledges that it has reviewed the applicable statutes and regulations referenced by and in these Certifications and Affidavits and agrees to abide by such statutes and regulations. By executing these Certifications and Affidavits, Contractor is affirming that it and its key employees have read, understand and agree to the provisions contained within these documents.

SECTION 8
STATUTORY AND REGULATORY COMPLIANCE

- A. Health Insurance Portability and Accountability Act of 1996. Notwithstanding the language in Section 8.A.3 of the Contract, the language below is not applicable if the Agency is not a Covered Entity for the purposes of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). However, if the Agency becomes a Covered Entity in the future and if the Contractor accordingly becomes a Business Associate, Contractor will comply with the terms of this Section upon written notice from the Agency that the Agency is a Covered Entity.
1. If the Contractor is a Business Associate under the requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as noted on the Signatures and Approval page of this Contract, the Contractor must comply with all terms and conditions of this Section of the Contract. If the Contractor is not a Business Associate under HIPAA, this Section of the Contract does not apply to the Contractor for this Contract.
 2. The Contractor is required to safeguard the use, publication and disclosure of information on all applicants for, and all clients who receive, services under the Contract in accordance with all applicable federal and state law regarding confidentiality, 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
 3. The State of Connecticut Agency named on page 1 of this Contract (“Agency”) is a “covered entity” as that term is defined in 45 C.F.R. § 160.103; and
 4. The Contractor is a “business associate” of the Agency, as that term is defined in 45 C.F.R. § 160.103; and
 5. The Contractor and the Agency 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 (“HITECH Act”), (Pub. L. 111-5, §§ 13400 to 13423), and more specifically with the Privacy and Security Rules at 45 C.F.R. parts 160 and 164, subparts A, C, and E (collectively referred to herein as the “HIPAA Standards”).
 6. Definitions
 - a. “Breach” shall have the same meaning as the term is defined in 45 C.F.R. § 164.402 and shall also include a use or disclosure of PHI that violates the HIPAA Standards.
 - b. “Business Associate” shall mean the Contractor.

- c. "Covered Entity" shall mean the Agency of the State of Connecticut named on page 1 of this Contract.
- d. "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 C.F.R. § 164.501.
- e. "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)).
- f. "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).
- g. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health V Information at 45 C.F.R. part 160 and part 164, subparts A and E.
- h. "Protected Health Information" or "PHI" shall have the same meaning as the term defined in 45 C.F.R. § 160.103, limited to information created, maintained, transmitted defined in 45 C.F.R. § 160.103, limited to information created, maintained, transmitted or received by the Business Associate from or on behalf of the Covered Entity or from another Business Associate of the Covered Entity.
- i. "Required by Law" shall have the same meaning as the term "required by law" in 45C.F.R. § 164.103.
- j. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- k. "More stringent" shall have the same meaning as the term "more stringent" in 45 C.F.R. § 160.202.
- l. "This Section of the Contract" refers to the HIPAA Provisions stated herein, in their entirety.
- m. "Security Incident" shall have the same meaning as the term "security incident" in 45 C.F.R. § 164.304.
- n. "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.
- o. "Unsecured protected health information" shall have the same meaning as the term as defined in 45 C.F.R. § 164.402.

7. Obligations and Activities of Business Associates.

- a. Business Associate agrees not to use or disclose PHI other than as permitted or required by this Section of the Contract or as Required by Law.
- b. Business Associate agrees to use and maintain appropriate safeguards and comply with applicable HIPAA Standards with respect to all PHI and to prevent use or disclosure of PHI other than as provided for in this Section of the Contract and in accordance with HIPAA Standards.
- c. 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.
- d. 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 Contract.
- e. Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Section of the Contract or any security incident of which it becomes aware.
- f. Business Associate agrees in accordance with 45 C.F.R. § 502(e)(1)(ii) and § 164.308(d)(2), if applicable, to ensure that any subcontractor that creates, receives, maintains or transmits PHI on behalf of the Business Associate agrees to the same restrictions, conditions and requirements that apply to the Business Associate with respect to such information.
- g. Business Associate agrees to provide access (including inspection, obtaining a copy or both), at the request of the Covered Entity, and in the time and manner designated by the Covered Entity, to PHI in a Designated Record Set, 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. Business Associate shall not charge any fees greater than the lesser of the amount charged by the Covered Entity to an Individual for such records; the amount permitted by state law; or the Business Associate's actual cost of postage, labor and supplies for complying with the request.
- h. Business Associate agrees to make any amendments to PHI in a Designated Record Set 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 designated by the Covered Entity.

- i. 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, maintained, transmitted or received by, Business Associate on behalf of Covered Entity, available to Covered Entity or to the Secretary in a time and manner agreed to by the parties or designated by the Secretary, for purposes of the Secretary investigating or determining Covered Entity's compliance with the HIPAA Standards.
- j. 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.
- k. Business Associate agrees to provide to Covered Entity, in a time and manner designated by the Covered Entity, information collected in accordance with subsection 8.A.7.j of this Section of the Contract, 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 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.
- l. Business Associate agrees to comply with any state or federal law that is more stringent than the Privacy Rule.
- m. Business Associate agrees to comply with the requirements of the HITECH Act relating to privacy and security that are applicable to the Covered Entity and with the requirements of 45 C.F.R. §§ 164.504(e), 164.308, 164.310, 164.312, and 164.316.
- n. In the event that an Individual requests that the Business Associate (i) restrict disclosures of PHI; (ii) provide an accounting of disclosures of the Individual's PHI; (iii) provide a copy of the Individual's PHI in an electronic health record; or (iv) amend PHI in the Individual's designated record set the Business Associate agrees to notify the Covered Entity, in writing, within five (5) business days of the request.
- o. Business Associate agrees that it shall not, and shall ensure that its subcontractors do not, directly or indirectly, receive any remuneration in exchange for PHI of an Individual without (i) the written approval of the Covered Entity, unless receipt of remuneration in exchange for PHI is expressly authorized by this Contract; and (ii) 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

p. Obligations in the Event of Breach.

- (1) The Business Associate agrees that, following the discovery by the Business Associate or by a subcontractor of the Business Associate of any use or disclosure not provided for by this section of the Contract, any breach of unsecured PHI, or any Security Incident, it shall notify the Covered Entity of such breach in accordance with Subpart D of Part 164 of Title 45 of the Code of Federal Regulations and this Section of the Contract.
- (2) Such notification shall be provided by the Business Associate to the Covered Entity without unreasonable delay, and in no case later than thirty (30) days after the breach is discovered by the Business Associate, or a subcontractor of the Business Associate, except as otherwise instructed in writing by a law enforcement official pursuant to 45 C.F.R. § 164.412. A breach is considered discovered as of the first day on which it is, or reasonably should have been, known to the Business Associate or its subcontractor. 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) whose unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during such breach.
- (3) The Business Associate agrees to include in the notification to the Covered Entity at least the following information:
 - (a) A description of what happened, including the date of the breach; the date of the discovery of the breach; the unauthorized person, if known, who used the PHI or to whom it was disclosed; and whether the PHI was actually acquired or viewed.
 - (b) A description of the types of unsecured PHI that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code).
 - (c) The steps the Business Associate recommends that Individual(s) take to protect themselves from potential harm resulting from the breach.

- (d) A detailed description of what the Business Associate is doing or has done to investigate the breach, to mitigate losses, and to protect against any further breaches.
 - (e) Whether a law enforcement official has advised the Business Associate, either verbally or in writing, that he or she has determined that notification or notice to Individuals or the posting required under 45 C.F.R. § 164.412 would impede a criminal investigation or cause damage to national security and; if so, include contact information for said official.
- (4) If directed by the Covered Entity, the Business Associate agrees to conduct a risk assessment using at least the information in subparagraphs (a) to (d) inclusive, of subsection 8.A.7.p.(3) of this Section and determine whether, in its opinion, there is a low probability that the PHI has been compromised. Such recommendation shall be transmitted to the Covered Entity within twenty (20) business days of the Business Associate's notification to the Covered Entity.
 - (5) If the Covered Entity determines that there has been a breach, as defined in 45 C.F.R. § 164.402, by the Business Associate or a subcontractor of the Business Associate, if directed by the Covered Entity, shall provide all notifications required by 45 C.F.R. §§ 164.404 and 164.406.
 - (6) Business Associate agrees to provide appropriate staffing and have established procedures to ensure that Individuals informed of a breach have the opportunity to ask questions and contact the Business Associate for additional information regarding the breach. Such procedures shall include a toll-free telephone number, an e-mail address, a posting on its Web site and a postal address. Business Associate agrees to include in the notification of a breach by the Business Associate to the Covered Entity, a written description of the procedures that have been established to meet these requirements. Costs of such contact procedures will be borne by the Contractor.
 - (7) Business Associate agrees that, in the event of a breach, 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.

8. Permitted Uses and Disclosure by Business Associate.

- a. General Use and Disclosure Provisions. Except as otherwise limited in this Section of the Contract, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Contract, provided that such use or disclosure would not violate the HIPAA Standards if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.
- b. Specific Use and Disclosure Provisions
 - (1) Except as otherwise limited in this Section of the Contract, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
 - (2) Except as otherwise limited in this Section of the Contract, 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.
 - (3) Except as otherwise limited in this Section of the Contract, 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).

9. Obligations of Covered Entity.

- a. 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.
- b. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual(s) to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- c. 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.

9. 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 HIPAA Standards 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 Contract.

10. Term and Termination.

- a. Term. The Term of this Section of the Contract shall be effective as of the date the Contract is effective and shall terminate when the information collected in accordance with the provisions of subsection 8.A.7.j of this Section of the Contract 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.
- b. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
 - (1) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate the Contract if Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity; or
 - (2) Immediately terminate the Contract if Business Associate has breached a material term of this Section of the Contract and cure is not possible; or
 - (3) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
- c. Effect of Termination.
 - (1) Except as provided in subparagraph 8.A.11.c (2) of this Section of the Contract, upon termination of this Contract, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity. Business Associate shall also provide the information collected in accordance with subsection 8.A.7.j of this Section of the Contract to the Covered Entity within ten (10) business days of the notice of termination. This section shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

- (2) 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 Contract 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.

11. Miscellaneous Sections.

- a. Regulatory References. A reference in this Section of the Contract to a section in the Privacy Rule means the section as in effect or as amended.
- b. Amendment. The Parties agree to take such action as is necessary to amend this Section of the Contract 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.
- c. Survival. The respective rights and obligations of Business Associate shall survive the termination of this Contract.
- d. Effect on Contract. Except as specifically required to implement the purposes of this Section of the Contract, all other terms of the Contract shall remain in force and effect.
- e. Construction. This Section of the Contract shall be construed as broadly as necessary to implement and comply with the Privacy Standard. Any ambiguity in this Section of the Contract shall be resolved in favor of a meaning that complies, and is consistent with, the Privacy Standard.
- f. Disclaimer. Covered Entity makes no warranty or representation that compliance with this Section of the Contract will be adequate or satisfactory for Business Associate's own purposes. Covered Entity shall not be liable to Business Associate for any claim, civil or criminal penalty, loss or damage related to or arising from the unauthorized use or disclosure of PHI by Business Associate or any of its officers, directors, employees, contractors or agents, or any third party to whom Business Associate has disclosed PHI contrary to the sections of this Contract or applicable law. Business Associate is solely responsible for all decisions made, and actions taken, by Business Associate regarding the safeguarding, use and disclosure of PHI within its possession, custody or control.

- e. "Good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;
 - f. "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;
 - g. "Marital status" means being single, married as recognized by the State of Connecticut, widowed, separated or divorced;
 - h. "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;
 - i. "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 C.G.S. § 32-9n; and
 - j. "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.
2. For purposes of this Section, the terms "Contract" and "contract" do not include a contract where each contractor is (i) a political subdivision of the state, including, but not limited to, a municipality, unless the contract is a municipal public works contract or quasi-public agency Project contract, (ii) any other state, including but not limited to any federally recognized Indian tribal government, as defined in C.G.S. §1-267, (iii) the federal government, (iv) a foreign government, or (v) an agency of a subdivision, state or government described in the immediately preceding enumerated items (i),(ii), (iii) or (iv).
 3. 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, status as a veteran, intellectual disability, 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,

4. The Contractor agrees, in all solicitation 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;
5. 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 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 applications for employment;
6. The Contractor agrees to comply with each provision of this Section and CGS §§ 46a056, 46a-68e, 46a-68f and 46a-86; and
7. 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 CGS §46a-56. If the contract is a public works contract, municipal public works contract or contract for a quasi-public agency project, the Contractor agrees and warrants that he or she will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works or quasi-public agency projects.
8. 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.
9. The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.
10. The Contractor shall include the provisions of subsection 3 of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and in every subcontract entered into in order to fulfill any obligation of a municipal public works contract for a quasi-public agency project, 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 C.G.S. § 46a-56, as amended; 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 regarding a State contract, 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.

11. 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.
12. 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;
13. The Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to C.G.S. § 46a-56.

D. Whistleblowing. This Contract is subject to C.G.S. § 4-61dd if the amount of this Contract is a "large state contract" as that term is defined in C.G.S. § 4-61dd(h). 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 agency or the Auditors of Public Accounts or the Attorney General under subsection (a) of such statute, the Contractor shall be liable for a civil penalty of not more than five thousand dollars (\$5,000) for each offense, up to a maximum of twenty per cent (20%) of the value of this Contract. 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 relevant sections of the statute relating to large state Contractors in a conspicuous place which is readily available for viewing by the employees of the Contractor.

E. Executive Orders. This Contract is subject to Executive Order No. 3 of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices; Executive Order No. 17 of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings; Executive Order No. 16 of Governor John G. Rowland, promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and made a part of the Contract as if they had been fully set forth in it. The Contract may also be subject to Executive

Order 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services and to Executive Order No. 49 of Governor Dannel P. Malloy, promulgated May 22, 2015, mandating disclosure of certain gifts to public employees and contributions to certain candidates for office. If Executive Order 14 and/or Executive Order 49 are applicable, they are deemed to be incorporated into and are made a part of the Contract as if they had been fully set forth in it. At the Contractor's request, the Comptroller Agency or the Connecticut Department of Administrative Services shall provide a copy of these orders to the Contractor.

- F. Campaign Contribution Restriction. For all State contracts as defined in C.G.S. § 9-612 having a value in a calendar year of \$50,000 or more or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Contract expressly acknowledges receipt of the State Elections Enforcement Commission's notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice, as set forth in "Notice to Executive Branch State Contractors and Prospective State Contractors of Campaign Contribution and Solicitation Limitations".
- G. Data Security. Pursuant to Connecticut Public Act 15-142, the Parties agree as follows:
 - 1. As used in this Section:
 - a. "Confidential Information" means an 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, personally identifiable information subject to 34 CFR 99, as amended from time to time and protected health information, as defined in 45 CFR 160. 103, as amended from time to time. Confidential Information does not include information that may be lawfully obtained from publicly available sources or from federal, state, or local government records that are lawfully made available to the general public.
 - b. "Confidential Information Breach" means an instance where an unauthorized person or entity accesses confidential information that is subject to or otherwise used in conjunction with the Contract in any manner, including, but not limited to, the following occurrences: (i) Any Confidential Information that is not encrypted or secured by any other method or technology that renders the personal information unreadable or unusable is misplaced, lost, stolen or subject to unauthorized access; (ii) one or more third parties have accessed, or taken control or

possession of, without prior written authorization from the state, (iii) any Confidential Information that is not encrypted or protected, or (iv) any encrypted or protected Confidential Information together with the confidential process or key that is capable of compromising the integrity of the Confidential Information; or (v) there is a substantial risk of identity theft or fraud of the State's Plan Participants.

2. Pursuant to this Agreement Comptroller will share Confidential Information with Contractor. Contractor at its own expense will protect from a Confidential Information Breach any and all Confidential Information that it comes to possess or control, wherever and however stored or maintained in a commercially reasonable standard and in accordance with current industry standards.
3. 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:
 - a. A security policy for employees related to the storage, access and transportation of data containing Confidential Information;
 - b. Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept;
 - c. A process for reviewing policies and security measures at least annually;
 - d. Creating secure access controls to Confidential Information, including but not limited to passwords; and
 - e. Encrypting of Confidential Information that is stored on laptops, portable devices or being transmitted electronically.
4. The Contractor and Contractor Parties shall notify Comptroller and the Connecticut Office of the Attorney General as soon as practicable, but no later than ten (10) days, 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.
5. If a Confidential Information Breach has occurred and there is a risk of identity theft or fraud to the State's Plan Participants, 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 Comptroller, and the Connecticut Office of the Attorney General, for review and approval.

6. 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.
7. 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.
8. Such credit monitoring or protection plans shall be approved by the State in accordance with this Section and shall cover a length of time, not to exceed two (2) years, commensurate with the circumstances of the Confidential Information Breach.
9. The Contractor's costs and expenses for the credit monitoring and protection plan shall not be recoverable from any State of Connecticut entity or any affected individuals.
10. Contractor understands that the Attorney General may investigate any violation of this section. If the Attorney General finds that Contractor has violated or is violating any provision of this section, the Attorney General may bring a civil action in the superior court for the judicial district of Hartford under this section in the name of the state against such contractor. Nothing in this section shall be construed to create a private right of action.
11. The requirements of this section shall be in addition to the requirements of section 36a-701b of the Connecticut General Statutes as amended by Public Act 15-142, and nothing in this section shall be construed to supersede Contractor's obligations pursuant to the Health Insurance Portability and Accountability Act of 1996 P. L. 104-191 "HIPAA", the Family Educational Rights and Privacy Act of 1974, 20 USC 1232g, "FERPA" or any other applicable federal or state law.

H. Fraud, Waste and Abuse Prevention.

1. Contractor will provide fraud, waste and abuse prevention and detection systems to identify aberrant claims and billing practices. Where it appears that fraud has been perpetrated on the State employee plan Contractor agrees to share results of investigations conducted by it with the State, including the Office of the Attorney General. In such event, Contractor will cooperate with Comptroller and the Office of the Attorney General in connection with investigations of suspected fraud waste and abuse.
2. Contractor agrees to provide notice to and consult with Comptroller and the Office of the Attorney General prior to suspending payments to providers or recovering

funds in any matter where fraud, waste or abuse involving, exclusively or principally, the State employee plan is suspected.

3. Contractor agrees to adhere to the Attorney General's reasonable requests to assure maximum opportunity to investigate suspected fraud, waste or abuse involving the State employee plan pursuant to (Public Act 14-217) Conn. Gen. Stat. §§4-61dd(d), 4-274 — 4-289 (revised to 2015) in order to avoid compromising a preliminary inquiry or investigation initiated by the Attorney General resulting from Contractor's referral of information relating to potential fraud, waste and abuse.
 4. Contractor shall promptly make available all provider enrollment information (including, but not limited to, claims information, applications, supporting material for applications, and anything signed by or on behalf of the provider in connection with enrollment and/or agreement to be bound by the Contractor's policies and procedures) as may be needed by the Comptroller for plan administration and/or by the Office of the Attorney General in connection with investigations of suspected fraud, waste and abuse.
 5. Contractor shall promptly make available all policies and procedures that providers are required to follow as needed by the Comptroller for plan administration and/or by the Office of the Attorney General in connection with investigations of suspected fraud, waste and abuse.
 6. Should Comptroller require consultation with the Office of the Attorney General, Contractor agrees to adhere to the Attorney General's reasonable requests to assure maximum opportunity to investigate the matter pursuant to Public Act 14-217.
- I. Tangible Personal Property. The Contractor on its behalf and on behalf of its Affiliates, as defined below, shall comply with the provisions of Conn. Gen. Stat. §12-411b, as follows:
1. For the term of the Contract, the Contractor and its Affiliates shall collect and remit to the State of Connecticut, Department of Revenue Services, any Connecticut use tax due under the provisions of Chapter 219 of the Connecticut General Statutes for items of tangible personal property sold by the Contractor or by any of its Affiliates in the same manner as if the Contractor and such Affiliates were engaged in the business of selling tangible personal property for use in Connecticut and had sufficient nexus under the provisions of Chapter 219 to be required to collect Connecticut use tax;
 2. A customer's payment of a use tax to the Contractor or its Affiliates relieves the customer of liability for the use tax;

3. The Contractor and its Affiliates shall remit all use taxes they collect from customers on or before the due date specified in the Contract, which may not be later than the last day of the month next succeeding the end of a calendar quarter or other tax collection period during which the tax was collected;
 4. The Contractor and its Affiliates are not liable for use tax billed by them but not paid to them by a customer; and
 5. Any Contractor or Affiliate who fails to remit use taxes collected on behalf of its customers by the due date specified in the Contract shall be subject to the interest and penalties provided for persons required to collect sales tax under chapter 219 of the general statutes.
 6. For purposes of this section of the Contract, the word "Affiliate" means any person, as defined in section 12-1 of the general statutes, that controls, is controlled by, or is under common control with another person. A person controls another person if the person owns, directly or indirectly, more than ten per cent of the voting securities of the other person. The word "voting security" means a security that confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business, or that is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. "Voting security" includes a general partnership interest.
 7. The Contractor represents and warrants that each of its Affiliates has vested in the Contractor plenary authority to so bind the Affiliates in any agreement with the State of Connecticut. The Contractor on its own behalf and on behalf of its Affiliates shall also provide, no later than 30 days after receiving a request by the State's contracting authority, such information as the State may require to ensure, in the State's sole determination, compliance with the provisions of the State Contracting Standards Act.
- J. Audit and Inspection of Plants, Places of Business and Records.
1. 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, at reasonable hours, inspect and examine all of the parts of the Contractor's and Contractor Parties' plants and places of business which, in any way, are related to, or involved in, the performance of this Contract.
 2. The Contractor shall maintain and shall require each of the Contractor Parties to maintain, accurate and complete Records. The Contractor shall make all of its and the Contractor Parties' Records available at all reasonable hours for audit and inspection by the State and its agents.
 3. The State shall make all requests for any audit or inspection in writing and shall provide the Contractor with at least twenty-four (24) 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.
4. All audits and inspections shall be at the State's expense.
 5. The Contractor shall keep and preserve or cause to be kept and preserved all of its and Contractor Parties' 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 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 Records until all Claims or audit findings have been resolved.
 6. The Contractor shall 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 cooperate with an exit conference.
 7. The Contractor shall incorporate this entire Section verbatim into any contract or other agreement that it enters into with any Contractor Party.

SECTION 9

CONFIDENTIALITY

- A. Nondisclosure. Neither Contractor, Subcontractor, nor any other subcontractor shall release any information concerning the services provided pursuant to the Agreement or any part thereof to any member of the public, press, business entity or any official body unless prior written consent is obtained from the Comptroller.
- B. Confidentiality. All data provided by the Comptroller to Contractor or Subcontractor or developed internally by Contractor with regard to the Comptroller will be treated as proprietary to the Comptroller and confidential unless the Comptroller agrees in writing to the contrary. Contractor agrees to forever hold in confidence all files, records, documents, or other information designated as Confidential, whether prepared by the Comptroller or others, which may come into Contractor's possession during the term of this Agreement, except where disclosure of such information by Contractor or its Subcontractor is required by other governmental authority to ensure compliance with laws, rules, or regulations, and such disclosure will be limited to that actually so required. Where such disclosure is required, Contractor or its Subcontractor will provide advance notice to the Comptroller of the need for the disclosure and will not disclose absent consent from the Comptroller.
- C. Subpoenas. In the event the Contractor's records are subpoenaed pursuant to Conn. Gen. Stat. Section 36a-43, the Contractor shall, within twenty-four (24) hours of service of the subpoena, notify the person designated for the Comptroller in Section 3 of this Agreement of such subpoena. Within thirty-six (36) hours of service, the Contractor

shall send a written notice of the subpoena together with a copy of the same to the person designated for the Comptroller in Section 3 of this Agreement.

D. Nondisclosure of Contractor's Confidential Information.

1. The Comptroller shall not disclose or make use of any Confidential Information of Contractor except as permitted under this Agreement without the prior written consent of Contractor, which consent may be conditioned upon the execution of a confidentiality agreement.
2. As used in this Section the term "Confidential Information" includes any information of Contractor (whether oral, written, electronic, visual or fixed in any tangible medium of expression) relating to its trade secrets, including reports, memoranda, statistics, forms, notes, records, financial information, patient lists, charts, know-how, work-in progress, business methods, legal documents, pricing, rebates, formulas, patterns, compilations, programs, devices, methods, techniques, processes, drawings, cost data, customer lists, or detailed production budgets that derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from their disclosure or use, and are the subject of efforts that are reasonable under the circumstances to maintain secrecy; or commercial or financial information, given in confidence, not required by statute.
3. If Comptroller is requested to disclose Contractor's Confidential Information in response to a subpoena, civil investigative demand, formal or informal investigation by any government agency, judicial process or otherwise, the Comptroller shall give Contractor prompt prior written notice to allow it to seek an appropriate protective order or modification of any requested disclosure.

E. Freedom of Information.

1. Contractor acknowledges that the Agency must comply with the Freedom of Information Act, C.G.S. §§ 1-200 et seq. ("FOIA") which requires the disclosure of documents in the possession of the State upon request of any citizen, unless the content of the document falls within certain categories of exemption, as defined by C.G.S. § 1-210(b).
2. Governmental Function. In accordance with C.G.S. § 1-218, if the amount of this Contract exceeds two million five hundred thousand dollars (\$2,500,000), and the Contractor is a "person" performing a "governmental function", as those terms are defined in C.G.S. § 1-200(4) and (11), the Agency is entitled to receive a copy of the Records and files related to the Contractor's performance of the governmental function, which may be disclosed by the Agency pursuant to the FOI.
3. Claim for Exemption

- a. Within 10 days of signing this Agreement, Contractor shall notify Comptroller in writing of all Confidential Information contained in this Agreement that it claims may be exempt from public disclosure under FOIA. In making a request for protection of materials Contractor must specifically identify particular provisions, documents or parts of documents [sentences, paragraphs, pages, data compilations, or sections] that Contractor believes are exempt from disclosure under the FOIA by marking each as “CONFIDENTIAL” and provide an explanation and rationale sufficient to justify each exemption claimed under FOIA. The rationale and explanation must be stated in terms of the prospective harm that would result to the competitive position of Contractor if the identified material were to be released and reasons why the materials are legally exempt from release pursuant to the FOIA.
- b. Within ten (10) days of signing this Agreement, Contractor shall provide Comptroller with a copy of this Agreement in electronic format (CD, or DVD) from which all information asserted by Contractor to be Confidential has been redacted. Contractor acknowledges and agrees that in the event a FOIA request for disclosure of the Agreement is submitted, Comptroller may disclose such redacted copy without advance notice or objection.
- c. In the event that Comptroller receives a FOIA request for disclosure of Confidential Information contained in other documents relating to services performed by Contractor under this Agreement, Comptroller shall promptly notify Contractor so that it may have the opportunity (i) to submit within the time limit prescribed by FOIA for the Comptroller to respond, a sufficient justification, as described above in Section [E.3.a] above why the requested materials are exempt and should not be disclosed and under FOIA or (ii) should Comptroller indicate an intention to disclose the requested materials, to seek a protective order or other similar relief. Comptroller 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 of Contractor that is sought pursuant to the FOIA. Contractor shall have the burden of establishing the availability of any FOIA exemption in any proceeding where it is an issue.
- d. Comptroller agrees that it will not release any information identified by Contractor as Confidential Information or claimed to be exempt from disclosure under FOIA without first providing notice to Contractor of such intent and allowing Contractor an opportunity to seek administrative or judicial relief to prevent such disclosure. If the Freedom of Information Commission or a court thereafter determines that the Comptroller is legally required to disclose such Confidential Information, Comptroller shall disclose the minimum required pursuant to such order.

4. In no event shall Comptroller have any liability for the disclosure of any documents in its possession which the Comptroller is compelled by a court or administrative order to disclose pursuant to FOIA or other requirements of law. To the extent that any other provision or part of the Agreement conflicts with or is in any way inconsistent with this section, this Section controls and shall apply.

**SECTION 10
REPRESENTATIONS AND WARRANTIES**

The Contractor, represents and warrants to Comptroller for itself and Subcontractors engaged to perform required services under the Contract that:

- A. If they are entities, they are duly and validly existing under the laws of their respective states of organization and authorized to conduct business in the State of Connecticut in the manner contemplated by the Contract. Further, as appropriate, they have taken all necessary action to authorize the execution, delivery and Performance of the Contract and have the power and authority to execute, deliver and Perform their obligations under the Contract;
- B. They will comply with all applicable State and Federal laws and municipal ordinances in satisfying their obligations to the State under and pursuant to the Contract, including, but not limited to Connecticut General Statutes Title 1, Chapter 10, concerning the State's Codes of Ethics;
- C. The execution, delivery and Performance of the Contract 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 of the following, as applicable: (1) any provision of law; (2) any order of any court or the State; or (3) 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, they have not, within the three years preceding the Contract, in any of their current or former jobs, been convicted of, or had a civil judgment rendered against them or against any person who would Perform under the Contract, 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. They are 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 not within the three years preceding the Contract had one or more contracts with any governmental entity Terminated;
- H. They have not employed or retained any entity or person, other than a bona fide employee working solely for them, to solicit or secure the Contract and that they have not paid or agreed to pay any entity or person, other than a bona fide employee working solely for them, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of the Contract or any assignments made in accordance with the terms of the Contract;
- I. To the best of their knowledge, there are no Claims involving Contractor or Subcontractor that might reasonably be expected to materially adversely affect their ability to Perform fully under the Contract;
- J. They shall disclose, to the best of their knowledge, to Comptroller in writing any Claims involving them that might reasonably be expected to materially adversely affect their ability to Perform fully under the Contract, no later than ten (10) Days after becoming aware or after they should have become aware of any such Claims;
- K. Their participation in the Request for Proposals process is not a conflict of interest or a breach of ethics under the provisions of Title 1, Chapter 10 of the Connecticut General Statutes concerning the State's Code of Ethics;
- L. The Proposal was not made in connection or concert with any other person or entity, including any affiliate (as defined in the Tangible Personal Property section of this Contract) of the Contractor, submitting a proposal for the same Goods or Services, and is in all respects fair and without collusion or fraud; and
- M. They are able to Perform under the Contract using their own resources or the resources of a party who is not a Contractor.

SIGNATURES AND APPROVAL

The Contractor IS or IS NOT CURRENTLY a Business Associate under the Health Insurance Portability and Accountability act of 1996, as amended.

Yale New Haven Health Services Corporation, Inc.

By: _____

Vincent Tammaro

Executive VP and Chief Executive Officer

Date: _____

Office of the State Comptroller

By: _____

Kevin Lembo

Comptroller of the State of Connecticut

Date: _____

Connecticut Attorney General (Approved as to form)

By: _____

Typed/Printed name of Authorized Official

Date: _____