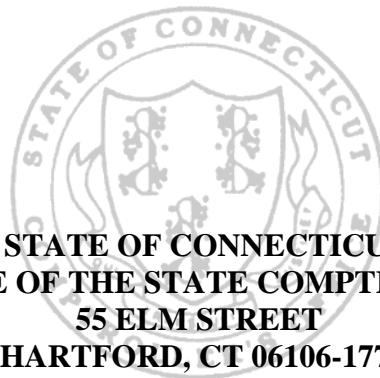


**REQUEST FOR PROPOSAL (RFP)  
THIRD PARTY ADMINISTRATION**

**DEPENDENT CARE ASSISTANCE,  
MEDICAL FLEXIBLE SPENDING AND  
QUALIFIED TRANSPORTATION  
ACCOUNT PROGRAMS**



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

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## **I. STATEMENT OF OBJECTIVES**

The State of Connecticut, Office of the State Comptroller (OSC) will be considering submissions from vendors qualified to serve as a Third Party Administrator (TPA) for its Flexible Spending Accounts (FSA) and Transportation Fringe Benefit Program (Program). The Program consists of the Dependent Care Assistance Program (DCAP), Medical Flexible Spending Account (MEDFLEX) and Qualified Transportation Account (QTA) Program. Interested vendors must be thoroughly knowledgeable in administration of Flexible Spending Accounts and Qualified Transportation Account Programs in accordance with Sections 129, 105, 132 and 125 of the Internal Revenue Code of 1986 and regulations promulgated thereunder and will be required to provide setup, administration and management for the Program. It is expected that one contract will be awarded to a single successful bidder; however, the OSC reserves the right to award separate contracts if it is in the best interest of the State.

We anticipate that this contract will cover services for the 2012, 2013 and 2014 Plan years. The contract will include a clause that gives the OSC the right to extend the contract for up to two additional one-year periods. The State reserves the right to accept or reject any or all proposals submitted. All proposals will be kept sealed and safe until the deadline for submission has passed.

## **II. BACKGROUND**

The OSC is charged with the responsibility for establishing and maintaining the DCAP, MEDFLEX and QTA Programs for State employees, pursuant to Sections 5-141e, 5-264b and 5-264d of the Connecticut General Statutes. The purpose of the Program is to provide tax savings for eligible dependent care expenses, eligible medical expenses not covered by the State health benefit program and eligible transportation and parking expenses.

## **III. SCOPE OF WORK**

The minimum Plan Year election for the DCAP, MEDFLEX and QTA will be \$20 on a bi-weekly basis with the maximum limit established pursuant to Sections 129, 105 and 132 of the Internal Revenue Code. Under the Program, the Comptroller or program administrator upon receipt of the written request of the employee will establish and maintain an account in accordance with an employee's election of any of the programs offered under the Program. The Comptroller will reduce the salary of such employees by the amount designated in such requests. Such amounts will be transferred to the employee's account and will be used to reimburse the employee's eligible expenses in accordance with the applicable provisions of the Internal Revenue Code and regulations promulgated thereunder. The OSC will remit employee reductions to the selected vendor on a bi-weekly basis. The MEDFLEX will not have a reserve fund; rather the OSC will use the monies taken from participant bi-weekly payroll reductions to fund the Program. If determined that a reserve fund is necessary, such fund will be maintained solely by the OSC.

The OSC will utilize the services of the Contractor to provide setup, administration and

management of the Program. Employee participation in the Program is entirely voluntary. Administrative fees for those employees electing participation in the Program will be paid by the employer to the Contractor in arrears by the fifteenth day of the month after services are rendered.

The selected TPA will report to the OSC's Healthcare Policy & Benefit Services Division (HPBSD), Employee Benefits Unit.

#### **IV. SCHEDULE AND SELECTION PROCESS**

7/14/2011	Release of RFP
7/26/2011	Questions due at <a href="mailto:osc.fsaprgm@po.state.ct.us">osc.fsaprgm@po.state.ct.us</a>
8/02/2011	OSC answers questions received via email to all contractors
8/08/2011	Notice of Intent to bid with contractor email address due at HPBSD of the OSC
8/18/2011	Delivery of proposals to HPBSD by 2:30pm eastern standard time

#### **Review and Selection Schedule**

8/19/2011	Reading and Scoring of Proposals by Screening Committee	
9/08/2011	Finalist Interviews	<i>Note 1</i>
9/15/2011	TPA Selection	<i>Note 2</i>
9/19/2011- 12/31/2011	Contract Negotiation, Testing, Conversion Process Commences	<i>Note 3</i>

1. Finalist Interviews. Contractors selected for a final interview will be expected to make a presentation in Hartford, Connecticut to the Review Committee, followed by a question and answer period. The number of finalists to be selected for interviews has yet to be determined; however, the expectation is that this number will not exceed three in each category.
2. Selection of the TPA may be conditioned upon a site visit by up to three representatives from the HPBSD, to be conducted at a mutually agreeable date and time. All expenses incurred in making the site visit shall be borne exclusively by the TPA and treated as a cost of responding to this RFP.
3. TPA Conversion. It is the State's expectation that, following the successful conclusion of contract negotiations, the TPA will develop and thereafter follow a work plan, which has as its objective the implementation of services by January 1, 2012.

## **V. PROGRAM REQUIREMENTS**

The State of Connecticut currently employs approximately 50,000 State employees of which approximately 40,000 would be eligible for the Program. The DCAP currently has approximately 915 participants. The MEDFLEX currently has approximately 1150 participants. The QTA currently has approximately 200 participants

The Contractor is expected to respond to the following requirements:

1. Administer a Program pursuant to Sections 129, 105, 132 & 125 of the Internal Revenue Code and the regulations promulgated thereunder.
2. Development and processing of enrollment in accordance with applicable Internal Revenue Code requirements.
3. Transfer of information to and from State of Connecticut Core-CT PeopleSoft system.
4. Marketing the Program. All marketing materials must be specific and pre-approved by the OSC. Where appropriate, generic marketing material will be considered. All enrollment material will be available to print electronically via the OSC and vendor web sites.
5. Development of a State-specific Program web site.
6. Operating a State-specific toll free hotline during open enrollment period and throughout plan year.
7. Processing all claim reimbursements pursuant to Internal Revenue Code requirements. It is expected that all claim reimbursements will be done via electronic funds transfer to the participant's bank account.
8. Processing of all run-out period (January – March) claim reimbursements pursuant to Internal Revenue Code requirements at no additional cost to the State.
9. Establishing a direct deposit system for participant deposits and claim reimbursements.
10. Responding promptly and accurately to all claim inquiries.
11. Advise the State on resolution of claim disputes.
12. Ability to establish a no fee debit card program for claim reimbursements pursuant to Internal Revenue Code requirements.

13. Providing participants with an online reporting system that allows the production of weekly account statements, including but not limited to account balance, account deposits, account claims total, account remaining election totals.
14. Provide participants with a year end account summary statement indicating account balance, account deposits, account claims total, account remaining, and election totals.
15. Provide the State with necessary reporting including, but not limited to, annual forfeiture reporting.
16. Conform to and process current and future federal/state reporting requirements.
17. Assist in developing and distributing a Plan Document.
18. Conduct Program Discrimination Testing.

## **VI. INSTRUCTIONS TO CONTRACTORS**

- A. All response to this RFP must conform to these instructions. Failure to conform may be considered an appropriate cause for rejection of the response.
- B. Except as called for in this RFP, vendors may not communicate with the OSC or the Healthcare Policy & Benefit Services Division of the OSC about the RFP until a TPA has been selected.
- C. Contractors who may have questions regarding the proposal must submit them in writing addressed to the OSC at: [osc.fsaprgm@po.state.ct.us](mailto:osc.fsaprgm@po.state.ct.us) by July 26, 2011. It is expected that the OSC will provide responses to those questions submitted by the deadline date by August 2, 2011.
- D. A notice of intent to bid will be due at the offices of the HPBSD by 2:30 P.M. on **August** 8, 2011. In the notice, the Contractor must provide an email address for communication of information about the RFP, answers to questions submitted by contractors, and other matters about the contractor selection process.
- E. Final responses must be in writing and received by 2:30 p.m. on August 18, 2011.
- F. The Contractor shall submit an original plus eight (8) copies of its proposal in loose-leaf binders. Hard copies must also be accompanied by two electronic copies on CD/DVD format. Proposals shall be submitted to:

STATE OF CONNECTICUT  
Office of the State Comptroller  
Attention: Amy McGuire  
Supervisor, Employee Benefits Unit  
Healthcare Policy & Benefit Services Division  
55 Elm Street  
Hartford, CT 06106

- G. Freedom of Information Act and Confidential Information. All proposals submitted in response to this RFP are to be the sole property of the State and may be subject to the terms of the Connecticut Freedom of Information Act (FOIA) and its corresponding rules, regulations and interpretations. Those particular sentences, paragraphs, pages or sections that the bidder believes are proprietary or confidential in nature, and therefore exempt from disclosure under the FOIA, must be specifically identified as such. If the bidder indicates that certain documentation is submitted in confidence, by specifically and clearly marking said documentation as CONFIDENTIAL, the Division will endeavor to keep said information confidential to the extent permitted by law. The Division however, has no obligation to initiate, prosecute or defend any legal proceeding or to seek a protective order or other similar relief to prevent disclosure of any information that is sought pursuant to a FOIA request. The bidder shall have the burden of establishing the FOIA exemption in any proceeding where it is an issue. In no event shall the Division or the State have any liability for the disclosure of any documents in its possession which the State or the Division believes are required to be disclosed pursuant to the FOIA or other requirements of law. Note that the OSC will reject any proposals marked in their entirety as confidential or proprietary.

Copies on a CD ROM (Redacted): If a bidder contends that part of its proposal contains confidential information, it must submit two (2) copies of a CD ROM of its entire proposal (including all attachments) in a form compatible with Microsoft WORD, current version, with: (1) all confidential and propriety information redacted; (2) a description of those particular sentences, paragraphs, pages or sections that the bidder believes are exempt from disclosure under the FOIA; and (3) an explanation and rationale sufficient to justify each exemption. In response to any relevant FOIA request it receives with regard to this RFP, the Division will submit a copy of the CD containing the redacted proposal as necessary. Failure to provide such a CD will signify the bidder's agreement to disclosure of all submitted information relative to a FOIA request.

### **CONTENT OF PROPOSALS**

1. **Title Page**

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

2. **Organizational Structure**

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

3. **Experience**

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

4. **References**

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

5. **Computer Systems**

Description of the on-site computer system Contractor will be using.

6. **Backup Equipment**

Description of alternative backup for all equipment to be used by Contractor.

7. **Subcontracts**

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

8. **Recommended Work Plan**

A statement of the Contractor's capacity to provide each of the deliverables specified in Section III through V of the RFP within the specified time frame.



9. **Remittance File Layout/ Submission Requirements**

The selected Contractor must conform to the file layout requirements of the State of Connecticut Core-CT system outlined in Attachment 2.

In addition, all respondents must confirm that they can access the Core-CT portal address from the Production Supplier Portal URL:

<https://corect.ct.gov:10400/psp/PSPRD/?cmd=login> and the Test Supplier Portal URL:

<https://corect.ct.gov:15000/psp/PSTPR/?cmd=login>.

10. **Sole or Multi Vendor Arrangement**

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

11. **Transition Plan**

In the event that the incumbent Contractor is not selected such Contractor's payroll deducted premiums would cease December 30, 2011. Accordingly, all responses, other than the incumbent's, must include a transition plan for employees currently participating in the DCAP, MEDFLEX and QTA. Any costs associated with administering run-out claims for Plan Year 2011 participants from January 1, 2012 – March 31, 2012 must be clearly stated.

12. **Contract Term**

For purposes of this RFP, it is anticipated that this contract will be for a term of three years from January 1, 2012 to December 31, 2014, unless the parties agree to extend the agreement for up to two additional one-year periods.

13. **Sales and Marketing**

Proposals must contain a work plan for marketing the Program to employees. Resources that will be dedicated to these purposes must be identified and sample sales and marketing materials, such as descriptive brochures, videos, letters, presentations and enrollment forms should be provided. Note that any sales and marketing fees must be rolled into the pricing structure.

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

14. **Acknowledgement**

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

15. **State Specific Toll Free Number**

Each Contractor will be expected to operate a State-specific toll-free number during the entire contract period.

16. **Reporting**

Each Contractor will be expected to provide ongoing reporting relative to product(s) offered for participating employees.

17. **Web Site**

Each Contractor must specify and include samples of a State-specific web site relative to Program.

18. **Fee Structure**

Each response must contain a full description of the Program fee schedule along with the representation that such premiums will be guaranteed for the contract term.

All services provided by the Contractor must be rolled into the pricing structure.

A fee schedule must be provided for the following scenarios:

(A) Where the Contractor is selected to administer the DCAP, MEDFLEX and QTA.

(B) Where the Contractor is selected to administer one or more but less than all three programs.

It is expected that the Contractor will submit a fee structure where the Contractor bills one flat fee per participant, per month regardless of the number of programs the participant is enrolled in (Ex. \$A per month per participant regardless of number of programs the participant is enrolled in).

Provide a total maximum, not to exceed cost estimate.

Administrative fees will be paid by the employer to the Contractor in arrears by the fifteenth day of the month after the month in which services are rendered.

The State is not responsible for any costs incurred by any party in responding to this RFP.

The State of Connecticut is exempt from the payment of excise, transportation, and sales tax imposed by the Federal Government and the State; accordingly, such taxes must not be reflected in the proposed price.

19. **Conflict of Interest**

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

20. **Regulatory Issues**

Disclose any regulatory problems experienced in the past ten years.

21. **Affirmative Action**

The proposal must include a summary of the Contractor's experience with affirmative action including a summary of the Contractor's affirmative action plan and the Contractor's affirmative action policy statement.

Regulations of Connecticut State Agencies Section 46a-68j-30(10) require agencies to consider the following factors when awarding a contract that is subject to contract compliance requirements:

- a. The Contractor's success in implementing an affirmative action plan;
- b. The Contractor's success in developing an apprenticeship program complying with Section 46a-68-1 to 46a-68-17 of the Connecticut General Statutes, inclusive;
- c. The Contractor's promise to develop and implement a successful affirmative action plan;
- d. The Contractor's submission of employment statistics contained in the "Workforce Analysis Affirmative Action Report," indicating that the composition of its work force is at or near parity when compared to the racial and sexual composition of the work force in the relevant labor market area; and
- e. The Contractor's promise to set aside a portion of the contract for legitimate small Contractors and minority business enterprises, where applicable (See C.G.S. §32-9e).

The State of Connecticut's Contract Compliance Forms applicable to State contracts are available at <http://www.ct.gov/chro/cwp/view.asp?a=2525&Q=315900>, please click on the four forms indicated below to download the pdf files from the CHRO web page:

- ***Notification to Bidders***

This document gives notice that the contract to be awarded is subject to the contract compliance requirements mandated by State statutes and regulations.

- ***Workforce Analysis Affirmative Action Report-State Contractors***  
This employment information form is used to report the racial and sexual composition of a firm's or corporation's workplace. The form must be completed by the Contractor and submitted with the proposal.
- ***Affidavit for Certification of Subcontractors as Minority Business Enterprises***  
Upon award of a contract, this form is used to document the good faith efforts of a Contractor to include minority business enterprises as subcontractors (including suppliers) on the State contract.
- ***Contract Compliance Notice Poster***  
This notice concerns the prohibition of discrimination in employment practices. Upon award of a State contract, the notice must be posted by the Contractor in conspicuous places accessible to all employees and applicants for employment.

More information about the State of Connecticut's Contract Compliance requirements is available on the Commission on Human Rights and Opportunities' web site at [www.state.ct.us/chro](http://www.state.ct.us/chro) under "Contract Compliance."

## 22. **Authorized Agent**

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

## 23. **Gift Certification and Campaign Affidavit**

The Contractor is required by the Office of the State Comptroller to provide affidavits detailing any gifts and campaign contributions, as that term is defined in Section 1-79(e) of the Connecticut General Statutes, given to officers or employees of the OSC for the two year period preceding the issuance of the RFP. The affidavits are required to be submitted as part of the contractor's response.

The Gift Certification and Campaign Affidavit are provided as Attachment I and II to this RFP.

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

## **VII. STANDARD CONTRACT TERMS AND CONDITIONS**

Be advised that the State has certain contract requirements. Contractors responding to this RFP must be willing to adhere to the following contract requirements and must affirmatively state their adherence to these terms and conditions with a transmittal letter appended to their proposal response.

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

Additionally, please be advised that the State will require the following provision:

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

Contractor shall advise the State promptly, in writing, of any labor related occurrence known to Contractor involving Contractor's employees which may reasonably be expected to affect Contractor's performance of services under this agreement. Notwithstanding such occurrence, the Contractor shall at all time assign competent personnel/staff to perform the services contracted for under this agreement. If at any time the State in its sole discretion determines that the personnel/staff assigned to perform the services under this agreement is incompetent, dishonest or uncooperative, State reserves the right to request that Contractor reassign personnel/staff and arrange for an employee(s) or subcontractor(s) satisfactory to State to provide the services otherwise performable by the Contractor hereunder.

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

## **VIII. EVALUATION OF PROPOSALS**

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

1. The benefit of the product or service to State employees.
2. The competitiveness of the proposed cost.
3. The skill, ability, competence and integrity of the Contractor and Contractor's personnel to deliver the proposed services, including the Contractor's understanding of the project and its purpose and scope, as evidenced by the proposed approach and the level of effort.

4. The past performance of the Contractor. In considering past performance, the OSC will evaluate the skill, ability and integrity of the applicant in terms of the applicant's fulfillment of past contract obligations, and experience or lack thereof in delivering the same or similar products and services.
5. At the Comptroller's option, presentation to a screening committee.
6. Any other information which the OSC deems necessary.

## **IX RIGHTS RESERVED TO THE STATE**

The State reserves the right to award in part, to reject any and all proposals in whole or in part, and to waive technical defects, irregularities and omissions if, in its judgment, the best interest of the State will be served.

## **ATTACHMENTS**

**COMPTROLLER'S GIFT CERTIFICATION**

I, \_\_\_\_\_, as the individual executing the contract hereby certify that, during the two years preceding the date of this affidavit, neither I, nor principals or key personnel of \_\_\_\_\_ (company name) who participated directly, extensively and substantially in the preparation of this response to the request for proposal, the subsequent negotiation or award of this contract have provided or caused to be provided any gifts, as defined in Connecticut General Statutes, Section 1-79(e), except as set forth below, including a gift for the celebration of a major life event as set forth in C.G.S. §1-79(e)(12) or any items of value for which full payment has not been made, to a state official or employee of the Office of the State Comptroller who participated directly, extensively and substantially in the preparation of bid solicitations or in the negotiation of the contract or award:

<b>Name of Recipient</b>	<b>Value of Gift/Item</b>	<b>Date of Gift/Item</b>	<b>Description</b>
_____			
_____			
_____			

Further, neither I nor any principals or key personnel, nor any agent of the above, knows of any action by \_\_\_\_\_ (company name) to circumvent such prohibition on gifts by providing for any other principals, key personnel, officials, employees of the company, nor any agents of the above, to provide a gift, in violation of the Ethics Code, to any such public official or state employee.

Further, the Contractor made its bid or proposal without fraud or collusion with any person.

Sworn as true to the best of my knowledge and belief, subject to the penalties for a false statement.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

Subscribed and sworn before me on this \_\_\_\_ day of \_\_\_\_\_, 200\_.

\_\_\_\_\_  
Commissioner of the Superior Court/  
Notary Public



**COMPTROLLER'S CAMPAIGN AFFIDAVIT**  
**FOR STATE CONTRACTS**

I, \_\_\_\_\_, as the company official authorized to execute the attached contract hereby swear that in the two years preceding the negotiations on this contract, neither I nor a principal or key personnel of the company/firm who participated directly, extensively and substantially in the negotiation of this contract, nor any agent of the above gave a contribution to a candidate for statewide public office or the General Assembly, as defined by C.G.S. §9-333b, except those listed below (include candidate name, date of contribution, contributor and amount of contribution):

\_\_\_\_\_

\_\_\_\_\_

Sworn as true to the best of my knowledge and belief, subject to the penalties for a false statement.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

Subscribed and sworn before me on this \_\_\_\_ day of \_\_\_\_\_, 200\_.

\_\_\_\_\_  
Commissioner of the Superior Court/  
Notary Public

	<b><i>Information for vendors that exchange data with CT</i></b>
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### **Inbound files to Core-CT**

Transactions are sent in biweekly – due in on Friday payday \*.

The transactions are sent in XML format – see dpy470/Payroll Input/ Inbound Interface at: <http://www.core-ct.state.ct.us/hrint/layouts/>

### **Outbound files to the vendor**

Deduction remittance files and reports are sent to the vendors biweekly – normally available no later than the Thursday before payday.

The deduction remittance file is in XML format – see dpyi02/Deduct Remit 3rd Parties/ Outbound Interface at: <http://www.core-ct.state.ct.us/hrint/layouts/>

The deduction remittance report is in PDF format.

### **File exchange protocols**

There are currently two approved methods for exchanging files:

Vendor logs into the secure Core-CT Production Supplier Portal via https to upload and download files.

FTP w/PGP – the State and the vendor can exchange files using FTP w/PGP – we will use the vendor's server.

### **Testing requirements**

At least one test cycle will be completed successfully prior to going live.

Access to the Core-CT Supplier Portal by the vendor is required to successfully complete the test, even if FTP w/PGP will be used in Production. The Core-CT Supplier Portal uses a non-standard port (10400 for Production, 15000 for Test) and that may require action by the vendor's Tech Support area to accomplish this.

Production Supplier Portal URL: <https://corect.ct.gov:10400/psp/PSPRD/?cmd=login>

Test Supplier Portal URL: <https://corect.ct.gov:15000/psp/PSTPR/?cmd=login>

\* See <http://www.core-ct.state.ct.us/hrint/schedules/2010.htm> for the 2010 Processing Schedule (for sample file purposes).

**CERTIFICATION**

*(By individual contractor regarding support of nondiscrimination against persons on account of their race, color, religious creed, age, marital or civil union status, national origin, ancestry, sex, mental retardation, physical disability or sexual orientation.)*

I, \_\_\_\_\_ of  
*Signer's Name*

\_\_\_\_\_  
*Business Address*

am entering into a contract (or an extension or other modification of an existing contract)  
with the State of Connecticut (the "State") in my individual capacity for:

\_\_\_\_\_  
*Contract #, if available or general description of goods or services to be provided*

In order to induce the State to consummate said contract, I hereby certify that I support  
the nondiscrimination agreements and warranties required under Connecticut General  
Statutes § 4a-60(a)(1) and § 4a-60a(a)(1), as amended in State of Connecticut Public Act  
07-245 and sections 9(a)(1) and 10(a)(1) of Public Act 07-142.

**IN WITNESS WHEREOF**, the undersigned has executed this certificate this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

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

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

Effective July 15, 2011

**SEEC FORM 11**

**NOTICE TO EXECUTIVE BRANCH STATE CONTRACTORS AND  
PROSPECTIVE STATE CONTRACTORS OF CAMPAIGN  
CONTRIBUTION AND SOLICITATION BAN**

This notice is provided under the authority of Connecticut General Statutes 9-612(g)(2), as amended by P.A. 07-1, and is for the purpose of informing state contractors and prospective state contractors of the following law (italicized words are defined below):

**Campaign Contribution and Solicitation Ban**

No *state contractor, prospective state contractor, principal of a state contractor or principal of a prospective state contractor*, with regard to a *state contract or state contract solicitation* with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder of a valid prequalification certificate, shall make a contribution to, or *solicit* contributions on behalf of (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee;

In addition, no holder or principal of a holder of a valid prequalification certificate, shall make a contribution to, or solicit contributions on behalf of (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of State senator or State representative, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee.

**Duty to Inform**

State contractors and prospective state contractors are required to inform their principals of the above prohibitions, as applicable, and the possible penalties and other consequences of any violation thereof.

**Penalties for Violations**

Contributions or solicitations of contributions made in violation of the above prohibitions may result in the following civil and criminal penalties:

Civil penalties--\$2000 or twice the amount of the prohibited contribution, whichever is greater, against a principal or a contractor. Any state contractor or prospective state contractor which fails to make reasonable efforts to comply with the provisions requiring notice to its principals of these prohibitions and the possible consequences of their violations may also be subject to civil penalties of \$2000 or twice the amount of the prohibited contributions made by their principals.

**Criminal penalties**—Any knowing and willful violation of the prohibition is a Class D felony, which may subject the violator to imprisonment of not more than 5 years, or \$5000 in fines, or both.

**Contract Consequences**

Contributions made or solicited in violation of the above prohibitions may result, in the case of a state contractor, in the contract being voided.

Contributions made or solicited in violation of the above prohibitions, in the case of a prospective state contractor, shall result in the contract described in the state contract solicitation not being awarded to the prospective state contractor, unless the State Elections Enforcement Commission determines that mitigating circumstances exist concerning such violation.

The State will not award any other state contract to anyone found in violation of the above prohibitions for a period of one year after the election for which such contribution is made or solicited, unless the State Elections Enforcement Commission determines that mitigating circumstances exist concerning such violation.

Additional information and the entire text of P.A 07-1 may be found on the website of the State Elections Enforcement Commission, [www.ct.gov/seec](http://www.ct.gov/seec). Click on the link to “State Contractor Contribution Ban.”

**Definitions:**

"State contractor" means a person, business entity or nonprofit organization that enters into a state contract. Such person, business entity or nonprofit organization shall be deemed to be a state contractor until December thirty-first of the year in which such contract terminates. "State contractor" does not include a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

"Prospective state contractor" means a person, business entity or nonprofit organization that (i) submits a response to a state contract solicitation by the state, a state agency or a quasi-public agency, or a proposal in response to a request for proposals by the state, a state agency or a quasi-public agency, until the contract has been entered into, or (ii) holds a valid prequalification certificate issued by the Commissioner of Administrative Services under section 4a-100. "Prospective state contractor" does not include a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or

unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

"Principal of a state contractor or prospective state contractor" means (i) any individual who is a member of the board of directors of, or has an ownership interest of five per cent or more in, a state contractor or prospective state contractor, which is a business entity, except for an individual who is a member of the board of directors of a nonprofit organization, (ii) an individual who is employed by a state contractor or prospective state contractor, which is a business entity, as president, treasurer or executive vice president, (iii) an individual who is the chief executive officer of a state contractor or prospective state contractor, which is not a business entity, or if a state contractor or prospective state contractor has no such officer, then the officer who duly possesses comparable powers and duties, (iv) an officer or an employee of any state contractor or prospective state contractor who has *managerial or discretionary responsibilities with respect to a state contract*, (v) the spouse or a *dependent child* who is eighteen years of age or older of an individual described in this subparagraph, or (vi) a political committee established or controlled by an individual described in this subparagraph or the business entity or nonprofit organization that is the state contractor or prospective state contractor.

"State contract" means an agreement or contract with the state or any state agency or any quasi-public agency, let through a procurement process or otherwise, having a value of fifty thousand dollars or more, or a combination or series of such agreements or contracts having a value of one hundred thousand dollars or more in a calendar year, for (i) the rendition of services, (ii) the furnishing of any goods, material, supplies, equipment or any items of any kind, (iii) the construction, alteration or repair of any public building or public work, (iv) the acquisition, sale or lease of any land or building, (v) a licensing arrangement, or (vi) a grant, loan or loan guarantee. "State contract" does not include any agreement or contract with the state, any state agency or any quasi-public agency that is exclusively federally funded, an education loan or a loan to an individual for other than commercial purposes.

"State contract solicitation" means a request by a state agency or quasi-public agency, in whatever form issued, including, but not limited to, an invitation to bid, request for proposals, request for information or request for quotes, inviting bids, quotes or other types of submittals, through a competitive procurement process or another process authorized by law waiving competitive procurement.

"Managerial or discretionary responsibilities with respect to a state contract" means having direct, extensive and substantive responsibilities with respect to the negotiation of the state contract and not peripheral, clerical or ministerial responsibilities.

“Dependent child” means a child residing in an individual’s household who may legally be claimed as a dependent on the federal income tax of such individual.

“Solicit” means (A) requesting that a contribution be made, (B) participating in any fund-raising activities for a candidate committee, exploratory committee, political committee or party committee, including, but not limited to, forwarding tickets to potential contributors, receiving contributions for transmission to any such committee or bundling contributions, (C) serving as chairperson, treasurer or deputy treasurer of any such committee, or (D) establishing a political committee for the sole purpose of soliciting or receiving contributions for any committee. Solicit does not include: (i) making a contribution that is otherwise permitted by Chapter 155 of the Connecticut General Statutes; (ii) informing any person of a position taken by a candidate for public office or a public official, (iii) notifying the person of any activities of, or contact information for, any candidate for public office; or (iv) serving as a member in any party committee or as an officer of such committee that is not otherwise prohibited in this section.

**AGREEMENT BY AND BETWEEN**  
**STATE OF CONNECTICUT**  
**AND**

This Agreement (“Agreement”) for the State of Connecticut Flexible Spending Account Program and the Qualified Transportation Account Program is made and entered into as of the 1st day of January 2012 (“Effective Date”) by and between the State of Connecticut (“State”) through Office of the State Comptroller (“Comptroller” and/or “Agency”), and \_\_\_\_\_ (“Contractor”).

**WITNESSETH THAT:**

WHEREAS, the State of Connecticut desires to provide State employees with access to a Qualified Transportation Account (“QTA”), Dependent Care Assistance Account Program (“DCAP”) and a Medical Flexible Spending Account Program (“MEDFLEX”) (collectively referred to as “the Plan”); and

WHEREAS, the Contractor has agreed to provide administrative and record keeping services to the Plan; and

WHEREAS under the authority of Conn. Gen. Stat. Sections 5-141e, 5-264b and 5-264d the State has selected the Contractor to provide such services for a three-year period beginning January 1, 2012 and ending December 31, 2014, on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of these presents and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, and intending to be legally bound, the State and Contractor agree as follows:

*Section 1 – Definitions.*

(a) “Employees” shall mean all permanent, active employees (excluding per diem employees and temporary or seasonal employees) of the State who work at least half-time (0.5 full time equivalent). Former employees and rehired retirees are not eligible to participate in these programs.

*Section 2 – Agreement to Provide Services*

(a) Contractor shall fulfill the following responsibilities

1. Administer the Plan pursuant to Sections 129, 105, 132 & 125 of the Internal Revenue Code and the regulations promulgated thereunder,
2. Develop enrollment and processing procedures in accordance with applicable Internal Revenue Code requirements;
3. Transfer information to and from State of Connecticut Core-CT PeopleSoft system;
4. Market the Plan—All marketing materials must be specific and pre-approved by the OSC. Where appropriate, generic marketing material will



be considered. All enrollment material will be available to print electronically via the OSC and vendor web sites;

5. Develop a State-specific Plan web site.
6. Operate a State-specific toll free hotline during open enrollment period and throughout plan year;
7. Process all claim reimbursements pursuant to Internal Revenue Code requirements. All claim reimbursements will be done via electronic funds transfer to the participant's bank account;
8. Process all run-out period (January – March) claim reimbursements pursuant to Internal Revenue Code requirements at no additional cost to the State.
9. Establish a direct deposit system for participant deposits and claim reimbursements.
10. Respond promptly and accurately to all claim inquiries.
11. Advise the State on resolution of claim disputes.
12. Establish a no fee debit card program for claim reimbursements pursuant to Internal Revenue Code requirements.
13. Provide participants with an online reporting system that allows the production of weekly account statements, including but not limited to account balance, account deposits, account claims total, and remaining election totals.
14. Process manually submitted claims daily.
15. Periodic ACH/EFT participant contribution pulls per payroll cycles.
16. Ensure compliance with all IRS requirements for substantiation, payment and reimbursement of expenses, using Inventory Information Approval System (IIAS);
17. Comply with all IRS recordkeeping requirements.
18. Maintain and/or hold all required records per IRS statute of limitation requirements.

19. Provide participants with a year end account summary statement indicating account balance, account deposits, account claims total, account remaining, and election totals.
20. Provide the State with necessary reporting including, but not limited to, annual forfeiture reporting.
21. Conform to and process current and future federal/state reporting requirements.
22. Assist in developing/updating Plan Documents for each program..
23. Conduct Program Discrimination Testing.
24. Attend agency visits to enroll and provide Plan information to employees during open enrollment at no additional costs.
25. Send re-enrollment notices to Plan participants either by email or U.S. Mail, at its expense.

(b) OSC shall be fulfill the following responsibilities

1. Set up and maintain program payroll deduction for adds, changes, and stops during open enrollment and throughout plan year.
2. Pay Contractor's fees, pursuant to Section \_\_\_ of this Agreement.
3. Assist Contractor in making the Plan available to all eligible State employees as defined in Section 1.

*Section 3—Entire Agreement.*

This Agreement embodies the entire agreement between the State 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 dated August 18, 2011, was determinative in the competitive procurement process that resulted in this Agreement. That proposal is attached hereto as a reference exhibit (EXHIBIT A).

*Section 4 – Term and Termination.*

(a) Term. This Agreement shall begin effective January 1, 2012 and shall expire on December 31, 2014, at which time the parties may agree to extend the Agreement for up to two additional one-year periods.

(b) Termination.

(1) Termination for Convenience—Notwithstanding any provisions in this Agreement, Comptroller, through a duly authorized employee, may terminate the Agreement whenever Comptroller makes a written determination that such termination is in the best interests of the State. Comptroller shall notify the Contractor in writing of

termination pursuant to this section, which notice shall specify the effective date of termination, which shall be at least 60 days after the date of the notice.

(2) Termination for Cause —Notwithstanding any provisions in this Agreement, Comptroller, through a duly authorized employee, may, after making a written determination that the Contractor has breached the Agreement, terminate the Agreement in accordance with the provisions in the Breach section of this Agreement.

(3) Comptroller shall send the notice of termination 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 the 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 the Comptroller and the Contractor shall deliver them to the 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 the 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.

(4) 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 the 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.

(5) In the case of any Termination or Cancellation, the 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 accordance with Exhibit B, 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 the Comptroller, the Contractor shall assign to the Comptroller, or any replacement contractor which the Comptroller designates, all subcontracts, purchase orders and other commitments, deliver to the Comptroller all Records and other information pertaining to its Performance, and remove from State premises, whether leased or owned, all such equipment, waste material and rubbish related to its Performance as the Comptroller may request.

(6) 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 consent to assignments given as if the assignments had never been requested or consented to, without liability to the Contractor or Contractor Parties or any third party.

(7) 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.

(8) Termination or Cancellation of the Contract pursuant to this section shall not be deemed to be a breach of contract by the Comptroller.

#### *Section 5 – Marketing.*

Contractor shall submit all marketing materials plan to the Comptroller for review and written approval. The Contractor shall coordinate any marketing strategy through the Comptroller and shall conduct its marketing activities in accordance with the marketing plan approved by the Comptroller.

The Contractor shall pay for all educational, marketing and enrollment expenses associated with the Plan and its offering except for Plan administrative expenses incurred by the Comptroller.

The Comptroller agrees to actively promote the Plan to employees through letters, payroll stuffers and other means at his disposal. The Comptroller further agrees to work with various State Agencies to educate employees as to the availability of the Plan. The Comptroller also agrees to educate the various state employee unions as to the availability of the Plan.

#### *Section 6 – Advertising, Publicity and 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 State, or the seal of the Comptroller:

- (a) In any advertising, publicity, promotion; nor
- (b) To express or imply any endorsement of the Contractor's products or services; nor
- (c) To use the names of the State, its officials or employees or the State seal or Comptroller's seal in any manner (whether or not similar to uses prohibited by subparagraphs (a) and (b) above), except as only to deliver in accordance with this Agreement such items as are hereby contracted by the State, provided however, the use of the State seal shall require specific and express permission from the Secretary of the State.

#### *Section 7 – Fees and Payment Schedules.*

See EXHIBIT B.

#### *Section 8 – Access and Examination of Records.*

The Comptroller or his representatives shall have the right at reasonable hours to examine any books, records, accounts and other documents of the Contractor or its subcontractors pertaining to work performed under this Agreement. The State will provide the Contractor or such subcontractor 72 hours notice of such intended

examination. At the State's request, the Contractor shall provide the State with hard copies, CD or DVD containing any data or information relating to the State's business, which data or information is in the possession or control of the Contractor. The Contractor shall incorporate this paragraph verbatim into any agreement it enters into with any subcontractor providing services under this Agreement.

#### *Section 9 –Reporting .*

Contractor shall submit the following reports to the Comptroller on a quarterly basis (within 30 days of the end of the quarterly period) beginning with the effective date of the Agreement:

- (a) a report detailing the number of active employees who have are participating in each Program in the Plan;
- (b) a report detailing target telephone response time, abandonment rate, and written response rate for inquiries by Plan participants.

The Comptroller reserves the right to request additional reports as may be necessary to monitor and audit the DCAP, MEDLFEX and QTA Programs, and Contractor agrees to comply with such request.

#### *Section 10—Discovery of 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 the Contractor to the Comptroller for clarification. The Comptroller shall issue such clarification within a reasonable period of time. Any service affected by such conflicts, discrepancies, errors or omissions which are performed by the Contractor prior to clarification by the Comptroller shall be at the Contractor's risk.

#### *Section 11 – Amendments.*

This Agreement may be amended only with the consent and signature of both parties and with the approval of the Attorney General.

#### *Section 12—Forum, Choice of Law and Litigation.*

The parties deem the Agreement to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of the Agreement to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Contractor waives any objection which it may now have or will have to the laying of venue of any claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

The Contractor shall provide written notice to the State of any material litigation that directly relates to the services to be provided by the Contractor under this Agreement or that reasonably would be expected to impair the ability of the Contractor to fulfill the terms and conditions of this Agreement in any material respect, including but not limited to any financial, legal or any other situation which reasonably would be expected to prevent the Contractor from meeting its obligations under this Agreement in any material respect.

*Section 13—Indemnity.*

(a) 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 (1) claims arising, directly or indirectly, from acts of commission or omission of the Contractor in connection with performance under the Agreement (collectively, the "Acts"); 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 such claims, Acts or the Agreement. 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 against claims includes 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.

(b) 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.

(c) 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. The State shall give the Contractor reasonable notice of any such claims.

(d) The Contractor's duties under this section shall remain fully in effect and binding in accordance with the terms and conditions of the Agreement, 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.

(e) The Contractor shall carry and maintain at all times during the term of the Agreement, and during the time that any provisions survive the term of the Contract, sufficient general liability insurance to satisfy its obligations under this Contract. The Contractor shall name the State as an additional insured on the policy and shall provide a copy of the Declaration Page of the policy to Comptroller prior to the effective date of the Contract. The Contractor shall not begin Performance prior to delivery of the Declaration Page to Comptroller. Comptroller shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that Comptroller or the State is contributorily negligent.

(f) 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.

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

*Section 14 – Subcontracting.*

The Contractor may enter into one or more subcontracts for the performance of portions of its services and obligations under this Agreement. The Contractor shall notify the State prior to the effective date of such subcontract of the identity of any material subcontractor together with a description of the portions of the work to be subcontracted and the State shall approve such subcontractor prior to commencement of work or service and such approval shall not be unreasonably withheld. Notwithstanding such subcontracting and/or delegation of duties, the Contractor shall remain responsible to the State for ensuring that its obligations under this Agreement are performed in accordance with the applicable provisions of this Agreement.

*Section 15 – Authorizations.*

Each party hereby represents that it has the unrestricted right and authority to enter into and perform its obligations under this Agreement.

*Section 16 – Notices.*

All notices required or permitted to be given or made in this Agreement shall be in writing. Such notice(s) shall be deemed to be duly given or made if delivered by hand, by certified or registered mail or by nationally recognized overnight courier to the address specified below:

If to Comptroller:

Office of the State Comptroller  
Healthcare Policy & Benefit Services Division  
55 Elm Street  
Hartford, CT 06106  
Attn: Thomas C. Woodruff, Ph.D., Director

If to Contractor:

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*Section 17 – Grievance Procedures.*

By the effective date of this Agreement, the Contractor shall submit a grievance procedure to the Comptroller for review and written approval by the Comptroller. The Contractor shall implement the grievance procedure as approved by the Comptroller. The Contractor's Grievance Procedure is attached hereto as Exhibit C and is incorporated herein by reference

*Section 18 – Nondisclosure.*

The Contractor shall not release any information concerning the services provided pursuant to this 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, except to the extent required by law, legal process or regulatory authority having jurisdiction over the Contractor.

*Section 19 – Confidentiality.*

All employee data provided to Contractor by the State will be treated as proprietary to the State and confidential. The Contractor agrees to hold such employee information in strictest confidence and not to disclose or otherwise make available any of such information in any form to any person except to those employees of the State, or the Contractor who need access to the information to facilitate the provision of services under this Agreement and except where a disclosure of such information by Contractor 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, the Contractor will provide advance notice to the Comptroller of the need for the disclosure and will not disclose absent consent from the Comptroller, except to the extent required by law, legal process or regulatory authority having jurisdiction over such party. Nothing herein shall be construed to prohibit Contractor from providing routine information to employees or beneficiaries concerning the Plan. Contractor agrees and warrants that this Section 22 is binding on any subcontracts for the performance of services and obligations under this Agreement.

*Section 20— Sovereign Immunity.*

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

*Section 21– Non-Waiver.*

None of the conditions of this Agreement shall be considered waived by any party hereto 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.

*Section 22– Executive Orders.*

This Agreement is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of the Contract as if they had been fully set forth in it. At the Contractor's request, the Client Comptroller shall provide a copy of these orders to the Contractor.



This Agreement may also be subject to Executive Order No. 7C of Governor M. Jodi Rell, promulgated July 13, 2006, concerning contracting reforms and Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services, in accordance with their respective terms and conditions.

*Section 23 – Assignment.*

This Agreement shall not be assigned by either party without the express prior written consent of the other.

*Section 24 – 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 1-81b of the Connecticut General Statutes is incorporated by reference into and made a part of the Contract as if the summary had been fully set forth in the Contract. (See Exhibit D, attached hereto and incorporated by reference herein.)

*Section 25 – Nondiscrimination and Affirmative Action Provisions.*

(Non-Discrimination) -The Contractor agrees to the following provisions required pursuant to 4a-60a of the Connecticut General Statutes:

For the purposes of this section, “minority business enterprise” means any small Contractor or supplier of materials fifty-one percent or more of the capitol 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 member of a minority, as such term is defined in subsection (a) of Connecticut General Statutes section 32-9n; and “good faith” means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations. “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. For purposes of this section, “Commission” means the Commission on Human Rights and Opportunities. For purposes of this section, “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.

(1) The Contractor agrees and warrants that in the performance of the Agreement 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, mental retardation or physical disability, including, but not limited to blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut. The Contractor further agrees to take affirmative action to insure that applicants with job related qualifications are employed and that employees are

treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, mental retardation, or physical disability, including, but not limited to, blindness unless it is shown by the Contractor that such disability prevents performance of the work involved; (2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an “affirmative action – equal opportunity employer” in accordance with regulations adopted by the Commission; (3) the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers’ representative of the Contractor’s commitments under this section and to post copies of the notice in conspicuous places available to employees and applicants for employment; (4) the Contractor agrees to comply with each provision of this section and Connecticut General Statutes sections 46a-68e and 46a-68f and with regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes sections 46a-56, 46a-68e and 46a-68f; (5) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission and permit access to pertinent books, records and accounts, concerning the works contract, the Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprise as subcontractors and suppliers of materials on employment practices and procedures of this Contractor as relate to the provisions of this section and section 46a-56. If the contract is a public works contract, the Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works projects.

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, recruiting; 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.

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

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

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

Non-discrimination Regarding Sexual Orientation—Unless otherwise provided by Connecticut General Statutes, Section 46a-51p, the Contractor agrees to the following provisions required pursuant to Section 4a-60a of the Connecticut General Statutes:

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

The Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on any 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 non compliance in accordance with Section 46a-56 of the Connecticut General Statutes provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

*Section 26 – Health Insurance Portability Act.*

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

(b) 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

(c) The State of Connecticut Comptroller named on page 1 of this Contract (hereinafter the “Department”) is a “covered entity” as that term is defined in 45 C.F.R. § 160.103; and

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

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

(f) The Contractor and the Department 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 (hereinafter the HITECH Act), (Pub. L. 111-5, sections 13400 to 13423), and more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E.

(g) Definitions

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

(2) “Business Associate” shall mean the Contractor.

(3) “Covered Entity” shall mean the Department of the State of Connecticut named on page 1 of this Contract.

(4) “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 C.F.R. § 164.501.

(5) “Electronic Health Record” shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. §17921(5))

(6) “Individual” shall have the same meaning as the term “individual” in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative as defined in 45 C.F.R. § 164.502(g).

(7) “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and parts 164, subparts A and E.

(8) “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, limited to information created or received by the Business Associate from or on behalf of the Covered Entity.

(9) “Required by Law” shall have the same meaning as the term “required by law” in 45 C.F.R. § 164.103.

(10) “Secretary” shall mean the Secretary of the Department of Health and Human Services or his designee.

(11) “More stringent” shall have the same meaning as the term “more stringent” in 45 C.F.R. § 160.202.

(12) “This Section of the Contract” refers to the HIPAA Provisions stated herein, in their entirety.

(13) “Security Incident” shall have the same meaning as the term “security incident” in 45 C.F.R. § 164.304.

(14) “Security Rule” shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. part 160 and parts 164, subpart A and C.

(15) “Unsecured protected health information” shall have the same meaning

as the term as defined in section 13402(h)(1)(A) of HITECH. Act. (42 U.S.C. §17932(h)(1)(A)).

(h) Obligations and Activities of Business Associates.

- (1) Business Associate agrees not to use or disclose PHI other than as permitted or required by this Section of the Contract or as Required by Law.
- (2) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for in this Section of the Contract.
- (3) Business Associate agrees to use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic protected health information that it creates, receives, maintains, or transmits on behalf of the Covered Entity.
- (4) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by Business Associate in violation of this Section of the Contract.
- (5) 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.
- (6) Business Associate agrees to insure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate, on behalf of the Covered Entity, agrees to the same restrictions and conditions that apply through this Section of the Contract to Business Associate with respect to such information.
- (7) Business Associate agrees to provide access, at the request of the Covered Entity, and in the time and manner agreed to by the parties, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524.
- (8) Business Associate agrees to make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of the Covered Entity, and in the time and manner agreed to by the parties.
- (9) Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by, Business Associate on behalf of Covered Entity, available to 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 determining Covered Entity’s compliance with the Privacy Rule.

- (10) Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.
- (11) Business Associate agrees to provide to Covered Entity, in a time and manner agreed to by the parties, information collected in accordance with clause h. (10) of this Section of the 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.
- (12) Business Associate agrees to comply with any state or federal law that is more stringent than the Privacy Rule.
- (13) Business Associate agrees to comply with the requirements of the HITECH Act relating to privacy and security that are applicable to the Covered Entity and with the requirements of 45 C.F.R. sections 164.504(e), 164.308, 164.310, 164.312, and 164.316.
- (14) In the event that an individual requests that the Business Associate (a) restrict disclosures of PHI; (b) provide an accounting of disclosures of the individual's PHI; or (c) provide a copy of the individual's PHI in an electronic health record, the Business Associate agrees to notify the covered entity, in writing, within five business days of the request.
- (15) Business Associate agrees that it shall not, directly or indirectly, receive any remuneration in exchange for PHI of an individual without (1) the written approval of the covered entity, unless receipt of remuneration in exchange for PHI is expressly authorized by this Contract and (2) the valid authorization of the individual, except for the purposes provided under section 13405(d)(2) of the HITECH Act,(42 U.S.C. § 17935(d)(2)) and in any accompanying regulations
- (16) Obligations in the Event of a Breach
  - A. The Business Associate agrees that, following the discovery of a breach of unsecured protected health information, it shall notify the Covered Entity of such breach in accordance with the requirements of section 13402 of HITECH (42 U.S.C. 17932(b) and the provisions of this Section of the Contract.
  - B. Such notification shall be provided by the Business Associate to the Covered Entity without unreasonable delay, and in no case later than 30 days after the breach is discovered by the Business Associate, except as otherwise instructed in writing by a law enforcement official pursuant to section 13402 (g) of HITECH (42 U.S.C. 17932(g)) . A breach is considered discovered as of the first day on which it is, or

reasonably should have been, known to the Business Associate. The notification shall include the identification and last known address, phone number and email address of each individual (or the next of kin of the individual if the individual is deceased) whose unsecured protected health information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during such breach.

- C. The Business Associate agrees to include in the notification to the Covered Entity at least the following information:
  - 1. A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known.
  - 2. A description of the types of unsecured protected health information that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code).
  - 3. The steps the Business Associate recommends that individuals take to protect themselves from potential harm resulting from the breach.
  - 4. A detailed description of what the Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches.
  - 5. Whether a law enforcement official has advised either verbally or in writing the Business Associate that he or she has determined that notification or notice to individuals or the posting required under section 13402 of the HITECH Act would impede a criminal investigation or cause damage to national security and; if so, include contact information for said official.
- D. Business Associate agrees to provide appropriate staffing and have established procedures to ensure that individuals informed by the Covered Entity of a breach by the Business Associate have the opportunity to ask questions and contact the Business Associate for additional information regarding the breach. Such procedures shall include a toll-free telephone number, an e-mail address, a posting on its Web site or a postal address. For breaches involving ten or more individuals whose contact information is insufficient or out of date to allow written notification under 45 CFR § 164.404(d)(1)(i), the Business Associate shall notify the Covered Entity of such persons and maintain a toll-free telephone number for ninety days after said notification is sent to the Covered Entity. 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.
- E. 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.

- (i) Permitted Uses and Disclosure by Business Associate.
  - (1) 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 Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.
  - (2) Specific Use and Disclosure Provisions
    - (A) Except as otherwise limited in this Section of the 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.
    - (B) 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.
    - (C) 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).
- (j) Obligations of Covered Entity.
  - (1) 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.
  - (2) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
  - (3) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- (k) Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity, except that Business Associate may use and disclose PHI for data aggregation, and management and administrative activities of Business Associate, as permitted under this Section of the Contract.



- (l) Term and Termination.
  - (1) 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 clause h. (10) 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.
  - (2) Termination for Cause Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
    - (A) 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
    - (B) Immediately terminate the Contract if Business Associate has breached a material term of this Section of the Contract and cure is not possible; or
    - (C) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
  - (3) Effect of Termination
    - (A) Except as provided in (1)(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 or received by Business Associate on behalf of Covered Entity. Business Associate shall also provide the information collected in accordance with clause h. (10) of this Section of the Contract to the Covered Entity within ten business days of the notice of termination. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
    - (B) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon documentation by Business Associate that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Section of the 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.
- (m) Miscellaneous Provisions.

- (1) 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.
- (2) 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.
- (3) Survival. The respective rights and obligations of Business Associate shall survive the termination of this Contract.
- (4) 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.
- (5) 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.
- (6) 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 provisions 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.
- (7) Indemnification. The Business Associate shall indemnify and hold the Covered Entity harmless from and against any and all claims, liabilities, judgments, fines, assessments, penalties, awards and any statutory damages that may be imposed or assessed pursuant to HIPAA, as amended or the HITECH Act, including, without limitation, attorney's fees, expert witness fees, costs of investigation, litigation or dispute resolution, and costs awarded thereunder, relating to or arising out of any violation by the Business Associate and its agents, including subcontractors, of any obligation of Business Associate and its agents, including subcontractors, under this section of the contract, under HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.

#### *Section 27—Severability*

If any term or provision of the Contract or its application to any person, entity, or circumstance shall to any extent be held to be invalid or unenforceable, the remainder of the Contract or the application of such term or provision shall not be affected as to persons, entities or circumstances other than those to whom or to which it is held to be

invalid or unenforceable. Each remaining term and provision of the Contract shall be valid and enforced to the fullest extent possible by law.

#### *Section 28—Campaign Contribution Restrictions*

For all State contracts as defined in P.A. 07-1 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 Agreement 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. See EXHIBIT E [SEEC Form 11].

#### *Section 29—Audit and Inspection of Plants, Places of Business and Records.*

(a) The State and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State's Attorney and their respective agents, may, 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 Agreement.

(b) 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.

(c) 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.

(d) All audits and inspections shall be at the State's expense.

(e) The Contractor shall keep and preserve or cause to be kept and preserved all of its and Contractor 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.

(f) 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.

(g) The Contractor shall incorporate this entire Section verbatim into any contract or other agreement that it enters into with any Contractor Party.

#### *Section 30— Personnel*

At all times, Contractor shall utilize approved, qualified and competent personnel to perform the services contracted for under this agreement. Contractor shall advise the State promptly, in writing, of any labor related occurrence known to Contractor involving Contractor's employees which may reasonably be expected to affect Contractor's performance of services under this agreement.

If at any time the State in its sole discretion determines that the personnel/staff assigned to perform the services under this agreement is

incompetent, dishonest or uncooperative, State reserves the right to request that Contractor reassign personnel/staff and arrange for an employee(s) or subcontractor(s) satisfactory to State to provide the services otherwise performable by the Contractor hereunder.

Contractor shall review any requests by State to reassign personnel/staff. In requesting such reassignment of personnel/staff, State shall give thirty-day (30) notice to Contractor of State's desire for such reassignment. Contractor will then have fifteen (15) days to investigate the situation and attempt, if it so desires, to resolve the situation to the mutual satisfaction of the parties. Should the parties not reach a mutual resolution, then fifteen (15) days thereafter, or thirty (30) days from the date of the notice of reassignment, the State may terminate this agreement by providing written notice. A termination pursuant to this provision shall be deemed a termination for cause in accordance with Section 4.

IN WITNESS HEREOF, the parties execute this Agreement.

Contractor

Office of the State Comptroller

By \_\_\_\_\_

By \_\_\_\_\_  
Kevin Lembo

Date \_\_\_\_\_

Date \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Attorney General's Office

Date \_\_\_\_\_