

INFORMATION PROCESSING SYSTEMS AGREEMENT

Contract #

Between

THE STATE OF CONNECTICUT

Acting by its

DEPARTMENT OF ADMINISTRATIVE SERVICES

And

NAME OF CONTRACTOR

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**EXHIBIT 1 – NOTICE TO EXECUTIVE BRANCH STATE CONTRACTORS AND
PROSPECTIVE STATE CONTRACTORS OF CAMPAIGN CONTRIBUTION AND
SOLICITATION LIMITATIONS**

EXHIBIT 2 – DELIVERABLES DOCUMENT

EXHIBIT 3 – DELIVERABLES IMPLEMENTATION SCHEDULE

EXHIBIT 4 – PRODUCT & PRICING SCHEDULE

EXHIBIT 5 – SERVICE LEVEL AGREEMENT (SLA)

This Information Processing Systems Agreement ("Agreement") is made by and between the **STATE OF CONNECTICUT** ("State"), acting by its **Department of Administrative Services** ("DAS"), located at 165 Capitol Avenue, Hartford, CT 06106, and **NAME OF CONTRACTOR** ("Contractor"), having its principal place of business at Contractor's Address.

Now therefore, in consideration of these presents, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, Contractor and the State agree as follows:

1. TERM OF AGREEMENT

This Agreement shall become effective upon its approval as to form by the Office of the Attorney General of the State of Connecticut ("Effective Date"), as evidenced by its signature hereon, and shall continue for Length of Term from the Effective Date ("Term"). The State, in its sole discretion, may extend this Agreement one or more times for a combined total period not to exceed the complete length of the original term.

2. DEFINITIONS

- a) **Acceptance Date:** Defined in Section 7.
- b) **Alteration:** The modification, changing, refashioning, remodeling, remaking, revising or reworking of any part of the System or Deliverable.
- c) **Claims:** All actions, suits, claims, demands, investigations, and proceedings of any kind, open, pending, or threatened, whether mature, un-matured, contingent, known or unknown, at law or in equity in any form.
- d) **Confidential Information:** Any information about a client, including but not limited to first name and last name, or first initial and last name, in combination with any one or more of the following related to such client: (a) Social Security Number; (b) driver's license number or State-issued identification card number; (c) date of birth; and (d) financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to a client's financial account. Without limiting the foregoing, Confidential Information shall also include any information that the Department classifies as "confidential" or "restricted." Confidential Information shall not include information that may be lawfully obtained from publicly available sources or from federal, state, or local government records which are lawfully made available to the general public.
- e) **Confidential Information Breach:** Generally, an instance where an unauthorized person or entity accesses Confidential Information in any manner, including but not limited to the following occurrences: (1) any Confidential Information that is not encrypted or protected is misplaced, lost, stolen or in any way compromised; (2) one or more third parties have had access to or taken control or possession of any Confidential Information that is not encrypted or protected without prior written authorization from the State; (3) the unauthorized acquisition of encrypted or protected Confidential Information together with the confidential process or key

that is capable of compromising the integrity of the Confidential Information; or (4) if there is a substantial risk of identity theft or fraud to the client, the Contractor, the Department or State.

- f) **Contractor Parties:** A Contractor's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, consultants, employees or any one of them or any other person or entity with whom the Contractor is in privity of oral or written contract and the Contractor intends for such other person or entity to Perform under this Agreement in any capacity.
- g) **Corrective Action Plan:** A detailed written plan produced by the Contractor at the request of the Department to correct or resolve Contractor deficiency(ies) identified by the Department in accordance with Section 21.
- h) **DAS:** State of Connecticut Department of Administrative Services.
- i) **Deliverable:** Any product, whether software, hardware, documentation, license, information, or otherwise, or any service, whether development, integration, administrative, maintenance, consulting, training, data warehousing, operations, support, hosting, or otherwise, or any warranty, that is an element of the Contractor's overall approach and solution to the requirements of this Agreement, whether produced by the Contractor or by a third party as a supplier or subcontractor to the Contractor.
- j) **Deliverables Document:** Exhibit 2 to this Agreement - Document which sets forth and describes the Services and Deliverables that are to be provided or made available under to this Agreement and the specific requirements and terms applicable to those Services and Deliverables.
- k) **Deliverables Implementation Schedule:** Exhibit 3 to this Agreement - Document which itemizes the timing requirements, including phases, dates of completion and Department signoffs, as applicable or appropriate, for specific Deliverables and/or Services to be provided pursuant to the Agreement.
- l) **Department:** Name of User Agency.
- m) **Effective Date:** Defined in Section 1.
- n) **Goods:** For the purposes of this Agreement, all things which are movable at the time that this Agreement is effective and which include, without limiting this definition, supplies, materials and equipment, as specified in the Solicitation and set forth in Exhibit 2 – Deliverables Document.
- o) **Improvement:** Contractor changes made to Deliverables from time to time either to provide additional functions for Department use or to correct errors and other Performance deficiencies noted by the Department and reported to the Contractor.

- p) **Licensed Software:** Computer program(s) provided by Contractor in connection with the Deliverables under an agreement where the Department acquires a personal, non-exclusive, non-transferable license (without the right to sublicense) to access and use certain software products and materials but does NOT acquire the licensor's (1) title to the product nor (2) liability for payment of any tax levied upon the product.
- q) **Perform:** For the purposes of this Agreement, the verb "to perform" and the Contractor's performance set forth in this Agreement and its exhibits are referred to as "Perform," "Performance" and other capitalized variations of the term.
- r) **POP (Primary Operation Period):** The days and hours of normal system operations and availability, which is to be hours and day(s).
- s) **PPM (Prime Period Maintenance):** The days and hours of normal maintenance services and/or technical support, which is to be hours and day(s).
- t) **Product & Pricing Schedule:** Exhibit 4 to this Agreement - Document which lists the Deliverables and Services available under this Agreement and establishes the component or unit pricing and price schedules for each Deliverable and Service available pursuant to this Agreement.
- u) **Product Schedule Update:** Update to the Product & Pricing Schedule in accordance with Section 3 of this Agreement to make additional products or services available under this Agreement or to alter the pricing of products or services listed in the Product & Pricing Schedule.
- v) **Purchase Order:** Document issued by the Department for one or more products, Deliverables or Services in accordance with the terms and conditions of this Agreement.
- w) **Records:** All working papers and such other information and materials as may have been accumulated by the Contractor in Performing this Agreement, including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries, memoranda and correspondence, kept or stored in any form.
- x) **Replacement Deliverable:** Any product, whether software, hardware, documentation, license, information, or otherwise, or any service, whether development, integration, administrative, maintenance, consulting, training, data warehousing, operations, support, hosting, or otherwise, or any warranty, that replaces a Deliverable at the request of the State.
- y) **Services:** The performance of labor or work set forth in Exhibit 2.
- z) **Site:** Location(s) specified by Department where Deliverables are to be installed or Services rendered.
- aa) **Solicitation:** Request for Proposal entitled insert title of RFP, dated insert date RFP published.

- bb) **Specifications:** Contractor's published technical and non-technical detailed descriptions of a Deliverable's capabilities and/or intended use.
- cc) **State:** The State of Connecticut, including the Department and any office, department, board, council, commission, institution or other agency or entity of the State.
- dd) **Statement of Work (SOW):** Statement issued in connection with a Purchaser Order for a Deliverable or Service available under this Agreement which sets forth all work and payment requirements for Contractor's Performance in connection with said Purchase Order.
- ee) **System:** Contractor furnished or otherwise supplied Deliverables that collectively and in an integrated fashion fulfills the business and technical requirements of this Agreement and its exhibits.
- ff) **Term:** Defined in Section 1.
- gg) **Termination:** An end to this Agreement prior to the end of its Term.
- hh) **User Acceptance Test:** Test in which the State tests the functionality of a Deliverable with real world scenarios to determine if the Deliverable performs in accordance with the agreed upon design as contained in the Specifications.
- ii) **Warranty Period:** The #months (#) period following the Acceptance Date.

3. ACQUIRING DELIVERABLES AND SERVICES

- a) Subject to the terms and conditions of this Agreement, Contractor shall sell, transfer, convey and/or license to the State any duly ordered Deliverable and/or Perform the Services set forth in the Deliverables Document in accordance with Exhibit 2 and Exhibit 3, if applicable and attached. Such Deliverables or Services, as appropriate, shall be itemized in and available under the Product & Pricing Schedule and listed in Purchase Orders.
- b) Any Purchase Order which has been accepted by the Contractor is subject to the terms of this Agreement and shall remain in effect until such time as the Purchase Order obligations are fulfilled or until Department acceptance of full Performance of all requirements contained therein, or extended or terminated sooner under the terms of this Agreement. Neither party will be bound by any additional terms different from those in this Agreement that may appear on a Purchase Order or other form document issued by either party.
- c) Contractor may supplement Exhibit 4 Product & Pricing Schedule at any time to make additional products, services and related terms available to the State, provided that the effective date of each supplement is stated thereon. Any supplement shall be transmitted to the State with a cover letter documenting formal approval of the supplement by a Contractor representative legally empowered to so act. The State shall evidence its concurrence with the supplement by issuing a Product Schedule Update letter to Contractor.

- d) Notwithstanding any other provision of this Agreement, no material change may be made to the Deliverables set forth on the Deliverables Document that alters the nature or scope of the Deliverables or their intended use. Any change in the Deliverables set forth in the Deliverables Document shall be conditioned upon the new product(s) being of a similar nature and having a similar use as the defined products. An update of the products or the addition of products that are related to or serve similar functions as the products is permissible only with the prior written approval of the State.
- e) Upon the State's receipt of ninety (90) calendar days prior written notice, Contractor may update pricing under the Product & Pricing Schedule by updating the Product & Pricing Schedule effective July 1 of any State of Connecticut fiscal year, provided: (1) the Product Schedule Update is transmitted and approved in the same manner as described for supplements in subsection 3.c.; (2) no software license or Deliverable maintenance or service rate is increased within the first year following acceptance of a any Deliverable; and (3) any such price increase shall not exceed the lesser of (i) insert # percent (%) and (ii) the average annual percentage increase over the immediately preceding calendar year in the 'Consumer Price Index' – Hartford, Connecticut Average for all Urban Consumers (CPI-U) (All items, 1982-84 = 100) published monthly by the Bureau of Labor Statistics of the United States Department of Labor or, should that index cease to be published, the most comparable index published on a regular basis by the US Government since the later of the date of this Agreement or Contractor's latest Product & Pricing Schedule.
- f) Deliverables ordered prior to the effective date of any Product & Pricing Schedule pricing increase shall enjoy protection from rate increase during their initial terms.
- g) Contractor shall provide the State with a discount on any Product Schedule Update according to the discount shown on the Product & Pricing Schedule.
- h) The Department is authorized to use any Licensed Software solely for the State's business purposes in connection with the Deliverables. The right to use any such Licensed Software, unless expressly stated otherwise elsewhere in this Agreement, shall be perpetual, irrevocable, nonexclusive and nontransferable.
- i) No additions to or reductions in the Deliverables and prices for work completed in the Performance of the Deliverables Document or Deliverables Implementation Schedule shall be permitted unless the Department issues a change order in accordance the provisions of Section 5.
- j) If the Deliverable is Licensed Software, Contractor shall provide the source code to such Licensed Software in accordance with Exhibit 6, if attached hereto.

4. PROJECT ADMINISTRATOR

The Department shall designate a Project Administrator, who may be replaced at the discretion of the Department. The Project Administrator shall have the authority to act for the Department under this Agreement for any Deliverable(s) initially acquired/installed from the Contractor and such authority shall continue to be in effect throughout the term of this Agreement.

5. CHANGE ORDERS

- a) The Department may, at any time, with written notice to Contractor, request changes within the scope of the Deliverables Document. Such changes shall not be unreasonably denied or delayed by Contractor. Such changes may include, but are not be limited to, modifications or other changes required by new or amended State and/or Federal laws and regulations relating to functional requirements and processing procedures, or involving the correction of System deficiencies. Prior to expiration of any Warranty Period, any changes to the Deliverables(s) required due to System deficiencies, or if the System does not fully perform in accordance with this Agreement, shall be made by Contractor without charge to the Department or the State. Any investigation necessary to determine the source of the problem requiring the change shall be done by Contractor at its sole cost and expense.
- b) A change order request may be issued only by the Department and must be in writing. As soon as possible after Contractor receives a written change order request, but in no event later than fifteen (15) calendar days thereafter, the Contractor shall provide the Department with a written statement confirming the change has no price impact on the Agreement or, if there is a price impact, Contractor shall provide the Department a written statement explaining the price increase or decrease involved in implementing the requested change.
- c) No change order, or any change to the Deliverables Document, shall become effective until Contractor's receipt of a Purchase Order from the Department.

6. DELIVERY, INSTALLATION & DEINSTALLATION

- a) Department shall prepare and make available to Contractor the installation site of any Deliverable in accordance with Contractor furnished requirements. If preparation for installation will not be completed as mutually scheduled, the Project Administrator shall notify Contractor as soon as possible, but no less than ten (10) days prior to the scheduled Deliverable installation date.
- b) Contractor shall provide all pre-installation and post-installation Deliverable compatibility system surveys, consultation, reference manuals and onsite operational training to facilitate proper installation and operation of all Deliverables.
- c) Contractor represents and warrants that it shall complete installation of the System in accordance with the Deliverables Document and, if attached, in accordance with the Deliverables Implementation Schedule.
- d) Department ordered System de-installation, relocation and, or, reinstallation of any System previously installed at a Department Site or Department designated Site shall be at Department's expense according to Contractor's prices then in effect for such services.

7. DELIVERABLE EVALUATION & ACCEPTANCE

- a) Any Deliverable furnished by Contractor under the terms of this Agreement shall be subject to an evaluation and acceptance testing period prior to acceptance.
 - 1. For a Deliverable installed by Contractor, the evaluation and acceptance period shall commence on the first Department work day following receipt of written notification from the Contractor to the Department that the Deliverable is installed and ready to undergo evaluation and acceptance testing.
 - 2. For a Deliverable installed by Department, the evaluation and acceptance period shall

commence on the first work day following receipt of the Deliverable by Department.

b) During the evaluation and acceptance testing period, the Department shall perform the User Acceptance Test (UAT). Successful completion of UAT shall be determined in accordance with the following procedures:

1. The Department shall approve each software Deliverable that conforms in all material respects with the Specifications or as set forth in the Statement of Work. Within fifteen (15) business days, or other period agreed by the parties in writing, from its receipt of a Deliverable, the Department shall provide Contractor with (a) written approval and acceptance of the Deliverable or (b) a written statement which identifies in reasonable detail, with references to the applicable Specifications, the deficiencies preventing approval and acceptance.
2. Contractor shall have five (5) business days, or such other period agreed upon by the parties in writing, from the date it receives the notice of deficiencies to complete corrective actions to make Deliverable conform in all material respects to the applicable Specifications. The Department shall complete its review of the corrected Deliverable and notify Contractor in writing of acceptance or rejection in accordance with the foregoing provisions of this section within five (5) business days from the date it receives the corrected Deliverable, or such other period agreed upon by the parties in writing.
3. Upon completion of successful UAT, the Department shall in writing notify the Contractor of the Department's approval and acceptance the Deliverable. Upon the request of Contractor, Department agrees to complete any required Contractor acceptance certificate after testing and acceptance of the Deliverable so long as such certificate does not amend, alter or modify in any way the terms and conditions of this Agreement or the obligations hereunder.

c) The Department shall evaluate and test the System in accordance with the UAT procedure prior to acceptance of the System to determine whether the System performs to the Specifications and fulfills the business and technical requirements of the Agreement. Upon successful completion of the System evaluation and testing, the Department shall in writing notify the Contractor of the Department's approval and acceptance the System. Upon the request of Contractor, Department agrees to complete any required Contractor acceptance certificate after testing and acceptance of the Deliverable so long as such certificate does not amend, alter or modify in any way the terms and conditions of this Agreement or the obligations hereunder.

d) The date the Department accepts a Deliverable or the System pursuant to this section shall be deemed the Acceptance Date for each such Deliverable or System.

8. PAYMENTS AND CREDITS

a) The Department shall pay for Deliverables only upon acceptance of the Deliverable(s) pursuant to Section 7 and receipt of a properly documented invoice from the Contractor.

1. The Department shall pay Contractor within insert of days (#) days of the Deliverable Acceptance Date and receipt of Contractor's properly documented invoice, whichever is the later date.

2. All payments shall be subject to a insert # percent (%) holdback.
 3. The Department shall pay Contractor the total amount of the holdbacks within insert of days (#) days of the System Acceptance Date.
- b) Payment of Contractor charges for any license term, or license maintenance and support term, shall entitle the Department to use the license, free of any usage charges, at the Department's convenience at any time during the applicable Term.
- c) Contractor may assign any license payments, but not any associated service payments, in whole or in part, upon prior written notice to the Department and compliance with the requirements of the State's Comptroller's Office concerning such assignments. No assignment of receivables by Contractor shall relieve Contractor of any obligations under this Agreement without prior written Department consent in each such instance. Notwithstanding any such assignment, Contractor represents and warrants that the Deliverable shall be and remain free of any repossession or any Claims by Contractor or its successors and assigns, subject to the terms and conditions of this Agreement.
- d) Contractor shall furnish separate invoices for each Purchase Order and shall list each license charge, maintenance and support charge or other charge included in each invoice as separate line items.
- e) Contractor shall not charge the Department a fee to reinstate licenses or maintenance and support. Contractor shall be entitled to payment of all license, maintenance and/or support fees that would have been paid during or for the reinstatement period, but no separate fees or penalties shall be paid by the Department in order to reinstate any license, maintenance or support. Where the license term specified is perpetual, charges for maintenance and support shall be as follows:
1. If the license fee specified is payable in periodic payments, there shall be no additional charge for maintenance and support during the period for which such periodic payments are payable. Upon the completion of the periodic payment period, Contractor shall continue to provide the Department with maintenance and support services for an additional twelve (12) month period, provided the Department elects to pay Contractor the applicable maintenance and support charges then in effect.
 2. If the license fee specified is payable in one lump sum, there shall be no additional charge for maintenance and support during the twelve (12) months following the Acceptance Date, or during the Warranty Period, if applicable. Upon the expiration of said twelve (12) month period, Contractor shall continue to provide the Department with maintenance and support services for an additional of twelve (12) month period, provided the Department elects to pay Contractor the applicable maintenance and support charges then in effect.

9. SOFTWARE MAINTENANCE & SUPPORT

- a) After acceptance of any Deliverable by the Department and subject to the terms, conditions and charges set forth in this Agreement, Contractor represents and warrants that maintenance and support services for any Deliverable shall be provided to the Department as follows:
1. Contractor shall provide such reasonable and competent assistance as necessary to cause the Deliverable to perform in accordance with applicable portions of the Specifications;

2. Contractor shall provide Improvements which may be available to Contractor to any Deliverable; and
 3. Contractor shall update any Deliverable, if and as required, to cause it to operate under new versions or releases of the operating system(s) specified in the Deliverables Document.
- b) Maintenance and support services shall be provided by the Contractor on an annual basis. Contractor shall provide Department written notice of renewal not less than insert of days (#) days prior to the expiration date of the then current maintenance and support period. Maintenance and support shall automatically renew for successive twelve (12) month periods unless thirty (30) days prior written notice of termination is provided to the Contractor by the Department before the end of the then current term of maintenance and support services.
- c) Contractor shall maintain sufficient and competent Deliverable support services staff to satisfy the Contractor obligations specified herein for any Deliverable.
- d) Contractor shall have full and free access to any Deliverable to provide required services thereon, subject to the State's access policies.
- e) If any Deliverable becomes not usable due to the computer manufacturer's release and the installation of (1) a new PU operating system or (2) an updated version of the present PU operating system or (3) a change to the present PU operating system and the Contractor is unable to provide changes to the Deliverable to cause it to operate according to Specifications within thirty (30) days of written notification by the Department to Contractor of such failure to operate, any such Deliverable so affected shall have its paid maintenance and support period, periodic-payment license period or limited term license period extended an additional period of time equal to the period of time the Deliverable was not usable. If, after the expiration of thirty (30) days from the date of said notification, the Deliverable remains not usable, then the applicable license may be terminated at the option of said Department without further obligation or liability.

10. HARDWARE MAINTENANCE & SUPPORT

- a) Maintenance and support services shall be provided by the Contractor on an annual basis. Contractor shall provide Department written notice of renewal not less than insert of days (#) days prior to the expiration date of the then current maintenance and support period. Maintenance and support shall automatically renew for successive twelve (12) month periods unless thirty (30) days prior written notice of termination is provided to the Contractor by the Department before the end of the then current term of maintenance and support services.
- b) Department shall be responsible for site work external to, but required for, hardware Deliverable installation and for Contractor maintenance time and material costs of hardware Deliverable repairs necessitated by Department misuse or negligence.
- c) Contractor shall not be responsible for the consequences of any hardware Deliverable repairs, adjustments, or modifications performed by any person not representing Contractor, however, this provision does not preclude Contractor granting approval for such performance by persons not representing the Contractor.

d) Contractor shall maintain sufficient installed hardware Deliverable support services staff, replacement hardware Deliverable and ancillary equipment to satisfy the preventive and remedial maintenance requirements and Section 11. SYSTEM RELIABILITY.

11. SYSTEM RELIABILITY

a) The reliability, at any point in time, of the System shall be determined by the System's operational capability for productive Department use as configured and installed within the agreed operating environment. Continued acceptability of such System performance reliability shall be based on the Department's experienced rate of recoverable and non-recoverable System operating errors or failures that preclude productive Department use of the System according to the agreed requirements and Contractor operating specifications.

b) The required reliability (Computed % Reliability) for the System (exclusive of scheduled and routine maintenance) during any calendar month is ninety-nine point nine percent (99.9%) uptime availability for aforesaid productive Department use, computed as follows:

$$\text{Computed \% Reliability} = \frac{(\text{Available-Time-per-Month}) - (\text{Downtime-per-Month})}{(\text{Available-Time-per-Month})}$$

with Available-Time-per-Month equated to 24 hours times the number of days in the month, which shall be deemed to correspond to POP during each calendar month and Downtime-per-Month equated to those hours of Available-Time-per-Month during which the Department or any specific site is precluded from aforesaid productive System use. EXAMPLE:

Given: Available-Time-per-Month was 720 hours.
Downtime per-Month was 3.60 hours.

$$\text{Then: Computed \% Reliability} = \frac{(720 - 3.60)}{720} = 99.5\%$$

c) A given instance of System downtime shall start after receipt by the Contractor of a bona fide Department service request to remedy any operational System deviation, error, or failure condition(s), and end with documented proof by Contractor to the Department that such System status has been fully restored to the applicable agreed operational specifications and made ready for productive Department use. However, the calculated time period of such an instance of System downtime shall exclude the following periods:

1. Any nonproductive System use time caused by the Department or the Department's authorized third party
2. Any time during which the Department fails to make the System available for Contractor's remedial service.

d) Contractor's Service Level Agreement, if attached to this Agreement as Exhibit 5, is incorporated herein.

12. SYSTEM WARRANTIES

- a) Contractor represents and warrants that the System shall conform to the terms and conditions of this Agreement and Contractor's Specifications, and be free from defects in material and workmanship upon acceptance of the System by the Department and for a minimum period of the Warranty Period.
- b) Additionally, during the Warranty Period, Contractor shall modify, adjust, repair and/or replace such Deliverable(s), at no charge to Department, as necessary to maintain ongoing System reliability according to Section 11. SYSTEM RELIABILITY.
- c) If the ongoing performance of Contractor's maintenance and support of the System or the performance of the System do not conform to Section 11. SYSTEM RELIABILITY, the Department shall give Contractor written notice of performance deficiencies. Contractor shall then have not more than a thirty (30) calendar day period to correct the applicable deficiency and restore the functioning of the System to a level of operation that meets or exceeds the requirements of this Agreement. If during the Warranty Period, any Deliverable or System performance, or service level, continues to fail to meet these specifications, then the Contractor shall be in material default of this Agreement.
- d) In the event of a material default by the Contractor under this section, in addition to any other rights or remedies provided in this Agreement, the State may, by written notice to Contractor, terminate this Agreement. In event of such termination, the Contractor shall reimburse the Department all monies paid by Department to Contractor under this Agreement.

13. OTHER WARRANTIES

- a) Contractor hereby warrants that it has right, title and ownership to the Deliverables. Unless expressly stated otherwise in this Agreement, Contractor hereby warrants that a Deliverable installed by Contractor, or installed by the Department in accordance with Contractor's instructions, shall function according to the Specifications on the Acceptance Date for such Deliverable, and that Contractor shall modify and/or replace such Deliverable as necessary to maintain ongoing reliability according to Section 11. SYSTEM RELIABILITY. This latter warranty shall not apply to any Deliverable deficiency caused by maintenance by a person other than the Contractor or its representative.
- b) If the ongoing performance of the Deliverable does not conform to Section 11. SYSTEM RELIABILITY provisions of this Agreement, the Department shall give Contractor written notice of performance deficiencies. Contractor shall then have not more than a ten (10) calendar day cumulative cure period per twelve (12) month period to correct such deficiencies. If the cumulative number of days in a twelve (12) month period is exceeded, and said performance continues to be in nonconformance with said Section 11, the Contractor shall be in material default of this Agreement and the State at its option may thereupon take any one or more of the following:
 - 1. if the Warranty Period has not expired, terminate this Agreement in accordance with Subsection 12.c;
 - 2. Require Contractor replace said Deliverable at Contractor's expense with a functional Deliverable or competent Service;
 - 3. Terminate the Deliverable license or service without fee or charge to the Department, or further obligation or financial liability. In the event of such termination, the Contractor shall refund to the Department all monies paid to the Contractor no later than 15 days after termination, according to the following schedule:
 - (i) if termination is of a lump-sum payment perpetual license, repayment shall be

determined by the point in the Term in which the Acceptance Date of the terminated Deliverable occurred:

- a. 1st - 12th month: 100% of license fee paid
- b. 13th - 24th month: 75% of license fee paid
- c. 25th - 36th month: 50% of license fee paid
- d. 37th month and over: 25% of license fee paid

(ii) if termination is of associated services, or a periodic payment license, or a lump-sum payment non-perpetual license, all fees paid by the Department to the Contractor during the period following the event of material default shall be returned.

c) The Contractor neither excludes nor modifies the implied warranties of merchantability and fitness for a particular purpose concerning the Deliverables offered under the terms and conditions of this Agreement.

14. PATENT, COPYRIGHT, LICENSE & PROPRIETARY RIGHTS

a) Contractor hereby grants the Department, at no additional cost, rights to copy and use any patented, copyrighted, licensed or proprietary software Deliverable solely in the pursuit of its own business interests. The Contractor shall provide to the Department reproductions of the patent, copyright, license or proprietary rights information notices which are applicable and were affixed to original Deliverables. Once the Department receives those notices, the Department shall promptly affix them to any copies made of the Deliverable. The Department shall maintain the confidentiality of any such Licensed Software Deliverable consistent with its privileged nature, and shall not divulge the Deliverable or make it available to any third party, except as may be noted elsewhere in this Agreement or as it may be required under the Connecticut Freedom of Information Act. This obligation survives the expiration or early termination of this Agreement.

b) In the event any software Deliverable becomes the actual or prospective subject of any patent, copyright, license & proprietary rights claim or proceeding, Contractor may, at its discretion:

1. Modify the Deliverable or substitute another equally suitable Deliverable (provided that the performance of the modified or substitute Deliverable equals or exceeds that of the original Deliverable);
2. Obtain for the State or Department the right to continued use of the Deliverable; or
3. If use of the Deliverable is prevented by injunction, take back the Deliverable and credit the State or Department for any charges as a result of enjoined use as follows:
 - (i) Where the license specified is less than perpetual, Contractor shall promptly refund the Department the amount of the fees paid to the Contractor for the portion of the applicable term found to be infringing.
 - (ii) Where the license specified is perpetual:
 - a. Periodic Payment License: Contractor shall promptly refund the Department the amount of the fees paid to the Contractor for the portion of the applicable term found to be infringing.

- b. Lump-Sum Payment License: Contractor shall promptly refund the Department any Deliverable maintenance and support charges paid by the Department to the Contractor applicable to the infringement period plus a sum determined by the point in the Term in which the Acceptance Date of the terminated Deliverable occurred:
 - 1. 1st - 12th month: 100% of license fee paid
 - 2. 13th - 24th month: 75% of license fee paid
 - 3. 25th - 36th month: 50% of license fee paid
 - 4. 37th month and over: 25% of license fee paid
- c) Contractor shall have no liability for any infringement claim or proceeding based on the Department's use of a Deliverable for which it was neither designed nor intended and Contractor has provided written notification to said Department of such inappropriate use.

15. CONFIDENTIALITY; NONDISCLOSURE

- a) The State shall exercise at least the same degree of care to safeguard any Licensed Software as the State does its own property of a similar nature and shall take reasonable steps to assure that neither the Licensed Software nor any part thereof received by the State under this Agreement shall be disclosed for reasons other than its own business interests. Such prohibition on disclosures shall not apply to disclosures by the State to its employees or its representatives, provided such disclosures are reasonably necessary to the State's use of the Deliverable, and provided further that the State shall take reasonable steps to ensure that the Deliverable is not disclosed by such parties in contravention of this Agreement.
- b) The State shall use any Licensed Software only in the pursuit of its own business interests. The State shall not sell, lease, license or otherwise transfer with or without consideration, any such Deliverable to any third party, other than those non-designated third parties that reasonably have need to know and agree to abide by the terms of this section, or permit any third party to reproduce, copy or otherwise use such Deliverable. The State will not create derivative works, translate, reverse engineer or decompile the Licensed Software, in whole or in part, nor create or attempt to create, by reverse engineering or disassembling of the design, algorithms or other proprietary trade secrets of the Licensed Software.

16. PROTECTION OF CONFIDENTIAL INFORMATION

- a) Contractor and Contractor Parties, at their own expense, have a duty to and shall protect from a Confidential Information Breach any and all Confidential Information which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with current industry standards.
- b) Each Contractor or Contractor Party shall develop, implement and maintain a comprehensive data - security program for the protection of Confidential Information. The safeguards contained in such program shall be consistent with and comply with the safeguards for protection of Confidential Information, and information of a similar character, as set forth in all applicable federal and state law and

written policy of the Department or State concerning the confidentiality of Confidential Information. Such data-security program shall include, but not be limited to, the following:

1. A security policy for employees related to the storage, access and transportation of data containing Confidential Information;
2. Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept;
3. A process for reviewing policies and security measures at least annually;
4. Creating secure access controls to Confidential Information, including but not limited to passwords; and
5. Encrypting of Confidential Information that is stored on laptops, portable devices or being transmitted electronically.

c) The Contractor and Contractor Parties shall notify the Department and the Connecticut Office of the Attorney General as soon as practical, but no later than twenty-four (24) hours, after they become aware of or suspect that any Confidential Information which Contractor or Contractor Parties have come to possess or control has been subject to a Confidential Information Breach. If a Confidential Information Breach has occurred, the Contractor shall, within three (3) business days after the notification, present a credit monitoring and protection plan to the Commissioner of Administrative Services, the Department and the Connecticut Office of the Attorney General, for review and approval. Such credit monitoring or protection plan shall be made available by the Contractor at its own cost and expense to all individuals affected by the Confidential Information Breach. Such credit monitoring or protection plan shall include, but is not limited to reimbursement for the cost of placing and lifting one (1) security freeze per credit file pursuant to Connecticut General Statutes § 36a-701a. Such credit monitoring or protection plans shall be approved by the State in accordance with this Section and shall cover a length of time commensurate with the circumstances of the Confidential Information Breach. The Contractors' costs and expenses for the credit monitoring and protection plan shall not be recoverable from the Department, any State of Connecticut entity or any affected individuals.

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

e) Nothing in this Section shall supersede in any manner Contractor's or Contractor Party's obligations pursuant to HIPAA or the provisions of this Agreement concerning the obligations of the Contractor as a Business Associate of the Department.

17. DELIVERABLE REPLACEMENTS & UPGRADES

- a) At any time after the Effective Date, the State may order replacement of any Deliverable with any other deliverable then available to the State (referred to as Replacement Deliverable in this section to distinguish from the Deliverable being replaced). Replacement Deliverables are subject to evaluation and acceptance as set forth in Section 7.
- b) Contractor shall provide the State with a discount or credit according to Contractor's policy then in effect or according to the credit shown below, whichever is greater:
1. If the Replacement Deliverable is replacing a Deliverable that was provided by the Contractor under a lump sum payment perpetual license, the State shall receive a credit toward the license fee for the Replacement Deliverable equal to a percentage of the license fee that was paid for the Deliverable to be replaced. The percentage shall be based on the length of time that has passed since the Acceptance Date for the Deliverable being replaced, as follows:
 - 1 - 12 months = 75% of the license fee paid for the Deliverable
 - 13 - 24 months = 50% of license fee paid for the Deliverable
 - 25 - 36 months = 25% of license fee paid for the Deliverable
 - 37 months or more = No credit
 2. If the Replacement Deliverable is replacing a Deliverable that was provided by the Contractor under a periodic payment license, the Department shall not receive any credit toward the license fee for the Replacement Deliverable. License fee payments for the Deliverable being replaced shall terminate on the Acceptance Date of the Replacement Deliverable.
 3. If the Replacement Deliverable is replacing a Deliverable that was provided by the Contractor under a lump-sum payment non-perpetual license, the Department shall receive a credit toward the Replacement Deliverable license fee equal to the prorated license fee for the period commencing the Acceptance Date of the Replacement Deliverable and the expiration date of the license term for the Deliverable being replaced.
- c) The Department shall be responsible for the applicable license fee for a Replacement Deliverable as of the Acceptance Date of the Replacement Deliverable.
- d) Contractor shall keep current any installed Deliverable throughout its license term by delivering, at no cost or expense to Department, the most current release of said Deliverable to the Department, provided that said Department has paid or will pay the most recent applicable annual maintenance charges.

18. RISK OF LOSS & INSURANCE

- a) The State shall not be liable to Contractor for any risk of Deliverable loss or damage while Deliverable is in transit, or while in the Department's possession, except when such loss or damage is due directly to the Department's negligence or intentional misconduct. Nothing in this Section is

intended nor shall it be construed, in any manner, as waiving or compromising the sovereign immunity of the State.

- b) Throughout the Term, Contractor shall maintain, at Contractor's sole cost and expense, a policy or policies of commercial general liability insurance, including contractual liability coverage, in an amount not less than \$1,000,000.00 for all damages arising out of bodily injuries to, or death of, all persons and injuries to or destruction of property, in any one accident or occurrence, and, subject to that limit per accident, a total (or aggregate) limit of \$2,000,000.00 per occurrence for all damages arising out of bodily injuries to, or death of, all persons and injuries to or destruction of property per policy period. Such insurance policy or policies shall name the State and State's officials, agents and employees as additional insureds. Contractor shall provide the State a certificate of insurance evidencing the above coverage upon written request on an annual basis and shall not begin performance of the Services until such a certificate has been provided to the State.
- c) All insurance shall be written on an occurrence basis as opposed to "claims made" basis.

19. DELIVERABLE ALTERATIONS

- a) Alterations of any hardware Deliverable may be made only with the prior written consent of Contractor and/or manufacturer. Such consent shall not be unreasonably withheld or delayed and shall be provided without cost to State or Department.
- b) Any and all inventions or improvements to computer programs and/or base software specifically developed by the Contractor and paid for by the State pursuant to this Agreement shall become the property of the State. The State shall retain all ownership rights to any such inventions or improvements.
- c) If any Deliverable Alteration interferes with the normal and satisfactory operation or maintenance and support of any Deliverable, or increases substantially the costs of maintenance and support thereof, or creates a safety hazard, the Department shall, upon receipt of written notice from Contractor, promptly restore the Deliverable to its pre-altered condition.
- d) Any Alteration of a Licensed Software by the Department without prior written consent of Contractor shall void the obligations of Contractor under Section 9. SOFTWARE MAINTENANCE & SUPPORT for the Deliverable. When providing the Department or State with written consent to the Alteration of a Licensed Software, Contractor shall specify which parts of the Deliverable being altered will continue to be subject to Section 9. SOFTWARE MAINTENANCE & SUPPORT and which will not.
- e) The State hereby acknowledges and agrees Contractor may develop and market a new or substantially different product that either uses or performs all or part of the functions performed by an installed Deliverable or System developed for the State. Nothing contained in this Agreement gives the State any rights with respect to such new or different product.

20. FORCE MAJEURE

Neither party shall be responsible for delays or failures in its obligations herein due to any cause beyond its reasonable control. Such causes shall include, but not be limited to, strikes, lockouts, riot,

sabotage, rebellion, insurrection, acts of war or the public enemy, acts of terrorism, unavailable raw materials, telecommunication or power failure, fire, flood, earthquake, epidemics, natural disasters, and acts of God.

21. REMEDIES

a) **GENERALLY:**

The State may pursue remedies for both programmatic and financial noncompliance. The Department, at its discretion, may impose or pursue one or more remedies for each item of noncompliance and shall determine appropriate sanctions on a case-by-case basis. The Department's pursuit or non-pursuit of a particular remedy shall not constitute a waiver of any remedy that the Department may have at law or equity.

b) **ADMINISTRATIVE REMEDIES:**

1. Contractor responsibility for improvement: The Contractor's performance shall continuously meet or exceed performance criteria over the Term of this Agreement. Accordingly, Contractor shall be responsible for ensuring that performance for a particular activity or result that fails to meet the requirements of the Deliverables Document or this Agreement must improve within thirty (30) days of written notice from the Department regarding the deficiency.
2. Notification and interim response: If the Department identifies areas of Contractor performance that fail to meet performance expectations, standards, or schedules, but which, in the determination of the Department, do not result in a material delay in the delivery of any Deliverable or implementation or operation of the System, the Department shall notify Contractor of such deficiency or exception. Contractor shall within three (3) business days of receipt of written notice of a non-material deficiency, provide the Department Project Administrator a written response explaining the reason(s) for the deficiency, the Contractor's plan to address or cure the deficiency, and the date and time by which the deficiency shall be cured. Contractor's proposed cure of a non-material deficiency is subject to the approval of the Department.
3. Contractor's repeated commission of non-material deficiencies: Contractor's repeated failure to resolve any deficiencies identified by the Department may be deemed a material deficiency by the Department and shall entitle the Department to pursue any other remedy provided in this Agreement or any other appropriate remedy the Department may have at law or in equity.
4. Corrective Action Plan: Department may require the Contractor prepare and submit a Corrective Action Plan to the Department. The Corrective Action Plan must provide a detailed explanation of the reasons for the cited deficiency, the Contractor's assessment or diagnosis of the cause, and a specific proposal to cure or resolve the deficiency. The Corrective Action Plan must be submitted within ten (10) business days following the request for the plan by the Department and is subject to approval by the Department,

which approval shall not unreasonably be withheld. Notwithstanding the submission and acceptance of a Corrective Action Plan, Contractor remains responsible for achieving all oral and written performance criteria. The acceptance of a Corrective Action Plan under this Section shall not excuse prior substandard performance, relieve Contractor of its duty to comply with performance standards, or prohibit the Department from assessing additional remedies or pursuing other approaches to correct substandard performance.

5. Review of administrative remedies: Contractor may request a review of the imposition of the foregoing remedies. Contractor shall make the request for review within ten (10) business days of receipt of written notification of the imposition of a remedy under this section by the Department.

c) **RESERVATION OF SOVEREIGN IMMUNITY:**

Nothing in this Section 21 is intended nor shall it be construed, in any manner, as waiving or compromising the sovereign immunity of the State.

22. GENERAL PROVISIONS

- a) Section headings and document titles used in this Agreement are included for convenience only and shall not be used in any substantive interpretation of this Agreement.
- b) If any term or condition of this Agreement is decided by a proper authority to be invalid, the remaining provisions of the Agreement shall be unimpaired and the invalid provision shall be replaced by a provision which comes closest to the intention underlying the invalid provision. Contractor shall comply with the statutes, regulations, Executive Orders and policies incorporated into this Agreement to the extent that such statutes, regulations, Executive Orders and/or policies are applicable to Contractor in connection with its performance under this Agreement.
- c) The failure at any time by either party to this Agreement to require performance by the other party of any provision hereof shall not affect in any way the full right to require such performance at any time thereafter. The failure of either party to enforce or pursue a right or remedy shall not constitute a waiver of the right or remedy itself, unless such a waiver is expressed in writing and signed by a duly authorized representative of the waiving party.
- d) In any case where the consent or approval of either party is required to be obtained under this Agreement, such consent or approval shall not be unreasonably withheld or delayed. No such consent or approval shall be valid unless in writing and signed by a duly authorized representative of that party. Such consent or approval shall apply only to the given instance, and shall not be deemed to be a consent to, or approval of, any subsequent like act or inaction by either party.
- e) The Department shall not remove or destroy any proprietary markings or proprietary legends placed upon or contained within any Deliverable.
- f) Except as may be otherwise provided for in this Agreement, the Department shall not assign, mortgage, alter, relocate or give up possession of any Deliverable to which Contractor retains title without the prior written consent of Contractor.
- g) Contractor represents and warrants that it will not, without prior written consent from the State,

make any reference to the Department or the State in any of Contractor's advertising or news releases. The Contractor may use the State's and/or the Department's name as a specific citation within proposals it submits.

h) Contractor shall execute any and all documents or to take any actions which may be reasonably necessary to perfect the rights granted to the Department in Section 14.

i) Neither Department nor Contractor's personnel who had substantive contact with personnel of the other in the course of the performance of the services hereunder shall directly or indirectly employ, solicit, engage or retain the services of such an employee of the other party to this Agreement during its term and for a period of one year from the termination or expiration of this Agreement or such longer period as may be required by State statute. This provision shall not restrict the right of either party to solicit or recruit generally in the media.

j) The Department shall cooperate with Contractor in the performance by Contractor of the services hereunder, including, (i) providing Contractor with adequate working space, equipment and facilities and timely access to data, information, and personnel of the State; (ii) providing experienced and qualified personnel to perform their assigned tasks and duties in a competent and timely fashion; (iii) providing a stable, fully functional system infrastructure environment which will support the Deliverables and allow Contractor and the Department to work productively; and (iv) promptly notifying Contractor of any issues, concerns or disputes with respect to the services provided by Contractor hereunder. The Contractor shall not be responsible for, among other things, the performance of the Department's personnel and agents, and the accuracy and completeness of all data and information provided to Contractor by the Department for purposes of the performance of the services hereunder.

k) Each of the State and Contractor is an independent contractor and neither of them is, nor shall be considered to be, nor shall purport to act as, the other's agent, partner, fiduciary, joint venturer, or representative.

l) Contractor may (i) provide any services to any person or entity, and (ii) develop for itself, or for others, materials or processes including those that may be similar to those produced as a result of the services hereunder, provided that, Contractor complies with its obligations of confidentiality set forth in Sections 14, 15 and 16.

m) All references in this Agreement to any statute, public act, regulation, code or executive order shall mean such statute, public act, regulation, code or executive order, respectively, as it has been amended, replaced or superseded at any time. Notwithstanding any language in this Agreement that relates to such statute, public act, regulation, code or executive order, and notwithstanding a lack of a formal amendment to this Agreement, this Agreement shall always be read and interpreted as if it contained the most current and applicable wording and requirements of such statute, public act, regulation, code or executive order as if their most current language had been used in and requirements incorporated into this Agreement at the time of its execution.

23. COMMUNICATIONS

a) Unless notified otherwise by the other party in writing, correspondence, notices, and coordination between the parties to this Agreement as to general business matters or the terms and conditions herein shall be directed to:

State: Connecticut Department of Administrative Services
165 Capitol Avenue
Hartford, CT 06106

Contractor: Contact Information

b) Details regarding Contractor invoices and all technical or day-to-day administrative matters pertaining to any Deliverable shall be directed to:

Department: The individual specified in the applicable Purchase Order

Contractor: The individual designated by Contractor in their Proposal or as the Contractor may otherwise designate in writing to the Department.

24. AUDIT REQUIREMENT FOR STATE GRANTS

For purposes of this paragraph, the word "contractor" shall be deemed to mean "nonstate entity," as that term is defined in Section 4-230 of the Connecticut General Statutes. The contractor shall provide for an annual financial audit acceptable to the Department for any expenditure of state-awarded funds made by the contractor. Such audit shall include management letters and audit recommendations. The State Auditors of Public Accounts shall have access to all records and accounts for the fiscal year(s) in which the award was made. The contractor will comply with federal and state single audit standards as applicable.

25. WHISTLEBLOWER PROVISION

This Agreement may be subject to the provisions of Section 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of the Contractor takes or threatens to take any personnel action against any employee of the Contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of such statute, the Contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of this Agreement. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with subsection (f) of such statute, each large state contractor, as defined in the statute, shall post a notice of the provisions of the statute relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the Contractor.

26. DISCLOSURE OF PUBLIC RECORDS PROVISION

This Agreement may be subject to the provisions of section 1-218 of the Connecticut General Statutes. In accordance with this statute, each contract in excess of two million five hundred thousand dollars between a public agency and a person for the performance of a governmental function shall (a) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (b) indicate that such records and files are subject to FOIA and may be disclosed by the public agency pursuant to FOIA. No request to inspect or copy such records or files shall be valid unless the request is made to the public agency in accordance with FOIA. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of sections 1-205 and 1-206 of the Connecticut General Statutes.

27. FORUM AND CHOICE OF LAW

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

28. BREACH

a) If either party breaches the Agreement in any respect, the non-breaching party shall provide written notice of the breach to the breaching party by overnight or certified mail, return receipt requested, to the most current address the breaching party has furnished for the purposes of correspondence and afford the breaching party an opportunity to cure within thirty (30) days from the date that the breaching party receives the notice. In the case of a Contractor breach, the Department may set forth any period greater or less than thirty (30) days, so long as such time period is otherwise consistent with the provisions of this Agreement (for the purposes of this paragraph, the time period set forth by the non-breaching party shall be referred to as the “right to cure period”). The right to cure period shall be extended if the non-breaching party is satisfied that the breaching party is making a good faith effort to cure, but the nature of the breach is such that it cannot be cured within the right to cure period.

b) The written notice of the breach may include an effective Termination date. If the identified breach is not cured by the stated Termination date, unless otherwise modified by the non-breaching party in writing prior to such date, no further action shall be required of any party to effect the Termination as of the stated date. If the notice does not set forth an effective Termination date, the non-breaching party shall be required to provide the breaching party no less than twenty four (24) hours

written notice prior to terminating the Agreement, such notice to be provided in accordance with Section 29(c).

- c) If the State determines the Contractor has not performed in accordance with the Agreement, the State may withhold payment in whole or in part pending resolution of the Performance issue, provided that the State notifies the Contractor in writing prior to the date that the payment would have been due.
- d) Notwithstanding any provisions in this Agreement, the State may terminate this Agreement with no right to cure period for Contractor's breach or violation of any of the provisions in the section concerning Representations and Warranties 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.
- e) Termination under this Breach section is subject to the provisions of the Termination section in this Agreement.

29. TERMINATION

- a) Notwithstanding any provisions in this Agreement, the Department, through a duly authorized employee, may Terminate the Agreement whenever the Department makes a written determination that such Termination is in the best interests of the State. The Department shall notify the Contractor in writing of Termination pursuant to this section, which notice shall specify the effective date of Termination and the extent to which the Contractor must complete its Performance under the Agreement prior to such date.
- b) Notwithstanding any provisions in this Agreement, the Department, 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.
- c) The Department 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 the Department for purposes of correspondence, or by hand delivery. Upon receiving the notice from the Department, 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 Department all Records. The Records are deemed to be the property of the Department and the Contractor shall deliver them to the Department no later than thirty (30) days after the Termination of the Agreement or fifteen (15) days after the Contractor receives a written request from the Department 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.
- d) Upon receipt of a written notice of Termination from the Department, the Contractor shall cease operations as the Department directs in the notice, and take all actions that are necessary or appropriate, or that the Department may reasonably direct, for the protection, and preservation of the Goods and any other property. Except for any work which the Department directs the Contractor to Perform in the notice prior to the effective date of Termination, and except as otherwise provided in the notice, the Contractor shall terminate or conclude all existing subcontracts and purchase orders and shall not enter into any further subcontracts, purchase orders or commitments.
- e) The Department shall, within forty-five (45) days of the effective date of Termination, reimburse the Contractor for its Performance rendered and accepted by the Department in accordance

with Exhibit A, in addition to all actual and reasonable costs incurred after Termination in completing those portions of the Performance which the notice required the Contractor to complete. However, the Contractor is not entitled to receive and the Department is not obligated to tender to the Contractor any payments for anticipated or lost profits. Upon request by the Department, the Contractor shall assign to the Department, or any replacement contractor which the Department designates, all subcontracts, purchase orders and other commitments, deliver to the Department all Records and other information pertaining to its Performance, and remove from State premises, whether leased or owned, all of Contractor's property, equipment, waste material and rubbish related to its Performance, all as the Department may request.

f) For breach or violation of any of the provisions in the section concerning Representations and Warranties, the Department may Terminate the Agreement in accordance with its terms and revoke any consents 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.

g) Upon Termination of the Agreement, all rights and obligations shall be null and void, so that no party shall have any further rights or obligations to any other party, except with respect to the sections which survive Termination. All representations, warranties, agreements and rights of the parties under the Agreement shall survive such Termination to the extent not otherwise limited in the Agreement and without each one of them having to be specifically mentioned in the Agreement.

h) Termination of the Agreement pursuant to this section shall not be deemed to be a breach of contract by the Department.

30. REPRESENTATIONS AND WARRANTIES

The Contractor represents and warrants to the State for itself and the Contractor Parties that:

a) if they are entities, they are duly and validly existing under the laws of their respective states of organization and authorized to conduct business in the State of Connecticut in the manner contemplated by the Agreement. Further, as appropriate, they have taken all necessary action to authorize the execution, delivery and Performance of the Agreement and have the power and authority to execute, deliver and Perform their obligations under the Agreement;

b) they will comply with all applicable State and Federal laws and municipal ordinances in satisfying their obligations to the State under and pursuant to the Agreement, including, but not limited to (1) Connecticut General Statutes Title 1, Chapter 10, concerning the State's Codes of Ethics and (2) Title 4a concerning State purchasing, including, but not limited to section 22a-194a concerning the use of polystyrene foam;

c) the execution, delivery and Performance of the Agreement will not violate, be in conflict with, result in a breach of or constitute (with or without due notice and/or lapse of time) a default under any of the following, as applicable: (1) any provision of law; (2) any order of any court or the State; or (3) any indenture, agreement, document or other instrument to which it is a party or by which it may be bound;

d) they are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any governmental entity;

- e) as applicable, they have not, within the three years preceding the Agreement, in any of their current or former jobs, been convicted of, or had a civil judgment rendered against them or against any person who would Perform under the Agreement, for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a transaction or contract with any governmental entity. This includes, but is not limited to, violation of Federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records or property, making false statements, or receiving stolen property;
- f) they are not presently indicted for or otherwise criminally or civilly charged by any governmental entity with commission of any of the offenses listed above;
- g) they have not within the three years preceding the Agreement had one or more contracts with any governmental entity terminated for breach or default;
- h) they have not employed or retained any entity or person, other than a bona fide employee working solely for them, to solicit or secure the Agreement and that they have not paid or agreed to pay any entity or person, other than a bona fide employee working solely for them, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of the Agreement or any assignments made in accordance with the terms of the Agreement;
- i) to the best of their knowledge, there are no Claims involving the Contractor or Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Agreement;
- j) they shall disclose, to the best of their knowledge, to the State in writing any Claims involving them that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Agreement, no later than ten (10) calendar days after becoming aware or after they should have become aware of any such Claims. For purposes of the Contractor's obligation to disclose any Claims to the State, the ten (10) calendar days in the section of this Agreement concerning disclosure of Contractor Parties litigation shall run consecutively with the ten (10) days provided for in this representation and warranty;
- k) their participation in the Solicitation process is not a conflict of interest or a breach of ethics under the provisions of Title 1, Chapter 10 of the Connecticut General Statutes concerning the State's Code of Ethics;
- l) the proposal submitted by Contractor in response to the Solicitation was not made in connection or concert with any other person, entity or proposer, including any affiliate (as defined in the Tangible Personal Property section of this Agreement) of the proposer, submitting a proposal for the same Solicitation, and is in all respects fair and without collusion or fraud;
- m) they are able to Perform under the Agreement using their own resources or the resources of a party who was not a proposer;

- n) the Contractor shall obtain in a written contract all of the representations and warranties in this section from any Contractor Parties and require that provision be included in any contracts and purchase orders with such Contractor Parties;
- o) they have paid all applicable workers' compensation second injury fund assessments concerning all previous work done in Connecticut; they have a record of compliance with Occupational Health and Safety Administration regulations without any unabated, willful or serious violations;
- p) they owe no unemployment compensation contributions;
- q) they are not delinquent in the payment of any taxes owed, or, that they have filed a sales tax security bond, and they have, if and as applicable, filed for motor carrier road tax stickers and have paid all outstanding road taxes;
- r) all of their vehicles have current registrations and, unless such vehicles are no longer in service, they shall not allow any such registrations to lapse;
- s) each Contractor Party has vested in the Contractor plenary authority to bind the Contractor Parties to the full extent necessary or appropriate to ensure full compliance with and Performance in accordance with all of the terms and conditions of the Contract and that all appropriate parties shall also provide, no later than fifteen (15) days after receiving a request from the Department, such information as the Department may require to evidence, in the Department's sole determination, compliance with this section;
- t) they either own or have the authority to use all the Goods;
- u) the Goods do not infringe or misappropriate any patent, copyright, trade secret or other intellectual property right of a third party;
- v) the Department's use of any Goods in a manner consistent with this Agreement shall not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;
- w) if they procure any Goods, they shall sub-license such Goods and that the Department shall be afforded the full benefits of any manufacturer or subcontractor licenses for the use of the Goods; and
- x) they shall assign or otherwise transfer to the Department, or afford the Department the full benefits of any manufacturer's warranty for the Goods, to the extent that such warranties are assignable or otherwise transferable to the Department.

31. DISCLOSURE OF CONTRACTOR PARTIES LITIGATION

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

becoming aware or after they should have become aware of any such Claims. Disclosure shall be in writing.

32. STATE COMPTROLLER'S SPECIFICATIONS

In accordance with Conn. Gen. Stat. § 4d-31, this Agreement is deemed to have incorporated within it, and the Contractor shall deliver the Goods and Services in compliance with, all specifications established by the State Comptroller to ensure that all policies, procedures, processes and control systems, including hardware, software and protocols, which are established or provided by the Contractor or Contractor Parties, are compatible with and support the State's core financial systems, including but not limited to, accounting, payroll, time and attendance, and retirement systems.

33. CHIEF INFORMATION OFFICER SUBCONTRACT APPROVAL

In accordance with Conn. Gen. Stat. § 4d-32, the Contractor shall not award a subcontract for work under this Agreement without having first obtained the written approval of the Chief Information Officer of the Department of Administrative Services or their designee of the selection of the subcontractor and of the provisions of the subcontract. The Contractor shall deliver a copy of each executed subcontract or amendment to the subcontract to the Chief Information Officer, who shall maintain the subcontract or amendment as a public record, as defined in Conn. Gen. Stat. § 1-200.

34. RIGHTS TO AND INTEGRITY OF PUBLIC RECORDS

In accordance with Conn. Gen. Stat. § 4d-34, (a) neither the Contractor nor Contractor Parties shall have any Title in or to (1) any public records which the Contractor or Contractor Parties possess, modify or create pursuant to a contract, subcontract or amendment to a contract or subcontract, or (2) any modifications by such contractor, subcontractor, employee or agent to such public records; (b) neither the Contractor nor Contractor Parties shall impair the integrity of any public records which they possess or create; and (c) public records which the Contractor or Contractor Parties possess, modify or create pursuant to this Agreement or other contract, subcontract or amendment to a contract or subcontract shall at all times and for all purposes remain the property of the State. For purposes of this section, "public records" shall have the meaning set forth in Conn. Gen. Stat. § 4-33, as it may be modified from time to time.

35. PUBLIC RECORDS AND FOIA

In accordance with Conn. Gen. Stat. § 4d-35, any public record which a state agency provides to the Contractor or Contractor Parties shall remain a public record for the purposes of subsection (a) of section 1-210 and as to such public records, the State, the Contractor and Contractor Parties shall have a joint and several obligation to comply with the obligations of the state agency under the Freedom of Information Act (FOIA), as defined in section 1-200, provided that the determination of whether or not to disclose a particular record or type of record shall be made by such state agency.

36. DISCLOSURE OF PUBLIC RECORDS

In accordance with Conn. Gen. Stat. § 4d-36, neither the Contractor nor Contractor Parties shall disclose to the public any public records (a) which they possess, modify or create pursuant to this Agreement or any contract, subcontract or amendment to a contract or subcontract and (b) which a state agency (1) is prohibited from disclosing pursuant to state or federal law in all cases, (2) may disclose pursuant to state or federal law only to certain entities or individuals or under certain conditions or (3) may withhold from disclosure pursuant to state or federal law. This provision shall not be construed to prohibit the Contractor from disclosing such public records to any Contractor Parties to carry out the purposes of its subcontract. For purposes of this section, “public records” shall have the meaning set forth in Conn. Gen. Stat. § 1-200, as it may be modified from time to time.

37. PROFITING FROM PUBLIC RECORDS

In accordance with Conn. Gen. Stat. § 4d-37, neither the Contractor nor Contractor Parties shall sell, market or otherwise profit from the disclosure or use of any public records which are in their possession pursuant to this Agreement or any contract, subcontract or amendment to a contract or subcontract, except as authorized in this Agreement. For purposes of this section, “public records” shall have the meaning set forth in Conn. Gen. Stat. § 1-200, as it may be modified from time to time.

38. CONTRACTOR’S OBLIGATION TO NOTIFY DAS CONCERNING PUBLIC RECORDS

In accordance with Conn. Gen. Stat. § 4d-38, if the Contractor or Contractor Parties learn of any violation of the provisions of Conn. Gen. Stat. §§ 4d-36 or 4d-37 they shall, no later than seven calendar days after learning of such violation, notify the Chief Information Officer of such violation.

39. GENERAL ASSEMBLY ACCESS TO RECORDS

In accordance with Conn. Gen. Stat. § 4d-40, the Joint Committee on Legislative Management and each nonpartisan office of the General Assembly shall continue to have access to DAS records that is not less than the access that said committee and such offices have on July 1, 1997.

40. CONTINUITY OF SYSTEMS

- a) This Section is intended to comply with Conn. Gen. Stat. §4d-44, as it may be amended.
- b) The Contractor acknowledges that the Systems and associated services are important to the function of State government and that they must continue without interruption. Pursuant to Conn. Gen. Stat. §4d-44, as it may be amended, if the work under the Contract, any subcontract, or amendment to either, is transferred back to the State or to another contractor at any time for any reason, then the Contractor shall cooperate fully with the State, and do and perform all acts and things that DAS deems to be necessary or appropriate, to ensure continuity of state agency information system and telecommunication system facilities, equipment and services so that there is no disruption or interruption in performance as required or permitted in the Contract. The Contractor shall not enter into any subcontract for any part of the performance under the Contract without approval of such subcontract by DAS, as required by Conn. Gen. Stat. §4d-32, as it may be amended, and without such subcontract including a provision that obligates the subcontractor to comply fully with Conn. Gen. Stat. §4d-44, as it may be amended, as if the subcontractor were in fact the Contractor. The Contractor shall

make a full and complete disclosure of and delivery to DAS or its representatives of all Records and “Public Records,” as that term is defined in Conn. Gen. Stat. §4d-33, as it may be amended, in whatever form they exist or are stored and maintained and wherever located, directly or indirectly concerning the Contract.

c) The parties shall follow the below applicable and respective procedures in order to ensure the orderly transfer to the State the following:

1. facilities and equipment: Unless a shorter period is necessary or appropriate to ensure compliance with subsection (a) above, in which case that shorter period shall apply, the Contractor shall deliver to the State, F.O.B. Hartford, Connecticut or other State location which the Department identifies, all facilities and equipment related to or arising out of the Agreement, subcontract or amendment, no later than 10 days from the date that the work under the Agreement is transferred back to the State or to another contractor for any reason. The Contractor shall deliver the facilities and equipment to the State, during the State’s business hours, in good working order and in appropriately protective packaging to ensure delivery without damage. Concurrent with this delivery, the Contractor shall also deliver all related operation manuals and other documentation in whatever form they exist and a list of all related passwords and security codes;
2. software Deliverables created or modified pursuant to the Agreement, subcontract or amendment: Unless a shorter period is necessary or appropriate to ensure compliance with subsection (a) above, in which case that shorter period shall apply, the Contractor shall deliver to the State, F.O.B. Hartford, Connecticut or other State location which the Department identifies, all Deliverables, no later than 10 days from the date that the work under the SOW or Agreement is transferred back to the Department or to another contractor for any reason. The Contractor shall deliver such Deliverables to the Department, during the Department’s business hours, in good working order, and if Department equipment shall be delivered, in appropriately protective packaging to ensure delivery without damage. Concurrent with this delivery, the Contractor shall also deliver all Deliverable-related operation manuals and other documentation in whatever form they exist, if delivery of such manuals and documentation is required by this Agreement or the SOW for such Deliverable, and a list of all Deliverable passwords and security codes; and
3. Public Records, as defined in Conn. Gen. Stat. §4d-33, as it may be amended, which the Contractor or Contractor Parties possess or create pursuant to the Agreement, subcontract or amendment: Unless a shorter period is necessary or appropriate to ensure compliance with subsection (a) above, in which case that shorter period shall apply, the Contractor shall deliver to the Department, F.O.B. Hartford, Connecticut or other State location which the Department identifies, all Public Records created or modified pursuant to the Agreement, Statement of Work, subcontract or amendment and requested in writing by the Department (provided that Contractor may redact confidential information of Contractor, its personnel or third parties to the extent permitted by applicable law) no later than the latter of (1) the time specified in the section in this Agreement concerning Termination for the return of Public Records and (2) 10 days from the date that the work under the Agreement or Statement of Work is transferred back to the Department or to another contractor for any reason. The Contractor shall deliver to the Department those Public Records in electronic, magnetic or other intangible form in a non-proprietary format, such as, but not limited to, ASCII or TXT. The Contractor shall deliver to the Department, during the Department’s business hours,

those Public Records and a list of all applicable passwords and security codes, all in appropriately protective packaging to ensure delivery without damage.

d) If the Contractor employs former State employees, the Contractor shall facilitate the exercising of any reemployment rights that such State employees may have with the State, including, but not limited to, affording them all reasonable opportunities during the workday to interview for State jobs. The Contractor shall include language similar to this section in all of its contracts with its subcontractors and applicable Contractor Parties so that they are similarly obligated.

41. TANGIBLE PERSONAL PROPERTY

a) The Contractor on its behalf and on behalf of its Affiliates, as defined below, shall comply with the provisions of Conn. Gen. Stat. §12-411b, as follows:

1. For the term of the Agreement, the Contractor and its Affiliates shall collect and remit to the State of Connecticut, Department of Revenue Services, any Connecticut use tax due under the provisions of Chapter 219 of the Connecticut General Statutes for items of tangible personal property sold by the Contractor or by any of its Affiliates in the same manner as if the Contractor and such Affiliates were engaged in the business of selling tangible personal property for use in Connecticut and had sufficient nexus under the provisions of Chapter 219 to be required to collect Connecticut use tax;
2. A customer's payment of a use tax to the Contractor or its Affiliates relieves the customer of liability for the use tax;
3. The Contractor and its Affiliates shall remit all use taxes they collect from customers on or before the due date specified in the Contract, which may not be later than the last day of the month next succeeding the end of a calendar quarter or other tax collection period during which the tax was collected;
4. The Contractor and its Affiliates are not liable for use tax billed by them but not paid to them by a customer; and
5. Any Contractor or Affiliate who fails to remit use taxes collected on behalf of its customers by the due date specified in the Contract shall be subject to the interest and penalties provided for persons required to collect sales tax under chapter 219 of the general statutes.

b) For purposes of this section of the Agreement, the word "Affiliate" means any person, as defined in section 12-1 of the general statutes, that controls is controlled by, or is under common control with another person. A person controls another person if the person owns, directly or indirectly, more than ten per cent of the voting securities of the other person. The word "voting security" means a security that confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business, or that is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. "Voting security" includes a general partnership interest.

c) The Contractor represents and warrants that each of its Affiliates has vested in the Contractor plenary authority to so bind the Affiliates in any agreement with the State of Connecticut. The Contractor on its own behalf and on behalf of its Affiliates shall also provide, no later than 30 days after receiving a request by the State's contracting authority, such information as the State may require

to ensure, in the State's sole determination, compliance with the provisions of Chapter 219 of the Connecticut General Statutes, including, but not limited to, §12-411b.

42. INDEMNIFICATION

- 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, in connection with the Agreement, including the acts of commission or omission (collectively, the "Acts") of the Contractor or Contractor Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, 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 non-copyrighted 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 third party 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 or any Contractor Parties. 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 Contract, without being lessened or compromised in any way, even where the Contractor is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims and/or where the State is alleged or is found to have contributed to the Acts giving rise to the Claims.
- 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 Agreement, sufficient commercial general liability insurance to satisfy its obligations under this Agreement. The Contractor shall name the State as an additional insured on the policy and shall provide a copy of the policy to the Department prior to the effective date of the Contract. The Contractor shall not begin Performance until the delivery of the policy to the Department. The Department shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that the Department or the State was contributorily negligent.
- f) This section shall survive the Termination of the Agreement and shall not be limited by reason of any insurance coverage.

43. SOVEREIGN IMMUNITY

The parties acknowledge and agree that nothing in 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.

44. 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 Agreement as if the summary had been fully set forth in the Agreement.

45. 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.

46. CAMPAIGN CONTRIBUTION RESTRICTION

For all State contracts, defined in Conn. Gen. Stat. §9-612(g)(1) as 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, as set forth in

"Notice to Executive Branch State Contractors and Prospective State Contractors of Campaign Contribution and Solicitation Limitations," attached as Exhibit 1.

47. EXECUTIVE ORDERS

This Agreement is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of the Agreement as if they had been fully set forth in it. The Agreement may also be subject to Executive Order No. 7C of Governor M. Jodi Rell, promulgated July 13, 2006, concerning contracting reforms and Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services and Executive Order No. 19 of Governor M. Jodi Rell, promulgated June 19, 2008 concerning use of System Development, in accordance with their respective terms and conditions. If Executive Orders 7C and 14 are applicable, they are deemed to be incorporated into and are made a part of the Agreement as if they had been fully set forth in it. At the Contractor's request, the Department shall provide a copy of these orders to the Contractor.

48. NONDISCRIMINATION

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

- i. "Commission" means the Commission on Human Rights and Opportunities;
- ii. "Agreement" and "contract" include any extension or modification of the Agreement;
- iii. "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor;
- iv. "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose;
- v. "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;
- vi. "good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;
- vii. "marital status" means being single, married as recognized by the state of Connecticut, widowed, separated or divorced;
- viii. "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders;
- ix. "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to

direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes § 32-9n; and

- x. "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

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

b) (1) The Contractor agrees and warrants that in the performance of the 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, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the Contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Contractor that such disability prevents performance of the work involved; (2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the Commission; (3) the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers' representative of the Contractor's commitments under this section and to post copies of the notice in conspicuous places available to employees and applicants for employment; (4) the Contractor agrees to comply with each provision of this Section and Connecticut General Statutes §§ 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes §§ 46a-56, 46a-68e and 46a-68f; and (5) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the provisions of this Section and Connecticut General Statutes § 46a-56. If the contract is a public works contract, the Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works projects.

c) Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other

reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.

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

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

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

g) (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 Connecticut General Statutes § 46a-56; and (4) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor which relate to the provisions of this Section and Connecticut General Statutes § 46a-56.

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

49. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT

- a) If the Contactor 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 Agreement.
- 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 Agreement 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 Agency named on page 1 of this Agreement (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 Agreement.
- 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 Agreement" refers to the HIPAA Provisions stated herein, in their entirety.
- 13) "Security Incident" shall have the same meaning as the term "security incident" in 45 C.F.R. § 164.304.
- 14) "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. part 160 and 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 Agreement or as Required by Law.
- 2) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for in this Section of the Agreement.
- 3) Business Associate agrees to use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic protected health information that it creates, receives, maintains, or transmits on behalf of the Covered Entity.
- 4) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by Business Associate in violation of this Section of the Agreement.
- 5) Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Section of the Agreement 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 Agreement to Business Associate with respect to such information.
- 7) Business Associate agrees to provide access, at the request of the Covered Entity, and in the time and manner agreed to by the parties, to PHI in a Designated Record Set, 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 Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder. Business Associate agrees 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 Agreement and (2) the valid authorization of the individual, except for the purposes provided under section 13405(d)(2) of the HITECH Act, (42 U.S.C. § 17935(d)(2)) and in any accompanying regulations
- 16) Obligations in the Event of a Breach
 - (a) The Business Associate agrees that, following the discovery of a breach of unsecured protected health information, it shall notify the Covered Entity of such breach in

accordance with the requirements of section 13402 of HITECH (42 U.S.C. 17932(b) and the provisions of this Section of the Agreement.

- (b) Such notification shall be provided by the Business Associate to the Covered Entity without unreasonable delay, and in no case later than 30 days after the breach is discovered by the Business Associate, except as otherwise instructed in writing by a law enforcement official pursuant to section 13402 (g) of HITECH (42 U.S.C. 17932(g)) . A breach is considered discovered as of the first day on which it is, or reasonably should have been, known to the Business Associate. The notification shall include the identification and last known address, phone number and email address of each individual (or the next of kin of the individual if the individual is deceased) 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.

(f) Permitted Uses and Disclosure by Business Associate.

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

2. Specific Use and Disclosure Provisions

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

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

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

j) Obligations of Covered Entity.

1) 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 Agreement.

l) Term and Termination.

- 1) Term. The Term of this Section of the Agreement shall be effective as of the date the Agreement is effective and shall terminate when the information collected in accordance with clause h. (10) of this Section of the Agreement is provided to the Covered Entity and all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- 2) Termination for Cause Upon 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 Agreement 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 Agreement if Business Associate has breached a material term of this Section of the Agreement and cure is not possible; or
 - (c) If neither termination nor cure is feasible, 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 Agreement, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Business Associate shall also provide the information collected in accordance with clause h. (10) of this Section of the Agreement to the Covered Entity within ten business days of the notice of termination. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
 - (b) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon documentation by Business Associate that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Section of the Agreement to such PHI and limit further uses and disclosures of PHI to those purposes that make return or destruction infeasible, for as long as Business Associate maintains such PHI. Infeasibility of the return or destruction of PHI includes, but is not limited to, requirements under state or federal law that the Business Associate maintains or preserves the PHI or copies thereof.

m) Miscellaneous Provisions.

- 1) Regulatory References. A reference in this Section of the Agreement to a section in the Privacy Rule means the section as in effect or as amended.
- 2) Amendment. The Parties agree to take such action as is necessary to amend this Section of the Agreement from time to time as is necessary for Covered Entity to comply with requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

- 3) Survival. The respective rights and obligations of Business Associate shall survive the termination of this Agreement.
- 4) Effect on Agreement. Except as specifically required to implement the purposes of this Section of the Agreement, all other terms of the Agreement shall remain in force and effect.
- 5) Construction. This Section of the Agreement shall be construed as broadly as necessary to implement and comply with the Privacy Standard. Any ambiguity in this Section of the Agreement shall be resolved in favor of a meaning that complies, and is consistent with, the Privacy Standard.
- 6) Disclaimer. Covered Entity makes no warranty or representation that compliance with this Section of the Agreement 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 Agreement 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.

50. OWNERSHIP OF DATA

Any and all data hosted by Contractor on behalf of the State of Connecticut will remain the sole property of the State and the State shall retain any and all ownership of such data. It is further understood that at no time will Contractor have ownership of any data held within the system.

51. TERMS AND CONDITIONS

Any and all Purchase Orders, Product Schedule Updates, Statement of Works or other documents authorized in connection with this shall be subject to the terms and conditions of this Agreement. Any terms or conditions contained in any such Purchase Order, Product Schedule Update, Statement of Work or other document shall have no force or effect and shall in no way affect, change or modify any of the terms and conditions of this Agreement.

52. WORKERS' COMPENSATION

The Contractor shall maintain Worker's Compensation and Employer's Liability insurance in compliance with the laws of the state of Connecticut, which coverage shall include Employer's

Liability coverage with minimum limits of \$100,000 for each accident, \$500,000 for disease, and \$100,000 for each employee, per policy period.

53. ENTIRETY OF AGREEMENT

This Agreement includes the SIGNATURE PAGE OF AGREEMENT. To the extent the provisions of the Product Schedule, Implementation Document, Implementation Schedule and any other exhibits or attachment referenced in the Agreement do not contradict the provisions of Sections 1-53 of this Agreement, said documents, exhibits and/or attachments are incorporated herein by reference and made a part hereof as though fully set forth herein. This Agreement, as thus constituted, contains the complete and exclusive statement of the terms and conditions agreed to by the parties hereto and shall not be altered, amended, or modified except in writing executed by an authorized representative of each party.

THE REMAINDER OF THIS PAGE IS LEFT BLANK INTENTIONALLY

SIGNATURE PAGE OF AGREEMENT

This Agreement is entered into by authority of Sections 4d-2, 4d-5 and 4d-8 of the General Statutes.

CONTRACTOR

STATE OF CONNECTICUT,

BY: _____

BY: _____

NAME: Title

NAME: Title

TITLE: Title

TITLE: Title

Duly Authorized

Department of Administrative Services

Duly Authorized

DATE: _____

DATE: _____

APPROVED AS TO FORM:

BY: _____

Attorney General of the State of Connecticut

DATE: _____

EXHIBIT 1

Notice to Executive Branch State Contractors and Prospective State Contractors of Campaign Contribution and Solicitation Limitations

This notice is provided under the authority of Connecticut General Statutes §9-612(g)(2), as amended by P.A. 10-1, and is for the purpose of informing state contractors and prospective state contractors of the following law (italicized words are defined on the reverse side of this page).

CAMPAIGN CONTRIBUTION AND SOLICITATION LIMITATIONS

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 (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 (which includes town committees).

In addition, no holder or principal of a holder of a valid prequalification certificate, shall make a contribution to (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.

On and after January 1, 2011, 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 **knowingly solicit** contributions from the state contractor's or prospective state contractor's employees or from a *subcontractor or principals of the subcontractor* 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.

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—Up to \$2,000 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 up to \$2,000 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 not more than \$5,000 in fines, or both.

CONTRACT CONSEQUENCES

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

In the case of a prospective state contractor, contributions made or solicited in violation of the above prohibitions 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 shall 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 may be found on the website of the State Elections Enforcement Commission, www.ct.gov/seec. Click on the link to “Lobbyist/Contractor Limitations.”

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, a loan to an individual for other than commercial purposes or any agreement or contract between the state or any state agency and the United States Department of the Navy or the United States Department of Defense.

“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.

“Subcontractor” means any person, business entity or nonprofit organization that contracts to perform part or all of the obligations of a state contractor's state contract. Such person, business entity or nonprofit organization shall be deemed to be a subcontractor until December thirty first of the year in which the subcontract terminates. “Subcontractor” does not include (i) 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 (ii)

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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 subcontractor” 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 subcontractor, 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 subcontractor, which is a business entity, as president, treasurer or executive vice president, (iii) an individual who is the chief executive officer of a subcontractor, which is not a business entity, or if a subcontractor has no such officer, then the officer who duly possesses comparable powers and duties, (iv) an officer or an employee of any subcontractor who has managerial or discretionary responsibilities with respect to a subcontract with a state contractor, (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 subcontractor.