Agreement for the Installation and Integration of a Bus Intelligent Transportation System
12PSX0323

Between

THE STATE OF CONNECTICUT

Acting by its

DEPARTMENT OF ADMINISTRATIVE SERVICES

And

MCPHEE ELECTRIC, LTD

CONTENTS

1. TERM OF AGREEMENT 4
2. DEFINITIONS 4
3. ACQUIRING DELIVERABLES AND SERVICES 8
4. PROJECT ADMINISTRATOR 9
5. CHANGE ORDERS 9
6. CONTROL OF THE WORK 19
7. DELIVERABLE EVALUATION & ACCEPTANCE 34
8. PAYMENTS AND CREDITS 34
9. SOFTWARE MAINTENANCE & SUPPORT 34
10. HARDWARE MAINTENANCE & SUPPORT 36
11. SYSTEM RELIABILITY 36
12. SYSTEM WARRANTIES 37
13. OTHER WARRANTIES 38
14. PATENT, COPYRIGHT, LICENSE & PROPRIETARY RIGHTS 38
15. CONFIDENTIALITY; NONDISCLOSURE 42
16. PROTECTION OF CONFIDENTIAL INFORMATION 42
17. DELIVERABLE REPLACEMENTS & UPGRADES 43
18. RISK OF LOSS & INSURANCE 45
19. DELIVERABLE ALTERATIONS 48
20. FORCE MAJEURE 48
21. RESERVED 48
22. GENERAL PROVISIONS 48
23. COMMUNICATIONS 50
24. AUDIT REQUIREMENT FOR STATE GRANTS 51
25. WHISTLEBLOWER PROVISION 51
26. DISCLOSURE OF PUBLIC RECORDS PROVISION 51
27. FORUM AND CHOICE OF LAW 51
28. BREACH 52
29. TERMINATION 53
30. REPRESENTATIONS AND WARRANTIES 54
31. DISCLOSURE OF CONTRACTOR PARTIES LITIGATION 57
32. STATE COMPTROLLER’S SPECIFICATIONS 57

33. CHIEF INFORMATION OFFICER SUBCONTRACT APPROVAL 57
34. RIGHTS TO AND INTEGRITY OF PUBLIC RECORDS 57
35. PUBLIC RECORDS AND FOIA 58
36. DISCLOSURE OF PUBLIC RECORDS 58
37. PROFITING FROM PUBLIC RECORDS 58
38. CONTRACTOR'S OBLIGATION TO NOTIFY DAS CONCERNING PUBLIC RECORDS 58
39. GENERAL ASSEMBLY ACCESS TO RECORDS 58
40. CONTINUITY OF SYSTEMS 59
41. TANGIBLE PERSONAL PROPERTY 60
42. INDEMNIFICATION 61
43. SOVEREIGN IMMUNITY 62
44. SUMMARY OF STATE ETHICS LAWS 62
45. AUDIT AND INSPECTION OF PLANTS, PLACES OF BUSINESS AND RECORDS 62
46. CAMPAIGN CONTRIBUTION RESTRICTION 63
47. EXECUTIVE ORDERS 63
48. NONDISCRIMINATION 64
49. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT 67
50. OWNERSHIP OF DATA 67
51. TERMS AND CONDITIONS 67
52. WORKERS' COMPENSATION 67
53. ENTIRETY OF AGREEMENT 67

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)
EXHIBIT 6 – SUPPLEMENT TO EXHIBIT 7
EXHIBIT 7 – TECHNICAL SPECIFICATIONS
EXHIBIT 8 – DRAWINGS
EXHIBIT 9 – FEDERAL REQUIREMENTS

This Agreement for the Installation and Integration of a Bus Intelligent Transportation System ("Agreement" or "Contract") is made as of the Effective Date, by and between **McPhee Electric, Ltd** (the "Contractor" with a principal place of business at 505 Main Street, Farmington, CT 06032, acting by Marcus W. McPhee, its President, and the **STATE OF CONNECTICUT** ("State"), acting by its **Department of Administrative Services** ("DAS"), located at 165 Capitol Avenue, Hartford, CT 06106, acting by Martin W. Anderson, its Deputy Commissioner, in accordance with Sections 4a-1 (c) and 4d-2 of the Connecticut General Statutes and with the consent of the Commissioner of the Department of Transportation, in accordance with Section 4-8, 13b-4, 13b-34 and 13b-36 of the Connecticut General Statutes.

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 below. The original term of the Agreement shall begin the Effective Date and continue uninterrupted through the Acceptance Date of the System and for an additional two year period following the Acceptance Date of the System ("Original Term"). DAS, in its sole discretion, may extend this Agreement for additional terms beyond the Original Term, prior to Termination or expiration, for up to three additional two year terms or parts thereof.

2. DEFINITIONS

a) **Acceptance Date:** The date the Department accepts a Deliverable or System shall be deemed as Acceptance Date for each Deliverable or System.

b) **Alteration:** The modification, changing, refashioning, remodeling, remaking, revising or reworking of any part of the System or Deliverable.

c) **Article:** Article where used in this Agreement refers to the corresponding article and section(s) contained in Form 816 (as defined in this section 2). Capitalized terms referenced in such Articles have the definitions ascribed to them in the Form 816.

d) **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.

e) **Confidential Information:** This shall mean any name, number or other information that may be used, alone or in conjunction with any other information, to identify a specific individual including, but not limited to, such individual's name, date of birth, mother's maiden name, motor vehicle operator's license number, Social Security number, employee identification number, employer or taxpayer identification number, alien registration number, government passport number, health insurance identification

number, demand deposit account number, savings account number, credit card number, debit card number or unique biometric data such as fingerprint, voice print, retina or iris image, or other unique physical representation. Without limiting the foregoing, Confidential Information shall also include any information that DAS 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.

f) **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.

g) **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.

h) **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 13.

i) **Deliverable:** Any product, service, or warranty that is required to be delivered to the Department under this Agreement or available under Exhibit 4, or both, 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 or CTDOT:** The Connecticut Department of Transportation, or its successor in interest.

m) **Final Acceptance:** Acceptance of a completed Deliverable or System as evidenced by the Department's issuance of a notice of final acceptance. The specific terms, conditions, and requirements of Final Acceptance are set forth in Exhibit 7 to the Contract.

n) **Form 816:** The document titled, "Standard Specifications for Roads, Bridges, and Incidental Construction and its Supplemental Specifications" merged with "Supplemental Specifications of July 2012", issued from time to time by the Connecticut Department of Transportation.

o) **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 or Exhibit 4, or both.

p) **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.

q) **Licensed Software:** Computer program(s) provided by Contractor in connection with the Deliverables, subject to Section 14 of this Agreement.

r) **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.

s) **POP (Primary Operation Period):** The days and hours of normal system operations and availability, which is to be 4:30 a.m. to 1:30 a.m. of the next day, 7 days a week for bus service, and 24 hours per day/7 days per week for the closed circuit camera system.

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 a Department for one or more Goods, 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) **Services:** The Performance of labor or work set forth in Exhibit 2 or in the Statement of Work, whichever is applicable.

y) **Site**: Location(s) specified by Department where Deliverables are to be installed or Services rendered.

z) **Solicitation**: Request for Proposal entitled Procurement, Installation, and Integration of a Bus Intelligent Transportation System (ITS) for the Connecticut Department of Transportation dated September 28, 2012.

aa) **Specifications:** Contractor's published technical and non-technical detailed descriptions of a Deliverable's capabilities and/or intended use.

bb) **State:** The State of Connecticut, including the Department and any office, department, board, council, commission, institution or other agency or entity of the State.

cc) **Statement of Work (SOW):** Statement issued in connection with a Purchase 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.

dd) **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.

ee) **System Demonstration Test:** The System acceptance test described in Exhibit 7, Article 1.2.6.

ff) **Term:** The original term plus any extensions exercised under Section 1 of the Agreement.

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 two (2) year period commencing upon the Acceptance Date for the System and, if optioned by the Department pursuant to Section 12c continuing uninterrupted through the Year 3 or Year 4 of Technical Support and Warranty Services as set forth in Exhibit 4.

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 in accordance with Exhibit 2 or in accordance with a Statement or Work, if applicable. Such Deliverables or Services, as appropriate, shall be itemized in and available under the Product & Pricing Schedule and may be acquired through properly issued 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 Department acceptance of full Performance of all Deliverables and Services contained in the applicable Purchase Order, unless terminated sooner under the terms of this Agreement. Neither party shall 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 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 DAS with a cover letter documenting formal approval of the supplement by a Contractor representative legally empowered to so act. The supplement will only be deemed accepted by DAS if it issues a Product Schedule Update letter to Contractor, indicating its concurrence with the supplement.

d) Notwithstanding any other provision of this Agreement, no material change may be made to the Deliverables set forth in Exhibits 2, 4, 6 and 7 that alters the nature or scope of the Deliverables or their intended use. Any change in the Deliverables set forth in Exhibit 4 shall be conditioned upon the new product(s) being of a similar nature and having a similar use as the defined Deliverables. An update of the Deliverables or the addition of products that are related to or serve similar functions as the Deliverables is permissible only with the prior written approval of the DAS.

e) The pricing for the optional items set forth in Exhibit 4, other than the Year 3 and Year 4 Technical Support and Warranty Services, will escalate five percent (5%) every year, starting six (6) months after successful completion of the System Demonstration Test. The parties further agree that after the conclusion of the initial two year Warranty Period, any non-maintenance pricing will be subject to change, according to then current pricing. Notwithstanding the foregoing, nothing is this section 3e) shall apply to the Technology Support and Warranty Services.

f) Contractor shall provide the State with a discount on any Product Schedule Update according to the discount, if any, shown on the Exhibit 4.

g) 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, nonexclusive and nontransferable.

h) No additions to or reductions in the Deliverables and prices for work completed in the

Performance of any Purchase Order shall be permitted unless the Department issues a change order in accordance the provisions of Section 5.

The Department shall issue a purchase order when acquiring any Deliverable or Service available under Exhibit 4 and, if appropriate, a Statement of Work mutually acceptable to the purchasing Department and the Contractor.

4. PROJECT ADMINISTRATOR

The Department shall designate a project administrator (the “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 Exhibit 2 or Statement of Work, if applicable. 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 required because the System does not fully perform in accordance with this Agreement, shall be made by Contractor without charge to the Department. 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. If Exhibit 4 does not contain applicable set pricing, the Contractor will be directed to proceed on a cost-plus basis in accordance with Article 1.09.04.

c) No change order with a price impact will be effective until Contractor receives written confirmation from the Department.

The following sections of the Form 816 apply to this Agreement and capitalized terms referenced in such sections have the definitions ascribed to them in the Form 816. In the event of any conflict between the following sections of Form 816 and any other provision of the Agreement, the following sections of Form 816 shall govern:

> **Article 1.09.03—Increased or Decreased Quantities:** Whenever the quantity of any item as given in both the bid proposal form and Contract is increased or decreased, the Department will pay for such item at the Contract price, on the basis of the actual quantity completed,

except as otherwise expressly authorized under the provisions of Articles 1.04.02, 1.04.03 or 1.04.04.

Article 1.09.04—Extra and Cost-Plus Work: Extra work shall be performed only under the conditions and subject to the requirements outlined in Article 1.04.05. Payment for such work shall be based either on a unit price or on a lump sum, to be agreed upon before the extra work is started; or, if no agreement as to price can be reached, the Engineer may order that the work will be paid for on a cost-plus basis.

For all work done on a cost-plus basis, the Contractor's compensation shall be determined in accordance with the following requirements:

(a) Labor:

(1) For all labor, the Department shall pay the Contractor the wage rate actually paid as shown by its certified payroll, which shall be at least the minimum rate established for the Project by the State Labor Department or the U.S. Department of Labor. For all foremen in direct charge of Project work, the Department will pay the Contractor the actual wage paid to the foremen as shown on the Contractor's certified payroll.

(2) The Department will reimburse the Contractor for the actual costs paid to, or on behalf of, workers by reason of allowances, health and welfare benefits, pension fund benefits and other such benefits, when such amounts are required by a collective bargaining agreement or another employment contract generally applicable to the classes of labor employed on the Project. The Contractor shall certify all such costs.

(3) For property damage, bonding, liability and workmen's compensation insurance premiums, unemployment insurance contributions and social security taxes on Project cost-plus work, the Department will reimburse the Contractor for its actual Project costs. The Contractor shall provide to the Engineer documentation, satisfactory to the Engineer in form and substance, of all such costs.

(4) The Department will also pay to the Contractor an amount equal to 20% (15% for overhead, 5% for profit) of the total sums described in **(a)** (1) through (3) above.
No part of the salary or expenses of anyone connected with the Contractor's forces above the grade of foreman, who provides general supervision of Project work, will be included in the above payment calculations, except when the Contractor's organization is entirely occupied with cost-plus work, in which case the salary of a superintendent may be included in said labor item when the nature of the pertinent Project work is such that, in the opinion of the Engineer, a superintendent is required for that work. The allowable rate of pay for such superintendent shall be agreed upon before the Contractor begins the pertinent work. If no agreement on the rate can be reached, the Engineer will make payment based on such rate as he deems reasonable.

The Engineer reserves the right to determine the number and type of personnel to be employed for the cost-plus Project work.

(b) Specialized Work: When the Engineer directs the Contractor to perform specialized

work requiring skills, tools and equipment substantially unlike those ordinarily used by the Contractor or its authorized Project subcontractors, the Department will pay the Contractor for the use of a specialist to perform the specialized work. For such specialized services, including materials incorporated into the Project, the Department will pay the Contractor its actual costs, plus additional compensation in accordance with subparagraph (e) below. Prior to performing such specialized work, the Contractor shall obtain and submit to the Engineer a minimum of three price quotes for the work, if requested by the Engineer.

(c) Materials: For all materials necessary for cost-plus Project work, the Department will pay the Contractor its actual cost for such materials as delivered to the Project site, including delivery charges as shown by original receipted bills, plus 15 % of the sum of said cost and charges.

In lieu of receipted bills for materials used which were not specifically purchased for the Project, but were taken from the Contractor's stock, the Contractor shall provide to the Engineer an affidavit certifying that such materials were not purchased for the Project, that the materials were taken from the Contractor's stock, that the quantity claimed to have been used on the Project was actually so used, and that the price claimed for the materials is currently their fair market value. The Department will pay for costs of transporting the materials to the Project site, in accordance with subparagraphs (a) and (d) hereof. The Department will not reimburse the Contractor for any penalty or charge incurred due to the Contractor's late or delayed payment for the pertinent materials.

(d) Equipment: All equipment used for cost-plus Project work must, in the judgment of the Engineer, be in good working condition and suitable for the purpose intended; and the Engineer reserves the right to determine the size and number of units of equipment to be used for such work. The manufacturer's ratings shall be the basis for all Rental Rate Blue Book classifications used for payment purposes. ("Rental Rate Blue Book" as used in these specifications refers to the current edition of the Rental Rate Blue Book, taking into account all current Rate Adjustment Tables, and amendments thereof, which is published by K III Directory Corporation of San Jose, California, including all current Rate Adjustment Tables and amendments thereof.) Trucks will be classified by cubic-yard capacity.

No percentage mark-up will be added for payment purposes to amounts charged by the Contractor based on equipment rental rates.

The Department will not pay rental rates for small tools needed to complete the cost-plus Project work.

For payment purposes, estimated operating costs per hour from the Rental Rate Blue Book will apply only to the actual time during which the equipment is actively being used to perform cost-plus Project work.

For equipment that is also being used for non-cost-plus Project work, the Department will pay the applicable hourly rate only for the actual time that the equipment is assigned to cost-plus Project work. The applicable period of assignment for each piece of equipment shall

start when the equipment commences to be used for cost-plus Project work ordered by the Engineer, and shall end at the time designated by the Engineer.

For equipment which has to be brought to the Project site exclusively for cost-plus work, the Department will reimburse the Contractor for loading and unloading costs and costs of transporting such equipment to and from the Project site; provided, however, that payment for return transportation from the Project site shall not exceed the cost of moving the equipment to that site. If such a piece of equipment is self-propelled, and is driven to the Project site under its own power, then the Department will pay only operating costs and labor costs for its transport to and from the Project site. The Department will not, however, pay for any loading, unloading and transportation costs if the equipment is used for any Project work on the site other than cost-plus work.

1) Owned Equipment: The Department will pay the Contractor the applicable rental rate set forth in the Rental Rate Blue Book for any equipment (1) which the Contractor uses, with the Engineer's authorization, to perform cost-plus Project work, and (2) which is owned by the Contractor or a subsidiary, affiliate, or parent company of the Contractor (no matter how far up or down the chain of ownership from the Contractor).
The maximum hourly rate to be used in paying for Contractor-owned equipment assigned to cost-plus work shall be the applicable monthly rate in the Rental Rate Blue Book, divided by 176 (176 working hours per month).

Should the proper completion of the cost-plus Project work require equipment of a type not covered by the Rental Rate Blue Book, the Engineer will determine, and the Department will make payment to the Contractor at, a reasonable rental rate based on rates prevailing in the area of the Project. If practicable, such rates shall be determined by the Engineer before the affected work is begun. If the Contractor proposes that the Engineer use a particular rate in such an instance, the Contractor must disclose to the Engineer the specific sources of, or support for, said rate.

If a piece of equipment owned by the Contractor is assigned to cost-plus Project work, but remains idle for some portion of the period of the cost-plus work, the Department will pay for that idle time at 50% of the applicable rental rate (exclusive of operating costs) in the Rental Rate Blue Book.

For payment purposes, the period of equipment usage shall be deemed to start when the Contractor begins to use the equipment for cost-plus Project work and shall be deemed to end when the equipment is released by the Engineer from use for such work. Any hours during which the equipment is used for work other than cost-plus Project work will be deducted from the pertinent payment period.

For any piece of Contractor-owned equipment assigned to cost-plus Project work, the Department will reimburse the Contractor for an aggregate minimum of 8 hours (of use time, idle time, or a combination thereof) in each 24-hour day (measured from one midnight to the following midnight) during the assignment period. No such reimbursement will be made, however, for Saturdays, Sundays and legal holidays during which the Contractor does no

Project work, or for any other day on which the Engineer orders the Contractor to do no Project work. If the equipment is used to perform cost-plus Project work for more than 8 hours in a day, the Department will pay the Contractor at the applicable hourly rate computed on a monthly basis for the actual time of use; however the Department will not pay the Contractor for more than 8 hours of idle time for a piece of equipment during a given day.

The Department shall have the right to limit its aggregate Project payments for idle time for a given piece of equipment to the replacement value of that equipment.

(2) Rented Equipment: If the Engineer determines that in order to perform the cost-plus Project work the Contractor must rent certain machinery, trucks or other equipment not owned by the Contractor or a subsidiary, affiliate, or parent company of the Contractor (no matter how far up or down the chain of ownership from the Contractor), the Contractor shall inform the Engineer, in advance of such rental, (1) of the specific nature of the rental(s), (2) the reasons for its need for such rental(s), (3) the anticipated or proposed rental rate(s), and (4) the estimated duration for the use of the equipment. Rates for such rented equipment must be provided based on the following:

- A daily rate per hour when the equipment is to be specifically assigned to Project work by the Engineer for a period of 7 consecutive calendar days or less.
- A weekly rate per hour when such assigned time exceeds 7 consecutive calendar days, but does not exceed 21 consecutive calendar days.
- A monthly rate per hour when such assigned time exceeds 21 consecutive calendar days.

The applicable daily, weekly, or monthly rate will be determined at the expiration of 21 calendar days or upon release of the equipment by the Engineer, whichever occurs first. Interruptions of the rental period, when equipment is used on other than assigned cost-plus work, will not entitle the Contractor to payment at a rental rate that would be applicable to the shorter periods arguably occasioned by such interruptions.

Prior to renting such equipment, the Contractor shall obtain and submit to the Engineer a minimum of three quotes, if requested by the Engineer.

The Department will pay the Contractor for such rental at the rate actually paid by the Contractor, provided that the given use and rental rate are acceptable to the Engineer. In order to obtain such payment, the Contractor must provide the Engineer with a copy of the original receipted bill for the rental expenses incurred.

(e) Administrative Expense: When extra work on a cost-plus basis is performed by an authorized subcontractor, the Department will pay the Contractor an additional 7.5% for that work; such payment will be in addition to the percentage payments described in (a), (b), (c) and (d) above, as a reimbursement for the Contractor's administrative expense in connection with such work.

(f) Bonding Costs: For bonding on the total cost of the cost-plus work including

administrative expenses as outlined in (e) above, the Contractor shall receive its actual cost. The Contractor shall provide to the Engineer documentation, satisfactory to the Engineer in form and substance, of all such costs.

(g) Miscellaneous: The compensation provided for in (a), (b), (c), (d) and (e) above shall be deemed to be payment in full for the extra work and shall be deemed as full compensation for same, including costs of superintendence, use of small tools, equipment for which no rental is allowed, safety equipment, consumables, field office overhead, home office overhead, bonding, other insurance, and profit. The Contractor's representative and the Engineer shall compare their respective records of the extra work done on a cost-plus basis at the end of each day. Copies of these records shall be signed by both the Engineer and the Contractor's representative. The Engineer will then forward a copy of same to the Contractor and to any affected subcontractor in accordance with Department procedures. Upon payment of such costs by the Contractor, the Contractor shall immediately furnish the Engineer with original receipted bills covering the costs, including transportation charges, for all materials used for such work.

Article 1.09.05—Eliminated Items: Should the Engineer determine any Contract items, or portion of Project work contained in a lump sum item, to be unnecessary for completion of the Project, the Engineer may eliminate such items or portion of work from the Contract. Such action shall in no way invalidate the Contract; and no allowance for any items, or portion of work contained in a lump sum item so eliminated, will be made by the Engineer in making final payment to the Contractor, except for (a) such actual work as may have been done on the items, or portion of work contained in a lump sum item, prior to the Engineer's notice to the Contractor that the items or work had been eliminated; and (b) such related material as may have been purchased for the Project prior to said notice. This provision shall apply unless the Engineer determines that an elimination of a given item, or portion of work contained in a lump sum item, constitutes a "significant change" in the character of the Contract work, as defined under Article 1.04.03. In such a case, the terms of Article 1.04.03 shall be applied to the payment issues related to the eliminated item or work.

Article 1.04.02—Increased or Decreased Quantities of Minor Items, and Elimination of Minor Items: An increase or decrease in the quantity of a Contract item shall be deemed to have occurred for the purposes of these specifications when the total pay quantity of that item (i.e., the total number of units of that item for which payment is due to the Contractor as of the time when the work under that item has been completed) is either more or less than the estimated quantity of that item which was given in the bid proposal form or in the Contract as bid upon (referred to below in this section as the "estimated quantity" of the given item). This article shall apply only to minor Contract items, and not to major items in the original Contract. Any quantity increase or decrease from an estimated quantity, if that increase or decrease results from a significant change in the character of the work as defined in Subsection 1.04.03(4)(a), shall be treated in accordance with the provisions of Article 1.04.03, and shall not be governed by or treated in accordance with the provisions of this article. Any such increase or decrease that occurs as the result of a differing site condition as defined in Article 1.04.04 shall be treated in accordance with the provisions of this article only to the extent that those provisions do not directly conflict with Article 1.04.04. If the

total pay quantity of any minor item varies from the estimated quantity by 25% or less, payment for that item will be made at the original Contract unit price therefore, unless said price is eligible for adjustment under Article 1.04.03. If the total pay quantity of any minor item varies from the estimated quantity by more than 25%, the compensation payable to the Contractor for that item will be determined in accordance with the provisions of this article. If, however, the Engineer and Contractor have executed a construction order specifying the payment to be made for the item, then payment will be made in accordance with the terms of said order. As an alternative to any and all bases for payment described in this article, the Department may, in any circumstance described in this article, make any price or payment adjustment agreed upon in writing by the Department and the Contractor.

(a) Increases of More Than 25 Percent: If the total pay quantity of a minor item exceeds the estimated quantity by more than 25%, the quantity of work in excess of 125% of the estimated quantity shall be paid for (i) by adjusting the Contract unit price for the quantity exceeding 125% (and only for that "excess" quantity) in the manner described in this Article; (ii) at the option of the Engineer, on a cost-plus basis as provided in Article 1.09.04; or (iii) on any basis agreed upon in writing by the Engineer and the Contractor.

If the Engineer does not elect to pay for said excess units on a cost-plus basis or according to such a written agreement, the price or payment adjustment shall be made according to the following principles: The increase or decrease in the unit price for the excess units of the subject item shall be the difference between the original Contract unit price and the actual unit cost, said difference to be calculated in the manner described hereafter, as of the time when work under the item was completed. If the costs of work under such item include fixed costs, all such fixed costs shall be deemed to have been recovered by the Contractor as part of the payments made by the Department for the first 125% of the estimated quantity. Such fixed costs shall therefore be excluded from any computation used to adjust the price or payment for the excess units of the given item. Subject to the above provisions, the actual unit cost of the item to be adjusted shall be determined by the Engineer in the same way that it would be determined if the work were to be paid for on a cost-plus basis as provided in Article 1.09.04.

If, however, the aggregate payment for the excess number of units, if they were paid for at the original, unadjusted Contract price, would be less than $25,000, the Engineer shall not adjust the Contract unit price.

(b) Decreases of More Than 25%: If the total pay quantity of any minor item is less than 75% of the estimated quantity, the original Contract unit price for the item will not be adjusted unless the Contractor gives a written request for such an adjustment to the Engineer. If the Contractor so requests, the quantity of said item performed or provided shall be paid for by (i) adjusting the Contract unit price as hereinafter provided; (ii) at the option of the Engineer, on a cost-plus basis as provided in Article 1.09.04, except that in this kind of instance, the Contractor’s fixed cost shall be included in the calculation; or (iii) on any basis agreed upon in writing by the Engineer and the Contractor.

The unit price paid for the decreased number of units shall not, in any case, be less than the unit price in the original Contract. On the other hand, the aggregate payment for a decreased total pay quantity of a minor item may not exceed the aggregate payment which would be made for the performance of 75% of the estimated quantity at the original Contract unit price for that item.

If the Engineer does not elect to pay for the decreased quantity of units on a cost-plus basis or on a basis established by written agreement, the price or payment adjustment shall be made according to the following principles:

The amount of the adjustment of the original Contract unit price shall be the difference between that unit price and the actual unit cost (including fixed costs), to be calculated as of the time all work under the item has been completed. The Engineer shall determine such actual unit costs in the same way that they would be determined if payment were to be made on a cost-plus basis under Article 1.09.04.

(c) Eliminated Items: If an item is entirely eliminated from the Contract, the Department will pay the Contractor only for costs which it incurred in connection with the eliminated item prior to the date upon which the Engineer provided the Contractor with written notice of said elimination. If the Contractor had ordered Project materials (that conformed to all pertinent Contract requirements) prior to the aforesaid date of notification, and if the orders for said materials could not have been canceled within 2 business days after the date of notification, the Department shall pay the Contractor for said materials at their actual cost to the Contractor. In such a case, the materials shall become property of the State and the actual cost of any further handling necessary to deliver them to the Department shall be assumed by the State. If the materials are returnable to their vendor and if the Engineer so directs, the Contractor shall return the materials to the vendor and the State shall reimburse the Contractor (i) for any reasonable charges made to the Contractor by the vendor for the return of the materials, and (ii) for the actual costs to the Contractor of its handling the materials in returning them to the vendor. Such charges or actual costs to be paid by the Department shall be computed as though the work was being paid for on a cost-plus basis under Articles 1.04.02(b)(ii) and 1.09.04.

Article 1.04.03—Changes in Quantities and Significant Changes in the Character of Work:

(1) The Engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the Contractor agrees to perform the work as altered.
(2) If the alterations or changes in quantities significantly change the character of the work under the contract, whether or not changed by any such different quantities or alterations, an adjustment, excluding loss of anticipated profits, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance

of work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the Contractor in such amount as the Engineer may determine to be fair and equitable.

(3) If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.

(4) The term "significant change" shall be construed to apply only to the following circumstances:

(a) When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction or

(b) When a major item of work, as defined elsewhere in the Contract, is increased in excess of 125% or decreased below 75% of the original Contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125% of original contract item quantity, or in case of a decrease below 75%, to the actual amount of work performed

Article 1.04.04—Differing Site Conditions:

(1) During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the Contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the Contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before they are disturbed and before the affected work is performed.

(2) Upon written notification, the Engineer will investigate the conditions, and if he/she determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the Contract, an adjustment, excluding loss of anticipated profits, will be made and the Contract modified in writing accordingly. The Engineer will notify the Contractor of his/her determination whether or not an adjustment of the Contract is warranted.

(3) No Contract adjustment that results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice.

(4) No Contract adjustment will be allowed under this clause for any effects caused on unchanged work.

Article 1.04.05—Extra Work: Unforeseen work made necessary by the Engineer’s changes of the Contract plans or specifications, or work that is necessary for completion of the Project, but for which no price is provided in the Contract, shall be done in accordance with the requirements of the specifications and as directed by the Engineer. The Engineer shall notify the Contractor of the necessity for such extra work, stipulating its character and extent, and shall notify the Contractor as to whether the Engineer wants the Contractor to propose a unit price or, instead, a lump sum, for the extra work. Within 5 days of receipt of such notification, the Contractor shall advise the Engineer, in writing, of the compensation (as a

unit price or lump sum, whichever has been requested by the Engineer) that the Contractor requests as compensation for the required extra work. The Contractor's request shall be itemized and reasonably detailed, and shall include all known or anticipated direct and indirect costs of the work, including but not limited to, the costs of all safety and other equipment, small tools, labor, subcontractor quotes, consumables, field office overhead, home office overhead, insurance, bonding, and profit. The character and extent of the extra work, together with the basis of compensation, shall be communicated to the Contractor by means of a construction order which, when signed by the Engineer, shall become a part of the Contract. If a Contractor objects to any portion of a construction order submitted to it by the Engineer for signing, and if the Contractor is not willing to sign that order or some portion of that order, the Contractor must, within 15 days of its receipt of said order, return the order with a letter to the Department's Assistant District Engineer administering the Contract, describing specifically what portions of the order the Contractor finds objectionable, the nature of its objections, and the bases for its objections. If the Contractor does not do so, it shall be deemed to have accepted the terms of the construction order. If the Engineer changes the scope of Contract work, the Contractor shall submit a proposed revised schedule and a cost revision proposal, which takes all such changes into account, if the Contractor believes that such revisions are warranted. If the schedule is to be revised, it will be revised in accordance with Article 1.08.08.

Article 1.08.08—Extension of Time: The Contractor may present to the Engineer a request in writing for an extension of Contract time if the time necessary for completion of the Project has been increased due to extra or added work or delays resulting from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, except for weather or seasonal conditions (unless extraordinary and catastrophic). Such causes include, but are not restricted to, natural catastrophes, acts of the State in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the State, the presence of utility facilities (including railroads), fires, strikes, floods, or delays by suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or such suppliers.

The Contractor's plea that insufficient Contract time was allowed under the Contract before commencement of the Project is not a valid reason for extending the Contract time. Requests for an extension of time, with adequate substantiation, must be presented within 60 calendar days from the event that is the basis of the request or from the first effect of such an event on the Project. The Contractor will be responsible for providing all the documentation necessary to support the reasonableness of the additional time requested.

Such requests will be considered by the Engineer and granted to the extent that he deems to be fair and reasonable. Requests will not be considered if based on delays caused by conditions existing at the time the bids were received and of which the Contractor might reasonably be expected to have had full knowledge at that time, or upon delays caused by failure on the part of the Contractor to anticipate properly the requirements of the Project as to materials, labor or equipment. For all Project delays or time increases, except as provided below, additional Contract time is the sole remedy that the Contractor may have, and such

periods of additional Contract time shall be deemed "Non-Compensable Delays." For delays caused by the State in its Contractual capacity, the Contractor may, in addition to a time extension, request additional compensation to reimburse it for damages sustained as a direct result of such delay, and such periods of extended Contract time may be deemed "Compensable Delays."

The period of a compensable delay is limited as follows: (1) it may not include time more than 60 days prior to the Engineer's receiving written notice from the Contractor. with adequate substantiation, of its intent to claim damages for the delay, (2) and it may not include periods of delay for which the State was responsible, but during which the Contractor experienced concurrent delays for which the State was not responsible. Damages for periods of Project delay for which the State had sole responsibility shall be limited to the increased costs incurred by the Contractor (which shall not include lost profits), which the Contractor substantiates and which the Contractor shows were caused by such delays

6. CONTROL OF THE WORK

The following sections of the Form 816 apply to this Agreement and capitalized terms referenced in such sections have the definitions ascribed to them in the Form 816. In the event of any conflict between the following sections of Form 816 and any other provision of the Agreement, the following sections of Form 816 shall govern:

SECTION 1.05 CONTROL OF THE WORK

1.05.01—Authority of Engineer
1.05.02—Plans, Working Drawings and Shop Drawings
1.05.03—Conformity with Plans and Specifications
1.05.04—Coordination of Special Provisions, Plans, Supplemental Specifications and Standard
Specifications and Other Contract Requirements
1.05.05—Cooperation by Contractor
1.05.06—Cooperation with Utilities (Including Railroads):
1.05.07—Coordination with Work by Other Parties
1.05.08—Left Blank
1.05.09—Authority of Inspectors
1.05.10—Inspection
1.05.11—Removal of Defective or Unauthorized Work
1.05.12—Payrolls
1.05.13—Examining and Copying Contractor's Records
1.05.14—Termination Clause
1.05.15—Markings for Underground Facilities
1.05.16—Dimensions and Measurements
1.05.17---Left Blank

1.05.01—Authority of Engineer: All work shall be subject to the review of the Engineer. He shall decide all questions as to interpretation of the plans and specifications, and questions of

mutual or respective rights of the Contractor and other Department contractors. The Engineer shall decide on an acceptable rate of progress, on the manner of performance, and on what shall be deemed acceptable fulfillment of the Contract. The Engineer shall have the right to determine the points at which the Contractor may begin work and the order in which the work shall be prosecuted in the best interests of the State within the intent of the terms in the Contract.

If a Project-related dispute arises between the Contractor and Department personnel assigned to the Project, and if those parties prove unable to resolve it, the Contractor may submit a detailed written description of the dispute to the Department's Assistant District Engineer administering the Contract. It must be understood, though, that at no time may the Contractor, because of its disagreement with the Engineer, either disregard the orders of the Engineer or halt Project construction. If the Contractor cannot resolve a Project work or pricing dispute with the Engineer, the Contractor's proper remedy is a claim under CGS Section 4-61. A Contractor that disregards the orders of the Engineer with regard to the prosecution of Project work, or who refuses to continue Project work because of a disagreement with the Engineer, may be subject to termination of its Contract.

1.05.02—Plans, Working Drawings and Shop Drawings:

1. Plans: The plans prepared by the Department show the details necessary to give a comprehensive idea of the construction contemplated under the Contract. The plans will generally show location, character, dimensions, and details necessary to complete the Project. If the plans do not show complete details, they will show the necessary dimensions and details, which when used along with the other Contract documents, will enable the Contractor to prepare working drawings or shop drawings necessary to complete the Project.

2. Working Drawings: When required by the Contract or when ordered to do so by the Engineer, the Contractor shall prepare and submit 9 copies of the working drawings to the Engineer for review. These drawings shall be submitted sufficiently (at least 30 calendar days) in advance of the proposed use, to allow for their review, and any necessary revisions, without delay of the Project. No work covered by these working drawings shall be done until the drawings have been submitted to the Engineer for review and the Engineer's comments have been appropriately taken into account and implemented. The furnishing of the working drawings shall not serve to relieve the Contractor of any part of its responsibility for the safety or the successful completion of the Project construction.

Any comments or suggestions by the Engineer concerning working drawings prepared by the Contractor shall not relieve the Contractor of any of its responsibility for claims by the State or by third parties, as per Article 1.07.10.

There will be no direct payment for furnishing any working drawings, procedures or supporting calculations, but the cost thereof shall be considered as included in the general cost of the work. The working drawings shall be signed, sealed and dated by a qualified Professional Engineer licensed to practice in the State of Connecticut.

a. Working Drawings for Permanent Construction: Drawings shall be submitted on 22-inch x 34-inch (559-millimeter x 864-millimeter) sheets with a border and title block similar to the Department standard. Calculations, procedures and other supporting data may be submitted in an 8-1/2-inch x 11- inch (216-millimeter x 279-millimeter) format. The Contractor will be required to furnish the Engineer with a complete set of reproducible mylar drawings of all the 22-inch x 34-inch (559- millimeter x 864-millimeter) sheets after all the comments made by the Engineer are resolved. The Contractor's designer who prepares the working drawings, shall secure and maintain at no direct cost to the State a Professional Liability Insurance Policy for errors and omissions in the minimum amount of $1,000,000. The Contractor's designer may, at his election, obtain a policy containing a maximum $250,000 deductible clause, but if the Contractor's designer should obtain a policy containing such a clause, he shall be liable to the extent of at least the deductible amount. The Contractor's designer shall obtain the appropriate and proper endorsement of its Professional Liability Policy to cover the indemnification clause in this Contract, as the same relates to negligent acts, errors or omissions in the Project work performed by him. The Contractor's designer shall continue this liability insurance coverage for a period (1) of 3 years from the date of acceptance of the Project by the Commissioner, as evidenced by a State of Connecticut, Department of Transportation Form Number CON-13, entitled "Certificate of Acceptance of Work and Acceptance of Project," issued to the Contractor, or (2) for 3 years after the termination of the Contract, whichever is earlier, subject to the continued commercial availability of such insurance.

The Contractor shall supply to the Engineer a certificate of insurance in accordance with Article 1.03.07 at the time that he submits the working drawings for the Project.

b. Working Drawings for Temporary Construction: The Contractor may submit to the Engineer drawings, calculations, procedures and other supporting data in any format acceptable to the Engineer.

3. Shop Drawings: When required by the Contract or when ordered to do so by the Engineer, the Contractor shall prepare and submit 9 copies of the shop drawings to the Engineer for review and approval before fabrication. In the case of a structure carrying a railroad, an additional copy of the superstructure shop drawings shall be submitted to the Engineer. When requested to do so by the Engineer, the Contractor shall also furnish the Engineer with a complete set of reproducible mylar drawings of same. Drawings shall be submitted on 22-inch x 34-inch (559-millimeter x 864-millimeter) sheets with an appropriate border and with a title block in the lower right-hand corner of each sheet. Procedures and other supporting data may be submitted on 8½-inch x 11-inch (216-millimeter x 279-millimeter) sheets. After review of such drawings, the Engineer will stamp each drawing as "Approved," "Approved as Noted," or "Revise and Resubmit." Three copies of each drawing stamped as "Approved" or "Approved as Noted" will be returned to the Contractor for its use. No additional copies of a drawing stamped "Approved as Noted" need be resubmitted, but the Engineer's notes must be appropriately taken into account and implemented by the Contractor. In the case of a drawing that is reviewed and stamped "Revise and Resubmit," two copies of the drawing will be returned to the Contractor, which shall take into account and implement all comments; the Contractor shall then resubmit the required number of copies of the revised drawings for review and approval.

If the Contractor proposes a revision of a previously-submitted shop drawing that has been stamped "Approved" or "Approved as Noted," the Contractor shall submit 9 copies of the revised drawing for the Engineer's review. Any such resubmitted shop drawing shall clearly indicate, in a revision block, the date and precise nature of the revision, as well as its location on the revised drawing.

When any shop drawing is stamped "Approved" or "Approved as Noted" by the Engineer, such approval shall not relieve the Contractor from responsibility for omissions, or for errors in dimensions, shop fits, field connections, etc.; or for providing the proper quantity of materials; or for compliance with the Contract; or for the successful completion of the Project. Any approval, comments or suggestions by the Engineer concerning shop drawings prepared by the Contractor shall not relieve the Contractor of any of the Contractor's responsibility for claims by the State or by third parties, as per Article 1.07.10. The Contractor shall submit any drawings to the Engineer at least 30 calendar days in advance of their proposed use in order to allow for their review by the Engineer, as well as for any necessary revision and approval of the drawing, without undue delay of the Project construction.

No work covered by shop drawings shall be done until the drawings have been submitted to the Engineer for review and approved by the Engineer. There will be no direct payment for furnishing any shop drawings, but the cost thereof shall be considered as included in the general Project costs.

1.05.03—Conformity with Plans and Specifications: All work performed and all materials furnished by the Contractor must be, in the opinion of the Engineer, in conformity with the lines, grades, cross-sections, dimensions and material requirements, including tolerances, shown on the plans or indicated in the Contract specifications.

If the Engineer believes that the materials or the finished product in which the materials were used are not in conformity with the plans and specifications, but believes nonetheless that the finished product is acceptable, he will then determine whether or not the work will be accepted and remain in place. If the Engineer believes that the work should be accepted, he will issue a construction order confirming his determination, and may provide therein for any equitable adjustment in the basis of payment which he deems appropriate.

If, in the opinion of the Engineer, any material provided by the Contractor, any finished product in which the materials were used, or any work performed does not conform to the plans and specifications and has resulted in an unacceptable product, the Contractor shall, at its own expense, either cure or remove and replace the unaccepted work and material, as the Engineer directs.

1.05.04—Coordination of Special Provisions, Plans, Supplemental Specifications and Standard
Specifications and Other Contract Requirements: All requirements indicated on the plans or in the
Standard Specifications, the Supplemental Specifications, Special Provisions or other Contract provisions shall be equally binding on the Contractor, unless there is a conflict between or

among any of those requirements. In the case of such a conflict, the order of governance among those requirements, in order of descending authority, shall be as follows:

1. Environmental Permits
2. Environmental Permit Applications
3. Special Provisions
4. Plans other than Standard Sheets (enlarged details on plans, used to clarify construction, shall take precedence over smaller details of the same area; and information contained in schedules or tables, titled as such, shall take precedence over other data on plans)
5. Standard Sheets
6. Supplemental Specifications
7. Standard Specifications and other Contract requirements

Numerical designations of dimensions shall take precedence over dimensions calculated by applying a scale to graphic representations. Neither party to the Contract may take advantage of any obvious error or omission in the Contract. Should either party to the Contract discover such an error or omission, that party shall notify the other party of same immediately in writing. The Engineer will make such corrections and interpretations of the Contract as are necessary, in his judgment, to fulfill the purposes of the Contract that are evident from examining the Contract as a whole.

If the Contract includes an item that does not have a corresponding specification for either performance or payment purposes, the Contractor shall notify the Engineer of that fact in writing at least 2 weeks prior to ordering materials for or commencing work on the item. If the Department’s documents do not contain such a specification, the Engineer shall, if possible, derive an appropriate specification from applicable AASHTO Specifications or, if necessary, ASTM Specifications. If neither of those sources provides a suitable specification, the Contractor shall seek guidance from the Engineer with regard to the item, and the Engineer will formulate a reasonable specification for the item. When compliance with 2 or more standards is specified, and the standards may establish different or conflicting requirements for minimum quantities or quality levels, the Contractor shall refer such issues to the Engineer for a decision before proceeding with the pertinent work.

1.05.05—Cooperation by Contractor: The Contractor will be supplied by the Department with copies of the plans, and the Contractor shall have available on the Project site at all times during the prosecution of the Project, a copy of the Contract plans and specifications. The Contractor shall give the Project constant attention to facilitate the progress thereof, shall cooperate with the Department, and shall promptly comply with all orders and directions of the Engineer.

The Contractor shall at all times during Project construction have on the Project site one of its employees who is thoroughly experienced in the type of work being performed, to supervise the work and accept directions from the Engineer. The Contractor shall always notify the Engineer of the identity of said employee representative in advance of the employee's assignment to that position. The Contractor's representative must have full authority to promptly execute and carry out the orders and directions of the Engineer within the terms of the Contract, and to supply such

materials, equipment, tools, labor and incidentals as may be required by the Contract or by the Engineer.

1.05.06—Cooperation with Utilities (Including Railroads): The Engineer may anticipate that a Project construction activity will require the removal, repair, replacement or relocation of a utility appurtenance. In such an instance, the Engineer, in advance of the commencement of such activity, will notify the affected utilities, either directly or through the local government, of the anticipated nature and timing of said activity. The Engineer will endeavor to have all necessary adjustments of public or private utility fixtures, pipelines, and other appurtenances within or adjacent to the limits of Project construction made as soon as practicable, when such changes are required by the State or local government. Whenever the Engineer determines that the relocation or adjustment of poles or the overhead plant of public or private utilities or railroad facilities is dependent upon the completion of certain required Contract activities, the Contractor shall complete those activities within a reasonable length of time. Temporary and permanent changes required by the State or local government in water lines, gas lines, sewer lines, wire lines, service connections, water or gas meter boxes, water or gas valve boxes, light standards, cableways, signals and all other utility (including railroad) appurtenances within the site of the proposed Project construction are to be made by others at no expense to the Contractor, except as otherwise provided for in the Special Provisions or as noted on the plans.

When the Contractor is required by the Engineer to relocate utility appurtenances, such work will be paid for as extra work unless specific bid items for such work appear in the Contract. If the Contractor, for its convenience or for any other reason, desires a change in the location of a water line, gas line, sewer line, wire line, service connection, water or gas meter box, valve box, light standard, cableway, signal or any other utility (including railroad) appurtenances, the Contractor shall satisfy the Department that the proposed relocation will not interfere with the Contractor's or other contractors' Project operations or their fulfillment of the requirements of the plans, and that said change will not create an obstruction or hazard to traffic. If the requested change of location is acceptable to the Engineer, the Contractor shall make its own request for such relocation work to the utility companies, pipe owners or other parties likely to be affected by said work. Such relocation work shall be done at the Contractor's sole expense.

The Contractor shall schedule its operations in such a manner as to minimize interference with the operations of the utility companies or local governments in effecting the installation of new facilities, as shown on the plans, or the relocation of their existing facilities. The Contractor shall consider in its bid all permanent and temporary utility appurtenances in their present or relocated positions and any installation of new facilities required for the Project. The Department will not make any additional compensation to the Contractor for delays, inconvenience or damage sustained by the Contractor due to (i) interference with Project construction caused by the location, condition or operation of utility (including railroad) appurtenances or (ii) the installation, removal, or relocation of such appurtenances; and the Contractor may not make a claim for any such compensation.

1.05.07—Coordination with Work by Other Parties: The Contractor shall make every effort to perform its work so as not to interfere with other work for the State or other parties. In the case of a dispute with another contractor working for the Department regarding their work for

the State, or in the case of a conflict between their planned operations or the needs of their projects, the Contractor shall bring that dispute or conflict to the Engineer's attention, and the Engineer shall decide how it shall be resolved. The Engineer's decision shall be binding upon all of the contractors working for the Department who are involved in the matter.

The Contractor shall, as far as possible, schedule and otherwise plan and arrange its work, and place and dispose of its Project materials, so as not to interfere with the operations of other contractors working for the State. The Contractor shall, as necessary to accomplish this goal, endeavor to coordinate and schedule its work in the way which will interfere least with the work of other parties.

If the Contractor's work or activities under the Contract come into conflict with other activities or work for the State, any financial or other liability arising from such conflicts shall be the Contractor's; and the Contractor shall protect and save harmless the State from any and all damages or claims, and the costs of defending same, which may arise because of inconvenience, delay, financial hardship, or injuries caused to the Contractor or to other contractors as a result of such conflicts, unless:

(a) The Contractor notifies the Engineer of such conflicts as soon as the likelihood of such a conflict becomes apparent; or, if such likelihood could not have been foreseen earlier, then as soon as the conflict becomes apparent.

(b) The Contractor waits for direction from the Engineer as to how the conflict should be avoided or resolved, and the Contractor does not proceed with the work involved in the conflict until the Engineer has provided the Contractor with such direction.
(c) The Contractor follows the directions given by the Engineer for avoiding, resolving, or minimizing the conflict.

The Contractor shall be responsible for the completion of its Contract work, regardless of any interference with, or delay of, that work which may be caused by the presence or activities of other contractors working for the State.

1.05.09—Authority of Inspectors: Inspectors employed by the Department are authorized to inspect all work done and all materials furnished for Project construction. Such inspection may extend to any part of the Project work, and to the preparation or manufacture of the materials to be used for same. In case of any dispute arising between the Contractor and the inspector as to materials furnished or the manner of performing work, the inspector has the authority to reject material or stop the work until the question at issue can be referred to and decided by the Engineer. The inspector is not authorized to revoke, alter, enlarge, relax, or release any requirements of the Contract, nor to approve or accept any portion of the Contract work, nor to issue instructions contrary to the Contract. The inspector shall in no case act as a foreman, or fulfill other duties for the Contractor. Any advice that the inspector may give to the Contractor shall not be construed as binding the Department in any way, nor as releasing the Contractor from its obligation to fulfill the terms of the Contract.

The conducting, failure to conduct, sufficiency, or accuracy of any inspection does not relieve the Contractor of its responsibility to perform the Project work properly, to monitor its work and the work of its subcontractors, and to institute and maintain quality control procedures appropriate for the proper execution of Project work.

1.05.10—Inspection: All materials and each part or detail of the Project work shall be subject at all times to inspection by the Engineer. Such inspection may include mill, plant, shop or other types of inspection; and any material furnished under the Contract is subject to such inspection. The Engineer shall be allowed access to all parts of the work and shall be furnished with such information and assistance by the Contractor as the Engineer deems necessary to make complete, detailed and timely inspections. The Contractor shall always notify the Engineer of its intention to perform work on the Project, including the nature of the particular work it intends to perform, at least 48 hours before the Contractor commences that work. If, after receiving such notice, the Engineer decides that he needs more than 48 hours to arrange for and conduct inspection related to that work, he shall so notify the Contractor, and the Contractor shall refrain from commencing the work until the Engineer has arranged for such inspection. The Contractor may not commence any portion of its work without prior related inspection by the Engineer unless the Engineer agrees otherwise. In the absence of such advance agreement by the Engineer, any work done or material used without inspection by a Department representative may be ordered exposed for examination and testing, and then corrected or restored, all at the Contractor's expense.

If, at any time before the Department's acceptance of the Project, the Engineer requests the Contractor to remove or uncover any portion of the Project work for inspection by the Engineer, the Contractor shall do so. After such inspection is completed, the Contractor shall restore such portions of the work to the condition required by the Contract as construed by the Engineer. If the work or material exposed and inspected under this provision proves acceptable to the Engineer, the Department shall pay the Contractor for any removal, uncovering or restoration of its previous Contract work. The Department shall pay the Contractor for such removal, uncovering, and restoration of the prior work as extra work. If the work or material exposed and inspected proves, in the opinion of the Engineer, not to conform with Contract requirements, the Contractor shall be responsible for the costs of the removal, uncovering, correction and restoration of the work and material in accordance with the Contract or as the Engineer requires.

1.05.11—Removal of Defective or Unauthorized Work: Work that does not conform to the requirements of the Contract shall be remedied in a manner acceptable to the Engineer or removed and replaced at the Contractor's expense in a manner acceptable to the Engineer.

No work shall be done without appropriate lines and grades having been established in the field. Work done contrary to the instructions of the Engineer, work done beyond the lines shown on the plans, or extra work done without the Engineer's prior written direction to perform it will be considered as unauthorized and the Department will not pay for it. Work so done may be ordered removed or replaced at the Contractor's expense.

If the Contractor fails to comply with any order of the Engineer made under the provisions of this Article, the Engineer has the authority to cause unacceptable or unauthorized work to be remedied or removed and replaced by a party or parties other than the Contractor, and to deduct

the costs of such activities from any monies due or to become due to the Contractor from the Department or any other agency of the State.

1.05.12—Payrolls: For each week of the Project from the first week during which an employee of the Contractor does Project work to which prevailing wage requirements apply, until the last week on which such an employee does such work, the Contractor shall furnish to the Engineer certified copies of payrolls showing (a) the names of the employees who worked on the Project and whose work is subject to prevailing wage requirements, (b) the specific days and hours and numbers of hours that each such employee worked on the Project, and (c) the amount of money paid to each such employee for Project work. Each such payroll shall include the statement(s) of compliance with prevailing wage laws required by the State of Connecticut and, if applicable, by the Federal government. Said payrolls must contain all information required by Connecticut General Statutes Section 31-53 (as it may be revised). For contracts subject to Federal prevailing wage requirements, each payroll shall also contain the information required by the Davis Bacon and Related Acts (DBR). All of the payroll requirements in this Article shall also apply to the work of any subcontractor or other party that performs work on the Project site, and the Contractor shall be responsible for ensuring that each such party meets said requirements. Every Contractor or subcontractor performing Project work is required to post the relevant prevailing wage rates as determined by the State Labor Commissioner and, on federal aid projects, those determined by the United States Secretary of Labor. The wage rate determinations shall be posted in prominent and easily accessible places at the work site.

1.05.13—Examining and Copying Contractor's Records: The Contractor shall permit the Department and its duly-authorized representatives to examine and copy all documents and other records of the Contractor that are relevant to charges for extra work, alleged breaches of Contract, or any formal or informal claim for additional compensation or for damages in connection with the Project.

With the exception noted below, the Contractor shall also permit the Department to examine and copy such of its documents and other records pertaining to the Project as the Department may deem necessary in order to determine whether or not the Contractor has complied with all laws, regulations and other governmental mandates, e.g., those relating to labor compliance, affirmative action programs, and equal employment opportunity. Documents and other records relating to the Project, if they were created prior to the opening of bids for the Contract, and if they are sought by the Department only for the purpose of confirming such compliance with legal requirements, shall, however, not be subject to examination by the Department pursuant to this Article without the consent of the Contractor.

The Contractor further agrees that it shall keep all documents and other records relating to the Project at least until the expiration of 3 years after the date of acceptance of the Project by the Department, as designated in a "Certificate of Acceptance of Work and Acceptance of Project" (CON-13), issued by the Department. If any claims are brought by the Department or the Contractor prior to that expiration, however, the Contractor shall keep all such records until the Department has given the Contractor a full and final release from all pending and potential claims regarding the Project. If the Contractor does not so keep any such records, it may not

assert any formal or informal claim for compensation or damages that could have been substantiated or disproven with such records.

The Contractor shall ensure that the requirements of this provision are made applicable to its subcontractors and suppliers, for the State's benefit, by including the operative language of this Article in its Project subcontracts and purchase agreements.

1.05.14—Termination for Convenience Clause: The State may terminate the Contract whenever the Engineer determines that such termination is in the best interests of the State. Any such termination shall be effected by delivery to the Contractor of a written Notice of Termination specifying the extent to which performance of work under the Contract is terminated and the date upon which said termination shall be effective.

In the case of such a termination, the Department will pay the Contractor at the Contract unit prices for the actual number of units or items of Contract work completed prior to the effective date of termination, or as may be agreed by the parties for such items of work partially completed. No claim for loss of overhead or anticipated profits shall be allowed.

When the volume of work completed is too small to compensate the Contractor under Contract unit prices for its related expenses, the Department may consider reimbursing the Contractor for such expenses. Materials obtained by the Contractor for the Project, if they have been inspected, tested as required, and accepted by the Engineer, but have not been incorporated into the Project construction, shall, if the Engineer and the Contractor so agree, be purchased by the Department from the Contractor at their actual cost as shown by receipted bills. To this cost shall be added all actual costs for delivery at such points of delivery as may be designated by the Engineer, as shown by actual cost records. If the Engineer does not agree to purchase such materials, the Department shall reimburse the Contractor for any reasonable restocking fees and handling costs incurred by the Contractor in returning said materials to the vendor. Termination of the Contract shall not relieve the Contractor of its responsibilities for the completed Project, nor shall it relieve the Contractor's surety of its obligation concerning any claims arising out of the work performed, until the requirements of Article 1.08.13 and 1.08.14 have been met.

1.05.15—Markings for Underground Facilities: In conformance with Section 16-345 of the Regulations of the DPUC, the Contractor is responsible for notifying “Call Before You Dig” prior to commencing any excavation, including milling, reclamation or trenching; and the Contractor shall install a warning tape located a minimum of 12 inches (300 millimeters) above all conduits, wires, cables, utility pipes, drainage pipes, underdrains, or other facility, unless the excavation’s depth, other underground facilities, or other engineering considerations make this minimum separation unfeasible. The warning tape shall be of durable impervious material, designed to withstand extended underground exposure without material deterioration or fading of color. The tape shall be of the color assigned to the type of facility for surface markings and shall be durably imprinted with an appropriate warning message. The tape shall also comply with the specific requirements of the utility that owns the facility.

All tapes, unless otherwise directed by the specific utility, shall be detectable to a depth of at least 3 feet with a commercial radio-type metal locator.

Assigned colors are:
Green—Storm and sanitary sewers and drainage systems, including force mains and other nonhazardous materials
Blue—Water
Orange—Communication lines or cables, including, but not limited to, those used in, or in connection with, telephone, telegraph, fire signals, cable television, civil defense, data systems, electronic controls and other instrumentation
Red—Electrical power lines, electrical power conduits and other electrical power facilities, traffic signals and appurtenances and illumination facilities
Yellow—Gas, oil petroleum products, steam, compressed air, compressed gases and all other hazardous material except water
Brown—Other
Purple—Radioactive materials
Payment for warning tapes shall be included in the bid price for the pay item of the specific facility for which the tape is used.

1.05.16—Dimensions and Measurements: The Contractor or one of its subcontractors shall verify each dimension that is needed in order to ensure that its work complies with the Contract, and must do so before ordering any material or doing any work for which such dimension is needed. Such dimensions include, but are not limited to, dimensions given on the plans, as well as dimensions of structures in place prior to Project construction or installed in the course of construction. The Contractor or any subcontractor that finds a discrepancy or error in dimensions must report it promptly to the Engineer and may proceed with affected work only after receiving clarification and direction from the Engineer regarding the matter. Any costs for delays, changes, cutting or repairs that are incurred due to the Contractor's failure to observe the above requirements shall be borne by the Contractor.

SECTION 1.11 CLAIMS

1.11.01—General
1.11.02—Notice of Claim
1.11.03—Record Keeping
1.11.04—Claim Compensation
1.11.05—Required Claim Documentation
1.11.06—Auditing of Claims

1.11.01–General: When filing a formal claim under Section 4-61 (referred to as “Section 4-61” below) of the C.G.S. (as revised), either as a lawsuit in the Superior Court or as a demand for arbitration, the Contractor must follow the procedures and comply with the requirements set forth in this Section of the Specifications. This Section does not, unless so specified, govern informal claims for additional compensation which the Contractor may bring before the Department. The Contractor should understand, however, that the Department may need, before the Department can resolve such a claim, the same kinds of documentation and other substantiation that it requires under this Section. It is the intent of the Department to compensate

the Contractor for actual increased costs caused by or arising from acts or omissions on the part of the Department that violate legal or contractual duties owed to the Contractor by the Department.

1.11.02–Notice of Claim: Whenever the Contractor intends to file a formal claim against the Department under Section 4-61, seeking compensation for additional costs, the Contractor shall notify the Commissioner in writing (in strict compliance with Section 4-61) of the details of said claim. Such written notice shall contain all pertinent information described in Article 1.11.05 below.
Once formal notice of a claim under C.G.S. Section 4-61 (b) (as revised) has been given to the Commissioner, the claimant may not change the claim in any way, in either concept or monetary amount, (1) without filing a new notice of claim and demand for arbitration to reflect any such change and (2) without the minimum period of six months after filing of the new demand commencing again and running before any hearing on the merits of the claim may be held. The only exception to this limitation will be for damages that continue to accrue after submission of the notice, in ways described and anticipated in the notice.

1.11.03–Record Keeping: The Contractor shall keep daily records of all costs incurred in connection with its construction-related activities on behalf of the Department. These daily records shall identify each aspect of the Project affected by matters related to any claim for additional compensation that the Contractor has filed, intends to file, or has reason to believe that it may file against the Department; the specific Project locations where Project work has been so affected; the number of people working on the affected aspects of the Project at the pertinent time(s); and the types and number of pieces of equipment on the Project site at the pertinent time(s). If possible, any potential or anticipated effect on the Project's progress or schedule which may result in a claim by the Contractor should also be noted contemporaneously with the cause of the effect, or as soon thereafter as possible.

1.11.04 –Claim Compensation: The payment of any claim, or any portion thereof, that is deemed valid by the Engineer shall be made in accordance with the following provisions of this Article:

(a) Compensable Items: The liability of the Department for claims will be limited to the following specifically-identified items of cost, insofar as they have not otherwise been paid for by the Department, and insofar as they were caused solely by the actions or omissions of the Department or its agents (except that with regard to payment for extra work, the Department will pay to the Contractor the mark-ups provided for in Article 1.04.05.):

(1) Additional Project-site labor expenses.
(2) Additional costs for materials.
(3) Additional, unabsorbed Project-site overhead (**e.g.**, for mobilization and demobilization).
(4) Additional costs for active equipment.
(5) For each day of Project delay or suspension caused solely by actions or omissions of the Department, either

(i) an additional ten percent (10%) of the total amount of the costs identified in Subarticles (1) through (4) above; except that if the delay or suspension period prevented the Contractor from incurring enough Project costs under Subarticles (1) through (4) during that period to require a payment by the Department that would be greater than the payment described in subparagraph (ii) below, then the payment for affected home office overhead and profit shall instead be made in the following *per diem* amount:
(ii) six percent (6%) of the original total Contract amount divided by the original number of days of Contract time.
Payment under either (i) or (ii) hereof shall be deemed to be complete and mutually-satisfactory compensation for any unabsorbed home office overhead and any profit related to the period of delay or suspension.

(6) Additional equipment costs. Only actual equipment costs shall be used in the calculation of any compensation to be made in response to claims for additional Project compensation. Actual equipment costs shall be based upon records kept in the normal course of business and in accordance with generally-accepted accounting principles. Under no circumstances shall Blue Book or other guide or rental rates be used for this purpose (unless the Contractor had to rent the equipment from an unrelated party, in which case the actual rental charges paid by the Contractor, so long as they are reasonable, shall be used). Idle equipment, for instance, shall be paid for based only on its actual cost to the Contractor.
(7) Subcontractor costs limited to, and determined in accordance with, Subarticles (1), (2), (3), (4), and (5) above and applicable statutory and case law. Such subcontractor costs may be paid for by the Department only (a) in the context of an informal claims settlement or (b) if the Contractor has itself paid or legally-assumed, present unconditional liability for those subcontractor costs.

(b) Non-Compensable Items: The Department will have no liability for the following specifically-identified non-compensable items:

(1) Profit, in excess of that provided for herein.
(2) Loss of anticipated profit.
(3) Loss of bidding opportunities.
(4) Reduction of bidding capacity.
(5) Home office overhead in excess of that provided for in Article 1.11.04(a)(5) hereof.
(6) Attorneys fees, claims preparation expenses, or other costs of claims proceedings or resolution.
(7) Any other consequential or indirect expenses or costs, such as tort damages, or any other form of expense or damages not provided for in these Specifications or elsewhere in the Contract.

1.11.05 –Required Claim Documentation: All claims shall be submitted in writing to the Commissioner, and shall be sufficient in detail to enable the Engineer to ascertain the basis and the amount of each claim, and to investigate and evaluate each claim in detail. As a minimum,

the Contractor must provide the following information for each and every claim and sub-claim asserted:

(a) A detailed factual statement of the claim, with all dates, locations and items of work pertinent to the claim.
(b) A statement of whether each requested additional amount of compensation or extension of time is based on provisions of the Contract or on an alleged breach of the Contract. Each supporting or breached Contract provision and a statement of the reasons why each such provision supports the claim, must be specifically identified or explained.
(c) Excerpts from manuals or other texts which are standard in the industry, if available, that support the Contractor's claim.
(d) The details of the circumstances that gave rise to the claim.
(e) The date(s) on which any and all events resulting in the claim occurred, and the date(s) on which conditions resulting in the claim first became evident to the Contractor.
(f) Specific identification of any pertinent document, and detailed description of the substance of any material oral communication, relating to the substance of such claim.
(g) If an extension of time is sought, the specific dates and number of days for which it is sought, and the basis or bases for the extension sought. A critical path method, bar chart, or other type of graphical schedule that supports the extension must be submitted.
(h) When submitting any claim over $50,000, the Contractor shall certify in writing, under oath and in accordance with the formalities required by the contract, as to the following:
    1. That supporting data is accurate and complete to the Contractors best knowledge and belief
    2. That the amount of the dispute and the dispute itself accurately reflects what the Contractor in good faith believes to be the Departments liability;
    3. The certification shall be executed by:
        a. If the Contractor is an individual, the certification shall be executed by that individual.
        b. If the Contractor is not an individual, the certification shall be executed by a senior company official in charge at the Contractor's plant or location involved or an officer or general partner of the Contractor having overall responsibility for the conduct of the Contractors affairs.

1.11.06 –Auditing of Claims: All claims filed against the Department shall be subject to audit by the Department or its agents at any time following the filing of such claim. The Contractor and its subcontractors and suppliers shall cooperate fully with the Department's auditors. Failure of the Contractor**,** its subcontractors, or its suppliers to maintain and retain sufficient records to allow the Department or its agents to fully evaluate the claim shall constitute a waiver of any portion of such claim that cannot be verified by specific, adequate, contemporaneous records, and shall bar recovery on any claim or any portion of a claim for which such verification is not produced. Without limiting the foregoing requirements, and as a minimum, the Contractor shall make available to the Department and its agents the following documents in connection with any claim that the Contractor submits:

(1) Daily time sheets and foreman's daily reports.
(2) Union agreements, if any.

(3) Insurance, welfare, and benefits records.
(4) Payroll register.
(5) Earnings records.
(6) Payroll tax returns.
(7) Records of property tax payments.
(8) Material invoices, purchase orders, and all material and supply acquisition contracts.
(9) Materials cost distribution worksheets.
(10) Equipment records (list of company equipment, rates, etc.).
(11) Vendor rental agreements
(12) Subcontractor invoices to the Contractor, and the Contractor's certificates of payments to subcontractors.
(13) Subcontractor payment certificates.
(14) Canceled checks (payroll and vendors).
(15) Job cost reports.
(16) Job payroll ledger.
(17) General ledger, general journal (if used), and all subsidiary ledgers and journals**,** together with all supporting documentation pertinent to entries made in these ledgers and journals.
(18) Cash disbursements journals.
(19) Financial statements for all years reflecting the operations on the Project.
(20) Income tax returns for all years reflecting the operations on the Project.
(21) Depreciation records on all company equipment**,** whether such records are maintained by the company involved, its accountant, or others.
(22) If a source other than depreciation records is used to develop costs for the Contractor's internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents.
(23) All documents which reflect the Contractor's actual profit and overhead during the years that the Project was being performed**,** and for each of the five years prior to the commencement of the Project.
(24) All documents related to the preparation of the Contractor's bid**,** including the final calculations on which the bid was based.
(25) All documents which relate to the claim or to any sub-claim, together with all documents that support the amount of damages as to each claim or sub-claim.
(26) Worksheets used to prepare the claim, which indicate the cost components of each item of the claim, including but not limited to the pertinent costs of labor, benefits and insurance, materials, equipment, and subcontractors’ damages, as well as all documents which establish the relevant time periods, individuals involved, and the Project hours and the rates for the individuals.
(27 The name, function, and pertinent activity of each Contractor’s or subcontractor’s official, or employee involved in or knowledgeable about events that give rise to, or facts that relate to, the claim.
(28) The amount(s) of additional compensation sought and a break-down of the amount(s) into the categories specified as payable under Article 1.11.04 above.
(29) The name, function, and pertinent activity of each Department official, employee or agent involved in or knowledgeable about events that give rise to, or facts that relate to, the claim.

7. DELIVERABLE EVALUATION & ACCEPTANCE

Any Deliverable furnished by Contractor under the terms of this Agreement shall be subject to an evaluation and acceptance testing period prior to acceptance in accordance with Exhibit 7 (as modified by Exhibit 6).

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 45 days of the Acceptance Date of the Deliverable and receipt of Contractor's properly documented invoice, whichever is the later date.
2. All payments for materials or labor performed prior to and in connection with acceptance of the System shall be subject to a 2.5% holdback.
3. The Department shall pay Contractor the total amount of the holdbacks within 90 days after 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 in accordance with the rights and restrictions in Section 14, free of any usage charges, at the Department's convenience at any time during the applicable Term.

c) Contractor may assign any payments in whole or in part, upon prior written notice to the DAS 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 DAS 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) For any Purchase Order issued after the Acceptance Date of the System, 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.

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.

9. LICENSED SOFTWARE MAINTENANCE & SUPPORT

a) After Final Acceptance of the System by the Department and throughout the duration of the Warranty Period, subject to the terms, conditions and charges set forth in this Agreement, Contractor represents and warrants that maintenance and support services for the Licensed

Software shall be provided to the Department, at no additional cost during the Warranty Period, as follows:

1. Contractor shall provide such reasonable and competent assistance as necessary to cause the Licensed Software to perform in accordance with applicable portions of the Specifications;
2. Contractor shall provide Updates to the Licensed Software at no additional cost;
3. Contractor shall provide Upgrades if optioned by the Department, with the cost of Contractor's services to install the Upgrade billed to the Department at the pricing set forth in Exhibit 4, Table 4; and
4. 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.

For the purpose of this Agreement, "Updates" shall mean bug fixes or patches to the Goods or Licensed Software. "Upgrades" shall mean a change to the primary version number of the Licensed Software, generally providing additional features or functionality.

b) Upon expiration of the initial two year Warranty Period, maintenance and support services for the Licensed Software shall be provided by the Contractor on an annual basis as part of the "Technical Support and Warranty Services (Year 3)" and "Technical Support and Warranty Services (Year 4)" for the System provided by the Contractor, if optioned by the Department at the pricing set forth in Exhibit 4, Table 4. In order for the Technical Support and Warranty Services (Year 3) or the Technical Support and Warranty Services (Year 4) to become effective, the Department must issue a Purchase Order to the Contractor in writing for the applicable additional warranty period no less than (30) days prior to the expiration of the current Warranty Period or Technical Support and Warranty Services. For the avoidance of any doubt, the Technical Support and Warranty Services (Year 3) and Technical Support and Warranty Services (Year 4) provide a warranty on the entire System, which warranty is more particularly described in Exhibit 7.

c) If the Department wishes to renew maintenance and support services solely for the Licensed Software after the Technical Support and Warranty Services (Year 4) period, it may enter into a separate maintenance agreement directly with the Licensed Software supplier.

d) Contractor shall maintain sufficient and competent Deliverable support services staff to satisfy the Contractor obligations specified herein for any Deliverable.

e) Contractor shall have full and free access to any Deliverable to provide required services thereon, subject to the Department's access policies.

f) Contractor shall invoice the Department for the applicable Technical Support and Warranty Services (Year 3) and Technical Support and Warranty Services (Year 4) on an annual basis, unless specifically otherwise indicated on the Product & Pricing Schedule. Department shall pay properly documented invoices within 45 days of receipt of such invoice. Payments for maintenance and support services shall not be subject to holdback requirements.

g) Contractor shall keep current any installed Licensed Software by delivering, at no cost or expense to Department, the most current release of said Licensed Software to the Department,

provided that the Department is in the Warranty period, or provided that the Department has paid or will pay the most recent applicable annual maintenance charges quoted to the Department by the Licensed Software supplier under a separate maintenance agreement, all in accordance with Exhibit 7.

h) Contractor may subcontract the performance of this section, including the right to invoice and collect payment, to Trapeze Software Group, Inc. pursuant to a subcontract agreement approved in accordance with Section 33 of this Agreement. Any such subcontract will incorporate by reference the terms and conditions of this Agreement.

10. HARDWARE MAINTENANCE & SUPPORT

a) The Department shall be responsible for Site work required for installation of hardware Deliverable(s) and for time and costs of materials expended or incurred by Contractor to repair damage to hardware Deliverables caused by the Department.

b) During the Warranty Period the Contractor shall not be responsible for the consequences of any hardware Deliverable repairs, adjustments, or modifications performed by any person not representing Contractor, unless the Contractor previously approved the performance of repairs by persons not representing the Contractor.

c) During the Warranty Period, the Contractor shall maintain sufficient installed hardware Deliverable support services staff, replacement hardware Deliverable and ancillary equipment to satisfy the preventive and remedial maintenance requirements of Section 11.

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 specified operating environment. Continued acceptability of the reliability of the System's performance 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 requirements of this Agreement 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 Department service request to remedy any operational System deviation, error, or failure condition(s), and end with documented proof, reasonably acceptable to the Department 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 and not related to a deficiency in the System.
2. Any time during which the Department fails to make the System available for Contractor's remedial service.
3. Any downtime investigated by Contractor which is then determined by the Contractor and the Department to be a non-downtime instance following such investigation.

12. SYSTEM WARRANTIES

a) Contractor represents and warrants that the System shall conform to the terms and conditions of this Agreement and the technical Specifications in Exhibit 7, and be free from defects in material and workmanship upon the Acceptance Date of the System by the Department and for a minimum period through the Warranty Period. With respect to any Goods that the Department begins to use substantially and beneficially for its intended purpose prior to the Acceptance Date of the System, the Warranty Period for those Goods will commence upon such use by the Department and will not run conterminously with the Warranty Period for the System.

b) Additionally, during the Warranty Period for the System, 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, excluding the Goods, if any, whose warranty has expired.

c) The Warranty Period for the System may be extended in accordance with the terms and conditions of Section 9.b) of this Agreement.

d) 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, the DAS shall give Contractor written notice of performance deficiencies. Contractor shall then have not more than a thirty (30) calendar day period, unless otherwise permitted by the Department, to correct the applicable deficiency and restore the functioning of the System to a level of operation that meets the requirements of this Agreement.

e) In the event of a material default by the Contractor under the subsection above, in addition to any other rights or remedies provided in this Agreement, DAS may, by written notice to Contractor, terminate this Agreement.

13. OTHER WARRANTIES

a) 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. 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 after the Acceptance Date, the ongoing performance of the Deliverable does not conform to the Specifications for such Deliverable and the System consequently fails to conform to the Section 11 provisions of this Agreement, Department shall give Contractor written notice of performance deficiencies, which it may transmit to Contractor by facsimile or electronic means and shall be considered received on the business day that it is received by such means. Upon receipt of the written notice, Contractor shall then address the performance deficiencies as outlined in Exhibit 5 – Service Level Agreement and commence to take all commercially reasonable action to correct such deficiencies. Additionally, if the Contractor anticipates that correction of the performance deficiency cannot be completed within seven (7) calendar days from the date of receipt of written notice from the Department, Contractor shall submit to the Department a Corrective Action Plan within such seven (7) day period (which Corrective Action Plan, among other things, will set forth an estimate of how long it will take the Contractor to remedy the performance deficiencies). If the number of days in which the Contractor fails to comply with its obligation to timely submit a Corrective Action Plan exceeds seven (7) days, and said performance continues to be in nonconformance with said Section 11, the Contractor shall be in material default of this Agreement and DAS, at its option, may thereupon take any one or more of the following actions:

1. Require Contractor replace said Deliverable at Contractor's expense with a functional Deliverable or competent Service;
2. Pursue any other remedies available to DAS under this Agreement.

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. LICENSED SOFTWARE

a) The Contractor and Department hereby acknowledge Trapeze Software Group, Inc. (together with its successors and/or assigns, “Trapeze”) is the current owner of the Licensed Software or is providing third party Licensed Software through a valid software license. Contractor hereby warrants and represents Contractor has obtained from Trapeze the right to assign the Licensed Software to Department, subject to the rights and restrictions set forth in this section.

b) Department shall have a perpetual, personal, non-transferable, non-exclusive license to use a production copy of the object code version of the Licensed Software in the form as licensed by Trapeze, and supplied by Contractor and on hardware approved by Contractor, restricted to the places of business of the Department, for the Department's own operations, in accordance with the operational characteristics described in Exhibit 4.

c) Department shall have a personal, non-transferable, non-exclusive license to use the user documentation and training materials pertaining to the Licensed Software as licensed by Trapeze and supplied by Contractor ("Documentation"), but only as required to exercise the license granted herein.

d) For the duration of the license, Department may make and maintain one back-up copy of the Licensed Software. Department may use the production copy of the Licensed Software solely to process Department's own data, and the Licensed Software may not be used on a service bureau or similar basis to process data of others. If the Department engages the services of a third party service provider to take over some or all of the Department's operational functions, the Department may assign its license rights to the service provider subject to Department's notification to Contractor of such sublicense and Contractor's consent to such sublicense, which shall not be unreasonably withheld. Department shall be responsible for any use of the Licensed Software by such third party service provider, and any breaches of the license by such third party service provider shall be treated as breaches by Department.

e) The license to use any transit database as licensed by Trapeze and supplied by Contractor is granted to Department solely for the development of internal reports by Department and for the integrated operation of the Licensed Software. Unless expressly included herein, all other access rights to transit databases as licensed by Trapeze and supplied by Contractor are excluded from this Agreement, and the Department shall not develop or use, or authorize the development or use of, any other interfaces to or from the transit databases licensed by Trapeze and supplied by Contractor.

f) In the event any Licensed 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:

a. If the Deliverable is 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. If the Deliverable is a lump-sum payment license, Contractor shall promptly refund the Department any license fee paid by the Department to the Contractor for the Licensed Software Deliverable as 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

g) Contractor shall not have any liability for any infringement claim or proceeding based on the Department's use of a Deliverable for which it was neither designed nor intended.

h) Any Alteration of a Licensed Software Deliverable by the Department without prior written consent of Contractor shall void the obligations of Contractor under Section 9, 11, 12 and 13 for such Deliverable.

i) Neither the State nor the Department will reproduce, 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.

j) The Department shall use the Licensed Software only in the pursuit of its own business operations. The Department shall not sell, lease, license or otherwise transfer with or without consideration, the Licensed Software 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 Licensed Software.

k) DAS and the Department shall exercise at least the same degree of care to safeguard the Licensed Software, documentation, and other related information (including all modifications of the Licensed Software developed for the Department) disclosed to the Department under this Agreement and the confidential and proprietary information of or supplied by Contractor, provided such documentation and information is clearly identified as confidential or proprietary by the Contractor, as DAS and the Department does their own property of a similar nature and shall take reasonable steps to assure such information received by DAS or the Department under this Agreement shall not be disclosed for reasons other than their own business operations. Such prohibition on disclosures shall not apply to disclosures by DAS or the Department to its employees or its representatives, provided such disclosures are reasonably necessary to the Department's use of the Deliverable, and provided further that DAS and the Department shall take all reasonable steps to ensure that the Deliverable is not disclosed by such parties in contravention of this Agreement. DAS's and the Department's performance of the requirements of this section shall be subject to the State of Connecticut Freedom of Information Act ("FOIA"),

as amended. DAS and the Department shall make reasonable efforts to notify the Contractor in the event this Agreement is the subject of an action before the Freedom of Information Commission; provided that, in no event will DAS or the Department have any liability for any failure to so notify the Contractor. Neither DAS nor the Department will have any obligation to initiate, prosecute or defend any legal proceeding or to seek a protective order or other similar relief to prevent disclosure of any information that is sought pursuant to a FOIA request. The Contractor shall have the burden of establishing the availability of any FOIA exemption in any proceeding where it is an issue.

l) Any and all inventions or improvements to computer programs and/or base software specifically developed by the Contractor and paid for by the Department pursuant to this Agreement shall be become the property of the State. The State shall retain all ownership rights to any such inventions or improvements. The Department hereby acknowledges the work in Exhibit 2 will not result in an invention or improvements to computer programs and/or base software that would vest an ownership interest in the State under this section.

m) Contractor's subcontract with Trapeze shall expressly ratify and incorporate the rights and obligations of this section.

n) Contractor shall provide pricing, at actual cost plus reasonable overhead, within eighteen months from the Effective Date of this Agreement, for an option to be exercised at the Department's discretion for placement of the Source Code (as defined below in this section) into escrow, pursuant to the requirements set forth in subsection (b) below. If so optioned by the Department, the Source Code escrow would go into effect on the day of Final Acceptance of the System by the Department and extend through the duration of the Warranty Period, or such other period as the parties agree in writing. "Source Code" is defined as the Licensed Software, including all corresponding programmer's comments, data files and structures, headers, files, macros, annotations, and documentation.

The Contractor shall meet the following escrow requirements:

1. Contractor shall arrange for a complete copy of the version of the Licensed Software delivered to the Department and Source Code to be deposited with the escrow agent Trapeze has under contract on the date of Final Acceptance of System by the Department ("Escrow Date"). The escrow agent will be an independent third party. On the Escrow Date, the Contractor shall provide the Department with written confirmation that Contractor or Trapeze has made such a deposit. Contractor shall arrange for updates of the escrow deposit with all modifications and changes to the Licensed Software which have been implemented by the Department and shall deposit a renewed copy of such Source Code whenever the Licensed Software has been updated by the Licensed Software supplier, subject to the Department's implementation of such update. The Source Code deposited shall include comments, explanations, and instructions to compile the Licensed Software, and all Licensed Software utilities and other materials necessary for use of the Source Code. The costs of the escrow shall be paid by the Contractor upon receipt of such payment from the Department.

2. The Release Conditions shall be (i) the bankruptcy of Trapeze; or (ii) the liquidation, dissolution or winding up of Trapeze. Regarding any release to the Department of the Source Code as provided in the Agreement, the Licensed Software provider shall continue to possess ownership rights for the Source Code, and the Department shall have the right to use, copy and modify the Source Code solely in order to use and support the Licensed Software in accordance with the Agreement, including the right to engage the services of a third party service provider to assist the Department to use and support the Licensed Software.

15. CONFIDENTIALITY; NONDISCLOSURE

The State shall exercise at least the same degree of care to safeguard any Trade Secrets or confidential information of Contractor 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 operations. 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 all reasonable steps to ensure that the Deliverable is not disclosed by such parties in contravention of this Agreement. The State's performance of the requirements of this section shall be subject to the State of Connecticut Freedom of Information Act, as amended.

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 DAS, 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 DAS, 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 the Health Insurance Portability and Accountability Act of 1996 or any provisions of this Agreement concerning the obligations of the Contractor as a business associate (as such term is defined in 45 C.F.R. § 160.103) of DAS or the Department.

17. LIQUIDATED DAMAGES

a) Contractor shall have until the 11:59 p.m. local time on January 16, 2015 to complete the requirements of this Agreement. Contractor shall be deemed to have completed the requirements of this Agreement upon the Department's acceptance of the System in accordance with Exhibit 7. If Contractor fails to complete such requirements within the time limits set forth in this subsection, Contractor shall pay Department liquidated damages in the amount of $10,000.00 per each day following January 16, 2015 through January 30, 2015, and $12,500.00 per each day following January 30, 2015 through but not including the date that the Contractor completes such requirements. If Contractor can reasonably foresee that it will not complete the requirements of this Agreement on or before 11:59 p.m. local time on January 16, 2015, then Contractor shall deliver notice thereof the Department on or before January 2, 2015.

b) In addition to the total project time set forth in section a) above, Contractor shall complete Milestone 1, as that milestone is defined in Exhibit 3, on or before 11:59 p.m. local time on April 10, 2014. Milestone 1 will be deemed completed upon completion and acceptance of the System Demonstration Test as required in Specification 204 of Exhibit 7 to the satisfaction of the Department, to be confirmed in writing by a Department engineer that the requisite work and time requirements have been satisfied. If Contractor fails to complete Milestone 1 within the time limits set forth in this subsection, Contractor shall be responsible for liquidated damages in the amount of $500.00 per day for each day following April 10, 2014 through April 25, 2014, and $2,367.00 per day for each day following April 25, 2014, through but not including the date that the Contractor completes Milestone 1. If Contractor can reasonably foresee that it will not complete Milestone 1 on or before 11:59 p.m. local time on April 10, 2014, then Contractor shall deliver notice thereof the Department on or before March 29, 2014.

c) In addition to the total project time set forth in section a) above, Contractor shall complete Milestone 2, as that milestone is defined in Exhibit 3, on or before 11:59 p.m. local time on December 3, 2014. Milestone 2 will be deemed completed upon completion and acceptance of the Installation Testing as required in Specification 205 of Exhibit 7 to the satisfaction of the Department, to be confirmed in writing by a Department engineer that the requisite work and time requirements have been satisfied. If Contractor fails to complete Milestone 2 within the time limits set forth in this subsection, Contractor shall be responsible for liquidated damages in the amount of $1,000.00 per day for each day following December 3, 2014 through December 17, 2014, and $2,266.00 per day for each day following December 17, 2014, through but not including the date that the Contractor completes Milestone 2. If Contractor can reasonably foresee that it will not complete Milestone 2 on or before 11:59 p.m. local time on December 3, 2014, then Contractor shall deliver notice thereof the Department on or before November 20, 2014.

d) Notwithstanding anything herein to the contrary, the Contractor's aggregate liability under this Section 17 shall be limited to Three Hundred Twenty Five and 00/100 Dollars ($325,000.00).

e) Further notwithstanding anything herein to the contrary, the Contractor's obligations under Subsection (b) and (c) of this Section 17 shall be subject to the following condition precedent:

1. The Contractor receives from the Department the written notice to proceed ("NTP") under this Agreement on or before 7:00 p.m. local time on September 12, 2013.

f) Further notwithstanding anything herein to the contrary, the Contractor's obligations under this Section 17 shall be subject to the following condition precedent:

1. That the Department has timely performed its obligations hereunder to the extent that any such obligations have an impact on the Contractor's time schedule and its ability to satisfy its obligations hereunder and not incur any liability under this

Section 17, including the Department's obligations to permit Contractor's full, unencumbered access to specified locations for and relating to the installation of the System, and access to specified vehicles in the specified quantities on or before the dates specified herein.

g) If the Department does not deliver NTP to the Contractor on or before 7:00 p.m. eastern time on September 12, 2013, the Department and the Contractor agree to negotiate, in good faith, to make appropriate adjustments to the (i) schedule, scope of work, and lump sum price pursuant to Article 1.09.04 of Section 5, and/or (ii) liquidated damages in order to ensure that the Contractor will complete performance by January 16, 2015. The parties agree that each will make every reasonable effort to commence such negotiations promptly after NTP in order that they conclude such negotiations by no later than the target completion date of Milestone 1, April 10, 2014 or such other date to which the parties agree. For the purposes of this subsection, "deliver" shall include the delivery of NTP by email or telefax to the Contractor contact identified in Section 23. The Department will make reasonable efforts to provide Contractor access to all "Access Constraint(s)" prior to dates as outlined in Exhibit 3 of this Contract.

18. RISK OF LOSS & INSURANCE

The following sections of the Form 816 apply to this Agreement and Capitalized terms referenced in such sections have the definitions ascribed to them in the Form 816. In the event any conflict between the following sections of Form 816 and any other provision of the Agreement, the following sections of Form 816 shall govern:

Article 1.03.07—Insurance: Before the Contract is executed, the Contractor must file with the Commissioner a certificate of insurance, executed by an insurance company satisfactory to the Commissioner, on the form provided by the Department, stating that with respect to the Contract, the Contractor carries insurance at least in accordance with the requirements and stipulations listed below. State of Connecticut, Department of Transportation, Form Number CON-32 entitled "CERTIFICATE OF INSURANCE" shall be the only acceptable form to be used by the Contractor as evidence of required insurance coverage. Continuance of the required insurance during the entire term of the Contract shall be the responsibility of the Contractor and is a condition of the Contract.

<u>The State must be named as an additional insured party for that the Contractor secures Excess/Umbrella Liability Insurance to meet the minimum requirements specified in paragraph 2, 3, or 6 below, the State shall be named as an additional insured.</u>

1. Worker's Compensation Insurance: With respect to all operations the Contractor performs and all those performed for it by subcontractors, the Contractor and each such subcontractor shall carry Workers' Compensation Insurance in accordance with the requirements of State law. Each such contractor's Workers' Compensation policy shall contain the U.S. Longshoreman's and Harbor Workers' Act endorsement when work is to be performed over or adjacent to a navigable water.

2. Commercial General Liability Insurance: With respect to the operations it performs and also those performed for it by subcontractors, the Contractor shall carry commercial general liability insurance, including Contractual Liability Insurance, which shall provide coverage of at least $1,000,000 for each accident or occurrence resulting in damages from (1) bodily injury to or death of persons and/or (2) injury to or destruction of property. Subject to that limit per accident or occurrence, the policy shall provide a total or aggregate coverage of at least $2,000,000 for all pertinent damages arising during the policy period.

3. Automobile Liability Insurance: The Contractor shall obtain automobile liability insurance covering the operation of all motor vehicles, including those hired or borrowed, that are used in connection with the Project; said insurance shall provide coverage of at least $1,000,000 for each accident or occurrence resulting in damages from (1) bodily injury to or death of persons and/or (2) injury to or destruction of property. If an insurance policy shows an aggregate limit as part of the automobile liability coverage, the aggregate limit as part of the automobile liability coverage, the aggregate limit must be at least $2,000,000.

4. Owner's and Contractor's Protective Liability Insurance for and in the Name of the State: With respect to the Contractor's Project operations and also those of its subcontractors, the Contractor shall carry, for and on behalf of the State, insurance which shall provide coverage of at least $2,000,000 for each accident or occurrence resulting in damages from (1) bodily injury to or death of persons and/or (2) injury to or destruction of property. Subject to that limit per accident or occurrence, the policy shall provide an aggregate coverage of at least $2,000,000 for all pertinent damages arising during the policy period.

5. Railroad Protective Liability Insurance: When the Contract involves construction or demolition work within fifty (50) feet of the railroad right-of-way or DOT-owned rail property, the Contractor shall carry, with respect to its Project operations and also those of its subcontractors, Railroad Protective Liability Insurance providing coverage of at least $2,000,000 for each accident or occurrence resulting in damages from (1) bodily injury to or death of all persons and/or (2) injury to or destruction of property. Subject to that limit per accident or occurrence, the policy shall provide an aggregate coverage of at least $6,000,000 for all damages during the policy period and with all of the following entities, as applicable, as the named insured parties: (i) the owner of the railroad right-of-way; (ii) the owner of any railcar licensed or permitted to travel within that affected portion of railroad right-of-way; (iii) the operator of any railcar licensed or permitted to travel within that affected portion of the railroad right-of-way; (iv) the DOT; and (v) any other party with an insurable interest.

6. Blasting: When explosives are to be used for the Project, the insurance required under paragraphs 2, 4 and 5 above shall also contain provisions for protection, in the amounts stated, against damage claims regarding such use of explosives.

7. Termination or Change of Insurance: Each insurance policy required by this Article must be endorsed to provide that the insurance company shall notify the Department by certified mail at least 30 days in advance of the termination or any alteration of the terms of the policy. No such change shall be made without the prior written approval of the Commissioner.

The Contractor shall keep all the required insurance in continuous effect until the date that the Department designates for the termination of the Contractor's responsibility, as determined under Article 1.08.13.

9. Compensation: There shall be no direct compensation allowed the Contractor on account of any premium or other charge necessary to obtain and keep in effect any insurance or bonds in connection with the Project, but the cost thereof shall be considered included in the general cost of the Project work.

10. Protection and Indemnity Insurance for Marine Construction Operations in Navigable Waters: If a vessel of any kind will be involved in Project work, the Contractor shall obtain the following additional insurance coverage:

A. Protection and Indemnity Coverage of at least $300,000 per vessel or equal to at least the value of hull and machinery, whichever is greater.

B. If there is any limitation or exclusion with regard to crew and employees under the protection and indemnity form, the Contractor must obtain and keep in effect throughout the Project a workers' compensation policy, including coverage for operations under admiralty jurisdiction, with a limit of liability of at least $300,000 per accident or a limit equal to at least the value of the hull and machinery, whichever is greater, or for any amount otherwise required by statute.

11. **Insurance Company Authorized Pursuant to State of Connecticut Law.** The required insurance coverage must be provided by an insurance company or companies, with each company, or if it is a subsidiary then its parent company, authorized, pursuant to the Connecticut General Statutes, to write insurance coverage in the State of Connecticut and/or in the state in which it, or in which the parent company, is domiciled. In either case, the company must be authorized to underwrite the specific line coverage.

12. **Certificate of Insurance**. The Municipality shall provide to the Department evidence of all required insurance coverages by submitting a Certificate of Insurance on the form(s) acceptable to the Department fully executed by an insurance company or companies satisfactory to the Department.

13. **Copies of Policies**. The Contractor shall produce, and require any subcontractor, as applicable, to produce, within five (5) business days, a copy or copies of all applicable insurance policies when requested by the Department. In providing said policies, the Contractor or subcontractor may redact provisions of the policy that are proprietary. This provision shall survive the suspension, expiration or termination of the Contract. The Contractor agrees to notify the Department with at least thirty (30) days prior notice of any cancellation or change in the insurance coverage required under this Contract.

Article 1.08.13—Termination of the Contractor's Responsibility: The Contractor's responsibility for non-administrative Project work will be considered terminated when the final inspection has been held, any required additional work and final cleaning-up have been

completed, all final operation and maintenance manuals have been submitted, and all of the Contractor's equipment and construction signs have been removed from the Project site. When these requirements have been met to the satisfaction of the Engineer, the Commissioner will accept the work by certifying in writing to the Contractor that the non-administrative Project work has been completed.

19. DELIVERABLE ALTERATIONS

a) This section applies only to Deliverables that do not include or incorporate Licensed Software as an operational component and applies only to Alterations made during the Warranty Period.

b) During the Warranty Period, Alterations of a 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 Department.

c) If any Deliverable Alteration made by the Department 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.

Any Alteration of a Deliverable by the Department without prior written consent of Contractor shall void the obligations of Contractor under Section 11, 12 and 13 for the Deliverable. When providing the Department with written consent to the Alteration of a Deliverable, Contractor shall specify which parts of the Deliverable being altered will continue to be subject to Section 11, 12 and 13 and which will not.

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. RESERVED

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 shall 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 State in Section14.

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 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.

n) Exhibit 8 is attached to and made a part of this Agreement and contains drawings relevant to the Deliverables and more particularly referenced in Exhibit 2 and Exhibit 7 to this Agreement.

o) Exhibit 9 is attached to and made a part of this Agreement and contains Federal Requirements to which the Agreement is subject.

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:

<u>State:</u> Connecticut Department of Administrative Services
Director of Procurement
165 Capitol Avenue
Hartford, CT 06106

<u>Contractor:</u> McPhee Electric, Ltd.
Marcus McPhee, President
505 Main Street
Farmington, CT 06032

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. INTENTIONALLY OMITTED

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, DAS 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) In the event of a breach, DAS may require the Contractor to prepare and submit to DAS or the Department a Corrective Action Plan in connection with an identified breach. The Corrective Action Plan shall 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 Contractor shall submit the Corrective Action Plan within ten (10) business days following the request for the plan by the State and is subject to approval by the Department or DAS, which approval shall not unreasonably be withheld. Notwithstanding the submission and acceptance of a Corrective Action Plan, Contractor remains responsible for achieving all Performance criteria. The acceptance of a Corrective Action Plan shall not excuse prior substandard Performance, relieve Contractor of its duty to comply with Performance standards, or prohibit the State from pursuing additional remedies or other approaches to correct substandard Performance.

c) 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).

d) If the Department reasonably and in good faith determines the Contractor has not Performed in accordance with the Agreement, the State may withhold payment in whole or in part in an amount reasonably related to the non-performance 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.

e) Notwithstanding any provisions in this Agreement, DAS 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.

f) 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 DAS, through a duly authorized employee, may Terminate the Agreement whenever the DAS makes a written determination that such Termination is in the best interests of the State. The DAS 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 DAS, 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 DAS 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 DAS for purposes of correspondence, or by hand delivery. Upon receiving the notice from the DAS, the Contractor shall immediately discontinue all services affected in accordance with the notice, undertake 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. Such transfer of Records shall not transfer ownership of intellectual property contained in such Records.

d) Upon receipt of a written notice of Termination from DAS, the Contractor shall cease operations as DAS directs in the notice, and take all actions that are necessary or appropriate, or that DAS may reasonably direct, for the protection, and preservation of the Goods and any other property. Except for any work which DAS 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 or for

any Goods delivered by Contractor, in addition to all reasonable actual or committed costs, including Contractor's demobilization 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 relating to work not Performed. Upon request by DAS, the Contractor shall assign to DAS or the Department, or any replacement contractor which DAS or the Department designates, all subcontracts, purchase orders, 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 DAS may request.

f) For breach or violation of any of the provisions in the section concerning Representations and Warranties, the DAS 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 the Agreement by the State.

30. REPRESENTATIONS AND WARRANTIES

At the time this Agreement is signed by Contractor, 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 twenty (20) calendar days after becoming 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 are not delinquent in the payment of 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 Agreement and that all appropriate parties shall also provide, no later than fifteen (15) days after receiving a request from DAS or the Department, such information as DAS or the Department may require to evidence, in their sole determination, compliance with this section;

t) they either own or have the authority to use all the Goods;

u) to the best of Contractor's knowledge, 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 twenty (20) calendar days after becoming 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 with minimal 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 minimal disruption or interruption in Performance as required or permitted in the Agreement. The Contractor shall not enter into any subcontract for any part of the Performance under the Agreement 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 DAS, F.O.B. Hartford, Connecticut or other State location which DAS 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 DAS, during the DAS'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 DAS, F.O.B. Hartford, Connecticut or other location which DAS identifies, all Deliverables, no later than 10 days from the date that the work under the SOW or Agreement is transferred back to the State or to another contractor for any reason. The Contractor shall deliver such Deliverables to DAS, during the DAS's

business hours, in good working order, and if 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 DAS, F.O.B. Hartford, Connecticut or other State location which DAS identifies, all Public Records created or modified pursuant to the Agreement, Statement of Work, subcontract or amendment and requested in writing by DAS (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 State or to another contractor for any reason. The Contractor shall deliver to DAS 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 DAS, during DAS'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 Agreement 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 and defend 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 for the acts or 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 DAS and, if requested, the Department prior to the effective date of the Contract. The Contractor shall not begin Performance until the delivery of the policy to DAS. The State shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that the State is 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, 14 and 19 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 State 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. "Contract" 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. INTENTIONALLY OMITTED

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

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

MCPHEE ELECTRIC LIMITED	STATE OF CONNECTICUT,
BY: ______________________________	BY: ______________________________
NAME: Marcus W. McPhee	NAME: Martin W. Anderson, Ph.D.
TITLE: President	TITLE: Deputy Commissioner
Duly Authorized	Department of Administrative Services
	Duly Authorized
DATE: ___________________________	DATE: ___________________________

APPROVED AS TO FORM:
OFFICE OF THE ATTORNEY GENERAL

BY: ______________________________
JOSEPH RUBIN
ITS ASSOCIATE ATTORNEY GENERAL

DATE: ___________________________