

**AGREEMENT**  
**BETWEEN**  
**the Connecticut State Colleges and Universities, on behalf of the Regional Community-Technical College**  
**System**  
**AND**  
**Assessment Technologies Institute, LLC**

This Agreement ("Contract") is entered into by and between the Connecticut State Colleges and Universities, on behalf of the Regional Community-Technical College System, a constituent unit of the State of Connecticut System of Higher Education, with an address of 61 Woodland Street, Hartford, Connecticut 06105 (hereinafter the "Institution" or "CSCU"), and Assessment Technologies Institute, LLC (hereinafter the "Contractor" or "ATI") with a principal place of business at 11161 Overbrook Road, Leawood, KS 66211 to provide ongoing standardized testing and reporting for students enrolled in the Connecticut Community College Nursing Program (CT-CCNP).

**I. GENERAL**

The Contractor shall provide ongoing standardized testing and reporting intended to measure student mastery of concepts and predict individual student success on the National Council Licensing Examination for Registered Nurses (NCLEX-RN) to students enrolled in the Connecticut Community College Nursing Program (CT-CCNP). The Contractor shall also provide student remediation and post-graduate NCLEX-RN Exam Preparation, as further described below.

Graduates of the CT-CCNP nursing program are awarded the Associate in Science Degree in Nursing and are eligible to take the National Council Licensing Examination for Registered Nurses. Six Community Colleges ("Colleges") in Connecticut currently offer the Nursing Program:

|  |           |
|--|-----------|
| Capital Community College                  | Hartford  |
| Gateway Community College                  | New Haven |
| Naugatuck Valley Community College         | Waterbury |
| Northwestern Connecticut Community College | Winsted   |
| Norwalk Community College                  | Norwalk   |
| Three Rivers Community College             | Norwich   |

**A. ATI's Comprehensive Assessment and Review Program (CARP):**

**1. Student Testing / Assessments:**

Student testing shall be provided each semester, designed to provide assessment data regarding student mastery of concepts within specific nursing content areas. ATI shall be responsible for the development, updates and security of all of the standardized tests described below. Tests shall be kept up to date with the National Council Licensing Examination for Registered Nurses (NCLEX-RN) test plan. Any test plan changes in the NCLEX-RN examination shall be integrated into the program as soon as the change is approved for implementation. ATI shall also integrate all of the latest techniques and practices in the industry for high stakes testing, i.e. security, fire walls, instant results, web based testing to include detailed feedback, references for students, and questions that are presented in multiple and / or alternate formats as per the NCLEX-RN.

ATI assessments and remediation resources shall be available to the CSCU and CT-CCNP Colleges online. Paper / Pencil Tests shall also be available and shall be shipped at the request of each College, at no additional charge.

Assessments include:

- a. **Standardized Proctored Assessments:** Eighteen (18) nationally normed standardized assessments designed to provide assessment data regarding student's mastery of concepts in specific areas linked to the NCLEX test plan.
- b. **NCLEX Comprehensive Predictor:** Two (2) *equated* nationally normed, standardized comprehensive assessments that provide the student's probability of passing NCLEX on their first attempt. Includes two (2) Comprehensive Predictor online practice tests.
- c. **Online Content Practice Assessments:** Thirty (30) content specialty assessments with correct/incorrect rationales.
- d. **Custom Assessment Builder:** allows faculty to build custom assessments from ATI's 3,500+ test bank or by importing their own test items/questions. The Custom Assessment Builder provides the opportunity for each College to build their individual item/test bank in addition to the ability to combine college based item/test banks into a systemwide item/test bank accessible at the individual College and system level. The Custom Assessment Builder affords faculty the ability to acquire standard overall test data analysis (i.e. measures of central tendency, variability, score distribution) in addition to individual test item analysis (i.e. p value, point biserial).

- e. Learning System: Thirty Five (35) content specific practice tests across all nursing content areas. These assessments are designed to be student driven, yet provide structured, guided support as ongoing practice to NCLEX content and critical thinking skills.

2. Remediation:

Remediation shall be available to students on an ongoing basis during each semester, to continually support mastery of concepts as they are presented.

- a. Review Modules: Nine (9) hard copy review books per content area offer a remediation source for review and remediation that is directly tied to the NCLEX Blueprint.
- b. Online E-Media series: 30+ hours of embedded audio/visual content which links students to the video that is relevant for that specific content area.
- c. Online Focused Reviews: Customized, focused remediation tool including audio and visual content review as well as text format remediation. The review is based on each student's individual results and shall be available for all proctored and practice assessments.

3. Reporting:

Multiple reporting options shall be available to faculty and staff at the CSCU and at each participating CT-CCNP College, and also available to students as appropriate. CSCU shall have the ability to create custom reports in addition to accessing basic reports, all at no additional cost. Basic reports include, but may not be limited to:

- a. Individual Performance Reports offer direct feedback on student performance in a specific content area.
- b. Group Performance Reports combine student reports with larger group performance in specific content areas at the college and aggregate/system level.
- c. Grade Book Report offers the ability to track students' individual scores across the curriculum, and indicates if they met institutional benchmarks.
- d. Longitudinal / Data Trending Report compares specific content performance with different classes to best understand gaps in the curriculum and what is taught versus what is learned.
- e. Nursing Outcomes Reports provide individual and / or group performance on specific nursing outcomes.
- f. Individual Transcript Reports provide a score, date, and time for every assessment and attempt a student makes.
- g. Tutorial Reports allow faculty to track student usage and time spent in tutorials as well as the scores for practice tests.
- h. Question Analysis Reports show how each student answered a question for a specific test.
- i. Critical Thinking Analysis Reports pull together student data from critical thinking entrance and exit assessments.
- j. Combination Individual and Group Reports combine the information from both the individual results and overall group results into one report.

4. Access to Curriculum and Faculty Resources:

CSCU shall have access to the following resources at no additional cost:

- a. The Curriculum Management and Articulation Program (C-MAP): a web-based program specifically designed to help facilitate curriculum development and evaluation. ATI representatives shall provide support of C-MAP implementation within the CT-CCNP curriculum, at the request of CSCU.

ATI shall have the ability to provide additional professional consulting services to more fully support faculty use of C-MAP at six Colleges and within the CSCU system office at the request of CSCU, and in accordance with Section I.A.5.i., below.

- b. Concept Based Curriculum Assessments: ATI's four standardized, nationally benchmarked assessments developed specifically for concept-based curriculums, including forty-six (46) concepts commonly shared among concept-based curriculums nationwide. These assessments may be used to compare learning outcomes across cohorts and programs
- b. Custom Assessment Builder: described in Section A, 1.d, above.
- c. ATI Pulse: an easy to view dashboard that intuitively displays assessment and resource usage results. Pulse provides an ongoing avaluation of student predicted success and provides an early indicator of remediation needs.

5. Services of Consultants:

- a. Start of Work/Initial Implementation Conference: ATI shall provide a start of work/implementation conference for each CT-CCNP College, to include a detailed presentation about the testing package, and an orientation to the services available to assist faculty with the implementation of the package. This shall include, but not be limited to:
  - i. Facilitate College's development of a policy for Student and faculty use of ATI products
  - ii. Explain how to navigate the website and reporting portal
  - iii. Explain how to produce and interpret score reports and data
  - iv. Identify and set an appropriate benchmark for the various assessments and tutorials
  - v. Determine effective methods of implementing ATI products and services, including degree to which stakes are involved for College
  - vi. Discuss how to troubleshoot issues
- b. Faculty Implementation Meetings: ATI shall provide one to two Faculty Implementation Meetings per year for each College, on dates and times determined by mutual agreement. The meetings shall be designed and adjusted to meet the specific needs of the faculty at each location. Examples include:
  - i. Custom report generation
  - ii. Implementation strategies to maximize student utilization
  - iii. Benchmarking, logistics
  - iv. Data analysis (curriculum evaluation and/or accreditation)
- c. Student Orientations: ATI shall provide a student orientation for each incoming class, including an introduction to ATI, an explanation of the benefits of using ATI during nursing school as well as for NCLEX-RN preparation, and information about navigating the student website and reporting portal.
- d. Meetings with Graduating Seniors: ATI shall provide opportunities to meet with graduating seniors to discuss NCLEX preparation options, and instructions for interpreting the Comprehensive Predictor (Exit) assessment.
- e. Training Webinars: Colleges shall have access to periodic expert-led, interactive sessions intended to help faculty, staff, and students better understand how to use ATI products and services.
- f. Customer Service: ATI shall provide ongoing real-time customer service in the form of a two-tier system to handle all real-time student and faculty questions. This support is a live person that is located on premise at ATI. This support is available to all students and faculty Monday-Friday 7am-7pm. ATI also allows for Colleges to receive after-hour and weekend support if any CSCU College is having a test on the weekends, provided that they give a 2-week notice.
  - i. Tier 1 – Our first tier of support comes from an in house customer service team. They are able to assist students with issues such as compatibility issues or problems logging in.
  - ii. Tier 2 – If the customer service team is unable to resolve the issue the student or faculty will be directed to our Technical Support team that can assist them in any technical issue that they might come across.

For all customer service, ATI has the option for live chat that lets the CSCU student or faculty members chat real-time with a member of the ATI Technical Support team.
- g. Psychometric and Research & Development: Colleges shall have access to ATI's Psychometric and Research & Development Departments, including the following:
  - i. Validation studies and content question analysis
  - ii. Longitudinal data and data trending
  - iii. Curriculum alignment to maximize effectiveness of assessments
- h. Banner Bridge: ATI shall work with the CSCU Information Technology Staff to successfully bridge data from the ATI database to the CSCU Banner student information system, in order to achieve the level of student tracking desired by the CSCU in the context of course and program outcomes. ATI shall provide unit level data (data for each tested student) as well as aggregate data by College, and for the system as a whole. Data shall be provided in an acceptable format to be used with CT-CCNP's existing batch upload interface. Test data and subsequent data transmission shall be available on demand and on an arranged schedule daily, weekly, or monthly at the request of CSCU. Payment for vendor services shall linked to valid data files that are successfully bridged into the CSCU Banner student information system
- i. Additional Professional Consultation Services: ATI shall provide customized professional consulting services upon the request of CSCU, at a fixed fee per service or hourly rate, at the preference of the CSCU. Prior to starting work on any consulting service, ATI shall submit a Scope of Work ("SOW") detailing the services to be performed, and the

associated fee and payment schedule, and must receive a signed approval of such SOW from the CSCU Chief Financial Officer ("CFO") or designee. Professional consulting services may include, but may not be limited to:

- i. Using the curriculum Management and Articulation Program (C-MAP) as a tool, facilitate faculty modification and improvement of the current curriculum through the application of best practices that allow for examination, evaluation, and transformation using the Nurse of The Future competencies as a framework.
- ii. Facilitate the development of a repertoire of student-centered, active learning strategies for use by faculty

**B. Post Graduate NCLEX Preparation:**

At the option of CSCU, ATI shall provide a Customized Live or Virtual NCLEX Review for CT-CCNP graduates each semester, formatted based upon class performance on the Comprehensive Predictor final exam. The review shall be highly interactive, aligned with the current NCLEX-RN test blueprint, and designed to improve competency on topics that need additional instruction. Test-taking strategies, critical thinking and Questions & Answers shall be presented. Upon completion of the review, students shall receive a customized, individual study plan to continue exam preparation.

The Customized Live/Virtual Review shall be provided at each CT-CCNP College campus or at alternate locations at the request and at the option of CSCU, on dates and times to be determined by mutual agreement each semester.

**C. Student Participation and CSCU Responsibilities:**

1. Each CT-CCNP College shall have the choice to participate in testing each semester, and shall have the choice to designate all enrolled nursing students or a portion of nursing students as "participating students," provided that designation of participating students shall consist of an entire cohort of students and not a portion of students from any given cohort. For the purposes of this agreement, a cohort is all enrolled nursing students at a single College that have the same projected program completion date. CSCU shall provide ATI with a list of the number of participating students by cohort at each participating College at the beginning of each semester, up to 21 days after the start of classes to provide a record of the number of students in the program who will be tested that semester. ATI shall invoice each College directly based upon the number of participating students at each College during that semester.
2. Prior to the start of each semester, CSCU shall provide ATI with a list of the participating Colleges and cohorts that will participate in ATI's Customized Live or Virtual NCLEX Review. CSCU shall provide ATI with a list of the number of participating students enrolled in the course, "NUR\*203" as the final clinical course in the program, by week 13 of the semester. Designation of participating students shall consist of an entire cohort of students and not a portion of students from any given cohort. At least thirty (30) days before any Customized Live or Virtual NCLEX Review, CSCU will confirm the date and number of participating students in each such review. Each Customized Live or Virtual NCLEX Review will have a minimum of fifteen (15) participating students.
2. CSCU shall facilitate the scheduling of faculty and student meetings, standardized testing, and post-graduate NCLEX Reviews. All activities shall be scheduled by mutual agreement of the parties.

**D. Contractor Analytics and Intellectual Property:**

1. Contractor reserves the right to use de-identified data in aggregate form for purposes of Contractor analytics related to Contractor's systems and product use and performance related thereto.
2. Contractor is and shall remain the sole and exclusive owner of all intellectual property rights in and to the products and services delivered and performed by Contractor hereunder.

**E. Limitation of Liability:**

Except for damages related to bodily injury, death or tangible property damage caused by Contractor or its agents in connection with this Contract, Contractor's liability is limited to all amounts paid and payable to Contractor under this Contract

**II. TERM OF THE AGREEMENT**

This Contract shall become effective only as of September 1, 2017 or on the date of signature by the Institution's authorized officials and, the date of approval by the Office of the Attorney General (OAG), if applicable, whichever occurs last, and shall continue in effect until August 31, 2022 unless terminated earlier in accordance with the terms of Section 7 below.

**III. COST**

Each participating College shall pay for the number of enrolled students reported to ATI as "participating students" for that semester. The cost of the ATI Assessment and Review Program per participating student at each participating College, per semester, exclusive of the Post Graduate Review, is \$59.00.

The cost of the Post-Graduate NCLEX Preparation Review is \$180.00 per participating student.

**A. Invoicing and Payment:**

The Contractor shall submit invoices in accordance with the schedule below:

- a. **ATI Comprehensive Assessment and Review Program:** The Contractor shall submit invoices directly to each participating College after receipt of the listing of the number of "participating students" and cohorts at each College and after student data from the previous semester has successfully been provided to the CT-CCNP through the Banner Bridge. The cost for each student each semester is \$59.00.
- b. **Post-Graduate NCLEX Preparation (Customized Live or Virtual NCLEX Review):** The Contractor shall submit invoices directly to each participating College for students participating in the NCLEX-RN review. Invoices shall be submitted at the conclusion of each review, based upon number of students participating. The cost for each participant is \$180.00.
- c. **Additional Professional Consultation Services:** The Contractor shall submit invoices for each service requested and approved by CSCU, per the terms of each SOW approved by CSCU's Chief Financial Officer.

**MAXIMUM AMOUNT OF CONTRACT \$ 1,500,000.00**

- 1. **Notices:** All notices, demands or requests provided for or permitted to be given pursuant to this Contract must be in writing. All notices, demands and requests shall be deemed to have been properly served if given by personal delivery, or if transmitted by facsimile with confirmed receipt, or if delivered to Federal Express or other reputable express carrier for next business day delivery, charges billed to or prepaid by shipper, or if deposited in the United States mail, registered or certified with return receipt requested, proper postage prepaid, addressed as follows:

**MUST BE COMPLETED**

|                         |  |
|-------------------------|--|
| If to the Institution*: | <u>The Connecticut State Colleges and Universities, on behalf of the Regional Community-Technical College System</u><br><u>61 Woodland Street</u><br><u>Hartford, Connecticut 06105</u><br>Attn: <u>Linda Perfetto</u> |
| If to the Contractor*:  | <u>Assessment Technologies Institute, LLC</u><br><u>11161 Overbrook Road</u><br><u>Leawood, KS 66211</u><br>Attn: <u>Gregg Paur</u>  |

**[Note: \*Any party may change its Notice information in writing in accordance with this Section.]**

**IV. GENERAL STATE CONTRACT PROVISIONS:**

- 1. **Statutory Authority.** Connecticut General Statutes §§ 10a-6, 10a-1b, 4a-52a, and/or 10a-151b provide the Institution with authority to enter into contracts in the pursuit of its mission.
- 2. **Claims Against the State.** The Contractor agrees that the sole and exclusive means for the presentation of any claim against the State of Connecticut or the Institution arising from this Contract shall be in accordance with Chapter 53 of the Connecticut General Statutes (Claims Against the State) and the Contractor further agrees not to initiate any legal proceedings in any state or federal court in addition to, or in lieu of, said Chapter 53 proceedings.
- 3. **Indemnification.** The Contractor agrees to indemnify, defend and hold harmless the State of Connecticut as well as all Departments, officers, agents, and employees of the State from and against any and all claims, losses or suits according to or resulting from any Contractors, Subcontractors, laborers, or any person, firm or corporation who may be directly or indirectly injured or damaged by the negligence or willful misconduct of the Contractor in the performance of the contract.
- 4. **Sovereign Immunity.** The parties acknowledge and agree that nothing in this contract 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 this contract. To the extent that this section conflicts with any other section, this section shall govern.
- 5. **Insurance.** The Contractor agrees that while performing services specified in this contract that it shall carry sufficient insurance (liability and/or other) as applicable according to the nature of the service(s) to be performed so as to "save harmless" the State of Connecticut from any insurable cause whatsoever. If requested, certificates of such insurance shall be provided to the contracting state agency prior to the performance of services.

6. **Forum and Choice of Law.** The parties deem the Contract 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 contract 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.
7. **Termination.**
- a. Notwithstanding any provisions in this contract, the Institution, through a duly authorized employee, may terminate the Contract whenever the Institution makes a written determination that such termination is in the best interests of the State. The Institution 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 contract prior to such date.
  - b. Notwithstanding any provisions in this contract, the Institution, through a duly authorized employee, may, after making a written determination that the Contractor has breached the contract, terminate the contract in accordance with the following breach provision.
    - i. **Breach.** If either party breaches the contract in any respect, the non-breaching party shall provide written notice of the breach to the breaching party and afford the breaching party an opportunity to cure within ten (10) days from the date that the breaching party receives the notice. In the case of a Contractor breach, any other time period which the Institution sets forth in the notice shall trump the ten (10) days. 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. The notice may include an effective contract termination date if the breach is not cured by the stated date and, unless otherwise modified by the non-breaching party in writing prior to the termination date, no further action shall be required of any party to effect the termination as of the stated date. If the notice does not set forth an effective contract termination date, then the non-breaching party may terminate the contract by giving the breaching party no less than twenty four (24) hours' prior written notice. If the Institution believes that the Contractor has not performed according to the contract, the Institution may withhold payment in whole or in part pending resolution of the performance issue, provided that the Institution notifies the Contractor in writing prior to the date that the payment would have been due.
  - c. The Institution shall send the notice of termination via certified mail, return receipt requested, to the Contractor at the most current address which the Contractor has furnished to the Institution for purposes of correspondence, or by hand delivery. Upon receiving the notice from the Institution, the Contractor shall immediately discontinue all services affected in accordance with the notice, undertake all commercially reasonable efforts to mitigate any losses or damages, and deliver to the Institution all records. The records are deemed to be the property of the Institution and the Contractor shall deliver them to the Institution no later than thirty (30) days after the termination of the contract or fifteen (15) days after the Contractor receives a written request from the Institution for the records. The Contractor shall deliver those records that exist in electronic, magnetic or other intangible form in a non-proprietary format, such as, but not limited to, ASCII or .TXT.
  - d. Upon receipt of a written notice of termination from the Institution, the Contractor shall cease operations as the Institution directs in the notice, and take all actions that are necessary or appropriate, or that the Institution may reasonably direct, for the protection, and preservation of the goods and any other property. Except for any work which the Institution 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 Institution shall, within forty-five (45) days of the effective date of termination; reimburse the Contractor for its performance rendered and accepted by the Institution in accordance with the terms of this contract, in addition to all actual and reasonable costs incurred after termination in completing those portions of the performance which the notice required the Contractor to complete. However, the Contractor is not entitled to receive and the Institution is not obligated to tender to the Contractor any payments for anticipated or lost profits. Upon request by the Institution, the Contractor shall assign to the Institution, or any replacement Contractor which the Institution designates, all subcontracts, purchase orders and other commitments, deliver to the Institution all records and other information pertaining to its performance, and remove from State premises, whether leased or owned, all of Contractor's property, equipment, waste material and rubbish related to its performance, all as the Institution may request.
  - f. For breach or violation of any of the provisions in the section concerning representations and warranties, the Institution may terminate the contract 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 contract, all rights and obligations shall be null and void, so that no party shall have any further rights or obligations to any other party, except with respect to the sections which survive termination. All representations, warranties, agreements and rights of the parties under the contract shall survive such termination.

to the extent not otherwise limited in the contract and without each one of them having to be specifically mentioned in the contract.

- h. Termination of the contract pursuant to this section shall not be deemed to be a breach of contract by the Institution.

- 8. **Entire Agreement and Amendment.** This written contract shall constitute the entire agreement between the parties and no other terms and conditions in any document, acceptance or acknowledgment shall be effective or binding unless expressly agreed to in writing by the Institution. This contract may not be changed other than by a formal written contract amendment signed by the parties hereto and approved by the Connecticut Attorney General.

- 9. **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 Contract or contract; (iii) "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor; (iv) "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose; (v) "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations; (vi) "good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements; (vii) "marital status" means being single, married as recognized by the State of Connecticut, widowed, separated or divorced; (viii) "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders; (ix) "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes § 32-9n; and (x) "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

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

(b) (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, 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, intellectual disability, 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 Conn. Gen. Stat. §§ 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Conn. Gen. Stat. §§ 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 it relates to the provisions of this Section and Conn. Gen. Stat. § 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 Conn. Gen. Stat. § 46a-56; provided if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

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

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

10. **Executive Orders.** This Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of the Contract as if they had been fully set forth in it. The Contract may also be subject to Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services and to Executive Order No. 49 of Governor Dannel P. Malloy, promulgated May 22, 2015, mandating disclosure of certain gifts to public employees and contributions to certain candidates for office. If Executive Order 14 and/or Executive Order 49 are applicable, they are deemed to be incorporated into and are made a part of the Contract as if they had been fully set forth in it. At the Contractor's request, the Institution or DAS shall provide a copy of these orders to the Contractor.
11. **Force Majeure.** If the performance of obligations under this Contract are rendered impossible or hazardous or is otherwise prevented or impaired due to illness, accident, Act(s) of God, riots, strikes, labor difficulties, epidemics, earthquakes, and/or any other cause or event, similar or dissimilar, beyond the control of the Contractor, then each party's obligations to the other under this Contract shall be excused and neither party shall have any liability to the other under or in connection with this Contract.
12. **Campaign Contribution Restrictions.** For all state contracts as defined in Connecticut General Statutes § 9-612(g)(2), as amended by Public Act 10-1 having a value in a calendar year of \$50,000 or more or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Agreement expressly acknowledges receipt of the State Election 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, referenced herein as Exhibit A.
13. **Contract Assignment.** No right or duty, in whole or in part, of the Contractor under this Agreement may be assigned or delegated without the prior written consent of the institution.
14. **Confidential Information.** The Contractor acknowledges that it may have access to Confidential Information (as hereinafter defined). The Contractor agrees that it will use the Confidential Information solely for the purpose of performing its duties as a consultant and agrees that it will not divulge, furnish, publish or use for its own benefit or for the



direct or indirect benefit of any other person or entity, whether or not for monetary gain, any Confidential Information.

For purposes of this Agreement, the term "Confidential Information" shall mean (i) all information related to the business operations, marketing plans, financial position and (ii) other business information and any other information disclosed to the Contractor. Confidential Information shall not include information which (i) is or becomes part of the public domain through no act or omission attributable to the Contractor, (ii) is released after prior written authorization or (iii) the Contractor receives from any third party who is unrelated to it and who is not under any obligation to maintain the confidentiality of such information.

15. **Family Educational Rights and Privacy Act (FERPA)**. In all respects, Contractor shall comply with the provisions of the Family Educational Rights and Privacy Act (FERPA). For purposes of this contract, FERPA includes any amendments or other relevant provisions of federal law, as well as all requirements of Chapter 99 of Title 34 of the Code of Federal Regulations, as amended from time to time. Nothing in this agreement may be construed to allow Contractor to maintain, use, disclose or share student information in a manner not allowed by federal law or regulation or by this contract. Contractor agrees that it shall not provide any student information obtained under this contract to any party ineligible to receive data protected by FERPA. This section shall survive the termination, cancellation or expiration of the contract.
16. **Summary of State Ethics Laws**. Pursuant to the requirements of section 1-101qq of the Connecticut General Statutes, the summary of State ethic laws developed by the State Ethics Commission pursuant to section 1-81b of the Connecticut General Statutes is incorporated by reference into and made a part of the contract as if the summary had been fully set forth in the contract.
17. **Whistleblower**. This contract 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 percent (20%) of the value of this contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with subsection (f) of such statute, each large state contractor, as defined in the statute, shall post a notice of the 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.
18. **Disclosure of Records**. This Contract 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 the Freedom of Information Act (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.
19. **Audit Requirements for State Grants**. For purposes of this clause, the word "Contractor" shall be read to mean "nonstate entity," as that term is defined in Conn. Gen. Stat. § 4-230. The Contractor shall provide for an annual financial audit acceptable to the Institution for any expenditure of State-awarded funds made by the Contractor. Such audit shall include management letters and audit recommendations. The State Auditors of Public Accounts shall have access to all records and accounts for the fiscal year(s) in which the award was made. The Contractor will comply with federal and State single audit standards as applicable.
20. **Audit Requirements for Federal Grants**. For U.S. based, non-profit Contractors expending \$500,000 or more of federal awards in one year: The Contractor agrees to comply with the requirements of Office of Management and Budget (OMB) Circular A-133. Contractor further agrees to provide the Institution with copies of all independent auditors' reports which cover the period of performance of this contract. Contractor will provide a copy of its response to auditors' reports and, in instances of non-compliance, a plan for corrective action. All records and reports prepared in accordance with the requirements of OMB Circular A-133 shall be made available for review or audit by appropriate officials of the Federal agency, Institution, or the General Accounting Office (GAO) during normal business hours.  
  
For U.S. based, non-profit Contractors expending less than \$500,000 of Federal awards in one year: Contractor agrees that all records pertaining to this agreement will be made available for review or audit by appropriate officials of the Federal agency, Institution, or the GAO during normal business hours.
21. **Professional Standards**. In rendering services under this contract, the Contractor shall conform to high professional standards of work and business ethic. The Contractor warrants that the services shall be performed: 1) in a professional and workmanlike manner; and 2) in accordance with generally and currently accepted principles and practices. During the term of this contract, the Contractor agrees to provide to Institution in a good and faithful manner, using its best efforts

and in a manner that shall promote the interests of Institution, such services as Institution requests, provided in the contract.

**22. Contractor's Standards of Conduct.**

- (a) In order to insure the orderly and efficient performance of duties and services at the Institution and to protect the health, safety and welfare of all members of Institution's community the Contractor agrees that the following items are strictly prohibited while performing services under this Agreement:
- i. Use or possession of drugs or alcohol;
  - ii. Possession of firearms or illegal weapons anywhere on campus property including vehicles;
  - iii. Smoking in buildings;
  - iv. Harassment (sexual, racial or otherwise) or intimidation of anyone on the premises of the campus;
  - v. Violation of applicable traffic or public safety regulations or of Institution rules and procedures;
  - vi. Unauthorized use of Institution vehicles, equipment or property;
  - vii. Use of University telephones for personal business;
  - viii. Removal or theft of University property;
  - ix. Unauthorized duplication or possession of University keys;
  - x. Transfer of personal identification card or of parking pass to unauthorized personnel;
  - xi. Conduct or behavior that endangers the health, safety and welfare of any member of the public or of the University community;
  - xii. Interference with the work of other employees;
  - xiii. Work attire other than the specified uniform; and
  - xiv. Loud, vulgar behavior or the use of profanity.
- (b) Violation of Standards: Contractor will require its employees to comply with the standards listed in Professional Standards and 22 (a) above. The Institution may, at its discretion, recommend discharge of any employee of the Contractor found to be in violation of the standards listed in 1.1(i) or 1.2(a) above, or in violation of any law or standards adopted by the Institution from time to time, as required, to protect the health, safety and welfare of the Institution's community. Upon request of the Institution, Contractor shall remove any of its employees that violate said standards from assignments to be performed under this Agreement.

**V. ACCEPTANCE 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.

**Connecticut State Colleges and Universities, on behalf of the Regional Community-Technical College System**

**Assessment Technologies Institute, LLC**

By: Jane Gates  
Print Name: JANE GATES  
Title: Provost & VPAA & Students  
Date: 08-24-2017

By: Mike Lynch  
Print Name: Mike Lynch  
Title: Executive Vice President  
Date: 08/23/2017

By: Erika Steiner  
Name: Erika Steiner  
Title: Chief Financial Officer  
Date: 8/25/17

**By the Connecticut Attorney General**

This contract template, having been reviewed and approved as to form by the Connecticut Attorney General, is exempt from review pursuant to a Memorandum of Agreement between the Connecticut State Colleges and Universities, Board of Regents for Higher Education and the Connecticut Attorney General dated December 30, 2015. Therefore, no signature is required below.



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## NOTICE TO EXECUTIVE BRANCH STATE CONTRACTORS AND PROSPECTIVE STATE CONTRACTORS OF CAMPAIGN CONTRIBUTION AND SOLICITATION LIMITATIONS

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

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### CAMPAIGN CONTRIBUTION AND SOLICITATION LIMITATIONS

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

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

On and after January 1, 2011, no state contractor, prospective state contractor, principal of a state contractor or principal of a prospective state contractor, with regard to a state contract or state contract solicitation with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder of a valid prequalification certificate, shall **knowingly solicit** contributions from the state contractor's or prospective state contractor's employees or from a *subcontractor or principals of the subcontractor* on behalf of (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee.

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### DUTY TO INFORM

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

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### PENALTIES FOR VIOLATIONS

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

**Civil penalties** - Up to \$2,000 or twice the amount of the prohibited contribution, whichever is greater, against a principal or a contractor. Any state contractor or prospective state contractor which fails to make reasonable efforts to comply with the provisions requiring notice to its principals of these prohibitions and the possible consequences of their violations may also be subject to civil penalties of up to \$2,000 or twice the amount of the prohibited contributions made by their principals.

**Criminal penalties** - Any knowing and willful violation of the prohibition is a Class D felony, which may subject the violator to imprisonment of not more than 5 years, or not more than \$5,000 in fines, or both.

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### CONTRACT CONSEQUENCES

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

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

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

Additional information may be found on the website of the State Elections Enforcement Commission, [www.ct.gov/seec](http://www.ct.gov/seec). Click on the link to "Lobbyist/Contractor Limitations."

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## DEFINITIONS

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

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

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

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

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

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

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

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

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

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