

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



**FLEXIBLE SPENDING ACCOUNTS AND  
QUALIFIED TRANSPORTATION ACCOUNT PROGRAM**

**STATE OF CONNECTICUT  
OFFICE OF THE STATE COMPTROLLER  
165 CAPITOL AVENUE  
HARTFORD, CT 06106-1775**

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## **I. STATEMENT OF OBJECTIVES**

The State of Connecticut, Office of the State Comptroller (OSC) will be considering submissions from vendors qualified to serve as a Third Party Administrator (TPA) for its Transportation Fringe Benefit and Flexible Spending Account (FSA) Program (Program). The Program consists of the Dependent Care Assistance Program (DCAP), Medical Flexible Spending Account (MEDFLEX), and Qualified Transportation Account (QTA) Programs. Interested vendors must be thoroughly knowledgeable in administration of such programs.

It is expected that the contract will be awarded to a single successful bidder; however, OSC reserves the right to award separate contracts if it is in the best interest of the State. OSC reserves the right to accept or reject any or all proposals.

This contract will cover services for the period from January 1, 2022 through December 31, 2024 and will include a clause that gives the OSC the right to extend the contract for up to two additional one-year periods. Fees should be guaranteed for the contract period, including any extensions.

OSC is looking for a vendor to provide flexible spending administration services in an easy to use and cost-effective manner. The successful vendor must be agreeable to adapt existing operations to meet the Program's needs and show a dedication to customer service.

## **II. BACKGROUND**

The State of Connecticut employs approximately 55,000 full-time State employees of whom approximately 50,000 would be eligible to participate in the Program. For the 2021 plan year enrollments are as follows: DCAP—1140; MEDFLEX—4252; and QTA—Transit (171), Parking (82).

The plan year is from January 1<sup>st</sup> to December 31<sup>st</sup>. Open enrollment for the DCAP and MEDFLEX occurs during the month of October. MEDFLEX participants can carry-over up to \$550 in unused funds from one plan year to the next. For Plan Year 2021 participants in the MEDFLEX were eligible to roll over all unused funds from the 2020 Plan Year. Plan documents for the DCAP and MEDFLEX may be viewed at <http://www.osc.ct.gov/benefits/suppbene.htm>. Online enrollment services are of interest to the State.

The minimum Plan Year election for the DCAP, MEDFLEX and QTA is \$260 per year (\$20 on a bi-weekly basis) with the maximum limits established by the IRS. For Plan Year 2021 only, the DCAP maximum has been set at \$10,500. Employee reductions are remitted to TPA via CORE-CT, the state's integrated human resources, payroll, and financial system.

MEDFLEX is funded from participant bi-weekly payroll reductions and has no reserve fund; OSC, as needed, may access appropriated funds to support advances to MEDFLEX

early in the plan year. To the extent that a reserve fund is deemed necessary, it will be maintained solely by OSC. TPA fees will be paid in arrears; invoices should be submitted the month after services are rendered. Invoices are subject to audit for accuracy of participant counts and will be paid within fifteen days after invoices are approved.

Competitive procurements are required for service contracts of this nature at least every five years. The incumbent, Progressive Benefit Solutions, Inc., has been in place since 2006 and is eligible to submit a proposal. The selected TPA will report to the OSC's Healthcare Policy & Benefit Services Division, Employee Benefits Unit.

### **III. SCOPE OF WORK**

The Contractor will provide set-up, administration and management of the Program and meet the following requirements:

- A. Administer the Program in accordance with Sections 129, 105, 132 & 125 of the Internal Revenue Code and regulations thereunder;
- B. Process enrollments;
- C. Transfer information to and from State of Connecticut's Core-CT PeopleSoft system;
- D. Market the Program. All marketing materials must be specific and pre-approved by the OSC. Where appropriate, generic marketing materials will be considered. All enrollment material will be available to print electronically via the OSC and vendor web sites;
- E. Develop a State-specific Program web site;
- F. Operate a State-specific toll free hotline during open enrollment period and throughout plan year;
- G. Process all claim reimbursements pursuant to Internal Revenue Code requirements. It is expected that all claim reimbursements will be done via electronic funds transfer to the participant's bank account;
- H. Process all run-out period (January – March) claim reimbursements at no additional cost to the State;
- I. Establish a direct deposit system for participant deposits and claim reimbursements;
- J. Respond promptly and accurately to all claim inquiries;
- K. Advise the State on resolution of claim disputes;

- L. Establish a no fee debit card program for claim reimbursements;
- M. Provide participants with an online reporting system that allows production of weekly account statements, including but not limited to account balance, account deposits, account claims total, account remaining election totals;
- N. Provide participants with a year-end account summary statement indicating account balance, account deposits, account claims total, account remaining, and election totals;
- O. Provide the State with access to online reporting tools and annual forfeiture reporting;
- P. Conform to current and future federal/state reporting requirements;
- Q. Assist in developing Plan Documents;
- R. Conduct Program Discrimination Testing; and
- S. Assist with transition at end of Contract period.

**IV. SCHEDULE AND SELECTION PROCESS**

5/17/2021	Release of RFP	
5/26/2021	Questions due at <a href="mailto:osc.rfp@ct.gov">osc.rfp@ct.gov</a>	
6/03/2021	OSC answers questions received via email to all contractors	
6/03/2021	Notice of Intent to bid with contractor email address due at <a href="mailto:osc.rfp@ct.gov">osc.rfp@ct.gov</a>	
6/18/2021	Delivery of proposals to OSC	
6/21/2021- 6/25/2021	Reading and Scoring of Proposals by Screening Committee	
6/29/2021- 6/30/2021	Finalist Interviews, if desired	<i>Note 1</i>
7/01/2021	TPA Selection and contract negotiation	<i>Note 2</i>
8/01/2021	TPA Implementation/Conversion begins	<i>Note 3</i>

1. Finalist Interviews. Contractors selected for a final interview will be expected to make a presentation to the Review Committee, followed by a question and answer period. Finalist interviews may be conducted in person in Hartford, CT or via Microsoft Teams. The number of finalists to be selected for interviews has yet to be determined but is not expected to exceed three.
2. Selection of the TPA may be conditioned upon a site visit by up to three representatives from the HPBSD, to be conducted at a mutually agreeable date and time. All expenses incurred in making the site visit shall be borne exclusively by the TPA and treated as a cost of responding to this RFP.

3. TPA Conversion. It is the State's expectation that, following the successful conclusion of contract negotiations, the TPA will develop and thereafter follow a work plan, which has as its objective the implementation of services at the beginning of the plan year on January 1, 2022.

## V. INSTRUCTIONS TO BIDDERS

- A. All responses to this RFP must conform to these instructions. Failure to conform may be considered an appropriate cause for rejection of the response. Bidders should provide responses to the Questionnaire in section VIII below.
- B. Except as called for in this RFP, vendors may not communicate with employees of OSC or the Healthcare Policy & Benefit Services Division about the RFP until a TPA has been selected.
- C. Vendors who may have questions regarding the proposal must submit them in writing addressed to the OSC at: [osc.rfp@ct.gov](mailto:osc.rfp@ct.gov) by May 26, 2021. It is expected that the OSC will respond to those questions by June 3, 2021.
- D. Notices of intent to bid must be submitted to [OSC.rfp@ct.gov](mailto:OSC.rfp@ct.gov) by June 3, 2021. See Attachment 1.
- E. Final responses must be in writing and received by 2:00 p.m. on June 18, 2021.
- F. Sealed Proposals

An authorized agent for the Proposer with authority to negotiate and contractually bind the Proposer must sign the proposal; such individual's title, address, and telephone number must also be provided. **The Proposer must submit one original and one unbound copy of its business and cost proposal in a sealed envelope or carton upon which a clear indication has been made of the RFP reference title and the date and time the proposal is submitted.**

Hard copies must also be accompanied by a complete electronic copy of the response in PDF format on a USB flash drive. Proposers may send the proposal by courier or overnight delivery service or deliver in person to the address below, arriving no later than **June 18, 2021 at 2:00 p.m. local time.** To avoid any delivery issues, proposals sent by U.S. Postal Service must arrive before 3:00 p.m. on the day prior to the due date. Proposals will not be publicly opened on the due date. Proposals received after the stated time herein may not be accepted. Postmark dates will not be considered as the basis for meeting any submission deadlines.

Proposals are to be submitted to:

STATE OF CONNECTICUT  
Office of the State Comptroller  
Administrative Services Division  
165 Capitol Avenue  
Hartford, CT 06106  
Attention: Steven Cosgrove

G. Information Required in the Proposal:

1. Provide the information requested below on the title page:

- Name of Proposer
- Business Location
- Mailing Address
- Telephone Number
- E-mail Address
- Federal Employer ID Number / Social Security Number

The Proposer must designate an authorized representative and one alternate who may speak and act on behalf of the Proposer in all dealings with the agency, if necessary. Provide the following information for each individual:

- Names
- Telephone Numbers
- Normal Hours of Work

2. Transmittal Letter

A transmittal letter must accompany all proposals. A corporate officer or person who is authorized to represent the company must sign this letter. A letter of transmittal must meet the following requirements:

- a) Identify the submitting organization;
- b) Explicitly indicate unequivocal acceptance of all of the requirements of this RFP and acknowledge receipt of any and all amendments to this RFP;
- c) Bear the signature of the person with the requisite power and authority to submit and deliver the proposal and subsequently to enter into, execute and deliver and perform on behalf of the firm any contract or agreement with the OSC.
- d) Explicitly warrant, represent and certify the following requirements have been met in connection with the RFP:

- i. The fees and costs proposed have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition as to any matter relating to such process with any other organization or with any competitor.
  - ii. Unless otherwise required by law, the costs quoted have not been knowingly disclosed by the firm prior to the deadline for submission of proposals directly or indirectly to any other organization or to any competitor; and
  - iii. No attempt has been made, or will be made, by the firm to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting completion.
- e) Explicitly represent that no elected or appointed official or employee of the State of Connecticut had benefited or will benefit financially or materially from any contract or agreement executed in connection with this RFP. Any contract or agreement executed in connection with this RFP may be terminated by the OSC if it is determined that gratuities of any kind were either offered to, or received by, any state officials or employees from the firm, the law firm's agent(s), representative(s) or employee(s). Such action on the part of the OSC shall not constitute a breach of contract on the part of the OSC.

H. Freedom of Information Act and Confidential Information. All proposals submitted in response to this RFP may be subject to the terms of the Connecticut Freedom of Information Act (FOIA). If a bidder believes that parts of its proposal contain trade secrets or confidential commercial information which is exempt from disclosure, the bidder should specifically identify those portions of its response containing such data. If the bidder indicates that certain documentation is submitted in confidence, by specifically and clearly marking said documentation as CONFIDENTIAL, OSC will endeavor to keep said information confidential to the extent permitted by law. The bidder shall have the burden of establishing any FOIA exemption claimed in any proceeding where it is an issue.

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



FOIA request. In no event shall OSC or the State have any liability for the disclosure of any documents in its possession which the State or OSC believes are required to be disclosed pursuant to the FOIA or other requirements of law.

I. CONTENT OF PROPOSALS

1. Title Page

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

2. Organizational Structure

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

3. Experience

- a. A description of the Contractor's experience in administering FSA programs, including length of time in the business and the number of clients you are currently administering.
- b. Describe the relevant experience of the staff/principal(s) who would be assigned to this project.
- c. Outline the length of experience of individuals who would be responsible for the day-to-day service contact with the State, indicating service with your company and throughout their career.

4. References

Provide names, addresses, and phone numbers of at least three clients similar to ours, preferably those having a unionized workforce, for whom you are administering FSA programs. For each reference provide the telephone number of the contact person, the type of services provided, and the number of participants.

5. Computer Systems

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

6. Security and Backup Equipment

Description of security and backup procedures in place.

7. Data Security

Contractor must describe its data security protocols to protect confidential information and prevent data breaches, inclusive of procedures reflecting compliance with Public Act 15-142.

8. Subcontracts

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

9. Recommended Work Plan

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

10. Remittance File Layout/ Submission Requirements

The selected Contractor must certify that it can access the Core-CT portal address from the Production Supplier Portal URL:  
<https://corect.ct.gov:10400/psp/PSPRD/?cmd=login> and the Test Supplier Portal URL: <https://corect.ct.gov:15000/psp/PSTPR/?cmd=login>. See Attachment II.

11. Transition Plan

All bidders other than the incumbent Contractor must include a transition plan for employees that will participate in the DCAP, MEDFLEX and QTA for the Plan Year beginning January 1, 2022. Any costs associated with administering run-out claims or for the 2021 Plan Year from January 1, 2022 – March 31, 2022 for Plan Year 2021 expenses must be clearly stated. Any costs for transitioning data from the October 2021 open enrollment period must be clearly stated.

12. Sales and Marketing

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

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

13. Acknowledgement

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

14. State Specific Toll-Free Number

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

15. Reporting

Each Contractor will be expected to provide ongoing reporting with regard to services offered to participating employees.

16. Web Site

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

18. Fee Structure

The State of Connecticut is exempt from the payment of excise, transportation, and sales tax imposed by the Federal Government and the State; accordingly, such taxes must not be reflected in proposed pricing. The State is not responsible for any costs incurred by any party in responding to this RFP.

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

It is OSC's preference that the Contractor submit a fee structure where the Contractor bills OSC one flat fee per participant, per month regardless of the number of programs in which the participant is enrolled in (Example, \$2.00 per month per participant.)

Fees should be guaranteed for the full 3-year term of the Agreement and any extensions thereto.

Acknowledge that administrative fees will be paid by OSC in arrears in the month after services are rendered.

19. Conflict of Interest

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

20. Regulatory Issues

Disclose any regulatory problems experienced in the past ten years.

21. Questionnaire

Each bidder should complete the Questionnaire Section below.

22. Authorized Agent

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

J. Additional Procurement Requirements

The Connecticut Department of Administrative Services ("DAS") has implemented a requirement that all firms seeking to do business with the State must register their business on CTSource. The portal for registering your business is accessible at <https://portal.ct.gov/DAS/CTSource>. Firms will have the ability to view, verify and update their information by logging in to their CTSource account, prior to submitting responses to an RFP.

The guide to using CTSource appears at <https://portal.ct.gov/-/media/DAS/CTSource/Documents/CTsource-Supplier-Registration-Portal-User-Guide-Final.pdf>.

Additional required forms as described below must be submitted through CTSource by the deadline for submission of proposals. Paper or electronic copies need not be provided with the submission to the Comptroller's office.

If you experience difficulty establishing your firm's account, please call DAS at 860-713-5095 or send an email to [das.ctsource@ct.gov](mailto:das.ctsource@ct.gov).

If you have difficult accessing your CTSource account call 1-866-889-8533 or email [webprocure-support@proactis.com](mailto:webprocure-support@proactis.com).

The following Statutory Affidavits/Certifications must be signed, dated, notarized, and uploaded to CTSource in accordance with the instructions on page 23 of the User Guide:

- OPM Ethics Form 1: Gift & Campaign Contribution Certification.
- OPM Ethics Form 5: Consulting Agreement Affidavit:
- OPM Ethics Form 6: Affirmation of Receipt of State Ethics Laws Summary
- OPM Ethics Form 7: Iran Certification

For information on how to complete these forms, please access the Office of Policy and Management website by using the following link:

[http://www.ct.gov/opm/cwp/view.asp?a=2982&q=386038&opmNAV\\_GID=1806](http://www.ct.gov/opm/cwp/view.asp?a=2982&q=386038&opmNAV_GID=1806)

### **Affirmative Action and Nondiscrimination**

Choose one (1) of the forms listed below that applies to your business. Complete and upload (or update) the form on CTSource. To obtain a copy of these forms, you must login to CTSource and follow the instructions referenced above.

- Form A: Representation by Individual (Regardless of Value); or
- Form B: Representation by Entity (Valued at \$50,000 or less); or
- Form C: Affidavit by Entity (Valued at \$50,000 or more); or
- Form D: New Resolution by Entity; or
- Form E: Prior Resolution by Entity

For information on how to complete these forms, please access the Office of Policy and Management website by using the following link:

[http://www.ct.gov/opm/cwp/view.asp?a=2982&q=390928&opmNAV\\_GID=1806](http://www.ct.gov/opm/cwp/view.asp?a=2982&q=390928&opmNAV_GID=1806)

### **Commission on Human Rights and Opportunities (“CHRO”) Workplace Analysis Affirmative Action Report/Employment Information Form.**

The CHRO Workplace Analysis Affirmative Action Report/Employment Information must be completed in CTSource and updated as necessary.

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

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

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

The State of Connecticut's Contract Compliance Forms applicable to State contracts are available at <https://portal.ct.gov/-/media/CHRO/NotificationtoBidderspdf.pdf>, You must complete the Bidder Contract Compliance Monitoring Report and upload it to CTSource.

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

Your proposal should confirm you have downloaded, completed, and submitted all of the procurement documents listed above to CTSource. If not, please explain

## VI. STANDARD TERMS AND CONDITIONS

Be advised that the State has certain contract requirements. Contractors responding to this RFP must adhere to the Comptroller's contract requirements, as set forth in a sample contract attached hereto as Attachment III and must affirmatively state their willingness to adhere to those terms and conditions in a transmittal letter appended to their proposal response.

- A. ***Acceptance or Rejection by the State*** - The State reserves the right to accept or reject any or all proposals submitted for consideration. All proposals will be kept sealed and safe until the deadline for submission has passed.
- B. ***Conformance with Statutes*** - Any contract awarded as a result of this RFP must be in full conformance with statutory requirements of the State of Connecticut.
- C. ***Ownership of Proposals*** - All proposals in response to this RFP are to be the sole property of the State, and subject to the provisions of Section 1-19 of the Connecticut General Statutes (Freedom of Information).
- D. ***Ownership of Subsequent Products*** - Any product, whether acceptable or unacceptable, developed under the contract awarded as a result of this RFP is to be the sole property of the State unless stated otherwise in the RFP or contract.

- E. ***Availability of Work Papers*** - All work papers and data used in the process of performing this project must be available for inspection by the State of Connecticut Auditors of Public Accounts for a period of three (3) years or until audited.
- F. ***Timing and Sequence*** - Timing and sequence of events resulting from this RFP will ultimately be determined by the State.
- G. ***Stability of Proposed Prices*** - Any price offerings from contractors must be valid for a period of one hundred eighty (180) days from the due date of contractor proposals.
- H. ***Oral Agreements*** - Any alleged oral agreement or arrangement made by a contractor with any agency or employee will be superseded by the written agreement.
- I. ***Amending or Canceling Requests*** - The State reserves the right to amend or cancel this RFP, prior to the due date and time, if it is in the best interests of the State.
- J. ***Rejection for Default or Misrepresentation*** - The State reserves the right to reject the proposal of any contractor which is in default of any prior contract or for misrepresentation.
- K. ***State's Clerical Errors in Awards*** - The State reserves the right to correct inaccurate awards resulting from its clerical errors.
- L. ***Rejection of Qualified Proposals*** - Proposals are subject to rejection in whole or in part if they limit or modify any of the terms and conditions and/or specifications of the RFP.
- M. ***Contractor Presentation of Supporting Evidence*** - A contractor, if requested, must be prepared to present evidence of experience, ability, service facilities, and financial standing necessary to satisfactorily meet the requirements set forth or implied in the proposal.
- N. ***Changes to Proposal*** - No additions or changes to the original proposal will be allowed after submittal. While changes are not permitted, clarification at the request of the agency may be required at the contractor's expense.
- O. ***Collusion*** - By responding, the contractor implicitly states that the proposal is not made in connection with any competing contractor submitting a separate response to the RFP and is in all respects fair and without collusion or fraud.
- P. ***Rights reserved to the State--*** The State reserves the right to award in part, to reject any and all proposals in whole or in part, and to waive technical defects, irregularities and omissions if, in its judgment, the best interest of the State will be served.

- Q. ***Affirmative Action*** - Include a summary of your contractor's experience with affirmative action. This information is to include a summary of your affirmative action plan and your affirmative action policy statement.
- R. ***Freedom of Information*** – After the contract is awarded all materials associated with this RFP and the eventual contract may be subject to disclosure under the Connecticut Freedom of Information Act (“FOIA”) and all corresponding rules, regulations and interpretations. Any proposer who submits matter that the proposer in good faith determines to contain trade secrets or confidential commercial or financial information must provide two redacted copies of its RFP response in a CD or DVD (an original and one copy), which may be disclosed without objection in the event that the State receives a FOIA request for its proposal.
- S. ***Applicable Law*** --The Contractor must agree that the contract will be governed by, construed, and enforced in accordance with the laws and court decisions of the State of Connecticut without giving effect to its principles of conflicts of laws. Under no circumstances may a State contract contain limited liability and/or binding arbitration provisions. The State will not indemnify a Contractor or waive its sovereign immunity.
- T. ***Personnel Qualifications***—The Contractor will be required to utilize approved, qualified personnel to perform the services and must agree that if at any time the State in its sole discretion determines that the personnel/staff assigned to perform the services is incompetent, dishonest or uncooperative, State has the right to request that Contractor reassign personnel/staff and arrange for an employee(s) or subcontractor(s) satisfactory to State to provide the services otherwise performable by the Contractor hereunder.

## **VII. EVALUATION OF PROPOSALS**

- A. Size, structure, resources and experience of vendor in providing FSA plan services similar in size and scope to that of the Program.
- B. Contractor's understanding of the Program’s purpose and scope, as evidenced by the proposed approach and the level of effort.
- C. Competitiveness of proposed cost to participants.
- D. Scope and suitability of proposed education and communication program.
- E. Availability in the State and competence of personnel with the appropriate training;
- F. Conformity with specifications contained herein;



- G. Data management services, including creation and maintenance of employee data, transaction data and history, interfaces with payroll and other record keeping and administrative functions,
- H. Demonstration of commitment to affirmative action by full compliance with the regulations of the Commission on Human Rights and Opportunities.
- I. At the option of the Screening Committee, an oral presentation.
- J. At the option of the Screening Committee, a site visit.
- K. Financial condition and stability of the organization.
- L. Location where services are being performed.

## **VIII. EXECUTION OF CONTRACT**

This RFP only serves as the instrument through which proposals are solicited. Once the evaluation of the proposals is complete, the selected proposal will serve as the basis for a contract to be negotiated and executed between the OSC and the selected firm. If the OSC and the initial selected firm fail to reach agreement on all issues within a time determined solely by the OSC, then the OSC may commence and conclude contract negotiations with other proposers. The OSC may decide at any time to start this RFP process again.

## **IX. QUESTIONNAIRE**

### **A. General**

1. How do you differentiate your services in administering FSA and pre-tax commuter programs from your competitors?
2. How many clients are you currently administering such services for? How many additional are expected during the next 6 months?
3. Provide a link to your website:
4. What percentage of your organization's total revenue is represented by the administration of FSA and pre-tax commuter programs?
5. Please provide an organization chart of employees who would be involved in this account along with their duties, titles, years of experience and physical locations.
6. For each of the following areas, indicate if the State of Connecticut will have a dedicated contract person and/or staff. Please describe how these areas work together:

- Implementation  Yes  No
- Eligibility  Yes  No
- Billing/Accounting  Yes  No
- Technical Support  Yes  No
- Customer Service  Yes  No
- Communications  Yes  No
- Legal/Compliance  Yes  No

7. Please confirm your willingness to have a dedicated account manager at implementation and to have this person present and involved at all implementation meetings and phone calls.
8. List your company's top 3 quality improvement programs for 2020. What steps have you taken over the past year to improve the quality of your service and the experience of your customers?
9. How would you ensure the State's compliance with federal tax laws and reporting requirements?

B. Service Details

1. OSC requires that the following services be provided in administering the FSA program. Please complete the following table. Indicate if your organization will perform the following services:

Communication materials to employees	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Handling of open enrollment information packages	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Initial setup of employee accounts	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Marketing materials for employees, including illustrations of tax savings gained	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Processing of requests for reimbursement, including eligibility verification according to IRS requirements	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Online web tools for enrollment, submission of expense documentation and account balances	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Fax and IVR capabilities	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Ongoing record keeping of accounts	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Issuance of reimbursement drafts and pertinent documentation	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Periodic employee statements	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Employee notification of account balances near year-end via mail/or post	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Periodic accounting and statistical reports (include examples)	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Plan Documents review/update	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Employee Statement Mailings	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Discrimination testing (if required)

Yes  No

2. The selected vendor shall provide the State with the information in its custody for use in preparing all returns and reports required by the Internal Revenue Service and any other federal or state agencies.  
 Yes  No
3. The selected vendor must stay current on legal and regulatory changes affecting FSA plans and advise the State of any regulatory, legal, or procedural changes.  
 Yes  No
4. The selected vendor must handle the intake and review of all customer service inquiries and appeals.  
 Yes  No
5. If your proposal does not include all of these services, or includes additional services, please describe in detail. Also, please indicate the cost of each service.

B. Claims Processing

1. What is your expected Claim Turnaround Time (number of business days from receipt) for (a) paper claims? (b) electronic claims?
2. What percentage of your claims is paper as opposed to electronic?
3. What was your claims payment accuracy for Calendar Year 2019? 2020?
4. What location would claims be paid out of?

C. Debit Cards

Card characteristics	Vendor Response
1. You have the ability to administer a debit card.	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. What types of claims cannot be administered via your debit card?	
3. Can dependent care expenses be administered by using the debit card?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4. Is there an added fee to administer a debit card?	<input type="checkbox"/> Yes <input type="checkbox"/> No

5. Must all participants use the debit card or can only certain individuals elect the debit card option?	<input type="checkbox"/> all participants use the debit card <input type="checkbox"/> only certain individuals elect the debit card option
6. What debit card transactions would prompt a request for claim substantiation?	
7. When you offer a debit card, do you require that all reimbursements be administered via this debit card or will you accept hard copy claim submissions by those participants who forget to use their card?	<input type="checkbox"/> require all reimbursements be administered via this debit card <input type="checkbox"/> will accept hard copy claim submissions by those participants who forget to use debit card
8. What happens when an ineligible item is charged to a debit card along with a covered prescription?	
9. What is your procedure to handle debit card utilization by terminated employees or employees on leave?	
10. Can your debit card administration process prior plan year medical charges that are first billed/submitted during the run out period?	<input type="checkbox"/> Yes <input type="checkbox"/> No
11. If you answered no, what would you recommend to prevent the debit card from being causing claims to be assigned to the incorrect plan year?	
12. Under what circumstances must members provide substantiation of a clam when using a debit card?	

D. Administration

1. Indicate how contributions, accounting, and reimbursements are handled by your system.
2. Describe how your system handles enrollment forms. (Are forms scanned? Date-stamped, etc.)

3. Describe the information that will be required from the employee to submit a valid claim for FSA benefits reimbursement, i.e., do they need a copy of the EOB from the health carrier confirming an out-of-pocket expense?
3. Does your system calculate salary reduction and payroll deduction amounts?
4. Can your system accommodate changes to an employee's election during the plan year due to:
  - employee status changes
  - family status changes
  - changes in eligibility
5. Can your system communicate to payroll for changes in deductions due to:
  - changes in employee elections
  - employee pay frequency changes
  - Employee pay duration changes
6. How does your system enroll newly eligible employees throughout the plan year and properly update or reconcile enrollment with payroll?
7. How does your system check for duplicate expenses and verify plan maximums?
8. What facilities are provided by the system to identify coverage changes that result from status changes or salary changes?
9. How does the system track termination dates?
10. What safeguards exist to prevent an ineligible plan member from attempting to gain reimbursement under the program?
11. Can your system flag certain recurring expenses that have already been substantiated?
12. Will you require substantiation of a recurring eligible expense each time the expense is submitted or only the first time the expense is submitted?)
13. Does the system maintain covered dependent and beneficiary information?
14. Can your system administer multiple plan years concurrently and allow dual records during the first months of a new plan year? Can your system automatically enroll eligible employees who elect to continue to participate?

15. How do you handle overpayments and underpayments?
- P. How will forfeitures be handled for year-end accounting?
- Q. What correction facilities are provided to reverse deposits, requests, payments?
- R. What back up procedures are in place to maintain data integrity?
- S. Please provide a detailed implementation timeline.
- T. Provide samples of communication materials to be distributed by the vendor to all members including but not limited to:
- Procedures for obtaining reimbursement
  - Claim forms
  - Claim substantiation when using debit card through participation in the FSA.
21. Please include samples of the following material:
- Communication material
  - Enrollment and any other forms
  - Management reports
22. What is the average lag time between receipt of eligibility information and downloading of information into your system?
23. How is enrollment and individual account balance information communicated to the State?
24. Please attach samples of your standard reports and indicate which reports are available monthly, quarterly and annually at no charge. Which reports if any are available to the State on-line?
25. Do you agree to refund 100% of costs to the State in the event that erroneous claims processing by you results in payment of claims on behalf of ineligible participants such as, for example, reimbursement of claims submitted more than 90 days after termination of employment, reimbursement of claims in excess of participant's account balance, etc.?

D. Fees

1. Please provide a quote for FSA administration and a detailed list of services that it includes.
2. .Please provide a quote for any fee connected with use of debit cards.

- 3.. Please confirm Section 125 testing is included in the administrative fee. If not, please specify the additional cost.

E. Systems Capabilities and Hardware

1. What system would you use to administer the plans?
2. Was the software developed internally, leased, or purchased from another provider? Who has the ultimate responsibility/authority to make sure the software remains current to laws, regulations, client needs, etc.?
3. How long have you used these systems?
4. Are you planning any major change in the software or hardware supporting your system in the next 24 months? If yes, please describe.
5. How often is data backed-up?
  - a. Describe any system outages within the last three years and how have they been handled.
  - b. Has any liability resulted from these outages and are there any pending claims related to these outages?
6. Describe in detail your procedures and safeguards used to guarantee:
  - a. Security for your hardware and facility;
  - b. Authorized access to data;
  - c. Confidentiality of data;
  - d. Security for any hard copy of plan-related data or documents; and
  - e. Explain your process in the event that participant data is compromised.
7. Describe your cybersecurity insurance coverage and indemnification provided to protect clients.



**Attachment I**

**INTENT TO BID FORM**

*Please fill out this form and email a PDF to [osc.rfp@ct.gov](mailto:osc.rfp@ct.gov). Note: This form must be received by 2:00PM on June 3, 2021.*

Attention:  
FLEXIBLE SPENDING ACCOUNTS AND  
QUALIFIED TRANSPORTATION ACCOUNT PROGRAM

The STATE OF CONNECTICUT

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

Authorized Personnel: \_\_\_\_\_

Title: \_\_\_\_\_

This is to confirm that we have received the Request for Proposal for the State of Connecticut. We wish to advise you that we \_\_\_\_\_ **will** \_\_\_\_\_ **will not** submit a proposal to provide:

FLEXIBLE SPENDING ACCOUNTS AND  
QUALIFIED TRANSPORTATION ACCOUNT PROGRAM

We are not submitting a proposal because

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature of this form confirms your intent to bid.

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

Email address: \_\_\_\_\_

Date: \_\_\_\_\_

## Attachment II

### CORE-CT FILE EXCHANGE

There are currently two methods for exchanging files with the State's Core-CT system:

1. The carrier logs into the secure Core-CT Production Supplier Portal via https to download files. The URL is <https://corect.ct.gov:10400/psp/PSPRD/signon.html>

-or-

2. The carrier logs into the secure Core-CT Axway Server. The URL is <https://sfile.ct.gov/> For those using an automated system Axway has a client available at <http://www.axway.com/productssolutions/securetransport>

#### Testing Requirements

At least one test cycle must be completed successfully prior to going live employing one of the previously mentioned file transports.

The Core-CT Supplier Portal uses a non-standard port (10400 for Production, 15000 for Test) and that may require action by the carrier's Tech Support area to accomplish this. Vendors must report in their response to this RFP whether they were able to successfully reach the portal sign on page at:

<https://corect.ct.gov:10400/psp/PSPRD/signon.html> or have obtained Axway client software and successfully connected to: <https://sfile.ct.gov/>

For testing purposes, the link to the TEST supplier portal is:

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

Additional information for all parties that exchange data with State's Core-CT system is available at: <http://www.core-ct.state.ct.us/hrint/>



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Any request for written notice under this Agreement shall be made in the manner set forth in this section. The parties may change their respective addresses for notices under this paragraph upon prior written notification to the other.

If for any reason, the Contractor shall fail to fulfill in a timely manner and proper manner its obligations under this Agreement, the Comptroller shall thereupon have the right to terminate this Agreement by giving written notice to the Contractor of such termination and the reason therefore specifying the effective date thereof at least thirty (30) days before the effective date of such termination. In such event, all records and data prepared by the Contractor under this Agreement shall become available for audit. The Contractor shall not be relieved of liability to the Comptroller for damages sustained by the Comptroller by virtue of any breach of the Agreement by the Contractor, and the Comptroller may withhold any payments to the Contractor for the purposes of set-off until such time as the exact amount of damages to the Comptroller is determined.

The Comptroller or the Contractor may terminate this Agreement for any time by giving at least 60 days' notice in writing to the other party. If the agreement is terminated by the Comptroller as provided herein, all fees earned up to the date of termination pursuant to \_\_\_\_\_ shall accrue and be paid to the Contractor.

**SECTION 4  
SPECIFICATION OF SERVICES**

*(Insert Outline of Work)*

**SECTION 5  
COST AND SCHEDULE OF PAYMENTS**

The Contractor shall be compensated for fees based upon work performed, documented, and accepted by the Comptroller. The Comptroller shall pay the CONTRACTOR for services performed under this AGREEMENT as follows:

*(Insert fee detail, etc.)*

The Contractor shall submit invoices on a periodic basis, not less often than monthly. Invoices shall, at a minimum, include the Contractor name, the Contract Number, the Contractor's Federal Employer Identification Number, the billing period, and an itemization of expenses by line item.

Invoices for any services billed by the hour shall include the name and title of the individual providing the services, the dates worked, the number of hours worked each day with a brief synopsis of the work performed, the rate being charged for the individual, and the total cost for that person's work during the billing period.

Invoices for expenses, if allowed, shall include a detailed account of expenses specifying the day when and purpose for which they were incurred as well as all receipts, invoices, bills and other available documentation as evidence of the actual cost of such expenses.

## **SECTION 6 OTHER CONDITIONS**

### **A. Entire Agreement**

This Agreement embodies the entire agreement between the Comptroller and the Contractor on matters specifically addressed herein. The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein. This Agreement shall supersede all prior written agreements between the parties and their predecessors. No changes, amendments or modifications of any terms or conditions of the Agreement shall be valid unless reduced to writing and signed by both parties and where applicable approved by the Office of the Attorney General. The Contractor's proposal response was used as determinative in the request for proposal process that resulted in this Agreement.

### **B. Changes in Service**

When changes in the services are required or requested by the Comptroller, Contractor shall promptly estimate their monetary effect and so notify the Comptroller. No change shall be implemented by Contractor unless it is approved by the Comptroller in writing; and, unless otherwise agreed to in writing, the provisions of this Agreement shall apply to all changes in the services. If the Comptroller determines that any change materially affects the cost or time of performance of this Agreement as a whole, Contractor and the Comptroller will mutually agree in writing to an equitable adjustment.

### **C. Independent Contractor**

Contractor represents that it is fully experienced and properly qualified to perform the services provided for herein, and that it is properly licensed, equipped, organized, and financed to perform such services. Contractor shall act as an independent Contractor in performing this Agreement, maintaining complete control over its employees and all of its subcontractors. Contractor shall furnish fully qualified personnel to perform the services under this Agreement. Contractor shall perform all services in accordance with its methods, subject to compliance with this Agreement and all applicable laws and regulations. It is acknowledged that services rendered by the Contractor to the Comptroller hereunder do not in any way conflict with other contractual commitments with or by the Contractor.

If applicable, Contractor shall deliver copies of any and all current license(s) and registration(s) relating to the services to be performed under this Agreement to the Comptroller, at the time of the execution of this Agreement, as evidence that such are in full force and effect.

D. Laws and Regulations

The Agreement shall be deemed to have been made in the City of Hartford, State of Connecticut. Both Parties agree that it is fair and reasonable for the validity and construction of this Agreement that it shall be governed by, construed, and enforced in accordance with the laws and court decisions of the State of Connecticut without giving effect to its principles of conflicts of laws.

The Contractor agrees that the sole and exclusive means for the presentation of any claims against the State arising from this Agreement shall be in accordance with Chapter 53 of the Connecticut General Statutes (Claims Against the State) and the Contractor further agrees not to initiate legal proceedings in any State or Federal Court in addition to, or in lieu of, said Chapter 53 proceedings.

To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Contractor waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

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

Contractor, its employees and representatives shall at all times comply with all applicable laws, ordinances, statutes, rules, regulations, and orders of governmental authorities, including those having jurisdiction over its registration and licensing to perform services under this Agreement.

E. Labor and Personnel

At all times, Contractor shall utilize approved, qualified personnel and any Comptroller approved subcontractors necessary to perform the services under this Agreement. Contractor shall advise the Comptroller promptly, in writing, of any labor

dispute or anticipated labor dispute or other labor related occurrence known to Contractor involving Contractor's employees or subcontractors which may reasonably be expected to affect Contractor's performance of services under this Agreement. The Comptroller may then, at its option, ask Contractor to arrange for a temporary employee(s) or subcontractor(s) satisfactory to the Comptroller to provide the services otherwise performable by Contractor hereunder. The Contractor will be responsible to the Comptroller for any economic detriment caused the Comptroller by such subcontract arrangement.

Contractor shall, if requested to do so by the Comptroller, reassign from the Comptroller's account any employee or authorized representatives whom the Comptroller, in its sole discretion, determines is incompetent, dishonest, or uncooperative. In requesting the reassignment of an employee under this paragraph, the Comptroller shall give ten (10) days' notice to Contractor of the Comptroller's desire for such reassignment. Contractor will then have five (5) days to investigate the situation and attempt, if it so desires, to satisfy the Comptroller that the employee should not be reassigned; however, the Comptroller's decision in its sole discretion after such five (5) day period shall be final. Should the Comptroller still desire reassignment, then five days thereafter, or ten (10) days from the date of the notice of reassignment, the employee shall be reassigned from the Comptroller's account.

F. Conflicts, Errors, Omissions, and Discrepancies

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

G. Indemnity

Contractor hereby indemnifies and shall defend and hold harmless the State of Connecticut, the Comptroller, its officers, and its employees from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, monetary loss, interest, attorney's fees, costs and expenses of whatsoever kind or nature arising out of the performance of this Agreement, including those arising out of injury to or death of Contractor's employees or subcontractors, whether arising before, during, or after completion of the services hereunder and in any manner directly or indirectly caused, occasioned or contributed to in whole or in part, by reason of any act, omission, fault or negligence of Contractor or its employees, agents or subcontractors.

H. Nondisclosure

Contractor shall not release any information concerning the services provided pursuant to the Agreement or any part thereof to any member of the public, press, business entity or any official body unless prior written consent is obtained from the Comptroller.

I. Quality Surveillance and Examination of Records

All services performed by Contractor shall be subject to the inspection and approval of the Comptroller at all times, and Contractor shall furnish all information concerning the services.

The Comptroller or its representatives shall have the right at reasonable hours to examine any books, records, and other documents of Contractor or its subcontractors pertaining to work performed under this Agreement and shall allow such representatives free access to any and all such books and records. The Comptroller will give the Contractor at least twenty-four (24) hours' notice of such intended examination. At the Comptroller's request, the Contractor shall provide the Comptroller with hard copies of or magnetic disk or tape containing any data or information in the possession or control of the Contractor which pertains to the Comptroller's business under this Agreement. The Contractor shall incorporate this paragraph verbatim into any Agreement it enters into with any subcontractor providing services under this Agreement.

The Contractor shall retain and maintain accurate records and documents relating to performance of services under this Agreement for a minimum of three (3) years after the final payment by the Comptroller and shall make them available for inspection and audit by the Comptroller.

In the event that this Agreement constitutes a grant Agreement, and the Contractor is a public or private agency other than another state agency, the Contractor shall provide for an audit acceptable to the Comptroller, in accordance with the provisions of Conn. Gen. Stat. Sec. 7-396a.

J. Insurance

The Contractor, at its sole expense, agrees to secure and keep in full force and effect at all times during the term of this Agreement as defined in Section 2 above, a one million dollar (\$1,000,000) liability insurance policy or policies provided by an insurance company or companies licensed to do business in the State of Connecticut. Said policy or policies shall cover all of the Contractor's activities under this Agreement and shall state that it is primary insurance in regard to the, State of Connecticut, the Comptroller, its officers and employees. The State of Connecticut shall be named as an additional insured.



In addition, the Contractor shall at its sole expense maintain in effect at all times during the performance of its obligations hereunder the following additional insurance coverages with limits not less than those set forth below with insurers and under forms of policies approved by the State Insurance Commissioner to do business in Connecticut:

<u>Coverage:</u>	<u>Minimum Amounts and Limits</u>
Workers' Compensation	Connecticut Statutory Requirements
Employer's Liability	To the extent included under Workers' Compensation Insurance Policy

Adequate comprehensive Vehicle Liability Insurance covering all vehicles owned or leased by

Contractor and in the course of work under this Agreement:

- a. Bodily Injury Insurance meeting Connecticut statutory requirements;
- b. Property Damage Insurance meeting Connecticut statutory requirements;

None of the requirements contained herein as to types, limits, and approval of insurance coverage to be maintained by Contractor are intended to and shall not in any way limit or qualify the liabilities and obligations assumed by Contractor under this Agreement.

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

K. Non-Waiver

None of the conditions of this Agreement shall be considered waived by the Comptroller or the Contractor unless given in writing. No such waiver shall be a waiver of any past or future default, breach, or modification of any of the conditions of this Agreement unless expressly stipulated in such waiver.

L. Promotion

Unless specifically authorized in writing by the Comptroller, the Contractor shall have no right to use, and shall not use, the name of the State of Connecticut, its officials or employees, the seal of the Comptroller, or the seal of the Comptroller:

1. In any advertising, publicity, promotion; nor
2. To express or imply any endorsement of the Contractor's products or services; nor
3. To use the names of the Comptroller, its officials or employees or the Comptroller seal or Comptroller's seal in any manner (whether or not similar to uses prohibited by subparagraphs 1 and 2 above), except as only to manufacture and deliver in accordance with this Agreement such items as are hereby contracted by the Comptroller, provided however, the use of the State seal shall require specific and express permission from the Secretary of the State.

M. Confidentiality

All data provided to Contractor by the Comptroller or developed internally by Contractor with regard to the Comptroller will be treated as proprietary to the Comptroller and confidential unless the Comptroller agrees in writing to the contrary. Contractor agrees to forever hold in confidence all files, records, documents, or other information as designated, whether prepared by the Comptroller or others, which may come into Contractor's possession during the term of this Agreement, except where disclosure of such information by Contractor is required by other governmental authority to ensure compliance with laws, rules, or regulations, and such disclosure will be limited to that actually so required. Where such disclosure is required, Contractor will provide advance notice to the Comptroller of the need for the disclosure and will not disclose absent consent from the Comptroller.

N. Subpoenas

In the event the Contractor's records are subpoenaed pursuant to Conn. Gen. Stat. Section 36a-43, the Contractor shall, within twenty-four (24) hours of service of the subpoena, notify the person designated for the Comptroller in Section 3 of this Agreement of such subpoena. Within thirty-six (36) hours of service, the Contractor shall send a written notice of the subpoena together with a copy of the same to the person designated for the Comptroller in Section 3 of this Agreement.

O. Survival

The rights and obligations of the parties which by their nature survive termination or completion of the Agreement, including but not limited to those set forth herein in sections relating to Indemnity, Nondisclosure, Promotion, and Confidentiality of this Agreement, shall remain in full force and effect.

P. Sovereign Immunity

Notwithstanding any provisions to the contrary contained in this Agreement, it is agreed and understood that the State of Connecticut shall not be construed to have waived any rights or defenses of sovereign immunity which it may have with respect to all matters arising out of this Agreement.

Q. Assignment

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

R. Severability

If any part or parts of this Agreement shall be held to be void or unenforceable, such part or parts shall be treated as severable, leaving valid the remainder of this Agreement notwithstanding the part or parts found to be void or unenforceable.

S. Headings

The titles of the several sections, subsections, and paragraphs set forth in this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

T. Third Parties

The Comptroller shall not be obligated or liable hereunder to any party other than the Contractor.

U. Non Waiver

In no event shall the making by the Comptroller of any payment to the Contractor constitute or be construed as a waiver by the Comptroller of any breach of covenant, or any default which may then exist, on the part of the Contractor and the making of any such payment by the Comptroller while any such breach or default exists shall in no way impair or prejudice any right or remedy available to the Comptroller in respect to such breach or default.

V. Contractor Certification

The Contractor certifies that the Contractor has not been convicted of bribery or attempting to bribe an officer or employee of the Comptroller, nor has the Contractor made an admission of guilt of such conduct which is a matter of record.

**SECTION 7  
STATUTORY AND REGULATORY COMPLIANCE**

A. Health Insurance Portability and Accountability Act of 1996. Notwithstanding the language in Section 7.A.3 of the Contract, the language below is not applicable if the Agency is not a Covered Entity for the purposes of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). However, if the Agency becomes a Covered Entity in the future and if the Contractor accordingly becomes a Business Associate, Contractor will comply with the terms of this Section upon written notice from the Agency that the Agency is a Covered Entity.

1. If the Contractor is a Business Associate under the requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as noted on the Signatures and Approval page of this Contract, the Contractor must comply with all terms and conditions of this Section of the Contract. If the Contractor is not a Business Associate under HIPAA, this Section of the Contract does not apply to the Contractor for this Contract.
2. The Contractor is required to safeguard the use, publication and disclosure of information on all applicants for, and all clients who receive, services under the Contract in accordance with all applicable federal and state law regarding confidentiality, which includes but is not limited to HIPAA, more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E; and
3. The State of Connecticut Agency named on page 1 of this Contract (“Agency”) is a “covered entity” as that term is defined in 45 C.F.R. § 160.103; and
4. The Contractor is a “business associate” of the Agency, as that term is defined in 45 C.F.R. § 160.103; and
5. The Contractor and the Agency agree to the following in order to secure compliance with the HIPAA, the requirements of Subtitle D of the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”), (Pub. L. 111-5, §§ 13400 to 13423), and more specifically with the Privacy and Security Rules at 45 C.F.R. parts 160 and 164, subparts A, C, and E (collectively referred to herein as the “HIPAA Standards”).
6. Definitions

- a. "Breach" shall have the same meaning as the term is defined in 45 C.F.R. § 164.402 and shall also include a use or disclosure of PHI that violates the HIPAA Standards.
- b. "Business Associate" shall mean the Contractor.
- c. "Covered Entity" shall mean the Agency of the State of Connecticut named on page 1 of this Contract.
- d. "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 C.F.R. § 164.501.
- e. "Electronic Health Record" shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. § 17921(5)).
- f. "Individual" shall have the same meaning as the term "individual" in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative as defined in 45 C.F.R. § 164.502(g).
- g. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health V Information at 45 C.F.R. part 160 and part 164, subparts A and E.
- h. "Protected Health Information" or "PHI" shall have the same meaning as the term defined in 45 C.F.R. § 160.103, limited to information created, maintained, transmitted defined in 45 C.F.R. § 160.103, limited to information created, maintained, transmitted or received by the Business Associate from or on behalf of the Covered Entity or from another Business Associate of the Covered Entity.
- i. "Required by Law" shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.103.
- j. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- k. "More stringent" shall have the same meaning as the term "more stringent" in 45 C.F.R. § 160.202.
- l. "This Section of the Contract" refers to the HIPAA Provisions stated herein, in their entirety.
- m. "Security Incident" shall have the same meaning as the term "security incident" in 45 C.F.R. § 164.304.
- n. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. part 160 and part 164, subpart A and C.
- o. "Unsecured protected health information" shall have the same meaning as the term as defined in 45 C.F.R. § 164.402.

7 Obligations and Activities of Business Associates.

- a. Business Associate agrees not to use or disclose PHI other than as permitted or required by this Section of the Contract or as Required by Law.

- b. Business Associate agrees to use and maintain appropriate safeguards and comply with applicable HIPAA Standards with respect to all PHI and to prevent use or disclosure of PHI other than as provided for in this Section of the Contract and in accordance with HIPAA Standards.
- c. Business Associate agrees to use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic protected health information that it creates, receives, maintains, or transmits on behalf of the Covered Entity.
- d. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by Business Associate in violation of this Section of the Contract.
- e. Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Section of the Contract or any security incident of which it becomes aware.
- f. Business Associate agrees in accordance with 45 C.F.R. § 502(e)(1)(ii) and § 164.308(d)(2), if applicable, to ensure that any subcontractor that creates, receives, maintains or transmits PHI on behalf of the Business Associate agrees to the same restrictions, conditions and requirements that apply to the Business Associate with respect to such information.
- g. Business Associate agrees to provide access (including inspection, obtaining a copy or both), at the request of the Covered Entity, and in the time and manner designated by the Covered Entity, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524. Business Associate shall not charge any fees greater than the lesser of the amount charged by the Covered Entity to an Individual for such records; the amount permitted by state law; or the Business Associate's actual cost of postage, labor and supplies for complying with the request.
- h. Business Associate agrees to make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of the Covered Entity, and in the time and manner designated by the Covered Entity.
- i. Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created, maintained, transmitted or received by, Business Associate on behalf of Covered Entity, available to Covered Entity or to the Secretary in a time and manner agreed to by the parties or designated by the Secretary, for purposes of the Secretary

- investigating or determining Covered Entity's compliance with the HIPAA Standards.
- j. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.
  - k. Business Associate agrees to provide to Covered Entity, in a time and manner designated by the Covered Entity, information collected in accordance with subsection 7.j of this Section of the Contract, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder. Business Associate agrees at the Covered Entity's direction to provide an accounting of disclosures of PHI directly to an Individual in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.
  - l. Business Associate agrees to comply with any state or federal law that is more stringent than the Privacy Rule.
  - m. Business Associate agrees to comply with the requirements of the HITECH Act relating to privacy and security that are applicable to the Covered Entity and with the requirements of 45 C.F.R. §§ 164.504(e), 164.308, 164.310, 164.312, and 164.316.
  - n. In the event that an Individual requests that the Business Associate (A) restrict disclosures of PHI; (B) provide an accounting of disclosures of the Individual's PHI; (C) provide a copy of the Individual's PHI in an electronic health record; or (D) amend PHI in the Individual's designated record set the Business Associate agrees to notify the Covered Entity, in writing, within five (5) business days of the request.
  - o. Business Associate agrees that it shall not, and shall ensure that its subcontractors do not, directly or indirectly, receive any remuneration in exchange for PHI of an Individual without (A) the written approval of the Covered Entity, unless receipt of remuneration in exchange for PHI is expressly authorized by this Contract; and (B) the valid authorization of the Individual, except for the purposes provided under section 13405(d)(2) of the HITECH Act, (42 U.S.C. § 17935(d)(2)) and in any accompanying regulations
  - p. Obligations in the Event of Breach.
    - i. The Business Associate agrees that, following the discovery by the Business Associate or by a subcontractor of the Business Associate of any use or disclosure not provided

for by this section of the Contract, any breach of unsecured PHI, or any Security Incident, it shall notify the Covered Entity of such breach in accordance with Subpart D of Part 164 of Title 45 of the Code of Federal Regulations and this Section of the Contract.

- ii. Such notification shall be provided by the Business Associate to the Covered Entity without unreasonable delay, and in no case later than thirty (30) days after the breach is discovered by the Business Associate, or a subcontractor of the Business Associate, except as otherwise instructed in writing by a law enforcement official pursuant to 45 C.F.R. § 164.412. A breach is considered discovered as of the first day on which it is, or reasonably should have been, known to the Business Associate or its subcontractor. The notification shall include the identification and last known address, phone number and email address of each Individual (or the next of kin of the Individual if the Individual is deceased) whose unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during such breach.
- iii. The Business Associate agrees to include in the notification to the Covered Entity at least the following information:
  - (A) A description of what happened, including the date of the breach; the date of the discovery of the breach; the unauthorized person, if known, who used the PHI or to whom it was disclosed; and whether the PHI was actually acquired or viewed.
  - (B) A description of the types of unsecured PHI that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code).
  - (C) The steps the Business Associate recommends that Individual(s) take to protect themselves from potential harm resulting from the breach.
  - (D) A detailed description of what the Business Associate is doing or has done to investigate the breach, to mitigate losses, and to protect against any further breaches.
  - (E) Whether a law enforcement official has advised the Business Associate, either verbally or in writing, that he or she has determined that notification or notice to Individuals or the posting required under 45 C.F.R. § 164.412 would impede a criminal investigation or cause damage to national security and; if so, include contact information for said official.



- (F) If directed by the Covered Entity, the Business Associate agrees to conduct a risk assessment using at least the information in subparagraphs (A) to (D) inclusive, of 7.p.iii of this Section and determine whether, in its opinion, there is a low probability that the PHI has been compromised. Such recommendation shall be transmitted to the Covered Entity within twenty (20) business days of the Business Associate's notification to the Covered Entity.
- (G) If the Covered Entity determines that there has been a breach, as defined in 45 C.F.R. § 164.402, by the Business Associate or a subcontractor of the Business Associate, if directed by the Covered Entity, shall provide all notifications required by 45 C.F.R. §§ 164.404 and 164.406.
- (H) Business Associate agrees to provide appropriate staffing and have established procedures to ensure that Individuals informed of a breach have the opportunity to ask questions and contact the Business Associate for additional information regarding the breach. Such procedures shall include a toll-free telephone number, an e-mail address, a posting on its Web site and a postal address. Business Associate agrees to include in the notification of a breach by the Business Associate to the Covered Entity, a written description of the procedures that have been established to meet these requirements. Costs of such contact procedures will be borne by the Contractor.
- (I) Business Associate agrees that, in the event of a breach, it has the burden to demonstrate that it has complied with all notifications requirements set forth above, including evidence demonstrating the necessity of a delay in notification to the Covered Entity.

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

and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

- ii. Except as otherwise limited in this Section of the Contract, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- iii. Except as otherwise limited in this Section of the Contract, Business Associate may use PHI to provide data aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

9. Obligations of Covered Entity.

- a. Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices of Covered Entity, in accordance with 45 C.F.R. § 164.520, or to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- b. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual(s) to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- c. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

10. Permissible Requests by Covered Entity.

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Standards if done by the Covered Entity, except that Business Associate may use and disclose PHI for data aggregation, and management and administrative activities of Business Associate, as permitted under this Section of the Contract.

11. Term and Termination.

- a. Term. The Term of this Section of the Contract shall be effective as of the date the Contract is effective and shall terminate when the

information collected in accordance with provision 7.j of this Section of the Contract is provided to the Covered Entity and all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

- b. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
  - i. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate the Contract if Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity; or
  - ii. Immediately terminate the Contract if Business Associate has breached a material term of this Section of the Contract and cure is not possible; or
  - iii. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
- c. Effect of Termination.
  - i. Except as provided in 11.c of this Section of the Contract, upon termination of this Contract, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity. Business Associate shall also provide the information collected in accordance with section 7.j of this Section of the Contract to the Covered Entity within ten (10) business days of the notice of termination. This section shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
  - ii. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon documentation by Business Associate that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Section of the Contract to such PHI and limit further uses and disclosures of PHI to those purposes that make return or destruction infeasible, for as long as Business Associate maintains such PHI. Infeasibility of the return or destruction of PHI includes, but is not limited to, requirements under state or federal law that the Business Associate maintains or preserves the PHI or copies thereof.

12. Miscellaneous Sections.

- a. Regulatory References. A reference in this Section of the Contract to a section in the Privacy Rule means the section as in effect or as amended.
- b. Amendment. The Parties agree to take such action as is necessary to amend this Section of the Contract from time to time as is necessary for Covered Entity to comply with requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- c. Survival. The respective rights and obligations of Business Associate shall survive the termination of this Contract.
- d. Effect on Contract. Except as specifically required to implement the purposes of this Section of the Contract, all other terms of the Contract shall remain in force and effect.
- e. Construction. This Section of the Contract shall be construed as broadly as necessary to implement and comply with the Privacy Standard. Any ambiguity in this Section of the Contract shall be resolved in favor of a meaning that complies, and is consistent with, the Privacy Standard.
- f. Disclaimer. Covered Entity makes no warranty or representation that compliance with this Section of the Contract will be adequate or satisfactory for Business Associate's own purposes. Covered Entity shall not be liable to Business Associate for any claim, civil or criminal penalty, loss or damage related to or arising from the unauthorized use or disclosure of PHI by Business Associate or any of its officers, directors, employees, contractors or agents, or any third party to whom Business Associate has disclosed PHI contrary to the sections of this Contract or applicable law. Business Associate is solely responsible for all decisions made, and actions taken, by Business Associate regarding the safeguarding, use and disclosure of PHI within its possession, custody or control.
- g. Indemnification. The Business Associate shall indemnify and hold the Covered Entity harmless from and against any and all claims, liabilities, judgments, fines, assessments, penalties, awards and any statutory damages that may be imposed or assessed pursuant to HIPAA, as amended or the HITECH Act, including, without limitation, attorney's fees, expert witness fees, costs of investigation, litigation or dispute resolution, and costs awarded thereunder, relating to or arising out of any violation by the Business Associate and its agents, including subcontractors, of any obligation of Business Associate and its agents, including subcontractors, under this section of the contract, under HIPAA, the HITECH Act, and the HIPAA Standards.

- B. Americans with Disabilities Act. The Contractor shall be and remain in compliance with the Americans with Disabilities Act of 1990 (<http://www.ada.gov/>) as amended from time to time (“ADA”) to the extent applicable, during the term of the Contract. The Agency may cancel or terminate this Contract if the Contractor fails to comply with the ADA. The Contractor represents that it is familiar with the terms of this Act and that it is in compliance with the law. The Contractor warrants that it shall hold the State harmless from any liability which may be imposed upon the state as a result of any failure of the Contractor to be in compliance with this ADA. As applicable, the Contractor shall comply with § 504 of the Federal Rehabilitation Act of 1973, as amended from time to time, 29 U.S.C. § 794 (Supp. 1993), regarding access to programs and facilities by people with disabilities.
- C. Non-discrimination.

- 1 For purposes of this Section, the following terms are defined as follows:
- a. “Commission” means the Commission on Human Rights and Opportunities;
  - b. “Contract” and “contract” include any extension or modification of the Contract or contract;
  - c. “Contractor” and “contractor” include any successors or assigns of the Contractor or contractor;
  - d. “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;
  - e. “Good faith” means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;
  - f. “Good faith efforts” shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;
  - g. “Marital status” means being single, married as recognized by the State of Connecticut, widowed, separated or divorced;

- h. “Mental disability” means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association’s “Diagnostic and Statistical Manual of Mental Disorders”, or a record of or regarding a person as having one or more such disorders;
  - i. “Minority business enterprise” means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of C.G.S. § 32-9n; and
  - j. “Public works contract” means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees. For purposes of this Section, the terms “Contract” and “contract” do not include a contract where each contractor is (i) a political subdivision of the state, including, but not limited to, a municipality, unless the contract is a municipal public works contract or quasi-public agency Project contract, (ii) any other state, including but not limited to any federally recognized Indian tribal government, as defined in C.G.S. §1-267, (iii) the federal government, (iv) a foreign government, or (v) an agency of a subdivision, state or government described in the immediately preceding enumerated items (i),(ii), (iii) or (iv).
- 2.
- a. The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, status as a veteran, intellectual disability, mental disability, or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved,
  - b. Contractor agrees, in all solicitation or advertisements for employees placed by or on behalf of the Contractor, to state that it is an “affirmative action-equal opportunity employer” in accordance with regulations adopted by the Commission;
  - c. the Contractor agree s 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 nor or workers' representative of the Contractor's commitments under this section and to post copies of the notice in conspicuous places available to employees and applications for employment;
- d. the Contractor agrees to comply with each provision of this Section and CGS §§ 46a056, 46a-68e, 46a-68f and 46a-86; 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 CGS §46a-56. If the contract is a public works contract, municipal public works contract or contract for a quasi-public agency project, the Contractor agrees and warrants that he or she will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works or quasi-public agency projects.
3. 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.
  4. The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.
  5. The Contractor shall include the provisions of subsection 2 of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and in every subcontract entered into in order to fulfill any obligation of a municipal public works contract for a quasi-public agency project, and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with C.G.S. § 46a-56, as amended; provided if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission regarding a State contract, the Contractor may request the State of Connecticut to enter into any such

litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

6. 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.
7.
  - a. 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;
  - b. 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;
  - c. The Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to C.G.S. § 46a-56; and
  - d. 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 C.G.S. § 46a-56.
8. 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 C.G.S. § 46a-56 as amended; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission regarding a State contract, the



Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

D. Freedom of Information.

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

E. Whistleblowing.

This Contract is subject to C.G.S. § 4-61dd if the amount of this Contract is a “large state contract” as that term is defined in C.G.S. § 4-61dd(h). In accordance with this statute, if an officer, employee or appointing authority of the Contractor takes or threatens to take any personnel action against any employee of the Contractor in retaliation for such employee’s disclosure of information to any employee of the Contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under subsection (a) of such statute, the Contractor shall be liable for a civil penalty of not more than five thousand dollars (\$5,000) for each offense, up to a maximum of twenty per cent (20%) of the value of this Contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day’s continuance of the violation shall be deemed to be a separate and distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with subsection (f) of such statute, each large state Contractor, as defined in the statute, shall post a notice of the relevant sections of the statute relating to large state Contractors in a conspicuous place which is readily available for viewing by the employees of the Contractor.

F. Executive Orders.

This Contract is subject to Executive Order No. 3 of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices; Executive Order No. 17 of Governor Thomas J. Meskill, promulgated February

15, 1973, concerning the listing of employment openings; Executive Order No. 16 of Governor John G. Rowland, promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and made a part of the Contract as if they had been fully set forth in it. The Contract may also be subject to Executive Order 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services and to Executive Order No. 49 of Governor Dannel P. Malloy, promulgated May 22, 2015, mandating disclosure of certain gifts to public employees and contributions to certain candidates for office. If Executive Order 14 and/or Executive Order 49 are applicable, they are deemed to be incorporated into and are made a part of the Contract as if they had been fully set forth in it. At the Contractor's request, the Client Agency or the Connecticut Department of Administrative Services shall provide a copy of these orders to the Contractor.

G. Campaign Contribution Restriction.

For all State contracts as defined in C.G.S. § 9-612 having a value in a calendar year of \$50,000 or more or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Contract expressly acknowledges receipt of the State Elections Enforcement Commission's notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice, as set forth in "Notice to Executive Branch State Contractors and Prospective State Contractors of Campaign Contribution and Solicitation Limitations" attached hereto.

H. Data Security

Pursuant to Connecticut Public Act 15-142, the Parties agree as follows:

1. As used in this Section:
  - a. "Confidential Information" means an individual's name, date of birth, mother's maiden name, motor vehicle operator's license number, Social Security number, employee identification number, employer or taxpayer identification number, alien registration number, government passport number, health insurance identification number, demand deposit account number, savings account number, credit card number, debit card number or unique biometric data such as fingerprint, voice print, retina or iris image, or other unique physical representation, personally identifiable information subject to 34 CFR 99, as amended from time to time and protected health information, as defined in 45 CFR 160. 103, as amended from time to time. Confidential Information does not include information that may be lawfully obtained from publicly

available sources or from federal, state, or local government records that are lawfully made available to the general public.

- b. "Confidential Information Breach" means an instance where an unauthorized person or entity accesses confidential information that is subject to or otherwise used in conjunction with the Contract in any manner, including, but not limited to, the following occurrences: (i) Any Confidential Information that is not encrypted or secured by any other method or technology that renders the personal information unreadable or unusable is misplaced, lost, stolen or subject to unauthorized access; (ii) one or more third parties have accessed, or taken control or possession of, without prior written authorization from the state, (i) any Confidential Information that is not encrypted or protected, or (ii) any encrypted or protected Confidential Information together with the confidential process or key that is capable of compromising the integrity of the Confidential Information; or (iii) there is a substantial risk of identity theft or fraud of the State's Plan Participants.

2. Pursuant to this Agreement Comptroller will share Confidential Information with Contractor. Contractor at its own expense will protect from a Confidential Information Breach any and all Confidential Information that it comes to possess or control, wherever and however stored or maintained in a commercially reasonable standard and in accordance with current industry standards.

3. **Each Contractor or Contractor Party shall implement and maintain a comprehensive data security program for the protection of Confidential Information. The safeguards contained in such program shall be consistent with and comply with the safeguards for protection of Confidential Information, and information of a similar character, as set forth in all applicable federal and state law and written policy of the Board or State concerning the confidentiality of Confidential Information. Such data-security program shall include, but not be limited to, the following:**
  - a. **A security policy for employees related to the storage, access and transportation of data containing Confidential Information;**

- b. Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept;**
  - c. A process for reviewing policies and security measures at least annually;**
  - d. Creating secure access controls to Confidential Information, including but not limited to passwords; and**
  - e. Encrypting of Confidential Information that is stored on laptops, portable devices or being transmitted electronically.**
- 4. The Contractor and Contractor Parties shall notify Comptroller and the Connecticut Office of the Attorney General as soon as practicable, but no later than ten (10) days, after they become aware of or suspect that any Confidential Information which Contractor or Contractor Parties possess or control has been subject to a Confidential Information Breach.
- 5. If a Confidential Information Breach has occurred and there is a risk of identity theft or fraud to the State's Plan Participants, the Contractor shall, within three (3) business days after the notification, present a credit monitoring and protection plan to the Connecticut Commissioner of Administrative Services, the Comptroller and the Connecticut Office of the Attorney General, for review and approval.
  - a. 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.
  - b. 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.
  - c. Such credit monitoring or protection plans shall be approved by the State in accordance with this Section and shall cover a length of time, not to exceed two (2) years, commensurate with the circumstances of the Confidential Information Breach.
- 6. The Contractor's costs and expenses for the credit monitoring and protection plan shall not be recoverable from any State of Connecticut entity or any affected individuals.
- 7. Contractor understands that the Attorney General may investigate any violation of this section. If the Attorney General finds that Contractor has violated or is violating any provision of this section, the Attorney General may bring a civil action in the superior court for the judicial district of Hartford under this section in the name of the state against such

contractor. Nothing in this section shall be construed to create a private right of action.

8. The requirements of this section shall be in addition to the requirements of section 36a-701b of the Connecticut General Statutes as amended by Public Act 15-142, and nothing in this section shall be construed to supersede Contractor's obligations pursuant to the Health Insurance Portability and Accountability Act of 1996 P. L. 104-191 "HIPAA", the Family Educational Rights and Privacy Act of 1974, 20 USC 1232g, "FERPA" or any other applicable federal or state law.

**SIGNATURES AND APPROVAL**

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

**Contractor**

(Corporate/Legal Name of Contractor)

By: \_\_\_\_\_  
(Typed/Printed Name and Title of Authorized Official)

Date: \_\_\_\_\_

**Office of the State Comptroller**

By: \_\_\_\_\_  
(Typed/Printed Name and Title of Authorized Official)

Date: \_\_\_\_\_

**Connecticut Attorney General (Approved as to form)**

Approved as to form:

\_\_\_\_\_  
Signature  
Date: \_\_\_\_\_

