



OFFICE OF THE STATE COMPTROLLER  
REQUEST FOR PROPOSAL  
FOR LEGAL SERVICES

**Contracting Authority:** Connecticut Office of the State Comptroller  
**Contracting Authority Address:** 165 Capitol Avenue  
Hartford, CT 06106-1775  
**Contracting Authority Website:** <http://osc.ct.gov/>

**Program:** Connecticut Retirement Security Program  
**Program Website:** [www.osc.ct.gov/crsa](http://www.osc.ct.gov/crsa)  
**Designated Contact:** Jessica Muirhead, Executive Director  
**Designated Contact Email:** [osc.rfp@ct.gov](mailto:osc.rfp@ct.gov)

**RFP Date of Issue:** August 5, 2024  
**RFP Submission Due Date:** August 30, 2024 at 12:00PM EST  
**RFP Place of Issue:** <https://www.osc.ct.gov/vendor/rfp.html>.

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## SECTION 1. PURPOSE

**1.1 Overview of the purpose of this request for proposals.** The Connecticut Office of the State Comptroller (“OSC”) seeks proposals from qualified law firms and individual attorneys to perform Legal Services for the Connecticut Retirement Security Program (“CRSP”), branded “MyCTSavings,” (the “Program” or “ MyCTSavings”). All firms submitting proposals are referred to as Proposer in this document; after negotiations, the awarded Proposer will be designated as the Contractor upon successful negotiation and execution of a contract. It is expected that the contract will be awarded to a single successful Proposer; however, the OSC reserves the right to award separate contracts if it is in the best interest of the State. The OSC reserves the right to accept or reject any or all proposals.

The successful proposer to this RFP will demonstrate its ability to deliver independent legal advising and a high capacity for working collaboratively within and across the organizations and teams that will ultimately be service providers to or stakeholders in the CRSP. Key characteristics of the successful Proposer will include organizational strength, depth and experience with defined contribution retirement programs, especially state-sponsored plans (“SSRPs”), the federal Employee Retirement Income Security Act of 1974 (“ERISA”), Connecticut state law, and individual retirement accounts (“IRAs”), including Roth IRAs. Proposers must also meet all statutory and regulatory requirements in providing such services.

Qualified proposals shall be assessed by the RFP search committee to identify which firm might be the best-qualified to enter a Contract (the “Contract” or “Agreement”) with the OSC for comprehensive legal services (the “Services”) related to the Program. The selection of a Proposer will be highly dependent on the Proposer’s experience and capabilities to assist the OSC with at least the following:

- Demonstrable experience in retirement law, including the Employee Retirement Income Security Act of 1974 (“ERISA”), and have a thorough understanding of state and federal laws which affect retirement systems in the State of Connecticut; and
- Be in good financial standing and be a member in good standing of the State Bar of Connecticut.
- Representation of the OSC and/or Advisory Board in disputes, administrative proceedings and/or litigation in coordination with the Office of the Attorney General, pertaining to the exercise of its duties under Chapter 574 of the Connecticut General Statutes, as amended;
- Legal advice on matters related to ERISA, program design, investment management, vendor contracts, and related documents in accordance with the OSC and Advisory Board’s responsibilities identified in sections §§31-416 through 31-429 of the Connecticut General Statutes, inclusive;
- Legal advice regarding issues of Advisory Board governance; and
- Legal advice pertaining to reviews of the language of C.G.S. §§31-416 through 31-429, inclusive, to ensure compliance with legislative intent, fiduciary responsibility, or other relevant requirements of the program.

While cost will be a factor to be considered, the OSC is not required and reserves the right in its reasonable discretion not to accept the lowest priced proposal.

## SECTION 2. BACKGROUND

**2.1 History of the program and program requirements.** The CRSP/MyCT Savings was established for the purpose of promoting and enhancing retirement savings for private sector employees in the state. Connecticut General Statutes §§31-416 through 31-429, as amended by Public Act 22-118 (the “Act”), provides that the OSC shall establish the Program in compliance with these rules. The Act requires the Program to, among other things:

- Allow eligible individuals to contribute through payroll deductions to a Roth individual retirement account established by the Program;
- Require qualified employers, as defined in the Act, to offer employees the opportunity to contribute to a Program IRA through payroll deductions, unless the employer offers a qualified retirement plan, including but not limited to a plan qualified under section 401(a), section 401(k), section 403(a), section 403(b), section 408(k) or section 408(p) of the Internal Revenue Code;
- Provide for automatic enrollment of eligible employees and allow such employees to opt out of the Program;
- Provide for employee contributions to a plan to be deposited directly with the custodian for the IRA and prohibit employer contributions to employee accounts;
- Require the maintenance of separate records and accounting for each individual retirement account;
- Provide quarterly statements to participants encompassing, among other things, the account balance, the value of the participant’s investment in each investment option selected by the participant, the investment options available, the amount of fees charged, and a description of the services to which the charges relate, and at the election of the Comptroller, , an estimate of the income the account is projected to generate for the participant;
- Allow for participants to maintain an account regardless of place of employment. Participants are allowed, to the extent permitted by Internal Revenue Code of 1986, to roll over funds into other retirement accounts, or to roll in funds from other retirement accounts to the account maintained by the CRSP;
- Establish criteria and guidelines to offer qualified investment choices. Invest account contributions into (1) an age-appropriate target date fund or (2) other investment vehicles the OSC may prescribe if affirmatively selected by the participant;
- Provide a lifetime income investment option if the Comptroller determines the design features illustrated in the Act to be feasible and cost effective;
- Prepare informational materials for employers, participants and prospective participants as required by the Act;
- Ensure the State of Connecticut and employers that participate in the Program have no proprietary interest in the contributions or earnings on amounts contributed to accounts established under the Program;
- Minimize total annual fees associated with the Program. Not less than annually provide each participant with a fee notice illustrating the fees of the Program and information regarding the various investment options. The Comptroller is directed to minimize total annual fees associated with the Program and on and after completion of the fourth calendar year following the first date on

which the Program becomes effective, total annual fees associated with the Program must not exceed 75 basis points of the total value of the Program's assets;

- Allow employers to establish an alternative retirement plan for some or all employees;
- Ensure that the Program is not treated as an employee benefit plan under the federal Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) ("ERISA")

The Comptroller is the sole fiduciary to the program. The program is additionally advised by a fifteen-member Connecticut Retirement Security Advisory Board, fourteen of which are currently appointed as of the issue of this RFP. The Advisory Board meets at public meetings at least quarterly and provides its members' expertise to the Comptroller and the Program.

## SECTION 3. SCOPE OF SERVICES

**3.1 Overview of the scope of services.** The successful Proposer(s), upon successful negotiation and execution of a contract at the discretion of the OSC, if it is in the best interest of the Program, shall become the Contractor. Contractor shall provide legal services on an as-needed basis to the OSC. Set forth below is the description of the legal services to be provided by outside counsel to the OSC and Advisory Board. This description is not intended to be comprehensive, but provides general guidance as to the scope of services that Contractor will be expected to provide.

The services requested include, though may not be limited to:

- 3.1.1 Providing expertise in State and Federal laws and regulations applicable to Public Act 16-29, as amended by Public Act 16-3;
- 3.1.2 Assisting the OSC and the Advisory Board with its regulatory and fiduciary obligations, including, but not limited to:
  - a. Representation at administrative or judicial hearings;
  - b. Federal and State legislative analysis on matters affecting the Program;
  - c. Legal analysis of Program governance and structure; and
  - d. Analysis of Program and its offerings for compliance with ERISA

Proposers are advised that the scope of services will be considered to include, in addition to the services described, all of those services understood by knowledgeable counsel to be reasonably necessary to satisfy the duties of such counsel.

Contractor will be expected to work closely with other vendors who provide services to the program.

**3.2 Contract term.** Contracts awarded pursuant to this RFP will have an initial term of three (3) years with an option to extend, by mutual consent, for up to two (2) additional one (1) year periods for a total maximum of five (5) years, unless otherwise amended. Any extensions will only be by written amendment to the original Contract. The OSC reserves the right during the term of these contracts to solicit and request additional proposals for legal services in the same or other areas of practice.

**3.3 Amount of Contract.** The total maximum value of all contracts awarded pursuant to this RFP will not exceed two hundred and fifty thousand dollars (\$250,000.)

## SECTION 4. RFP SUBMISSION REQUIREMENTS

The OSC requires that prospective Proposers comply with all criteria listed below, which are mandatory for a bid to be accepted for further review. Lack of compliance may automatically disqualify the Proposer. Proposers should clearly demonstrate compliance with all of the requirements of this section in their response.

Responses must follow the numbering format for each requirement below, i.e. (*"4.2.1. Statement of Financial Standing."*)

**4.1 Mandatory Cover Letter.** Each response submission must be accompanied by a cover letter. The letter, which shall be considered an integral part of the submission, shall be signed by an individual who is authorized to bind the firm contractually, giving his or her title.

The letter must certify that all information contained in the submission is accurate and complete. Inaccurate or incomplete information may affect the submission adversely. The letter shall contain a statement to the effect that it constitutes an offer to provide the services requested subject to acceptance of compensation levels determined in accordance with this RFP.

**4.2 Table of Contents.** Responses must include a table of contents outlining the sections and subsections of their response.

**4.3 Legal Services Minimum Requirements.** Each Proposer in their response to this request must demonstrate the following minimum requirements of providing legal services in the areas requested:

- 4.3.1 *Standing.* Demonstrate good financial standing of the firm and/or practice and as a member in good standing of the State Bar of Connecticut.
- 4.3.2 *Experience in retirement law.* Demonstrate and describe experience in and knowledge of retirement law, including of the Employee Retirement Income Security Act of 1974 ("ERISA") and have a thorough understanding of state and federal laws which affect retirement systems in the State of Connecticut.
- 4.3.3 *Experience in governance.* Describe experience in board governance, ethics and fiduciary responsibility matters applicable to the Connecticut Retirement Security Program, its Advisory Board, and the Office of the State Comptroller.
- 4.3.4 *Oversight.* Describe the specific steps the firm will take to be continually apprised of all developments within or related to the area of law which directly bear on the services to be performed pursuant to section 3.1 of this RFP.

**4.4 Firm Information Requirements.** All firms, regardless of the category or categories in which they seek consideration, must additionally provide the following information, following the numbering format below (i.e. *"4.4.1. General Description."*):

- 4.4.1 *General Description.* Provide a general description of the firm, its history, significant changes in its makeup over the last three (3) years, and its range of business. Please provide a detailed listing, which may be presented in tabular form as an exhibit or appendix to your submission, of the number of attorneys (by partners, associates, counsel and other categories) and paralegals in each

of the major practice areas of your firm. For sole practitioners, please provide a resume and any other relevant information relating to your background and areas of expertise.

- 4.4.2 *Experience with similar entities.* State the firm's experience in providing Federal and State guidance to financial entities substantially similar to the CRSP over the past five (5) years.
- 4.4.3 *References.* Provide the names and addresses for three (3) references that the OSC may contact.
- 4.4.4 *Litigation.* Provide details of any criminal investigation, regulatory proceeding, or material litigation against you, your firm, or members of your firm which is either pending or which has been completed since January 1, 2014.
- 4.4.5 *Insurance.* Provide details as to the nature (including coverage limitations) and amounts of your firm's professional liability insurance.
- 4.4.6 *Conflict of Interest.* If Proposer believes that a conflict of interest may arise as a result of representing the OSC, Program, or the Advisory Board, please describe the nature of the conflict. In addition, given the fact that conflicts of interest typically arise during most continuous legal representation, please describe how you or your firm would manage a request to represent a party whose interest may be in conflict with the interests of the CRSP. Specifically, does the firm represent or has represented: (a) any private sector employees in proceedings which may impact or be impacted by Public Act 16-29, as amended by § Public Act 16-3 or by similar statutes; or (b) any vendors who provide or are proposing to provide services to retirement boards governed by Public Act 16-29, as amended by § Public Act 16-3 or by similar statutes. If so, Proposers must comment on whether such representation may give rise to potential conflicts with the OSC, CRSP, and/or Advisory Board. Proposers will not be considered to have an irreconcilable conflict of interest because the firm or attorneys associated with the firm have in the past brought or are currently bringing litigation against the State, whether in court, mediation, or arbitration, so long as that litigation does not concern the proposer's involvement in matters related to and adverse to the State related to any of the described services sought in this RFP. However, all potential conflicts with the State must be fully described and discussed in the proposal.
- 4.4.7 *Equal Employment Opportunity.* Provide a detailed copy of your firm's equal employment opportunity and affirmative action policy, as well as your policy related to the pro bono activities of your attorneys.

**4.5 Specific Counsel Information.** Proposers must provide the proposed professional staffing for this engagement, if selected, following the numbering format below:

- 4.5.1 *Proposed staff qualifications and responsibilities.* Provide a brief resume for each such professional, and the particular responsibilities of each such professional with respect to this matter. The naming of such persons shall be considered to be a commitment by the firm to assign those individuals to provide legal services to the CRSP if the firm is the successful Proposer.
- 4.5.2 *Engagements of specific staff.* Describe the current or recent engagements most relevant to this RFP in which one or more of the professionals named in response to question 4.4.1 above had principal responsibility. In this regard, please provide the client's name, client contact and telephone number.
- 4.5.3 *Certification of Qualifications.* Provide certification that each primary attorney assigned for this contract must hold a Juris Doctorate degree from an American Bar Association (ABA) accredited institution or program, have no Bar Association sanctions in the last five (5) years in any jurisdiction, and be admitted to practice before State and Federal courts. At least one of the primary attorneys

assigned for this contract must also have an active license in good standing with the Connecticut State Bar Association or partner with a firm or attorney meeting all criteria.

- 4.5.4 *Subcontracting.* Indicate whether the firm intends to use the services of other vendors or attorneys as subcontractors. Indicate the nature of such arrangements and include the names and resumes of the aforementioned with your response.

**4.6 Fee Structure.** Proposers must provide a description of the fee structure for all services related to this RFP, including the billing rates for all personnel who will represent or provide services to the OSC, CRSP, and/or Advisory Board with respect to these legal services. The fee structure must include an estimate of the total cost of the contract over the contract term.

**4.7 Required Certifications.** Proposer responses should additionally provide information and compliance with each of the conditions qualifying an institution to propose as outlined below.

- 4.7.1 *Bankruptcy.* Provide certification that the Proposer has not been in bankruptcy and/or receivership within the last three (3) calendar years.
- 4.7.2 *Incorporation.* If incorporated, identify of the Proposer's state of incorporation and a statement that it is in good standing in that state, and if the state of incorporation is not Connecticut, a statement that the Proposer has complied with all filing requirements of the Connecticut Secretary of the State.
- 4.7.3 *Licensure.* Provide a statement that the Proposer meets all applicable state and federal requirements, and has all licenses necessary to perform the work contracted.
- 4.7.4 *Liability insurance.* Provide a copy or proof of any fidelity bond or liability insurance policy extending to any or all employees who perform work under the contract.
- 4.7.5 *Statement of Confidentiality.* The Proposer must submit a statement acknowledging that all materials and information provided to the Contractor by the OSC, Program, or Advisory Board, or acquired by the Contractor on behalf of the OSC, Program, or Advisory Board shall be regarded as confidential information in accordance with Federal and State law, and ethical standards. The contractor must take all necessary and prudent steps to safeguard the confidentiality of such materials or information.
- 4.7.6 *Acceptance of Terms and Conditions.* The Proposer must submit a statement affirming that their firm and proposal adheres to the terms and conditions as outlined in section 8 of this RFP and in the draft contract appended to this RFP.

## SECTION 5. INSTRUCTIONS FOR SUBMISSION OF RESPONSES

**5.1 Proposer's authorized representative.** Proposers must designate an authorized representative and one (1) alternate, and provide the name, title, address, telephone and facsimile numbers, email address, and normal working hours for the authorized representative and alternate. This information must be submitted with the RFP submission in the mandatory cover letter described in section 4.1 of this document.

**5.2 Communications notice.** All communications with the OSC, the CRSP, the Advisory Board or any person representing the OSC or Program concerning this RFP are strictly prohibited, except as permitted by this RFP. Any violation of this prohibition by proposers or their representatives may result in disqualification or other sanctions, or both.



**5.3 Inquiry procedures.** All questions regarding this RFP and submission requirements must be directed, in writing, to the designated contact, Jessica Muirhead, Executive Director of the CRSP, by August 12, 2024 at 12:00PM EST. Proposers may contact the designated contact solely via email at [OSC.RFP@ct.gov](mailto:OSC.RFP@ct.gov). Any questions submitted regarding this RFP shall be compiled, answered, and released as an addendum to this RFP by August 16, 2024 on the place of issue of this RFP, <https://www.osc.ct.gov/vendor/rfp.html>.

**5.4 Required submission method.** Proposers must submit the required information as outlined in Section 4 of this document and send one digital copy (via email, in PDF file format) of their response and all attachments no later than August 30, 2024 at 12:00PM EST. The subject line of the email submission must use the subject line "OSC RFP Submission: Legal Services." Responses and attachments received after this deadline date and time will not be evaluated. A facsimile response will not qualify as a "submission." Receipt of the electronic copy submission will be considered the official submission of a proposal and used to determine timeliness. Responses, including all attachments, should be delivered via email to:

Jessica Muirhead  
Executive Director  
Office of the State Comptroller  
[OSC.RFP@ct.gov](mailto:OSC.RFP@ct.gov)

**5.5 Notice on the Freedom of Information Act (FOIA) and submissions to this RFP.** All proposals submitted in response to this RFP may be subject to the terms of the Connecticut Freedom of Information Act (FOI). If a Proposer believes that parts of their proposal contain trade secrets or confidential commercial information which is exempt from disclosure, the Proposer should specifically identify those portions of its response containing such data. If the Proposer 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. Proposer shall have the burden of establishing any FOI exemption claimed in any proceeding where it is an issue.

**5.6 Minimum submission requirements.** Proposals must (1) be submitted by the deadline listed on the schedule of this RFP, (2) satisfy the electronic format and submission requirements, (3) follow the required format for submission, (4) be complete, (5) include all required forms, and (6) be duly executed by an authorized representative of the Proposer. Proposals that fail to meet these minimum submission requirements may be disqualified and not reviewed further.

## SECTION 6. SELECTION PROCESS

**6.1 Evaluation process.** It is the intent of the Comptroller to conduct a comprehensive, fair, and impartial evaluation of proposals received in response to this RFP. When evaluating proposals, negotiating with successful Proposers, and awarding contracts, the Comptroller will conform with the state's written procedures for POS and PSA procurements pursuant to § C.G.S. 4-217 and the State's Code of Ethics pursuant to C.G.S. § 1-84 and 1-85. Final funding allocation decisions will be determined during contract negotiation.

**6.2 Selection committee.** A selection committee appointed by the Comptroller will evaluate qualified proposals submitted in response to this RFP and recommend a finalist or finalists for consideration of an award. The selection committee shall be composed of Comptroller staff, Advisory Board members, or other designees as deemed appropriate, and the Comptroller shall designate a Committee Chairperson. The contents of all submitted proposals, including any confidential information, will be shared with the selection committee. Only proposals found to be responsive and comply with all instructions and requirements described within this RFP will be reviewed, rated, and scored. Proposals that fail to comply with all instructions may be rejected without further consideration. The selection committee shall evaluate all proposals that meet the minimum submission required by score and rank ordered in the Scoring Criteria Table. Any attempt by a Proposer to influence a member of the selection committee will result in the elimination of that Proposer's submission from consideration.

**6.3 Deviations and negotiation.** The selection committee chairperson shall have the sole right to determine whether any deviation from the requirements of this RFP is substantial in nature, and the chairperson may reject non-conforming proposals. In addition, the chairperson may waive minor irregularities in proposals, allow a Proposer to correct minor irregularities, and negotiate with eligible Proposers in any manner deemed necessary or desirable to serve the best interests of the State. In addition, the Chairperson may permit qualified Proposers to review their Proposals by submitting "best and final" offers, if necessary.

**6.3 Oral interviews.** At the Chairperson's discretion, through a recommendation of the selection committee, the selection committee may convene meetings with proposers in order to gain a fuller understanding of the proposals. These meetings may involve demonstrations, interviews, presentations, or site visits. The selection committee shall decide if such meetings are warranted and will contact Proposers to make an appointment. The Chairperson reserves the right to recommend a Proposer or Proposer(s) for contract award based upon the Proposer's proposal without oral presentations or further discussion. However, the Chairperson and/or the selection committee may engage in further discussion if it is determined that it might be beneficial to gain a fuller understanding of the proposal. In such cases, the Chairperson will notify those eligible Proposers with whom further discussion is desired.

**6.3 Scoring of proposals.** Proposals meeting the minimum submission requirements will be evaluated according to the established criteria. Evaluation will be made on the basis of the evaluation criteria discussed below. Proposals who meet the minimum criteria for submissions shall be evaluated by the RFP Review Committee. Proposals shall be scored according to the proposal evaluation criteria in the Scoring Criteria Table in section 6.5 below. Criteria will be weighted according to their importance to the Program.

Criteria shall be scored on a scale from 1-10, with 1 being the least satisfactory to the Program's needs and 10 being the most satisfactory to the program's needs. Each criteria score shall be weighted according to the weight assigned in the Scoring Criteria Table in section 6.4 of this document, and combined into a total weighted score ("TWS"). The highest TWS shall determine suitability for award(s) of a contract from this RFP.

#### **6.4 Scoring Criteria Table.**

Scoring Criteria	Description	Weight
Completeness of submission	Based on whether all required information has been submitted in the format outlined.	Pass / Fail
Legal Services Minimum Requirements	Based on experience and proposal in providing services outlined in section 4.3 of this RFP.	40%
Firm Information Requirements	Based on proposer's qualifications, experience, and stability of firm's responses to section 4.4 of this RFP.	20%
Specific Counsel Information	Based on proposed staffing qualifications and experience outlined in section 4.5 of this RFP.	10%
Risk Assessment	Based on identification of risks to the agency based on responses as outlined in section 4.7 of this RFP.	10%
Fees	Based on total estimated cost of the price proposal outlined in section 4.6 of this document.	20%
<b>TOTAL</b>		<b>100%</b>

**6.5 Proposal selection.** Upon completing its evaluation of proposals, the selection committee through the Chairperson will submit the rankings of all proposals to the Comptroller. The Proposer or Proposer(s) with the highest total weighted score(s) shall be considered for award, provided it is in the best interest of the OSC to make an award to this contract. The final selection of a successful Proposer is at the discretion of the Comptroller. Any Proposer selected will be so notified and award an opportunity to negotiate a contract with the Comptroller. Such negotiations may, but will not automatically, result in a contract. Any resulting contract will be posted on the State Contracting Portal. All unsuccessful Proposers will be notified by email or U.S. mail, at the Comptroller's discretion, about the outcome of the evaluation and proposal selection process. The Comptroller reserves the right to decline to award contracts for activities in which the Comptroller considers there are not adequate respondents.

It is the OSC's intention to notify the successful Proposer of award as soon as possible and to initiate negotiations for engagement shortly thereafter.

**6.6 Debriefing.** Within ten (10) days of receiving notification from the Comptroller that a contract has been awarded unsuccessful Proposers may contact the designated contact for this RFP and request information

about the evaluation and Proposer selection process. The email sent date on the notification will be considered “day one” of the ten (10) days. If unsuccessful Proposers still have questions after receiving this information, they may contact the designated contact and request a meeting with the comptroller’s designee to discuss the evaluation process and their proposals. If held, a debriefing meeting will not include any comparisons of unsuccessful proposals with other proposals. The Comptroller’s designee may schedule and hold the debriefing meetings within fifteen (15) days of the request. The Comptroller will not change, alter, or modify the outcome of the evaluation or selection process as a result of any debriefing meeting.

**6.7 Appeal Process.** Proposers may appeal any aspect of the Comptroller’s competitive procurement, including the evaluation and proposal selection process. Any such appeal must be submitted to the Comptroller in writing. A Proposer may file an appeal at any time after the closing date, but not later than thirty (30) days after the Comptroller notifies unsuccessful Proposers about the outcome of the evaluation and Proposer selection process. The email sent date on the notification will be considered the first day of the thirty (30) days. The filing of an appeal shall not be deemed sufficient reason for the Comptroller to delay, suspend, cancel, or terminate the procurement process or execution of a contract. More detailed information about filing an appeal may be obtained from the designated contact.

**6.8 Contracts resulting from this RFP.** Selected Proposer(s) awarded shall enter into a contract with the OSC, substantially in the form of the draft contract set out in Appendix A. By submitting a proposal to this RFP, Proposers accept the terms as outlined in the draft contract agreement.

## SECTION 7. RFP SCHEDULE

<b>DATE DUE</b>	<b>ACTIVITY</b>
<b>August 5, 2024</b>	RFP Issued
<b>August 12, 2024 at 12:00PM EST</b>	Questions due to Jessica Muirhead, designated contact, via email: <a href="mailto:osc.rfp@ct.gov">osc.rfp@ct.gov</a>
<b>August 16, 2024</b>	Answers to proposer questions released
<b>August 30, 2024 at 12:00PM EST</b>	Submission deadline
<b>September 2-13, 2024</b>	Reading and scoring of proposals by RFP review committee.
<b>Mid-September, 2024*</b>	Finalist oral interviews ( <i>*at the discretion of the committee.</i> )
<b>By September 30, 2024</b>	Vendor Selection and Negotiations
<b>Upon Executed Contract</b>	Services Begin

## SECTION 8. TERMS AND CONDITIONS

### OSC GENERAL TERMS AND CONDITIONS

By submitting a proposal in response to this RFP, a proposer agrees to comply with the following terms and conditions:

**Equal Opportunity and Affirmative Action.** The State is an Equal Opportunity and Affirmative Action employer and does not discriminate in its hiring, employment, or business practices. The State is committed to complying with the Americans with Disabilities Act of 1990 (ADA) and does not discriminate on the basis of disability in admission to, access to, or operation of its programs, services, or activities.

**Preparation Expenses.** Neither the State nor OSC shall assume any liability for expenses incurred by a proposer in preparing, submitting, or clarifying any proposal submitted in response to this RFP.

**Exclusion of Taxes.** OSC is exempt from the payment of excise and sales taxes imposed by the federal government and the State. Proposers are liable for any other applicable taxes.

**Proposed Costs.** No cost submissions that are contingent upon a State action will be accepted. All proposed costs must be fixed through the entire term of the contract.

**Changes to Proposal.** No additions or changes to the original proposal will be allowed after submission. While changes are not permitted, OSC may request and authorize proposers to submit written clarification of their proposals, in a manner or format prescribed by OSC, and at the proposer's expense.

**Supplemental Information.** Supplemental information will not be considered after the deadline submission of proposals, unless specifically requested by OSC. OSC may ask a proposer to give demonstrations, interviews, oral presentations or further explanations to clarify information contained in a proposal. Any such demonstration, interview, or oral presentation will be at a time selected and in a place provided by OSC. At its sole discretion, OSC may limit the number of proposers invited to make such a demonstration, interview, or oral presentation and may limit the number of attendees per proposer.

**Presentation of Supporting Evidence.** If requested by OSC, a proposer must be prepared to present evidence of experience, ability, data reporting capabilities, financial standing, or other information necessary to satisfactorily meet the requirements set forth or implied in this RFP. OSC may make onsite visits to an operational facility or facilities of a proposer to evaluate further the proposer's capability to perform the duties required by this RFP. At its discretion, OSC may also check or contact any reference provided by the proposer.

**RFP Is Not An Offer.** Neither this RFP nor any subsequent discussions shall give rise to any commitment on the part of the State or OSC or confer any rights on any proposer unless and until a contract is fully executed by the necessary parties. The contract document will represent the entire agreement between the proposer and OSC and will supersede all prior negotiations, representations or agreements, alleged or made, between the parties. The State shall assume no liability for costs incurred by the proposer or for payment of services under the terms of the contract until the successful proposer is notified that the contract has been accepted and approved by OSC and, if required by the Attorney General's Office.

Contractors responding to this RFP must adhere to the following conditions and must affirmatively state their adherence to these requirements with a transmittal letter appended to their proposal response.

**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. By responding to this procurement, applicants agree to accept the Comptroller's determinations as final.

**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 and the federal government.

**Ownership of Proposals.** All proposals submitted in response to this RFP are to be the sole property of the State and will be subject to the applicable Freedom of Information provisions starting at Section§§1-200 of the Connecticut General Statutes. In addition to the completed response, any proposer that submits matter that it in good faith determines to contain trade secrets or confidential commercial or financial information must mark such materials as "CONFIDENTIAL" and provide one redacted copy of its RFP response on a separate thumb drive, which may be disclosed without objection in the event a FOI request is made for its proposal. Failure to clearly mark materials as "CONFIDENTIAL" and/or failure to provide a redacted copy may result in the release of the RFP response on file with the State at the time such FOI request is made.

**Ownership of Subsequent Products.** Any product, whether acceptable or unacceptable, developed under a contract award as a result of this RFP is to be the sole property of the State of Connecticut, unless explicitly stated otherwise in the RFP or contract.

**Communication Blackout Period.** Except as called for in this RFP, contractors may not communicate about the RFP with anyone other than the designated contact, Jessica Muirhead, until final selections have been made. Until such time as final selections are made, any such contact will be considered collusion under the "Terms and Conditions" herein and may be grounds for disqualification of the Contractor's proposal.

**Timing and Sequence.** All timing and sequence of events resulting from this RFP will ultimately be determined by the State. Late responses may or may not be considered, and it will be left to the Comptroller's discretion whether to accept or reject late responses.

**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 the Contractor proposals.

**Oral Agreements.** Any alleged oral agreement or arrangement made by a Contractor with any agency or employee will be superseded by the written agreement.

**Amending or Canceling Requests.** The State reserves the right to amend or to cancel this RFP prior to the due date and time, if such action is deemed to be in the best interest of the State.

**Rejection for Default or Misrepresentation.** The State reserves the right to reject the proposal of any Contractor that is in default of any prior contract or for misrepresentation.

**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.

**Collusion.** By responding to this RFP, 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. It is further implied that the Contractor did not participate in the RFP development process, had no knowledge of the specific contents of the RFP prior to its issuance, and that no employee of the agency participated directly or indirectly in the Contractor's proposal preparation.

**Conformance to Instructions.** All responses to the RFP must conform to the instructions herein. Failure to provide any required information, provide the required number of copies, meet deadlines, answer all questions, follow the required format, or failure to comply with any other requirements of this RFP may be considered appropriate cause for rejection of the response.

**Appearances.** In some cases, Contractors may be asked to appear to give demonstrations, interviews, presentations or further explanation to the RFP's screening committee.

**Standard Contract and Conditions.** The Contractor must accept the State's standard contract language and conditions. See Standard Contract and Conditions. Appendix A.

**Entire Agreement.** The contract will represent the entire agreement between the Contractor and the State and will supersede all prior negotiations, representations or agreements, alleged or made, between the parties. The State shall assume no liability for payment of services under the terms of the contract until the successful Contractor is notified that the contract has been accepted and approved by the Office of the State Comptroller and by the Office of the Attorney General. The contract may only be amended by means of a written signed agreement by the Office of the State Comptroller, the Contractor, and the Office of the Attorney General.

**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, to waive technical defects, irregularities and omissions if, in its judgment, the best interest of the State will be served.

**Receipt of Summary of State Ethics Laws.** The Contractor must acknowledge that it has received a summary of State Ethics Laws by submitting a signed receipt with its bid. See Attachments C and D hereto.

## **STANDARD CONTRACT TERMS**

By submitting a proposal in response to this RFP, the proposer implicitly agrees to comply with the State's standard contract terms, as seen in the attached contract. The standard contract will include the scope of services, contract performance, quality assurance, reports, terms of payment, budget, and other program-specific provisions of any resulting POS contract. It will also include the mandatory terms and conditions, may be amended only in consultation with, and with the approval of the Attorney General's Office.

Also included is the State Elections Enforcement Commission's (SEEC) notice (pursuant to Section 9-612(g)(2) of the Connecticut General Statutes) advising executive branch State contractors and prospective State contractors of the ban on campaign contributions and solicitations. If a proposer is awarded an opportunity to negotiate a contract with the Department and the resulting contract has an anticipated value in a calendar year of \$50,000 or more, or a combination or series of such agreements or contracts has an anticipated value of \$100,000 or more, the proposer must inform the proposer's principals of the contents of the SEEC notice.

## **ASSURANCES**

By submitting a proposal in response to this RFP, a proposer implicitly gives the following assurances:

**Collusion.** The proposer represents and warrants that the proposer did not participate in any part of the RFP development process and had no knowledge of the specific contents of the RFP prior to its issuance. The proposer further represents and warrants that no agent, representative, or employee of the State participated directly in the preparation of the proposer's proposal. The proposer also represents and warrants that the submitted proposal is in all respects fair and is made without collusion or fraud.

**State Officials and Employees.** The proposer certifies that no elected or appointed official or employee of the State has or will benefit financially or materially from any contract resulting from this RFP. The Agency may terminate a resulting contract if it is determined that gratuities of any kind were either offered or received by any of the aforementioned officials or employees from the proposer, contractor, or its agents or employees.

**Competitors.** The proposer assures that the submitted proposal is not made in connection with any competing organization or competitor submitting a separate proposal in response to this RFP. No attempt has been made, or will be made, by the proposer to induce any other organization or competitor to submit, or not submit, a proposal for the purpose of restricting competition. The proposer further assures that the proposed costs have been arrived at independently, without consultation, communication, or agreement with any other organization or competitor for the purpose of restricting competition. Nor has the proposer knowingly disclosed the proposed costs on a prior basis, either directly or indirectly, to any other organization or competitor.

**Validity of Proposal.** The proposer certifies that the proposal represents a valid and binding offer to provide services in accordance with the terms and provisions described in this RFP and any amendments or attachments hereto. The proposal shall remain valid for a period of 180 days after the submission due date and may be extended beyond that time by mutual agreement. At its sole discretion, the Agency may include the proposal, by reference or otherwise, into any contract with the successful proposer.

**Press Releases.** The proposer agrees to obtain prior written consent and approval of the Agency for press releases that relate in any manner to this RFP or any resultant contract.

## **RIGHTS RESERVED TO THE STATE**

By submitting a proposal in response to this RFP, a proposer implicitly accepts that the following rights are reserved to the State:

**Timing Sequence.** The timing and sequence of events associated with this RFP shall ultimately be determined by OSC.

**Amending or Canceling RFP.** OSC reserves the right to amend or cancel this RFP on any date and at any time, if OSC deems it to be necessary, appropriate, or otherwise in the best interests of the State.

**No Acceptable Proposals.** In the event that no acceptable proposals are submitted in response to this RFP, OSC may reopen the procurement process, if it is determined to be in the best interests of the State.

**Award and Rejection of Proposals.** OSC reserves the right to award in part, to reject any and all proposals in whole or in part, for misrepresentation or if the proposal limits or modifies any of the terms, conditions, or specifications of this RFP. OSC may waive minor technical defects, irregularities, or omissions, if in its



judgment the best interests of the State will be served. OSC reserves the right to reject the proposal of any proposer who submits a proposal after the submission date and time.

**Sole Property of the State.** All proposals submitted in response to this RFP are to be the sole property of the State. Any product, whether acceptable or unacceptable, developed under a contract awarded as a result of this RFP shall be the sole property of the State, unless stated otherwise in this RFP or subsequent contract. The right to publish, distribute, or disseminate any and all information or reports, or part thereof, shall accrue to the State without recourse.

**Contract Negotiation.** OSC reserves the right to negotiate or contract for all or any portion of the services contained in this RFP. OSC further reserves the right to contract with one or more proposer for such services. After reviewing the scored criteria, OSC may seek Best and Final Offers (BFO) on cost from proposers. OSC may set parameters on any BFOs received.

**Clerical Errors in Award.** OSC reserves the right to correct inaccurate awards resulting from its clerical errors. This may include, in extreme circumstances, revoking the awarding of a contract already made to a proposer and subsequently awarding the contract to another proposer. Such action on the part of the State shall not constitute a breach of contract on the part of the State since the contract with the initial proposer is deemed to be void ab initio and of no effect as if no contract ever existed between the State and the proposer.

**Key Personnel.** When OSC is the sole funder of a purchased service, OSC reserves the right to approve any additions, deletions, or changes in key personnel, with the exception of key personnel who have terminated employment. OSC also reserves the right to approve replacements for key personnel who have terminated employment. OSC further reserves the right to require the removal and replacement of any of the proposer's key personnel who do not perform adequately, regardless of whether they were previously approved by OSC.

## **STATUTORY AND REGULATORY COMPLIANCE**

By submitting a proposal in response to this RFP, the proposer implicitly agrees to comply with all applicable State and federal laws and regulations, including, but not limited to, the following:

**Freedom of Information, C.G.S. § 1-210(b).** The Freedom of Information Act (FOIA) generally 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). Proposers are generally advised not to include in their proposals any confidential information. If the proposer indicates that certain documentation, as required by this RFP, is submitted in confidence, the State will endeavor to keep said information confidential to the extent permitted by law. Failure to clearly mark materials as "CONFIDENTIAL" and/or failure to provide a redacted copy of a Proposer's RFP response may result in the release of the RFP response on file with the State at the time that an FOI request is made. The State has no obligation to initiate, prosecute, or defend any legal proceeding or to seek a protective order or other similar relief to prevent disclosure of any information pursuant to a FOI request. The proposer has the burden of establishing the availability of any FOI exemption in any proceeding where it is an issue. While a proposer may claim an exemption to the State's FOI Act, the final administrative authority to release or exempt any or all material so identified rests with the State. In no event shall the State or any of its employees have any

liability for disclosure of documents or information in the possession of the State and which the State or its employees believe(s) to be required pursuant to the FOI Act or other requirements of law.

**Contract Compliance, C.G.S. § 4a-60 and Regulations of CT State Agencies § 46a-68j-21 thru 43, inclusive.** CT statute and regulations impose certain obligations on State agencies (as well as contractors and subcontractors doing business with the State) to ensure that State agencies do not enter into contracts with organizations or businesses that discriminate against protected class persons.

**Consulting Agreements, C.G.S. § 4a-81. Consulting Agreements Representation, C.G.S. § 4ad-81.** Pursuant to C.G.S. §§ 4a-81 the successful contracting party shall certify that it has not entered into any consulting agreements in connection with this Contract, except for the agreements listed below. "Consulting agreement" means any written or oral agreement to retain the services, for a fee, of a consultant for the purposes of (A) providing counsel to a contractor, vendor, consultant or other entity seeking to conduct, or conducting, business with the State, (B) contacting, whether in writing or orally, any executive, judicial, or administrative office of the State, including any department, institution, bureau, board, commission, authority, official or employee for the purpose of solicitation, dispute resolution, introduction, requests for information, or (C) any other similar activity related to such contracts. "Consulting agreement" does not include any agreements entered into with a consultant who is registered under the provisions of chapter 10 of the Connecticut General Statutes as of the date such contract is executed in accordance with the provisions of section 4a-81 of the Connecticut General Statutes. Such representation shall be sworn as true to the best knowledge and belief of the person signing the resulting contract and shall be subject to the penalties of false statement.

**Campaign Contribution Restriction, C.G.S. § 9-612.** For all State contracts, defined in section 9-612 of the Connecticut General Statutes as having a value in a calendar year of \$50,000 or more, or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to the resulting contract must represent that they have received 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." Such notice is available at [https://seec.ct.gov/Portal/data/forms/ContrForms/seec\\_form\\_11\\_notice\\_only.pdf](https://seec.ct.gov/Portal/data/forms/ContrForms/seec_form_11_notice_only.pdf)

**Gifts, Conn. Gen. Stat. § 4-252.** Pursuant to section 4-252 of the Connecticut General Statutes and Acting Governor Susan Bysiewicz's Executive Order No. 21-2, the Contractor, for itself and on behalf of all of its principals or key personnel who submitted a bid or proposal, represents:

- (1) That no gifts were made by (A) the Contractor, (B) any principals and key personnel of the Contractor, who participate substantially in preparing bids, proposals or negotiating State contracts, or (C) any agent of the Contractor or principals and key personnel, who participates substantially in preparing bids, proposals or negotiating State contracts, to (i) any public official or State employee of the State agency or quasi- public agency soliciting bids or proposals for State contracts, who participates substantially in the preparation of bid solicitations or requests for proposals for State contracts or the negotiation or award of State contracts, or (ii) any public official or State employee of any other State agency, who has supervisory or appointing authority over such State agency or quasi- public agency;

(2) That no such principals and key personnel of the Contractor, or agent of the Contractor or of such principals and key personnel, knows of any action by the Contractor to circumvent such prohibition on gifts by providing for any other principals and key personnel, official, employee or agent of the Contractor to provide a gift to any such public official or State employee; and

(3) That the Contractor is submitting bids or proposals without fraud or collusion with any person. Any bidder or proposer that does not agree to the representations required under this section shall be rejected and the State agency or quasi-public agency shall award the contract to the next highest ranked proposer or the next lowest responsible qualified bidder or seek new bids or proposals.

**Iran Energy Investment Certification C.G.S. § 4-252(a).** Pursuant to C.G.S. § 4-252(a), the successful contracting party shall certify the following: (a) that it has not made a direct investment of twenty million dollars or more in the energy sector of Iran on or after October 1, 2013, as described in Section 202 of the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010, and has not increased or renewed such investment on or after said date. (b) If the Contractor makes a good faith effort to determine whether it has made an investment described in subsection (a) of this section it shall not be subject to the penalties of false statement pursuant to section 4-252a of the Connecticut General Statutes. A "good faith effort" for purposes of this subsection includes a determination that the Contractor is not on the list of persons who engage in certain investment activities in Iran created by the Department of General Services of the State of California pursuant to Division 2, Chapter 2.7 of the California Public Contract Code. Nothing in this subsection shall be construed to impair the ability of the State agency or quasi-public agency to pursue a breach of contract action for any violation of the provisions of the resulting contract.

**Nondiscrimination Certification, C.G.S. § 4a-60 and 4a-60a.** If a bidder is awarded an opportunity to negotiate a contract, the proposer must provide the State agency with written representation in the resulting contract that certifies the bidder complies with the State's nondiscrimination agreements and warranties. This nondiscrimination certification is required for all State contracts – regardless of type, term, cost, or value. Municipalities and CT State agencies are exempt from this requirement. The authorized signatory of the contract shall demonstrate his or her understanding of this obligation by either (A) initialing the nondiscrimination affirmation provision in the body of the resulting contract, or (B) providing an affirmative response in the required online bid or response to a proposal question, if applicable, which asks if the contractor understands its obligations. If a bidder or vendor refuses to agree to this representation, such bidder or vendor shall be rejected and the State agency or quasi-public agency shall award the contract to the next highest ranked vendor or the next lowest responsible qualified bidder or seek new bids or proposals.

**Access to Data for State Auditors.** The Contractor shall provide to OPM access to any data, as defined in C.G.S. § 4e-1, concerning the resulting contract that are in the possession or control of the Contractor upon demand and shall provide the data to OPM in a format prescribed by OPM [or the Client Agency] and the State Auditors of Public Accounts at no additional cost.

# APPENDIX A

## Agreement By and Between

### The Office of the State Comptroller

And

XXXX

This Agreement (“Agreement” or “Contract”) is made and entered into by and between the State of Connecticut by and through the Office of the State Comptroller (“Comptroller,” “Office” or “OSC”) pursuant to Section 3-112 of the Connecticut General Statutes and XXX (“Contractor”).

cons

## SECTION 1

### DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings:

- **Claims:** All actions, suits, claims, demands, investigations, and proceedings of any kind, open, pending or threatened, whether mature, unmatured, contingent, known or unknown, at law or in equity, in any forum.
- **Confidential Information:** Any name, number or other information that may be used, alone or in conjunction with any other information, to identify a specific individual including, but not limited to, such individual's name, date of birth, mother's maiden name, motor vehicle operator's license number, Social Security number, employee identification number, employer or taxpayer identification number, alien registration number, government passport number, health insurance identification number, demand deposit account number, savings account number, credit card number, debit card number or unique biometric data such as fingerprint, voice print, retina or iris image, or other unique physical representation. Without limiting the foregoing, Confidential Information shall also include any information that the Department classifies as “confidential” or “restricted.” Confidential Information shall not include information that may be lawfully obtained from publicly available sources or from federal, state, or local government records which are lawfully made available to the general public.
- **Confidential Information Breach:** An instance where an unauthorized person or entity accesses Confidential Information in any manner, including but not limited to the following occurrences: (1) any Confidential Information that is not encrypted or protected is misplaced, lost, stolen or in any way compromised; (2) one or more third parties have had access to or taken control or possession of any Confidential Information that is not encrypted or protected without prior written authorization from the State; (3) the unauthorized acquisition of encrypted or protected Confidential Information together with the confidential process or key that is capable of compromising the integrity of the Confidential Information; or (4) if there is a substantial risk of identity theft or fraud to the client, the Contractor, the Department or State.
- **Contractor Parties:** A Contractor’s members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Contractor is in privity of oral or written contract and the Contractor intends for such other person or entity to Perform under the Contract in any capacity.
- **Goods:** All things which are movable at the time that the Contract is effective and which include, without limiting this definition, supplies, materials and equipment.
- **Goods or Services:** Goods, Services or both.
- **Perform:** For purposes of this Contract, the verb “to perform” and the Contractor’s performance set forth in this Contract are referred to as “Perform,” “Performance” and other capitalized variations of the term.
- **Records:** All working papers and such other information and materials as may have been accumulated by the Contractor in Performing the Contract, including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries, memoranda and correspondence, kept or

stored in any form.

- **Services:** The performance of labor or work, as specified in the Solicitation and as set forth in this Contract.
- **Solicitation:** A State request, in whatever form issued, inviting bids, proposals or quotes for Goods or Services, typified by, but not limited to, an invitation to bid, request for proposals, request for information or request for quote.
- **State:** The State of Connecticut, including the Office and any office, department, board, council, commission, institution or other agency or entity of the State.
- **Termination:** An end to the Contract prior to the end of its term whether effected pursuant to a right which the Contract creates or for a breach.

## SECTION 2

### CONTRACT PERIOD

This Agreement shall begin upon final approval by the Office of the Attorney General, and shall expire on XX XX, 202X (hereinafter “end date”), and the duties of the Contractor as set forth in this Agreement shall be completed by the Contractor no later than the end date.

## SECTION 3

### NOTICE OF CHANGE AND TERMINATION

Unless otherwise expressly provided to the contrary, any notice provided under this Agreement shall be in writing and shall be delivered personally, electronically, by recognized overnight courier service, or by certified or registered mail to the following addresses:

**Comptroller:**

Office of the State Comptroller  
165 Capitol Ave.  
Hartford, CT 06106  
Attention: XX  
XX

**Contractor:**

[NAME OF CONTRACTOR]  
[ADDRESS OF CONTRACTOR]  
Attn: [CONTACT NAME]  
CONTACT EMAIL]

Notwithstanding any provisions in this Contract, the Office, through a duly authorized employee, may Terminate the Contract whenever the Office makes a written determination that such Termination is in the best interests of the State. The Office shall notify the Contractor in writing of Termination pursuant to this section, which notice shall specify the effective date of Termination and the extent to which the Contractor must complete its Performance under the Contract prior to such date.

Notwithstanding any provisions in this Contract, the Office, through a duly authorized employee, may, after making a written determination that the Contractor has breached the Contract, Terminate the Contract in accordance with the provisions in the Breach section of this Contract.

The Office shall send the notice of Termination via certified mail, return receipt requested, to the Contractor at the most current address which the Contractor has furnished to the Office for purposes of correspondence, or by hand delivery. Upon

receiving the notice from the Office, the Contractor shall immediately discontinue all services affected in accordance with the notice, undertake all commercially reasonable efforts to mitigate any losses or damages, and deliver to the Office all Records. The Records are deemed to be the property of the Office and the Contractor shall deliver them to the Office no later than thirty (30) days after the Termination of the Contract or fifteen (15) days after the Contractor receives a written request from the Office for the Records. The Contractor shall deliver those Records that exist in electronic, magnetic or other intangible form in a non-proprietary format, such as, but not limited to, ASCII or .TXT.

Upon receipt of a written notice of Termination from the Office, the Contractor shall cease operations as the Office directs in the notice, and take all actions that are necessary or appropriate, or that the Office may reasonably direct, for the protection, and preservation of the Goods and any other property. Except for any work which the Office directs the Contractor to Perform in the notice prior to the effective date of Termination, and except as otherwise provided in the notice, the Contractor shall terminate or conclude all existing subcontracts and purchase orders and shall not enter into any further subcontracts, purchase orders or commitments.

The Office shall, within forty-five (45) days of the effective date of Termination, reimburse the Contractor for its Performance rendered and accepted by the Office in accordance with Exhibit A, in addition to all actual and reasonable costs incurred after Termination in completing those portions of the Performance which the notice required the Contractor to complete. The Contractor, however, is not entitled to receive, and the Office is not obligated to tender to the Contractor, any payments for anticipated or lost profits. Upon request by the Office, the Contractor shall assign to the Office, or any replacement contractor which the Office designates, all subcontracts, purchase orders and other commitments, deliver to the Office all Records and other information pertaining to its Performance, and remove from State premises, whether leased or owned, all of Contractor's property, equipment, waste material and rubbish related to its Performance, all as the Office may request.

For breach or violation of any of the provisions in the section concerning representations and warranties, the Office may Terminate the Contract in accordance with its terms and revoke any consents to assignments given as if the assignments had never been requested or consented to, without liability to the Contractor or Contractor Parties or any third party.

Upon Termination of the Contract, all rights and obligations shall be null and void, so that no party shall have any further rights or obligations to any other party, except with respect to the sections which survive Termination. All representations, warranties, agreements and rights of the parties under the Contract shall survive such Termination to the extent not otherwise limited in the Contract and without each one of them having to be specifically mentioned in the Contract. Termination of the Contract pursuant to this section shall not be deemed to be a breach of contract by the Office.

#### **SECTION 4**

##### **SPECIFICATION OF SERVICES**

The Contractor shall provide the following specific services for the program(s) and shall comply with the terms and conditions set forth in this Contract as required by the Office, including, but not limited to: XX

##### **Scope of Services**

XXXXXX

#### **SECTION 5**

##### **COST AND SCHEDULE OF PAYMENTS**

XXXXXXXX

The maximum payable under this contract shall be XX. Such payments shall be made [ON WHAT FREQUENCY] by the OSC to Contractor upon successful completion of monthly and quarterly deliverables as stated in Section Three, as determined by the OSC. Contractor shall submit invoices in arrears. Invoices shall include the Contractor name, the Contract Number, Contractor's Federal Employer Identification Number ("FEIN"), monthly and quarterly deliverables completed, and the billing period.

## **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.

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

#### **B. 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 its subcontractors.

In accordance with Section 4d-32 of the Connecticut General Statutes, Contractor shall not award a subcontract for work under this Agreement without having first obtained the written approval of the Commissioner of Administrative Services ("DAS") or such designee of the selection of the subcontractor and of the provisions of the subcontract.

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.

#### **C. Laws and Regulations.**

The parties deem the Contract to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of the Contract to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable

to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Contractor waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

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.

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 state and federal laws, regulations, ordinances, statutes, rules, regulations, and orders of governmental authorities, including those having jurisdiction over its registration and licensing to perform services under this Agreement.

**D. 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. Both the Contractor and any and all subcontractors shall not perform any services under this contract outside of the United States.

Should the Contractor or any subcontractors perform any call center services to the state, such state business-related call center and customer service work must be performed by state contractors or other agents or subcontractors entirely within this state, except that, if any such contractor, other agent or subcontractor performs work outside this state and adds customer service employees who will perform work pursuant to such new contracts or agreements, such new employees shall immediately be employed within this state, in compliance with Section 31-57aa of the Connecticut General Statutes, as amended.

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.

**E. 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.

**F. Liability and Indemnity**

1. The Contractor shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with the Contract, including the acts of commission or omission (collectively, the "Acts") of the Contractor or Contractor Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or the Contract. The Contractor shall use counsel reasonably acceptable to the State in carrying out its obligations under this section. The Contractor's obligations under this section to indemnify, defend and hold harmless against Claims includes Claims concerning confidentiality of any part of or all of the Contractor's bid, proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the Performance.
2. The Contractor shall not be responsible for indemnifying or holding the State harmless from any liability arising due to the negligence of the State or any third party acting under the direct control or supervision of the State.
3. The Contractor shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of the Contractor or any Contractor Parties. The State shall give the Contractor reasonable notice of any such Claims.
4. The Contractor's duties under this section shall remain fully in effect and binding in accordance with the terms and conditions of the Contract, without being lessened or compromised in any way, even where the Contractor is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims and/or where the State is alleged or is found to have contributed to the Acts giving rise to the Claims.
5. The Contractor shall carry and maintain at all times during the term of the Contract, and during the time that any provisions survive the term of the Contract, sufficient general liability insurance to satisfy its obligations under this Contract. The Contractor shall name the State as an additional insured on the policy and shall provide a copy of the policy to the Office prior to the effective date of the Contract. The Contractor shall not begin Performance until the delivery of the policy to the Office. The Office shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that the Office or the State is contributorily negligent.
6. This section shall survive the Termination of the Contract and shall not be limited by reason of any insurance coverage.
7. The Contractor shall not use, raise, or plead the defense of sovereign or governmental immunity in the adjustment or settlement of any Claims against the Contractor arising out of the work performed under this Agreement, or as a defense in any Claims, unless specifically authorized to do so in writing by the Attorney General or its designee.

**G. 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.

**H. Quality Surveillance, Examination of Records, Audits and Continuity of Services.**

- a. In accordance with Section 4e-29 of the Connecticut General Statutes, the State and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State's Attorney and their respective agents, may, at reasonable hours, inspect and examine all of the parts of the Contractor's and Contractor Parties' plants and places of business which, in any way, are related to, or involved in, the performance of this Contract.

- b. The Contractor shall maintain and shall require each of the Contractor Parties to maintain, accurate and complete Records in compliance with Section 2-90 and Section 4e-72 of the Connecticut General Statutes. The Contractor shall make all of its and the Contractor Parties' Records available at all reasonable hours for audit and inspection by the State and its agents, in accordance with Section 4e-30a of the Connecticut General Statutes.
- c. The State shall make all requests for any audit or inspection in writing and shall provide the Contractor with at least twenty-four (24) hours' notice prior to the requested audit and inspection date. If the State suspects fraud or other abuse, or in the event of an emergency, the State is not obligated to provide any prior notice.
- d. The Contractor shall pay for all costs and expenses of any audit or inspection which reveals information that, in the sole determination of the State, is sufficient to constitute a breach by the Contractor under this Agreement. The Contractor shall remit full payment to the State for such audit or inspection no later than 30 days after receiving an invoice from the State. If the State does not receive payment within such time, the State may set off the amount from any moneys which the State would otherwise be obligated to pay the Contractor in accordance with this Agreement's setoff provision.
- e. In accordance with Section 4e-30(a) of the Connecticut General Statutes, the Contractor shall keep and preserve or cause to be kept and preserved all of its and Contractor Parties' Records until three (3) years after the latter of (i) final payment under this Agreement, or (ii) the expiration or earlier termination of this Agreement, as the same may be modified for any reason. The State may request an audit or inspection at any time during this period. If any Claim or audit is started before the expiration of this period, the Contractor shall retain or cause to be retained all Records until all Claims or audit findings have been resolved.
- f. The Contractor shall cooperate fully with the State and its agents in connection with an audit or inspection. Following any audit or inspection, the State may conduct and the Contractor shall cooperate with an exit conference.
- g. The Contractor shall incorporate this entire Section verbatim into any contract or other agreement that it enters into with any Contractor Party.
- h. Pursuant to Section 4e-30(b) of the Connecticut General Statutes, if the Contractor enters into an amendment to the Contract or subcontract that extends the terms of the Contract or such subcontract, the amendment shall be deemed a new and separate negotiated contract. All records related to the performance of such amendment shall be subject to the record maintenance requirements set forth in Section H(e) of this Contract.

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

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 Section 7-396a of the Connecticut General Statutes. Pursuant to this state statute, any agreement for a state grant entered into between a state agency and a public or private agency shall provide for an audit acceptable to such state agency of any grant expenditures made by such public or private agency and, unless otherwise provided by the state agency, the cost of such audit may be considered an allowable expense under such grant agreement. The Auditors of Public Accounts shall have access to all records and accounts of such public or private agency for the fiscal year in which such grant is made. A copy of any audit performed under the provisions of this section shall be filed with the Auditors of Public Accounts. In the case of an agreement for a state grant entered into between a state agency and a public or private agency where the state agency has received funding for such grant from the federal government, the cost of any required audit shall be considered an allowable expense under such grant agreement, provided the cost of such audit is an allowable expense under the federal grant regulations.

## **I. Insurance.**

The State shall not be liable to Contractor for any risk of Deliverable loss or damage while Deliverables are in Contractor's possession or in transit, or while in the OSC's possession prior to the OSC's Acceptance, except when such loss or damage is due directly to the OSC's negligence or intentional misconduct. Nothing in this section is intended nor shall it be construed, in any manner, as waiving or compromising the sovereign immunity of the State.

Before commencing Performance, throughout the Term and during the time that any provisions survive the Term, the Contractor shall obtain and maintain at its sole cost and expense, the insurance required by this section, including but not limited to, premiums, taxes, audits, commissions, policy deductibles and self-insured retentions. The Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the state of Connecticut and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. The Contractor's insurance policies shall be primary (including primary, excess and umbrella) and non-contributory with respect to any other insurance or self-insurance maintained by or available to the State. All insurance coverage shall be written on an occurrence basis as opposed to a "claims made" basis with the exception of Professional Liability, if applicable, as specified in the Contract. Any failure of Contractor to comply with the claim reporting provisions of its policies shall not affect coverage provided to the State.

Contractor shall provide to the State: (1) a certificate of insurance (2) the declaration page and (3) the additional insured endorsement to the policy to the OSC all in electronic format acceptable to the OSC prior to the Effective Date evidencing such coverage. The Contractor shall not begin Performance until the delivery of these three (3) documents to the OSC. Contractor shall provide an annual electronic update of the three (3) documents to the OSC on or before each anniversary of the Effective Date during the Term, including each anniversary after the Term for policies requiring continuous coverage or an extended reporting period specified in this section. The State retains the right to request certified copies of required policies at any time. Contractor's insurance shall not be permitted to expire, be suspended, be cancelled or be materially changed for any reason without thirty (30) days prior written notice to the State.

If the Contractor maintains broader coverage or higher limits than specified in the Contract, the State requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor. The Contractor agrees to waive its right of recovery or subrogation against the State and shall obtain any endorsement necessary to affect this waiver of subrogation endorsement from their insurer(s). If applicable, all tiers of Contractor's sub-contractors shall maintain insurance in like form and amounts, including the additional insured requirements and provide certificates of insurance and applicable endorsements to the Contractor prior to the start of the sub-contractor's work.

Acceptance by the OSC of insurance submitted by the Contractor does not relieve or decrease in any manner the liability of the Contractor arising, directly or indirectly, out of this Contract. The Contractor is responsible for any losses, claims and costs of any kind which exceed the Contractor's limits of liability, or which may be outside the coverage scope of the policies, or which result from non-compliance with any laws including, but not limited to, environmental laws. The requirements herein are not intended, nor shall they be construed to limit or eliminate the liability of the Contractor. Contractor's failure to cooperate and/or comply with any provision of the required insurance policies shall not relieve the Contractor of any liability or indemnification in favor of the State for losses which otherwise would have been covered by these policies. Failure to comply with any of the indemnification or insurance requirements herein may be held a willful violation and serve as the basis for immediate termination of the Contract. The State retains the option to maintain the insurance coverage and charge the expense to the Contractor, withhold payment for Performance or terminate the Contract.

### **Commercial General Liability**

\$1,000,000 combined single limit per occurrence / \$2,000,000 annual aggregate for bodily injury and property damage. Coverage shall include, personal & advertising injury, premises and operations, independent contractors, products and completed operations, contractual liability and broad form property damage coverage. The State shall be entitled to recover

under the insurance policy even if a body of competent jurisdiction determines that the State is contributorily negligent. Contractor shall continue to provide products/completed operations coverage for two (2) years after the Term and during the time that any provisions survive the Term. This coverage shall include liability arising out of work or operations performed by or on behalf of the Contractor. The Contractor shall cause the State and its officers, agents and employees to be named as an additional insured on the policy and amend any Insured vs. Insured language to eliminate any conflicts or coverage restrictions between the respective insureds.

#### **Automobile Liability**

\$1,000,000 combined single limit per accident for bodily injury and property damage. Coverage extends to owned, hired and non-owned automobiles. If the Contractor does not own an automobile, but one is used in the Performance, then only hired and non-owned coverage is required. If a vehicle is not used in the Performance, then automobile coverage is not required.

#### **Workers' Compensation and Employer's Liability**

Contractor shall maintain Worker's Compensation and Employer's Liability insurance in compliance with the laws of the State of Connecticut, which coverage shall include Employer's Liability coverage with minimum limits of \$500,000 for each accident, \$500,000 for disease, and \$500,000 for each employee, per policy period.

#### **Excess / Umbrella Liability**

\$2,000,000 per occurrence, following form. Excess/umbrella liability insurance may be included to meet minimum requirements. Umbrella coverage must indicate the existing underlying insurance coverage.

#### **Professional Liability**

\$10,000,000 per claim and annual aggregate, during the Term, and Contractor shall maintain continuous coverage or obtain an extended reporting period for a period of three (3) years thereafter. The policy retroactive date must be on or before the start of work under the Contract. The policy definition of "Professional Services" shall include the services required in the scope of this Contract.

#### **Information Security Privacy/Cyber Security Liability**

\$1,000,000 per occurrence or claim/ \$1,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this Contract and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, release of Confidential Information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

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.

#### **J. 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 State:

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 State'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.

**K. Confidentiality, Ownership Breach, Data Security Breach.**

All data provided to Contractor by the Comptroller or developed internally by Contractor regarding the Comptroller will be treated as proprietary to the Comptroller and confidential unless the Comptroller agrees in writing to the contrary or authorizes the release of such information prior to such release. Contractor agrees to comply with Section 4e-70 of the Connecticut General Statutes to forever hold in confidence and protect from confidential information breach 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 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. The Contractor's responsibilities pursuant to Section 4e-70 shall not be construed to supersede a contractor's P.L. 104-191 (Health Insurance Portability and Accountability Act) obligations.

**Data Security Breach; Protection of Confidential Information.**

- a. The Contractor and Contractor Parties, at their own expense, have a duty to and shall protect from a Confidential Information Breach any and all Confidential Information which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with current industry standards.
- b. Each Contractor or Contractor Party shall develop, implement and maintain a comprehensive data - security program for the protection of Confidential Information. The safeguards contained in such program shall be consistent with and comply with the safeguards for protection of Confidential Information, and information of a similar character, as set forth in all applicable federal and state law and written policy of the Department or State concerning the confidentiality of Confidential Information. Such data-security program shall include, but not be limited to, the following:
  1. A security policy for employees related to the storage, access and transportation of data containing Confidential Information;
  2. Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept;
  3. A process for reviewing policies and security measures at least annually;
  4. Creating secure access controls to Confidential Information, including but not limited to passwords; and
  5. Encrypting of Confidential Information that is stored on laptops, portable devices or being transmitted electronically.
- c. The Contractor and Contractor Parties shall notify the Office and the Connecticut Office of the Attorney General as soon as practical, but no later than twenty-four (24) hours, after they become aware of or suspect that any Confidential Information which Contractor or Contractor Parties have come to possess or control has been subject to a Confidential Information Breach. If a Confidential Information Breach has occurred, the Contractor shall, within three (3) business days after the notification, present a credit monitoring and protection plan to the Department of Administrative Services, the Office and the Connecticut Office of the Attorney General, for review and approval. Such credit monitoring or protection plan shall be made available by the Contractor at its own cost and expense to all individuals affected by the Confidential Information Breach. Such credit monitoring or protection plan shall include, but is not limited to reimbursement for the cost of placing and lifting one (1) security freeze per credit file pursuant to Connecticut General Statutes § 36a-701a. Such credit

monitoring or protection plans shall be approved by the State in accordance with this Section and shall cover a length of time commensurate with the circumstances of the Confidential Information Breach. The Contractors' costs and expenses for the credit monitoring and protection plan shall not be recoverable from the Office, any State of Connecticut entity or any affected individuals.

- d. The Contractor shall incorporate the requirements of this Section in all subcontracts requiring each Contractor Party to safeguard Confidential Information in the same manner as provided for in this Section.
- e. Nothing in this Section shall supersede in any manner Contractor's or Contractor Party's obligations pursuant to the Health Insurance Portability and Accountability Act or the provisions of this Contract concerning the obligations of the Contractor as a Business Associate of the Department.

## **Breach**

a. If one party (the "Non-breaching Party") determines that the other (the "Breaching Party") has failed to comply with any of the Breaching Party's corresponding Contract obligations (a "Breach"), then the Non-breaching Party shall provide written notice of such failure to the Breaching Party in accordance with this Contract. The Non-breaching Party must provide the Breaching Party an opportunity to remedy the Breach within thirty (30) calendar days from the date of the notice. However, if Contractor is the Breaching Party, then the Office may set forth any remedy period in the notice, so long as that period is otherwise consistent with the provisions of this Contract. The period set forth in the notice is known as the "Remedy Period." The Non-breaching Party shall extend the Remedy Period if it is satisfied that the Breaching Party is making a good faith effort to remedy the Breach, but the nature of the Breach is such that it cannot be remedied within the Remedy Period.

b. If the Office determines that the Contractor has committed a Breach, then the Office may require the Contractor to, and Contractor shall, prepare and submit to the Office a CAP in connection with the identified Breach. Contractor shall provide in the Corrective Action Plan ("CAP") a detailed explanation of the deficiencies and other factors that contributed to the cited Breach, Contractor's assessment or diagnosis of Breach (identifying the deficiencies and factors in reasonable detail, with references to the applicable Specifications), and a specific proposal to remedy or resolve the Breach. Contractor shall submit the CAP to the Office within (10) Business Days following the Office's request for the CAP for the Office's review and approval. Within (10) Business Days of receiving the CAP, the Office must either approve the CAP, or reject it by delivering to Contractor a written explanation for the rejection. If the Office fails to accept or reject the CAP within the (10) Business Days, then the CAP is deemed to have been approved, without more. The Office's explanation for the rejection must include suggestions for changes to the CAP and the Contractor shall address the suggestions in such a manner to make it likely that the Office will approve the CAP when the Contractor re-submits it to the Office for review and approval. If the Office rejects a CAP, then the parties will repeat this submittal and review process until the earliest of one of the following: (1) the Office accepts a CAP, (2) the Office waives its right to receive a CAP, (3) Contractor remedies the Breach, (4) the Office waives the Breach, or (5) the Office makes a determination to Terminate this Contract. After the first rejection, each of the parties will have (5) Business Days, instead of (10) Business Days, within which to review the CAP. Each subsequent revision and review will be for up to (3) Business Days each instead of (10) or (5) Business Days.

c. If the Office determines that the Contractor has Breached this Contract, then the Office may withhold payment in whole or in part for any amounts due pending resolution of the Performance issue, provided that the Office notifies Contractor in writing prior to the date that the payment would have been due.

d. For purposes of the Office determining whether there is a Breach under this Contract, or whether any statement in the Representations and Warranties Section of this Contract is false or misleading, the parties deem the Acts of the Contractor Parties to be the Acts of the Contractor itself, as if the Contractor itself was the subject of the Acts which the Office considers in determining if there was a Breach, or an instance of false or misleading statements, or both.

e. The written notice of the Breach may include an effective Termination date. If the identified Breach is not remedied by the stated Termination date, unless otherwise modified by the Non-breaching Party in writing before such date, no further action shall be required of any party to effect the Termination as of the stated date. If the notice does not set forth an effective Termination date, then the Non-breaching Party shall provide the Breaching Party no less than twenty-four (24) hours' prior written notice before terminating this Contract.

f. Notwithstanding any provisions in this Contract, the Office may terminate this Contract with no Remedy Period for Contractor's Breach or violation of any of the representations or warranties in this Contract and revoke any consent to assignments given as if the assignments had never been requested or consented to, without liability to Contractor or Contractor Parties or any third party. Termination under this Breach section is subject to the provisions of the Termination Section of this Contract. In case of such revocation or Termination, the Office will have no liability or responsibility to Contractor or Contractor Parties or any third party, or any of them, resulting from the Termination or revocation.

g. None of the State's rights under this Breach Section diminishes the State's rights under the Termination Section of this Contract.

**Tangible Personal Property.** The Contractor on its behalf and on behalf of its Affiliates, as defined below, shall comply with the provisions of Section 12-411b of the Connecticut General Statutes, as follows:

1. For the term of the Contract, the Contractor and its Affiliates shall collect and remit to the State of Connecticut, Department of Revenue Services, any Connecticut use tax due under the provisions of Chapter 219 of the Connecticut General Statutes for items of tangible personal property sold by the Contractor or by any of its Affiliates in the same manner as if the Contractor and such Affiliates were engaged in the business of selling tangible personal property for use in Connecticut and had sufficient nexus under the provisions of Chapter 219 to be required to collect Connecticut use tax;
2. The Contractor and its Affiliates shall collect the use tax only on items that are subject to the six and thirty-five-hundredths per cent rate of tax.
3. A customer's payment of a use tax to the Contractor or its Affiliates relieves the customer of liability for the use tax;
4. The Contractor and its Affiliates shall remit all use taxes they collect from customers on or before the due date specified in the Contract, which may not be later than the last day of the month next succeeding the end of a calendar quarter or other tax collection period during which the tax was collected;
5. The Contractor and its Affiliates are not liable for use tax billed by them but not paid to them by a customer; and
6. Any Contractor or Affiliate who fails to remit use taxes collected on behalf of its customers by the due date specified in the Contract shall be subject to the interest and penalties provided for persons required to collect sales tax under Chapter 219 of the Connecticut General Statutes.
7. For purposes of this section of the Contract, the word "Affiliate" means any person, as defined in Section 12-1 of the Connecticut General Statutes, that controls, is controlled by, or is under common control with another person. A person controls another person if the person owns, directly or indirectly, more than ten per cent of the voting securities of the other person. The word "voting security" means a security that confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business, or that is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. "Voting security" includes a general partnership interest.
8. The Contractor represents and warrants that each of its Affiliates has vested in the Contractor plenary authority to so bind the Affiliates in any agreement with the State of Connecticut. The Contractor on its own behalf and on behalf of its Affiliates shall also provide, no later than 30 days after receiving a request by the State's contracting authority, such information as the State may require to ensure, in the State's sole determination, compliance with the provisions of Chapter 219 of the Connecticut General Statutes, including, but not limited to, §12-411b.

**L. Subpoenas.**

In the event the Contractor's records are subpoenaed, 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.

**M. 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.

**N. Sovereign Immunity.**

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

**O. Assignment.**

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

**P. 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.

**Q. 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.

**R. Third Parties.**

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

**S. 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.

**T. 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 AND ADDITIONAL CONDITIONS**

**Health Insurance Portability and Accountability Act.**

- (a) If the Contactor is a Business Associate under the requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as noted in 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.

- (b) The Contractor is required to safeguard the use, publication and disclosure of information on all applicants for, and all clients who receive, services under the Contract in accordance with all applicable federal and state law regarding confidentiality, which includes but is not limited to HIPAA, more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E; and
- (c) The Client Office is a “covered entity” as that term is defined as in 45 C.F.R. § 160.103; and
- (d) The Contractor is a “business associate” of the Office, as that term is defined in 45 C.F.R. § 160.103; and
- (e) The Contractor and the Client Office agree to the following in order to secure compliance with 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. Part 160 and Part 164, subparts A, C, D and E (collectively referred to herein as the “HIPAA Standards”).
- (f) Definitions

- (1) “Breach” shall have the same meaning as the term is defined in Section 45 C.F.R. 164.402 and shall also include any use or disclosure of PHI that violates the HIPAA Standards.
- (2) “Business Associate” shall mean the Contractor
- (3) “Covered Entity” shall mean the Client Office.
- (4) “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 C.F.R. § 164.501.
- (5) “Electronic Health Record” shall have the same meaning as the term is defined in Section 13400 of the HITECH Act (42 U.S.C. §17921(5)).
- (6) “Individual” shall have the same meaning as the term “individual” in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative as defined in 45 C.F.R. § 164.502(g).
- (7) “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.
- (8) “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, and includes electronic PHI, as 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.
- (9) “Required by Law” shall have the same meaning as the term “required by law” in 45 C.F.R. § 164.103.
- (10) “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- (11) “More stringent” shall have the same meaning as the term “more stringent” in 45 C.F.R. § 160.202.
- (12) “This Section of the Contract” refers to the HIPAA provisions stated herein, in their entirety.
- (13) “Security Incident” shall have the same meaning as the term “security incident” in 45 C.F.R. § 164.304.
- (14) “Security Rule” shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. part 160 and part 164, subpart A and C.
- (15) “Unsecured protected health information” shall have the same meaning as the term as defined in 45 C.F.R. 164.402.

- (g) Obligations and Activities of Business Associates.

- (1) Business Associate agrees not to use or disclose PHI other than as permitted or required by this Section of the Contract or as Required by Law.
- (2) Business Associate agrees to use 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.
- (3) Business Associate agrees to use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Covered Entity.
- (4) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by Business Associate in violation of this Section of the Contract.
- (5) Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Section of the Contract or any Security Incident of which it becomes aware.
- (6) Business Associate agrees, in accordance with 45 C.F.R. 502(e)(1)(ii) and 164.308(d)(2), if applicable, to ensure that any subcontractors that create, receive, maintain or transmit PHI on behalf of the Business Associate, agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information;
- (7) 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.
- (8) Business Associate agrees to make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of the Covered Entity, and in the time and manner designated by the Covered Entity.
- (9) Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created, 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.
- (10) Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and Section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.
- (11) Business Associate agrees to provide to Covered Entity, in a time and manner designated by the Covered Entity, information collected in accordance with Subsection (g)(10) of this Section of the Contract, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and Section 13405 of the HITECH Act (42

U.S.C. § 17935) and any regulations promulgated thereunder. Business Associate agrees at the Covered Entity's direction to provide an accounting of disclosures of PHI directly to an individual in accordance with 45 C.F.R. § 164.528 and Section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.

- (12) Business Associate agrees to comply with any State or federal law that is more stringent than the Privacy Rule.
- (13) Business Associate agrees to comply with the requirements of the HITECH Act relating to privacy and security that are applicable to the Covered Entity and with the requirements of 45 C.F.R. §§ 164.504(e), 164.308, 164.310, 164.312, and 164.316.
  - (14) In the event that an Individual requests that the Business Associate (A) restrict disclosures of PHI; (B) provide an accounting of disclosures of the Individual's PHI; (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 Days of the request.
- (15) 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
- (16) Obligations in the Event of a Breach.
  - (A) 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 protected health information, 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.
  - (B) Such notification shall be provided by the Business Associate to the Covered Entity without unreasonable delay, and in no case later than 30 days after the Breach is discovered by the Business Associate, 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 protected health information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during such Breach.
  - (C) The Business Associate agrees to include in the notification to the Covered Entity at least the following information:

- i. 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.
    - ii. A description of the types of Unsecured protected health information that were involved in the Breach (such as full name, Social Security number, date of birth, home address, account number, or disability code).
    - iii. The steps the Business Associate recommends that Individual(s) take to protect themselves from potential harm resulting from the Breach.
    - iv. 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.
    - v. 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, contact information for said official.
  - (D) If directed by the Covered Entity, the Business Associate agrees to conduct a risk assessment using at least the information in subparagraphs 1 to 4, inclusive of (g) (16) (C) 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 20 business days of the Business Associate's notification to the Covered Entity.
  - (E) 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, the Business Associate, if directed by the Covered Entity, shall provide all notifications required by 45 C.F.R. 164.404 and 45 C.F.R. 164.406.
  - (F) 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 website 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 Business Associate.
  - (G) 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.
- (h) Permitted Uses and Disclosure by Business Associate.
- (1) General Use and Disclosure Provisions Except as otherwise limited in this Section of the Contract, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Contract, provided that such use or disclosure would not violate the HIPAA Standards if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

- (2) Specific Use and Disclosure Provisions
  - (A) Except as otherwise limited in this Section of the Contract, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
  - (B) Except as otherwise limited in this Section of the Contract, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
  - (C) Except as otherwise limited in this Section of the Contract, Business Associate may use PHI to provide data aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).
- (i) Obligations of Covered Entity.
  - (1) Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices of Covered Entity, in accordance with 45 C.F.R. § 164.520, or to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
  - (2) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual(s) to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
  - (3) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- (j) 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.
- (k) Term and Termination.
  - (1) Term. The term of this Section of the Contract shall be effective as of the date the Contract is effective and shall terminate when the information collected in accordance with provision (g)(10) of this Section of the Contract is provided to the Covered Entity and all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
  - (2) Termination for Cause Upon Covered Entity's knowledge of a material Breach by Business Associate, Covered Entity shall either:
    - (A) Provide an opportunity for Business Associate to cure the Breach or end the violation and terminate the Contract if Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity in accordance with Section 11 of the Contract; or
    - (B) Immediately terminate the Contract if Business Associate has breached a material term of this Section of the Contract and cure is not possible; or

- (C) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
- (3) Effect of Termination.
  - (A) Except as provided in (k)(2) of this Section of the Contract, upon termination of this Contract, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity. Business Associate shall also provide the information collected in accordance with Section (g)(10) of this Section of the Contract to the Covered Entity within ten 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.
  - (B) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon documentation by Business Associate that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Section of the Contract to such PHI and limit further uses and disclosures of PHI to those purposes that make return or destruction infeasible, for as long as Business Associate maintains such PHI. Infeasibility of the return or destruction of PHI includes, but is not limited to, requirements under State or federal law that the Business Associate maintains or preserves the PHI or copies thereof.
- (1) Miscellaneous Sections.
  - (1) Regulatory References. A reference in this Section of the Contract to a section in the HIPAA Standards means the section as in effect or as amended.
  - (2) Amendment. The parties agree to take such action as is necessary to amend this Section of the Contract from time to time as is necessary for Covered Entity to comply with requirements of HIPAA, the HITECH Act and the HIPAA Standards (all as amended).
  - (3) Survival. The respective rights and obligations of Business Associate shall survive the termination of this Contract.
  - (4) Effect on Contract. Except as specifically required to implement the purposes of this Section of the Contract, all other terms of the Contract shall remain in force and effect.
  - (5) Construction. This Section of the Contract shall be construed as broadly as necessary to implement and comply with HIPAA, the HITECH Act and the HIPAA Standards (all as amended). Any ambiguity in this Section of the Contract shall be resolved in favor of a meaning that complies, and is consistent with, HIPAA, the HITECH Act and the HIPAA Standards. (all as amended)
  - (6) Disclaimer. Covered Entity makes no warranty or representation that compliance with this Section of the Contract will be adequate or satisfactory for Business Associate's own purposes. Covered Entity shall not be liable to Business Associate for any claim, civil or criminal penalty, loss or damage related to or arising from the unauthorized use or disclosure of PHI by Business Associate or any of its officers, directors, employees, contractors or agents, or any third party to whom Business Associate has disclosed PHI contrary to the 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.

- (7) Indemnification. The Business Associate shall indemnify and hold the Covered Entity harmless from and against any and all claims, liabilities, judgments, fines, assessments, penalties, awards and any statutory damages that may be imposed or assessed pursuant to HIPAA, the HIPAA Standards, or the HITECH Act (all as amended), 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.

1. **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 Office 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.

#### **E. Nondiscrimination and Affirmative Action Provisions.**

##### **Nondiscrimination.**

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

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

- direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in Subsection (a) of Connecticut General Statutes § 32-9n; and
- x. "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

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

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



- (d) The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.
- (e) The Contractor shall include the provisions of Subsection (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.
- (f) The Contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.
- (g) (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation; (2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this Section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (3) the Contractor agrees to comply with each provision of this Section and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes § 46a-56; and (4) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor which relate to the provisions of this Section and Connecticut General Statutes § 46a-56.
- (h) The Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes § 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.
- (i) Pursuant to Subsection (c) of Section 4a-60 and Subsection (b) of section 4a-60a of the Connecticut General Statutes, the Contractor, for itself and its authorized signatory of this Contract, affirms that it understands the obligations of this section and that it will maintain a policy for the duration of the Contract to assure that the Contract will be performed in compliance with the nondiscrimination requirements of such sections. The Contractor and its authorized signatory of this Contract demonstrate their understanding of this obligation by (A) having provided an affirmative response in the required online bid or response to a proposal question which asks if the contractor understands its obligations under such sections, (B) signing this Contract, or (C) initialing this nondiscrimination affirmation:

## **F. Freedom of Information.**

1. Contractor acknowledges that the Office must comply with the Freedom of Information Act pursuant to Connecticut General Statutes §§1-200 et seq. (“FOI”) 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 Connecticut General Statutes §1-210(b).
2. **Governmental Function.** This Contract may be subject to the provisions of Section 1-218 of the Connecticut General Statutes. In accordance with this statute, each contract in excess of two million five hundred thousand dollars between a public agency and a person for the performance of a governmental function shall (a) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (b) indicate that such records and files are subject to FOIA and may be disclosed by the public agency pursuant to FOIA. No request to inspect or copy such records or files shall be valid unless the request is made to the public agency in accordance with FOIA. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of Sections 1-205 and 1-206 of the Connecticut General Statutes.

## **G. Whistleblowing.**

This Contract may be subject to the provisions of Section 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of the Contractor takes or threatens to take any personnel action against any employee of the Contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of Subsection (a) of such statute, the Contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent 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 (i) of such statute, each large state contractor, as defined in the statute, shall post a notice of the provisions of the statute relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the Contractor.

Pursuant to Subsection (e)(2)(A) of such statute, an employee of the Contractor may file a complaint against the Contractor with the Chief Human Rights Referee designated under Section 26a-57 of the Connecticut General Statutes, not later than ninety days after learning of the specific incident giving rise to a claim that a personnel action has been taken or occurred.

In accordance with Subsection (e)(5), the affected Agency or Contractor may bring a civil action in the Superior Court for the Judicial District of Hartford against an officer or employee of the State, officer or Employee of the Constructor, that takes or threatens to take any action to impede, fail to renew, or cancel a contract between the Agency and Contractor in retaliation for the disclosure of information pursuant to subsection (a) of this statute

## **H. Executive Orders and Other Enactments.**

- a. All references in this Contract to any Federal, State, or local law, statute, public or special act, executive order, ordinance, regulation or code (collectively, “Enactments”) shall mean Enactments that apply to the Contract at any time during its term, or that may be made applicable to the Contract during its term. This Contract shall always be read and interpreted in accordance with the latest applicable wording and requirements of the Enactments. Unless otherwise provided by Enactments, the Contractor is not relieved of its obligation to perform under this Contract if it chooses to contest the applicability of the Enactments or the Office’s authority to require compliance with the Enactments.

- b. This Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of this Contract as if they had been fully set forth in it.
- c. This Contract may be subject to (1) Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services; and (2) Executive Order No. 61 of Governor Dannel P. Malloy promulgated December 13, 2017 concerning the Policy for the Management of State Information Technology Projects, as issued by the Office of Policy and Management, Policy ID IT-SDLC-17-04. If any of the Executive Orders referenced in this Subsection is applicable, it is deemed to be incorporated into and made a part of this Contract as if fully set forth in it.

**I. Campaign Contribution Restriction.**

The Contractor and its principals shall not make a contribution to or knowingly solicit contributions from the Contractor's employees or from a subcontractor or principals of a subcontractor to the listed committees or candidates in Sections 9-612(f)(2)(A) and 9-612(f)(2)(B). Any principal of the Contractor shall certify that neither the Contractor or its principals have made any contributions to, or solicited any contributions on behalf of, any party committee, exploratory committee, candidate for state-wide office or for the General Assembly, or political committee in the previous four years, that were determined by the State Elections Enforcement Commission to be in violation of Sections 9-612(f)(2)(A) and 9-612(f)(2)(B), without mitigating circumstances having been found to exist concerning such violation.

For all State contracts, defined in Section 9-612 of the Connecticut General Statutes as having a value in a calendar year of \$50,000 or more, or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Agreement expressly acknowledges receipt of the State Elections Enforcement Commission's notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice.

**J. Large State Contract Representation for Contractor.**

Pursuant to Section 4-252 of the Connecticut General Statutes and Acting Governor Susan Bysiewicz Executive Order No. 21-2, promulgated July 1, 2021, the Contractor, for itself and on behalf of all of its principals or key personnel who submitted a bid or proposal with a value of \$500,000 or more, represents:

- 1) That no gifts were made by (A) the Contractor, (B) any principals and key personnel of the Contractor, who participate substantially in preparing bids, proposals or negotiating State contracts, or (C) any agent of the Contractor or principals and key personnel, who participates substantially in preparing bids, proposals or negotiating State contracts, to (i) any public official or State employee of the State agency or quasi- public agency soliciting bids or proposals for State contracts, who participates substantially in the preparation of bid solicitations or requests for proposals for State contracts or the negotiation or award of State contracts, or (ii) any public official or State employee of any other State agency, who has supervisory or appointing authority over such State agency or quasi-public agency;
- 2) That no such principals and key personnel of the Contractor, or agent of the Contractor or of such principals and key personnel, knows of any action by the Contractor to circumvent such prohibition on gifts by providing for any other principals and key personnel, official, employee or agent of the Contractor to provide a gift to any such public official or State employee; and
- 3) That the Contractor is submitting bids or proposals without fraud or collusion with any person.

If the Contractor does not agree to the representations required under such Section, the Contractor shall be rejected and the Agency shall award the contract to the next highest ranked proposer, next lowest responsible qualified bidder, or seek new proposals.

**K. Large State Contract Representation for Official or Employee of State Office.**

Pursuant to Section 4-252 of the Connecticut General Statutes and Acting Governor Susan Bysiewicz Executive Order No. 21-2, promulgated July 1, 2021, the State agency official or employee represents that the selection of the person, firm or corporation was not the result of collusion, the giving of a gift or the promise of a gift, compensation, fraud or inappropriate influence from any person.

**L. Iran Energy Investment Certification.**

(a) Pursuant to Section 4-252a of the Connecticut General Statutes, the Contractor certifies that it has not made a direct investment of twenty million dollars or more in the energy sector of Iran on or after October 1, 2013, as described in Section 202 of the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010, and has not increased or renewed such investment on or after said date.

(b) If the Contractor makes a good faith effort to determine whether it has made an investment described in Subsection (a) of this Section then the Contractor shall not be deemed to be in breach of the Contract or in violation of this Section. A "good faith effort" for purposes of this Subsection includes a determination that the Contractor is not on the list of persons who engage in certain investment activities in Iran created by the Department of General Services of the State of California pursuant to Division 2, Chapter 2.7 of the California Public Contract Code. Nothing in this Subsection shall be construed to impair the ability of the State agency or quasi-public agency to pursue a breach of contract action for any violation of the provisions of the Contract.

**M. Consulting Agreements Representation.**

Pursuant to Section 4a-81 of the Connecticut General Statutes, the person signing this Contract on behalf of the Contractor represents, to their best knowledge and belief and subject to the penalty of false statement as provided in Section 53a-157b of the Connecticut General Statutes, that the Contractor has not entered into any consulting agreements in connection with this Contract, except for the agreements listed below or in an attachment to this Contract.

If such consulting agreement has been entered into, such representation shall include or attach the following: the name of the consultant, the consultant's firm, the basic terms of the consulting agreement, a brief description of the services provided, and an indication as to whether the consultant is a former state employee or public official. If the consultant is a former state employee or public official, such representation shall indicate his or her former agency and the date such employment terminated.

"Consulting agreement" means any written or oral agreement to retain the services, for a fee, of a consultant for the purposes of (A) providing counsel to a contractor, vendor, consultant or other entity seeking to conduct, or conducting, business with the State, (B) contacting, whether in writing or orally, any executive, judicial, or administrative office of the State, including any department, institution, bureau, board, commission, authority, official or employee for the purpose of solicitation, dispute resolution, introduction, requests for information, or (C) any other similar activity related to such contracts. "Consulting agreement" does not include any agreements entered into with a consultant who is registered under the provisions of Chapter 10 of the Connecticut General Statutes as of the date such contract is executed in accordance with the provisions of Section 4a-81 of the Connecticut General Statutes.



employees of such subcontractor or consultant have read and understood the summary and agree to comply with the provisions of state ethics law;

(d) failure to include such representations in such contracts with subcontractors or consultants shall be cause for termination of the Contract; and

(e) each contract with such contractor, subcontractor or consultant shall incorporate such summary by reference as a part of the contract terms.

**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.

IN WITNESS HEREOF, the parties execute this Agreement upon final approval by the Office of the Attorney General.

**[CONTRACTOR NAME]**

**Office of the State Comptroller**

By \_\_\_\_\_

By \_\_\_\_\_

[NAME OF CONTRACTOR, TITLE]

Comptroller

Date \_\_\_\_\_

Date \_\_\_\_\_

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

Approved as to form:

\_\_\_\_\_

Signature

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