

Personal Service Agreement

SECTION 1

This Personal Service Agreement (hereinafter referred to as the “**Agreement**”) is entered into by and between the State of Connecticut acting through the Department of Housing (hereinafter “**DOH**” or the “**Agency**”) having an office at 505 Hudson Street, Hartford, CT 06106, pursuant to Connecticut General Statutes (“**CGS**”) §§ 4-8, 8-206, and 4-212, et seq., and **CONTRACTOR NAME** a corporation having its principal offices at **CONTRACTOR ADDRESS** (hereinafter “**Contractor**”). The parties agree that the services specified below shall be provided by Contractor in strict compliance with the provisions of this Agreement.

SECTION 2 CONTRACT PERIOD AND DEFINITIONS

A. Agreement Period. The term of this Agreement will commence as of the date it is fully executed by the parties hereto including, if applicable, the Attorney General of the State of Connecticut or his or her designee, and will run until **CONTRACT END DATE**, or the earlier termination of this Agreement.

B. Definitions. Whenever the following terms or phrases are used in this Agreement, they shall have the following meaning unless the context clearly requires otherwise:

- (i) Activity Budget: The budget for the Services to be performed under this Agreement which has been previously approved by DOH and which is attached to this Agreement as Exhibit A. The Activity Budget may be amended from time to time with the prior written consent of DOH, which consent may be withheld in the sole discretion of DOH.
- (ii) Affiliate: The term “Affiliate” means any person, as defined in CGS § 12-1, 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 percent (10%) 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.
- (iii) Bid: A Bid submitted in response to a Solicitation.
- (iv) Bidder: A person or entity submitting a competitive Bid in response to a Solicitation.
- (v) Claim: The term “Claim” shall mean 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.
- (vi) 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 Agreement in any capacity.
- (vii) Day or day: Whenever the term Day or day is used, it shall refer to all calendar days, other than Saturdays, Sundays and days designated as national or State of Connecticut holidays upon which banks in Connecticut are closed.
- (viii) Goods: All things which are movable at the time that the Agreement is effective and which include, without limiting this definition, supplies, materials and equipment, as specified in this Agreement and as set forth in Exhibit B.

- (ix) Perform: For purposes of this Agreement, the verb “to perform” and the Contractor’s performance set forth in Exhibit B are referred to as “Perform,” “Performance” and other capitalized variations of the term.
- (x) Records: All working papers and such other information and materials as may have been accumulated by the Contractor in Performing the Agreement, including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries, memoranda and correspondence, kept or stored in any form.
- (xi) Services: The performance of labor or work, as specified in Exhibit B.
- (xii) Solicitation: A State request, in whatever form issued, inviting bids, proposals or quotes for Services, typified by, but not limited to, an invitation to bid, request for proposals, and request for information or request for quotes.
- (xiii) State: The State of Connecticut, including DOH, and any office, department, board, council, commission, institution or other agency of the State.
- (xiv) Termination: An end to the Agreement prior to the end of its term whether effected pursuant to a right which the Agreement creates or for a breach.
- (xv) Title: all ownership, title, licenses, rights and interest, including, but not limited to, perpetual use, of and to the Goods or Services.

SECTION 3 CANCELLATION & TERMINATION PROVISIONS

A. This Agreement may be canceled at will by the Agency upon 30 days written notice delivered by certified mail. Notwithstanding any provisions in this Agreement, the Agency, through a duly authorized employee, may terminate the Agreement whenever the Agency makes a written determination that such Termination is in the best interests of the State. The Agency shall notify the Contractor in writing, pursuant to the provisions of Section 4 of this Agreement, of Termination pursuant to this section, which notice shall specify the effective date of Termination and the extent to which the Contractor must complete its Performance under the Agreement prior to such date.

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

C. If the Contractor breaches the Agreement in any respect, the Agency shall provide written notice of the breach to the Contractor and afford the Contractor an opportunity to cure within ten (10) days from the date that the Contractor receives the notice. Notwithstanding the foregoing, any other time period which the Agency sets forth in the notice shall trump the ten (10) days. The right to cure period may be extended if the Agency is satisfied that the Contractor is making a good faith effort to cure but the nature of the breach is such that it cannot reasonably be cured within the right to cure period specified in the written notice of breach. The notice may include an effective Agreement Termination date if the breach is not cured by the stated date and, unless otherwise modified by the Agency in writing prior to the Termination date, no further action shall be required of the Agency to effect the Termination as of the stated date. If the notice does not set forth an effective Agreement Termination date, then the Agency may terminate the Agreement by giving the Contractor no less than twenty four (24) hours' prior written notice. If the Agency believes that the Contractor has not performed according to the Agreement, the Agency may withhold payment in whole or in part pending resolution of the Performance issue, provided that the Agency notifies the Contractor in writing prior to the date that the payment would have been due in accordance with this Agreement.

SECTION 4 NOTICE

Unless otherwise expressly provided to the contrary, any other notice provided under this Agreement shall be in writing and may be delivered in the manner set forth in this section. All notices shall be effective if delivered personally, by certified mail, by recognized overnight courier, or by e-mail to the following addresses:

State: State of Connecticut
 Department of Housing
 505 Hudson Street, 2nd Floor
 Hartford, CT 06106
 Attention: Steve DiLella
 steve.dilella@ct.gov

Contractor: FILL IN CONTACT INFORMATION

The parties may change their respective addresses for notices under this paragraph upon prior written notification to the other.

SECTION 5 SPECIFICATION OF SERVICES

Contractor shall Perform the Services set forth on Exhibit B which is attached hereto and made a part hereof.

SECTION 6 COST AND SCHEDULE OF PAYMENTS

- A. The State shall pay the Contractor a total sum not to exceed **\$CONTRACT AMOUNT** for services performed under this Agreement. Funds shall be provided from the Community Investment Account pursuant to CGS § 4-66aa.
- B. The Contractor shall be compensated in accordance with the Activity Budget for fees based upon work performed, documented, and accepted by the State.
- C. The Contractor shall submit invoices on a periodic basis, not less often than monthly. Invoices shall, at a minimum, include the Contractor name, the Agreement Number, the Contractor's Federal Employer Identification Number, the billing period, and an itemization of expenses by line item.
- D. Invoices for deliverables shall include an identification of the deliverable; if printed material, a copy of the deliverable; and the date that the deliverable was provided to the State.
- E. Invoices for services billed by the hour shall include the name and title of the individual providing the services, the dates worked, the number of hours worked each day with a brief synopsis of the work performed, the rate being charged for the individual, and the total cost for that person's work during the billing period.
- F. Invoices for expenses, if allowed, shall include a detailed account of expenses specifying the day when and purpose for which they were incurred as well as all receipts, invoices, bills and other available documentation or if no documentation is available, a detailed accounting of the computation used to determine the reimbursable cost, as evidence of the actual cost of such expenses. Such expenses may include, but are not limited to: mileage at current State approved reimbursement rate; costs of travel including coach airfare and hotels; and office expenses such as, phone calls, copying, postage and package delivery incurred in connection with the service pertaining to this Agreement. All expenses will be reimbursed at cost.

G. The State shall assume no liability for payment for services under the terms of this Agreement until the Contractor is notified that the Agreement has been accepted by DOH, and if applicable, approved by DOH, the Department of Administrative Services and/or by the Attorney General of the State.

SECTION 7 REPRESENTATIONS AND WARRANTIES

A. The Contractor represents and warrants to the Agency for itself and any Contractor Parties, as appropriate, that:

- (a) if they are entities, they are duly and validly existing under the laws of their respective states of organization and authorized to conduct business in the State of Connecticut in the manner contemplated by the Agreement. Further, as appropriate, they have taken all necessary action to authorize the execution, delivery and Performance of the Bid, if applicable, and the Agreement and have the power and authority to execute, deliver and Perform their obligations under the Agreement;
- (b) they will comply with all applicable State and Federal laws and municipal ordinances in satisfying their obligations to the Agency under and pursuant to the Agreement, including, but not limited to (1) CGS Title 1, Chapter 10, concerning the State's Codes of Ethics and (2) CGS Title 4a concerning State purchasing, including, but not limited to CGS § 22a-194a concerning the use of polystyrene foam;
- (c) the execution, delivery and Performance of the Agreement will not violate, be in conflict with, result in a breach of or constitute (with or without due notice and/or lapse of time) a default under any of the following, as applicable: (1) any provision of law; (2) any order of any court or the State; or (3) any indenture, agreement, document or other instrument to which it is a party or by which it may be bound;
- (d) they are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any governmental entity;
- (e) as applicable, they have not, within the three (3) years preceding the Agreement, in any of their current or former jobs, been convicted of, or had a civil judgment rendered against them or against any person who would Perform under the Agreement, for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a transaction or contract with any governmental entity. This includes, but is not limited to, violation of Federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records or property, making false statements, or receiving stolen property;
- (f) they are not presently indicted for or otherwise criminally or civilly charged by any governmental entity with commission of any of the offenses listed above;
- (g) they have not within the three (3) years preceding the Agreement had one or more contracts with any governmental entity terminated;
- (h) they have not employed or retained any entity or person, other than a bona fide employee working solely for them, to solicit or secure the Agreement and that they have not paid or agreed to pay any entity or person, other than a bona fide employee working solely for them, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of the Agreement or any assignments made in accordance with the terms of the Agreement;
- (i) to the best of their knowledge, there are no claims involving the Contractor or Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Agreement;
- (j) they shall disclose, to the best of their knowledge, to the Agency in writing any claims involving them that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Agreement, no later than ten (10) days after becoming aware or after they should have become aware of any such claims. For

purposes of the Contractor's obligation to disclose any claims to the Agency, the ten (10) days in the section of this Agreement concerning disclosure of Contractor Parties litigation shall run consecutively with the ten (10) days provided for in this representation and warranty;

- (k) their participation in the Solicitation process is not a conflict of interest or a breach of ethics under the provisions of CGS Title 1, Chapter 10 concerning the State's Code of Ethics;
- (l) the bid, if any, was not made in connection or concert with any other person, entity or bidder, including any affiliate of the Contractor, submitting a bid for the same Services, and is in all respects fair and without collusion or fraud;
- (m) they are able to Perform under the Agreement using their own resources or the resources of a party who is not a bidder;
- (n) the Contractor shall obtain in a written contract all of the representations and warranties in this section from any Contractor Parties and to require that provision to be included in any contracts and purchase orders with such Contractor Parties;
- (o) they have paid all applicable workers' compensation second injury fund assessments concerning all previous work done in Connecticut;
- (p) they have a record of compliance with Occupational Health and Safety Administration regulations without any unabated, willful or serious violations;
- (q) they owe no unemployment compensation contributions;
- (r) they are not delinquent in the payment of any taxes owed, or, that they have filed a sales tax security bond, and they have, if and as applicable, filed for motor carrier road tax stickers and have paid all outstanding road taxes;
- (s) all of their vehicles have current registrations and, unless such vehicles are no longer in service, they shall not allow any such registrations to lapse;
- (t) each Contractor Party has vested in the Contractor plenary authority to bind the Contractor Parties to the full extent necessary or appropriate to ensure full compliance with and Performance in accordance with all of the terms and conditions of the Agreement and that all appropriate parties shall also provide, no later than fifteen (15) days after receiving a request from the Agency, such information as the Agency may require to evidence, in the Agency's sole determination, compliance with this section;
- (u) if either party Terminates the Agreement, for any reason, the Contractor shall relinquish or cause to be relinquished to the Agency all Title to any Goods delivered, accepted and paid for (except to the extent any invoiced amount is disputed) by the Agency in connection with Performance of the Agreement;
- (v) they shall not copyright, register, distribute or claim any rights in or to any work product created in the Performance of this Agreement after the effective date of the Agreement without the Agency's prior written consent;
- (w) if they procure any Goods, they shall sub-license such Goods and that the Agency shall be afforded the full benefits of any manufacturer or subcontractor licenses for the use of the Goods; and
- (x) they shall assign or otherwise transfer to the Agency, or afford the Agency the full benefits of any manufacturer's warranty for the Goods, to the extent that such warranties are assignable or otherwise transferable to the Agency.

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

ten (10) days after becoming aware or after they should have become aware of any such Claims. Disclosure shall be in writing.

SECTION 8 OTHER CONDITIONS

A. Entire Agreement

This Agreement embodies the entire agreement between the State and Contractor on the 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 of the terms or conditions of the Agreement shall be valid unless reduced to writing, signed by both parties, and approved by the Attorney General or his designee. This Agreement shall inure to the benefit of each party's heirs, successors, and assigns.

B. Changes in Service

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

C. Independent Contractor

Contractor represents that it is fully experienced and properly qualified to perform the services provided for herein, and that it is properly licensed, equipped, organized, and financed to perform such services. Contractor shall act as an independent Contractor in performing this Agreement, maintaining complete control over its employees and all of its subcontractors. Contractor shall furnish fully qualified personnel to perform the services under this Agreement. Contractor shall perform all services in accordance with its methods, subject to compliance with this Agreement and all applicable laws and regulations. It is acknowledged that services rendered by the Contractor to the State 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 State, at the time of the execution of this Agreement, as evidence that such are in full force and effect.

D. Laws and Regulations

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

E. Labor and Personnel

At all times, Contractor shall utilize approved, qualified personnel and any State approved subcontractors necessary to perform the services under this Agreement. Contractor shall advise the State 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 State may then, at its option, ask Contractor to arrange for a temporary employee(s) or subcontractor(s) satisfactory to the State to provide the services otherwise performable by Contractor hereunder. The Contractor will be responsible to the State for any economic detriment caused the State by such subcontract arrangement.

Contractor shall, if requested to do so by the State, reassign from the State's account any employee or authorized representatives whom the State, in its sole discretion, determines is incompetent, dishonest, or uncooperative. In requesting the reassignment of an employee under this paragraph, the State shall give ten (10) days notice to Contractor of the State'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 State that the employee should not be reassigned; however, the State's decision in its sole discretion after such five (5) day period shall be final.

Should the State still desire reassignment, then five (5) days thereafter, or ten (10) days from the date of the notice of reassignment, the employee shall be reassigned from the State's account.

F. Conflicts, Errors, Omissions, and Discrepancies

In the event of any conflict between the provision of this Agreement and the provisions of Form CO-802A to which this Agreement is attached, the provisions of this Agreement shall control.

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 State for clarification. The State 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 State shall be at Contractor's risk.

G. Indemnification

(a) In addition to the specific covenants of indemnification set forth in this Agreement, 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 or other Claims arising, directly or indirectly, in connection with this Agreement, including the acts of commission or omission (collectively, the "**Acts**") of the Contractor 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 this Agreement. The Contractor shall use counsel reasonably acceptable to the State in carrying out its obligations under this section. The Contractor's obligations under this section to indemnify, defend and hold harmless against Claims includes Claims concerning confidentiality of any part of or all of the Contractor's bid, if applicable, 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 of this Agreement.

(b) The Contractor shall not be responsible for indemnifying or holding the State harmless from any liability arising due to the negligence of the State or any third party acting under the direct control or supervision of the State.

(c) The Contractor shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of the Contractor. The State shall give the Contractor reasonable notice of any such Claims.

(d) The Contractor's duties under this section shall remain fully in effect and binding in accordance with the terms and conditions of this Agreement, without being lessened or compromised in any way, even where the Contractor is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims and/or where the State is alleged or is found to have contributed to the Acts giving rise to the Claims.

(e) Without limiting the other insurance requirements set forth under this Agreement, the Contractor shall carry and maintain at all times until the expiration of the Agreement, and during the time that any provisions of this Agreement survive a termination, sufficient general liability insurance to satisfy its obligations under this Agreement. The Contractor shall name the State and DOH as additional insureds on the policy and shall provide a copy of the policy or satisfactory evidence of such insurance coverage to DOH. The State shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that the State is contributorily negligent.

(f) This section shall survive the expiration or termination of this Agreement and shall not be limited by reason of any insurance coverage.

H. Nondisclosure

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

I. Audit and Inspection of Plants, Places of Business and Records

All services performed by Contractor shall be subject to the inspection and approval of the State at all times, and Contractor shall furnish all information concerning the services. At the State's request, the Contractor shall provide the State with hard copies or an electronic format of any data or information in the possession or control of the Contractor which pertains to the State's business under this Agreement.

(a) The State and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State's Attorney and their respective agents, may, at reasonable hours, inspect and examine all of the parts of the Contractor's and Contractor Parties' plants and places of business, which are in any way related to, or involved in, the performance of this Agreement.

(b) The Contractor shall maintain, and shall require each of the Contractor Parties to maintain, accurate and complete records in any way related to, or involved in, the performance of this Agreement. The Contractor shall make all of its and the Contractor Parties' records (in any way related to, or involved in, the performance of this Agreement) available at all reasonable hours for audit and inspection by the State and its agents.

(c) The State shall make all requests for any audit or inspection in writing and shall provide the Contractor with at least twenty-four (24) hours' notice prior to the requested audit and inspection date. If the State suspects fraud or other abuse, or in the event of an emergency, the State is not obligated to provide any prior notice.

(d) All audits and inspections shall be at the Contractor's expense.

(e) The Contractor shall keep and preserve or cause to be kept and preserved all of its and Contractor Parties' Records until three (3) years after the latter of (i) final payment under this Agreement, or (ii) the expiration or earlier termination of this Agreement, as the same may be modified for any reason. The State may request an audit or inspection at any time during this period. If any Claim or audit is started before the expiration of this period, the Contractor shall retain or cause to be retained all Records until all Claims or audit findings have been resolved.

(f) The Contractor shall cooperate fully with DOH, the State and their respective employees, agents, representatives, or contractors 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) The Contractor shall provide for an annual financial audit acceptable to DOH for any expenditure of state-awarded funds made by the Contractor. Such audit shall include management letters and audit recommendations. The audit shall be in accordance with the Audit Guide for Audits of the State of Connecticut Department of Economic and Community Development ("**DECD**") programs published by DECD, as it may be modified or superseded from time to time, (the "**Audit Guide**"), and the requirements established by federal law and state statute (collectively, the "**Audit Standards**"). If the Contractor is not subject to a federal and/or state single audit, it shall be subject to a Cost Certification and Independent Auditor's Report within one hundred twenty (120) days of the Agreement Completion Date or at such times as required by DOH. The Cost Certification and Independent Auditor's Report shall be in the form prescribed by DOH in the Audit Guide, as the same may be amended from time to time. An independent public accountant shall conduct the audits or complete the Cost Certification and Independent Auditor's Reports, as applicable. At the sole discretion and with the approval of DOH, examiners from the State may conduct project-specific audits. The Contractor will comply with federal and state single audit standards as applicable.

(i) Repayment to State Based Upon Audit. In the event that the audit referred to subsection (h) of this Section demonstrates that the actual expenditures made by the Contractor in connection with the Agreement are less than the amount of the funds disbursed to the Contractor, any such excess shall become immediately due and payable by the Contractor to DOH. Upon repayment by the Contractor of such excess, the stated amount of this Agreement shall be amended, as applicable, so as to evidence the actual amount of funds received by the Contractor.

J. Insurance

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

In addition, the Contractor shall at its sole expense maintain in effect at all times during the performance of its obligations hereunder the following additional insurance coverages with limits not less than those set forth on Exhibit C attached hereto and made a part hereof, as the same may be revised from time to time, with insurers and under forms of policies approved by the State Insurance Commissioner to do business in Connecticut:

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

Contractor shall deliver Certificates of Insurance relating to all of the above referenced coverages to DOH 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 State prior to cancellation, termination or alteration of said policies of insurance.

K. Non-Waiver

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

L. Promotion

Unless specifically authorized in writing by the Secretary of DOH, on a case by case basis, Contractor shall have no right to use, and shall not use, the name of the State of Connecticut, its officials, agencies, or employees or the seal of the State of Connecticut or its agencies:

- (a) in any advertising, publicity, promotion; or
- (b) to express or to imply any endorsement of Contractor's products or services; or
- (c) to use the name of the State of Connecticut, its officials, agencies, or employees or the seal of the State of Connecticut or its agencies in any other manner (whether or not similar to uses prohibited by subparagraphs (a) and (b) above), except only to manufacture and deliver in accordance with this Agreement such items as are hereby contracted for by the State. In no event may the Contractor use the State Seal in any way without the express written consent of the Secretary of State.

M. Confidentiality

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

2. "Confidential Information" shall mean any name, number or other information that may be used, alone or in conjunction with any other information, to identify a specific individual including, but not limited to, such individual's name, date of birth, mother's maiden name, motor vehicle operator's license number, Social Security number, employee identification number, employer or taxpayer identification number, alien registration number, government passport number, health insurance identification number, demand deposit account number, savings account number, credit card number, debit card number or unique biometric data such as fingerprint, voice print, retina or iris image, or other unique physical representation. Without limiting the

foregoing, Confidential Information shall also include any information that 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.

3. **"Confidential Information Breach"** shall mean, generally, an instance where an unauthorized person or entity accesses Confidential Information in any manner, including but not limited to the following occurrences: (1) any Confidential Information that is not encrypted or protected is misplaced, lost, stolen or in any way compromised; (2) one or more third parties have had access to or taken control or possession of any Confidential Information that is not encrypted or protected without prior written authorization from the State; (3) the unauthorized acquisition of encrypted or protected Confidential Information together with the confidential process or key that is capable of compromising the integrity of the Confidential Information; or (4) if there is a substantial risk of identity theft or fraud to the client, the Contractor, the Agency or State.

4. Protection of Confidential Information.

(a) Contractor and Contractor Parties, at their own expense, have a duty to and shall protect from a Confidential Information Breach any and all Confidential Information which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with current industry standards.

(b) Each Contractor or Contractor Party shall develop, implement and maintain a comprehensive data - security program for the protection of Confidential Information. The safeguards contained in such program shall be consistent with and comply with the safeguards for protection of Confidential Information, and information of a similar character, as set forth in all applicable federal and state law and written policy of the Agency or the 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 Connecticut Department of Administrative Services ("DAS"), the Agency, and the Connecticut Office of the Attorney General as soon as practical, but no later than twenty-four (24) hours, after they become aware of or suspect that any Confidential Information which Contractor or Contractor Parties have come to possess or control has been subject to a Confidential Information Breach. If a Confidential Information Breach has occurred, the Contractor shall, within three (3) business days after the notification, present a credit monitoring and protection plan to the Commissioner of Administrative Services, the Agency, 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 Contractor's costs and expenses for the credit monitoring and protection plan shall not be recoverable from DAS, the Agency, any State of Connecticut entity or any affected individuals.

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

(e) Nothing in this section shall supersede in any manner Contractor's or Contractor Party's obligations pursuant to HIPAA or any provisions of this Agreement concerning the obligations of the Contractor as a business associate of a covered entity.

N. Subpoenas

In the event the Contractor's records are subpoenaed pursuant to CGS § 36a-43, the Contractor shall, within twenty-four (24) hours of service of the subpoena, notify the person designated for the State in Section 4 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 State in Section 4 of this Agreement.

O. Survival

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

P. Americans with Disabilities Act

This clause applies to those Contractors which are or will become responsible for compliance with the terms of the Americans with Disabilities Act of 1990 during the term of this Agreement. Contractor represents that it is familiar with the terms of this Act and that it is in compliance with the law. Failure of the Contractor to satisfy this standard either now or during the term of this Agreement as it may be amended will render the contract voidable at the option of the State upon notice to the Contractor. Contractor warrants that it will 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 Act.

Q. 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" mean this Agreement and 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 C.G.S. § 1-267, (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) (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, 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, 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 in the following box:

R. Executive Orders and Other Enactments

(a) All references in this Agreement 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 Agreement at any time during its term, or that may be made applicable to the Agreement during its term. This Agreement shall always be read and interpreted in accordance with the latest applicable wording and requirements of the Enactments. At the Contractor's request, DOH shall provide a copy of these Enactments to the Contractor. Unless otherwise provided by Enactments, the Contractor is not relieved of its obligation to perform under this Agreement if it chooses to contest the applicability of the Enactments or DOH's authority to require compliance with the Enactments.

(b) This Agreement is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated

August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of this Contract as if they had been fully set forth in it.

(c) This Agreement 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 Agreement as if fully set forth in it.

S. Sovereign Immunity

The Contractor recognizes that the State, of which DOH is a part, is sovereign and the Contractor agrees not to make any Claims of a right to use the defense of sovereign immunity as the State's agent without the prior written consent of the Commissioner to be granted in the Commissioner's sole discretion. Nothing contained herein may be construed as a modification, compromise, waiver or limitation by the Agency of any rights or defenses of any immunities provided by federal law or the laws of the State of Connecticut to the Agency or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of this Agreement. To the extent that this section conflicts with any other section, this section shall govern.

T. Assignment

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

U. 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.

V. 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.

W. Third Parties

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

X. Non Waiver

In no event shall the making by the State of any payment to the Contractor constitute or be construed as a waiver by the State 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 State while any such breach or default exists shall in no way impair or prejudice any right or remedy available to the State in respect to such breach or default.

Y. Contractor Certification

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

Z. Intentionally Omitted

AA. State Contracting Standards Board

Per CGS § 4e-7, Contractor acknowledges and accepts that, for cause, the State Contracting Standards Board may review and recommend, for DOH's consideration and final DOH determination, termination of the Agreement. "For Cause" means: (1) a violation of the State ethics laws (CGS Chapter 10) or CGSs § 4a-100 or (2) wanton or reckless disregard of any State contracting and procurement process by any person substantially involved in such contract or State contracting agency.

BB. Large State Construction or Procurement Contract

The following provision is only applicable if this Agreement is a large state construction or procurement contract (as defined below). Pursuant to the requirements of section 1-101qq of the Connecticut General Statutes (a) the State has provided to the Contractor the summary of State ethics laws developed by the State Ethics Commission pursuant to section 1-81b of the Connecticut General Statutes, which summary is incorporated by reference into and made a part of this Agreement as if the summary had been fully set forth in this Agreement; (b) the Contractor represents that the chief executive officer or authorized signatory of the Agreement and all key employees of such officer or signatory have read and understood the summary and agree to comply with the provisions of state ethics law; (c) prior to entering into a contract with any subcontractors or consultants, the Contractor shall provide the summary to all subcontractors and consultants and each such contract entered into with a subcontractor or consultant on or after July 1, 2021, shall include a representation that each subcontractor or consultant and the key 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 Agreement; and (e) each contract with such contractor, subcontractor or consultant shall incorporate such summary by reference as a part of the contract terms.

"Large state construction or procurement contract" means any contract, having a cost of more than five hundred thousand dollars, for (A) the remodeling, alteration, repair or enlargement of any real asset, (B) the construction, alteration, reconstruction, improvement, relocation, widening or changing of the grade of a section of a state highway or a bridge, (C) the purchase or lease of supplies, materials or equipment, as defined in CGS § 4a-50, or (D) the construction, reconstruction, alteration, remodeling, repair or demolition of any public building.

CC. Large State Contract Representation for Contractor

The following provision is only applicable if this Agreement is a large state contract (as defined in Conn. Gen. Stat. section 4-250, as modified by Acting Governor Susan Bysiewicz Executive Order No. 21-2). 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, 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.

DD. Large State Contract Representation for Official or Employee of State Agency

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.

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.

II. Forum and Choice of Law

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

JJ. Access to Contract and State Data

The Contractor shall provide to DOH access to any data, as defined in Conn. Gen Stat. Sec. 4e-1, concerning the Agreement and DOH that are in the possession or control of the Contractor upon demand and shall provide the data to DOH in a format prescribed by DOH and the State Auditors of Public Accounts at no additional cost.

KK. Compliance with Consumer Data Privacy and Online Monitoring.

Pursuant to section 4 of Public Act 23-16 of the Connecticut General Assembly, Contractor shall at all times comply with all applicable provisions of sections 42-515 to 42-525, inclusive, of the Connecticut General Statutes, as the same may be revised or modified.

LL. Health Insurance Portability and Accountability Act of 1996.

(a) If the Contractor is a Business Associate under the requirements of the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**"), as noted in this Agreement, the Contractor must comply with all terms and conditions of this Section of the Agreement. If the Contractor is not a Business Associate under HIPAA, this Section of the Agreement does not apply to the Contractor for this Agreement.

(b) The Contractor is required to safeguard the use, publication and disclosure of information on all applicants for, and all clients who receive, services under the Agreement in accordance with all applicable federal and state law regarding confidentiality, which includes but is not limited to HIPAA, more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E; and

(c) The State of Connecticut Agency named on page 1 of this Agreement ("**Agency**") is a "covered entity" as that term is defined in 45 C.F.R. § 160.103; and

(d) The Contractor is a "business associate" of the Agency, as that term is defined in 45 C.F.R. § 160.103; and

(e) The Contractor and the Agency agree to the following in order to secure compliance with the HIPAA, the requirements of Subtitle D of the Health Information Technology for Economic and Clinical Health Act ("**HITECH Act**"), (Pub. L. 111-5, §§ 13400 to 13423), and more specifically with the Privacy and Security Rules

at 45 C.F.R. Part 160 and Part 164, subparts A, C, D and E (collectively referred to herein as the “HIPAA Standards”).

(f) For the purposes of this Section, the following definitions shall apply:

(1) “**Breach**” shall have the same meaning as the term is defined in section 45 C.F.R. 164.402 for purposes of this Section II. and shall also include a use or disclosure of PHI that violates the HIPAA Standards.

(2) “**Business Associate**” shall mean the Contractor.

(3) “**Covered Entity**” shall mean the Agency of the State of Connecticut named on page 1 of this Agreement.

(4) “**Designated Record Set**” shall have the same meaning as the term “designated record set” in 45 C.F.R. § 164.501.

(5) “**Electronic Health Record**” shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. §17921(5)).

(6) “**Individual**” shall have the same meaning as the term “individual” in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative as defined in 45 C.F.R. § 164.502(g).

(7) “**Privacy Rule**” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and 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 designee.

(11) “**More stringent**” shall have the same meaning as the term “more stringent” in 45 C.F.R. § 160.202.

(12) “**This Section of the Agreement**” refers to the HIPAA Provisions stated herein, in their entirety.

(13) “**Security Incident**” shall have the same meaning as the term “security incident” in 45 C.F.R. § 164.304.

(14) “**Security Rule**” shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. part 160 and 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 Agreement 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 Agreement 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 Agreement.
- (5) Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Section of the Agreement or any security incident of which it becomes aware.
- (6) Business Associate agrees, 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 protected health information 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 Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder. Business Associate agrees at the Covered Entity's direction to provide an accounting of disclosures of PHI directly to an individual in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.
- (12) Business Associate agrees to comply with any state or federal law that is more stringent than the Privacy Rule.

(13) Business Associate agrees to comply with the requirements of the HITECH Act relating to privacy and security that are applicable to the Covered Entity and with the requirements of 45 C.F.R. §§ 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 (5) business 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 Agreement 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 Agreement, 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 Agreement.

(B) Such notification shall be provided by the Business Associate to the Covered Entity without unreasonable delay, and in no case later than 30 days after the breach is discovered by the Business Associate, 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:

1. 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.
2. A description of the types of unsecured protected health information that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code).
3. The steps the Business Associate recommends that Individual(s) take to protect themselves from potential harm resulting from the breach.

4. 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.

5. 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 Web site and a postal address. Business Associate agrees to include in the notification of a breach by the Business Associate to the Covered Entity, a written description of the procedures that have been established to meet these requirements. Costs of such contact procedures will be borne by the Contractor.

(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 Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Agreement, provided that such use or disclosure would not violate the 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 Agreement, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

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

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

(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 Agreement.

LL. Certain contracts for performance of governmental functions. Records and files subject to Freedom of Information Act.

This Agreement may be subject to the provisions of CGS § 1-218. In accordance with this statute, each contract in excess of two million five hundred thousand dollars (\$2,500,000) 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 the 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 CGS §§1-205 and 1-206.

For purposes of CGS § 1-218, a governmental function is defined in CGS § 1-200(11) which provides that "Governmental function" means the administration or management of a program of a public agency, which program has been authorized by law to be administered or managed by a person, where (A) the person receives funding from the public agency for administering or managing the program, (B) the public agency is involved in or regulates to a significant extent such person's administration or management of the program, whether or not such involvement or regulation is direct, pervasive, continuous or day-to-day, and (C) the person participates in the formulation of governmental policies or decisions in connection with the administration or management of the program and such policies or decisions bind the public agency. "Governmental function" shall not include the mere provision of goods or services to a public agency without the delegated responsibility to administer or manage a program of a public agency.

**SECTION 9
WORK PRODUCT**

- A. All products of the work under the terms of this Agreement shall become and remain the property of the State. This shall include all partially completed work in the event that the Agreement is terminated before completion for any reason. Pursuant to section 4a-52-14 of the Regulations of Connecticut State Agencies, the State shall have and retain sole and exclusive right and title in and to the forms, maps or other materials produced for the state, including all rights to use, distribute, sell, reprint, or otherwise dispose of same. The Contractor shall not copyright, register, distribute or claim any rights in or to said forms, maps or other materials or the work produced under this Agreement.
- B. (1) The Contractor shall transfer to the State, as part of the consideration for this Agreement, any and all copyright rights or other proprietary interests which the Contractor may have in materials produced

by it under the terms of this Agreement ("**Work Products**"); and that the Contractor shall, whenever so requested by the State, sign (with proper notarization or other lawful acknowledgement of its signature) and deliver to the State a letter agreement, in form and content satisfactory to the State, stating that the Contractor thereby irrevocably transfers to the State all of its copyright and other proprietary rights in the Work Products designated by the State in its related request.

(2) If deemed appropriate by the State in its sole discretion, the Contractor shall agree that any or all Work Products shall be deemed a work of joint authorship by the State and the Contractor for copyright purposes, and shall be registered as such with the United States Copyright Office. The Contractor hereby waives any right to oppose or object to such a claim of joint authorship or to such related copyright registration.

- C. The Contractor shall not engage or allow any party ("**Other Party**") other than itself or the State to contribute directly to the creation of any Work Product unless the Contractor has first obtained from said Other Party a written agreement ("**Secondary Agreement**") containing essentially the same terms as Section B above; i.e., the Other Party (1) shall agree to transfer to the State any and all copyright or other proprietary rights said Other Party may have in designated Work Products, or, if the State requests, shall agree to deem such Work Product a work of joint authorship by the State and by Other Party, and, if appropriate, by the Contractor also; and (2) shall agree to sign (with proper notarization or other lawful acknowledgement of its signature) and deliver to the State any letter agreement ("**Letter Agreement**") of the kind described in Section B above which the State shall request from it. The Secondary Agreement between the Contractor and an Other Party shall provide expressly that any such Letter Agreement delivered by the Other Party to the State shall be directly enforceable by the State, and that the execution, delivery, and enforceability of such a Letter Agreement are part of the consideration for the Secondary Agreement.

EXHIBIT A

ACTIVITY BUDGET

Payments under this Agreement shall be made in accordance with the following Activity Budget:

INSERT BUDGET

BUDGET VARIANCE:

The Contractor may transfer funds from one category to another (except for equipment) in the agreed upon and approved budget included in this agreement for a single component without prior notification of DOH under the following conditions:

- a. The amount by which a single category may be increased may not exceed **20%** of the approved amount or **\$5,000.00** whichever is greater. This applies only to category amounts in the formally approved budget subsequently approved budget revisions.
- b. Budget flexibility is to be applied to each component separately and is not to be computed on the composite budget items.
- c. The number of people or the percentage of time charged to a job classification may be increased, provided this does not exceed the flexibility cited above.
- d. The Contractor may not make any transfer under this procedure that involves any of the categories or kinds of expenditures specifically listed below.
- e. All such transfers will be reflected on the next submitted financial report.

DOH requires the following changes in approved program budgets to have prior written DOH approval by a formal budget revision and/or formal agreement amendment:

- a. The purchase of an item of equipment not approved in the original budget.
- b. A transfer that involves an increase of an approved category amount by more than **20%** or **\$5,000.00** whichever is greater.
- c. Any increase in compensation for services under a third party contract.
- d. Any transfers of funds from one component to another.
- e. Any transfer of budgeted program income or food reimbursement. DOH will respond to a properly executed request within 30 days of receipt.
- f. No budget revisions proposed by the Contractor may be submitted later than 30 calendar days after the program has ended, except that DOH may entertain, at any time, a budget revision for the purpose of increasing funds solely for the audit of the program. The final financial report will show all category overruns. Costs incurred after the end of the budget period will be disallowed except where DOH has expressly approved in writing and in advance.
- g. Equipment: Equipment is defined as machinery, tools, furniture, vehicles, and other personal property with a normal useful life of more than one year and a value of \$1,000.00 or more, or as revised by the Comptroller of the State of Connecticut. Equipment purchased, in whole or in part, with funds provided by DOH under this contract will be considered the property of DOH. Equipment will be considered purchased from Contractor funds if the program has other sources of income equal to or greater than the equipment purchase price. Such purchases will be considered to be the property of the Contractor. Equipment to be purchased for the program with DOH funds must be identified and the cost itemized in the approved budget of this agreement or in a budget revision form.

The following provisions apply to equipment purchases made in full or in part with DOH funds:

- i. Contractor shall obtain the prior approval of DOH either through the agreement application budget or a budget revision. Each piece of equipment to be purchased and its costs must be clearly itemized.
- ii. Contractor shall obtain three (3) competitive bids with the purchase to be made from the lowest qualified bidder.
- iii. Contractor shall maintain an inventory of all equipment purchased with DOH funds.
- iv. As part of its annual audit statement, Contractor shall submit verification by the auditor of the continued possession of all equipment purchased with DOH funds.
- v. Any item of equipment purchased with DOH funds shall not be discarded or sold or removed from the inventory without the prior written approval of the DPJ.
- vi. If DOH funding to the Contractor is terminated or not renewed, DOH will determine the manner of the disposition of all equipment purchased in full or in part with DOH funds by:
 - (1) Permitting the Contractor to retain and use the property;
 - (2) Allowing the Contractor to sell the equipment and return the proceeds to DOH, minus an agreed upon amount to compensate for the costs of selling the property;
or
 - (3) Returning the equipment to DOH.

EXHIBIT B

Scope of Work

EXHIBIT C

INSURANCE REQUIREMENTS

(a) Contractor shall procure and maintain for the duration of this Agreement the following types of insurance, in amounts not less than the stated limits, against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder.

1. Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. Coverage shall include Premises and Operation, Independent Contractors, Product and Completed Operations and Contractual Liability. If a general aggregate is used, the general aggregate limit shall apply separately to this Agreement or the general aggregate limit shall be twice the occurrence limit.

2. Workers' Compensation and Employer's Liability: Statutory coverage in compliance with compensation laws of the State of Connecticut. Coverage shall include Employer's Liability with a minimum limit of \$100,000.00 each accident, \$500,000.00 Disease – Policy limit, \$100,000.00 each employee.

3. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury. Coverage extends to owned, hired and non-owned automobiles. If the vendor/contractor does not own an automobile, but one is used in the execution of the contract, then only hired and non-owned coverage is required. If a vehicle is not used in the execution of the contract, then automobile coverage is not required.

4. Professional Liability: The contractor shall maintain professional liability coverage providing for a total limit of \$1,000,000 to cover any act, error or omission to cover any claim arising from the performance of the designated professional services (if available).

(b) Additional Insurance Provisions.

1. The State of Connecticut Department of Housing, its officials and employees shall be named as an Additional Insured on the Commercial General Liability policy: Additional Insured status is not required for items (a) 2 through (a) 4 above.

2. Described insurance shall be primary coverage and Contractor and Contractor's insurer shall have no right of subrogation recovery or subrogation against the State of Connecticut.

3. Contractor shall assume any and all deductibles in the described insurance policies.

4. Without limiting Contractor's obligation to procure and maintain insurance for the duration identified in (a) above, each insurance policy shall not be suspended, voided, cancelled or reduced except after thirty (30) days prior written notice by certified mail has been given to the State of Connecticut with the exception that a ten (10) day prior written notice by certified mail return receipt requested for nonpayment of premium is acceptable.

5. Each policy shall be issued by an insurance company licensed to do business by the Connecticut Department of Insurance and having a Best Rating of A-, VII, or equivalent or as otherwise approved by DOH.