
AGREEMENT

STATE OF CONNECTICUT

and

21CT, INC.

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SECTION 1

THIS AGREEMENT (hereinafter referred to as "Agreement"), dated November 15, 2013, is entered by and between the **STATE OF CONNECTICUT ("State")**, acting herein through its duly authorized representative, the **OFFICE OF POLICY AND MANAGEMENT ("OPM")**, the **DEPARTMENT OF SOCIAL SERVICES ("DSS")** and **21CT, INC. ("Contractor")**, a corporation having its principal place of business at 6011 W Courtyard Drive, Building 5, Suite 300, Austin, Texas 78730.

WHEREAS, Connecticut spends billions of dollars for health care services on behalf of the state's Medical assistance program and anticipates expansion of the eligible Medicaid population resulting in significant additional costs and caseload growth from the implementation of the Affordable Care Act;

WHEREAS, the State spends billions of dollars on other programs and services provided on behalf of the citizens of Connecticut;

WHEREAS, the Connecticut Department of Revenue Services collects over \$12.6 billion annually in income and sales taxes and has a core mission of collecting taxes and pursuing non-filers and underreporting filers in an effort to prevent fraudulent activities;

WHEREAS, Connecticut is looking to coordinate and enhance ongoing fraud detection and prevention activities through (i) prevention of overpayments in various state funded programs; (ii) cost avoidance; (iii) recoveries of overpayments; (iv) identification of fraud networks and schemes; and (v) identification of underpayments of taxes and other revenue due the State;

WHEREAS, fraudulent schemes are, by their nature, difficult to detect, complex and ever-evolving, requiring the expenditure of significant State resources to identify, prosecute and recover State resources lost to fraud, waste and abuse;

WHEREAS, the State is seeking to apply sophisticated investigative analytics and graph pattern analyses tools to various State Data sources that will be used to assist auditors, investigators and attorneys to identify and target high priority leads for further investigation of potential fraud, waste, and/or abuse perpetrated against State programs;

WHEREAS, in addition to reducing fraud, waste and abuse, other objectives of the State include: 1) enhanced efficiency in investigations; 2) an increased number of cases closed during any given period of time; 3) the minimization and streamlining of the State resources needed to complete investigative tasks; 4) the ability to acquire stronger evidence through and in furtherance of investigations; 5) an increased number of successful adjudications; 6) a quicker detection of fraud, waste or abuse; 7) a quicker and more efficient State action in the identification, investigation and prosecution of instances of fraud, waste or abuse; 8) an increase in the identification

of the number of suspicious parties providing services to or receiving benefits from the State; 9) the identification of new fraud schemes and techniques; 10) the acquisition of greater intelligence regarding the nature and practice of fraud in Connecticut; 11) new policy recommendations for State practices as a result of any findings related to fraud, waste, or abuse techniques; 12) a decrease in the amount of fraud in the State; and 13) the use of State resources for their intended purposes;

WHEREAS, on July 22, 2013 the State, through OPM, issued its Request for Proposals titled: Fraud Detection and Prevention Efforts OPMBUD20130722 (the "RFP");

WHEREAS, subsequent to that date, OPM provided additional information for Prospective Bidders under OPM Number OPMBUD20130722, OPM Addendum 1 & Addendum 2 (the "Information") which modified, supplemented and amplified certain provisions of the RFP;

WHEREAS, Contractor timely submitted its response to the RFP and the Information by the August 16, 2013, RFP due date (the "Response");

WHEREAS, the State seeks the implementation of a fraud, waste and abuse detection and prevention solution applying investigative analytics and graph pattern matching. The State selected Contractor and its LYNXeon™ advanced proprietary software solution to meet this goal. This Agreement identifies the objectives, scope, tasks, Schedule, and Deliverables for this solution;

WHEREAS, the State's objective for this project is to ensure efficient, high quality and cost effective implementation of healthcare and other state government services. This project shall further this objective by helping the State coordinate fraud, waste and abuse detection activities to identify and effectively deter suspected fraud, waste, and abuse in state-funded programs. By avoiding unnecessary costs and enhancing recovery efforts, the State can more appropriately allocate taxpayer funds to ensure that proper services are provided to appropriate residents in the most efficient and effective manner possible;

WHEREAS, it is intended by the Parties hereto that the terms, conditions and specifications in the RFP, the information and certain parts of the response shall be incorporated herein and shall be considered integrated into this Agreement, all as set forth in Appendix F;

WHEREAS, additional State agencies may be added to this Agreement in the future as additional State Parties;

NOW THEREFORE, the State (through OPM and DSS) and Contractor, for and in consideration of the mutual covenants and other good and valuable consideration set forth herein, do hereby agree to the terms of the Agreement as set forth herein.

This Agreement shall be read as a whole and in the event of any conflict, the following order of precedence shall govern: (i) the Agreement, (ii) Appendix A Statement of Work (iii) the Appendix F, RFP Response, (iv) Appendix L, Contractor RFP Bid.

SECTION 2 STATUTORY & CORPORATE AUTHORITY

This Agreement is entered into between Contractor, a Delaware corporation qualified and registered to do business in the State of Connecticut, acting herein through its duly authorized representative in a manner authorized and consistent with Contractor's Bylaws and governing structure, and OPM, acting herein through its Secretary, under the authority of Sections 4-8, 4-65a, 4-66, 4-70b and 4-70e of the Connecticut General Statutes (CGS), as amended, and DSS, acting herein through its Commissioner, under the authority of Sections 4-8, 12-15, 17b-1, 17b-2, 17b-3, 17b-4, 17b-6, 17b-7a, 17b-88, 17-b-88a, 17b-97, and 17b-99 of the Connecticut General Statutes, as amended.

SECTION 3 DEFINITIONS

In addition to any other terms that may be defined in the Agreement, the listed terms shall have the following meaning:

"Agency" means OPM, or DSS, or both or any other future State signatories.

"Agreement" means this agreement, if, and if so, when, it becomes effective as of the Effective Date, together with all applicable contract documents, and amendments, if any, the Statement of Work and all other applicable Schedules, Appendices and other Change Orders that are made by and among the Parties on or after the date first above written.

"Agreement Anniversary Date" means, initially, the month and day that is the one (1) year anniversary of the Effective Date of this Agreement based on a calendar year of 365 days, and each subsequent such date thereafter during the Term of this Agreement.

"Analytics" means the combination of the application of LYNXeon™ by Contractor to conduct advanced and complex predictive and investigative analytics of huge stores of Data and Contractor's staff skill set and expertise to detect among other things: billing aberrations, improprieties, fraud, waste, abuse, or all of the foregoing.

"Business Day" means a calendar day during which State is open for business, which excludes weekends and holidays observed by State.

“Breach” means failure, without any legal excuse, to perform any promise, agreement, task or specification, or to fulfill any representation or warranty, which forms the whole or any part of the Agreement.

“Case” shall mean a Deliverable from Contractor providing sufficient information for the State to conduct additional investigations or initiate State action that includes: payment holds, civil or administrative proceedings, administrative licensing actions or warrants criminal investigations to be commenced against such providers, recipients, individuals or entities.

“Change Order” means a written order to change the Statement of Work described in Section 18.

“Claims” mean any and all claims, demands, suits, actions, causes of action, losses, liabilities, damages, judgments, orders, decrees, requests for injunctive and/or declaratory relief, fines, liens, debts, charges, executions, penalties, interest and expense(s) whatsoever (including, but not limited to, all reasonable attorney’s fees, court costs, expert and other professional fees and other costs of investigation and defense of any of the foregoing), whether mature or not matured, contingent, or known or unknown, which are, have been or may be made, brought, issued or awarded at law or in equity, or under or in connection with any administrative rule or proceeding, in any forum.

“Contractor” means 21CT, Inc., its officers, directors, employees or its agents.

“Contractor’s Parties” shall mean Contractor’s members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, subsidiaries, parent company, consultants, employees or any 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.

“Data” means the State’s facts and statistics (including, but not limited to, names, social security numbers, mailing addresses, driver’s license information, birth dates, telephone numbers, e-mail addresses, numerical information, employee numbers, medical information, eligibility information, tax information, employment information, wage information, unemployment information, insurance information, workers’ compensation records, medical records, Protected Health Information (PHI), Personally Identifiable Information (PII) and financial account information) that is collected, compiled, stored, or used for reference or analysis and included as part of the State’s deliverables as well as, drawings, video, pictures, specifications, notes, reports, records, estimates, summaries, memoranda, and correspondence that are shared with the Contractor through an approved interface feed (whether in electronic, hard copy or other form) provided by the State for, as a result of, or in connection with, or which in any way relate to, pertain to, or reference, this Agreement.

Notwithstanding anything to the contrary contained in this Agreement, in no event will OPM, DSS, any other Agency, any State Party, or the State be required to provide Data to the Contractor in violation of any Federal, State, or local law, statute, regulation or rule.

"Data Center" shall mean the physical location where the LYNXeon™ Data System and Data will reside.

"Default" shall have the meaning set forth in Section 26.

"Deliverables" mean the professional services deliverables in the Statement of Work (SOW), Cases and reports, including any future configuration of licensed software and documentation identified as a "Deliverable" in the applicable SOW. Deliverables shall not include any software already owned by the Contractor at the time of this Agreement and third-party software or related documentation licensed directly to the State from a third party, or any modifications or enhancements thereto or derivatives thereof, unless prescribed in a Change Order in the future.

"Effective Date" of the Agreement means the date when the Agreement is approved and authorized by the State of Connecticut Office of the Attorney General.

"Expiration" shall mean the ending of the Agreement in accordance with its Term.

"Expiration Date" shall mean November 18, 2016, the date of Expiration of the Agreement.

"Force Majeure Event" shall mean an unforeseeable event beyond the reasonable control of that party, including without limitation: act of God, fire, explosion, lightning, hurricane, labor dispute, cable cuts by third parties, acts of terror, material shortages or unavailability, government laws or regulations, war or civil disorder, or failures of suppliers of goods and services.

"Intellectual Property Rights" shall mean exclusive legal rights associated with creations of the mind, such as discoveries and inventions and designs for which exclusive rights are recognized, including but not limited to, copyright, trademarks, patents, industrial design rights, trade dress, and trade secrets.

"Investigative Services" means the processes and workflows that Contractor shall use to provide findings of alleged suspicious activity for use by the State in its fraud, waste, and/or abuse prevention and detection efforts. These process and workflows include, without limitation, Contractor's data curation and data analysis using LYNXeon™, collaboration with the State over policy and rule interpretations, and reports and briefings on findings.

"Leads" shall mean information provided by the State of potential fraud, waste or abuse to be analyzed and investigated.

“LYNXeon™” means a comprehensive software management tool, including any and all updates, owned by Contractor that will perform advanced and complex predictive and investigative analytics of huge stores of Data to detect among other things: billing aberrations, improprieties, fraud, waste, abuse, or all of the foregoing.

“Payment Schedule” means the schedule set forth and incorporated herein in Appendix B.

“Perform” means the act of fulfilling the Agreement according to its terms.

“Performance” means the fulfillment of the Agreement, in whole or in part, according to its terms.

“Personally Identifiable Information (PII)” shall have the meaning set forth in Section 11.

“Personally Identifiable Information Breach” shall have the meaning set forth in Section 11.

“Party” or **“Parties”** means the State or Contractor, or both.

“Price” is set forth in Appendix B.

“Project Objectives” means the actions of the Contractor uploading State Data into the LYNXeon™ Data System to apply sophisticated investigative analytics and graph pattern analysis tools to various State Data sources that will be used to assist State auditors, investigators and attorneys to identify and target high priority suspicions for further investigation of potential fraud, waste, and/or abuse perpetrated against State programs.

“Project Schedule” means the State-specific project schedule that is mutually agreed upon by the Parties as produced within this Agreement and in any Schedules.

“Protected Health Information (PHI)” shall have the same meaning set forth in Section 25.

“Protected Health Information Breach” shall have the meaning set forth in Section 25.

“Quarterly Meetings” means meetings held every three months from the Effective Date of this Agreement to discuss Cases and other relevant business related to this Agreement.

“Records” means all working papers and such other information, data and materials (including, but not limited to, documents, Cases, Data, Leads, third-party data, plans,

books, e-mail, text messages, computations, recorded information, processes, flow charts, drawings, specifications, notes, reports, records, estimates, summaries, memoranda, and correspondence and related material) that are prepared, generated or accumulated by Contractor (whether in electronic, hard copy or other form for, as a result of, or in connection with, or which in any way relate to, pertain to, or reference, this Agreement) for the benefit of the State.

“Recovery Point Objective (RPO)” means the point in time, identified by the State, back to when Contractor must recover Data.

“Recovery Time Objective (RTO)” means the duration of time within which, and a service level to which, the Contractor must restore a business process after a Force Majeure Event.

“Release Condition” shall mean the occurrence of an Event of Default under this Agreement that authorizes the escrow agent, pursuant to the Software Escrow Agreement, to release LYNXeon™ Proprietary Software held in escrow to OPM.

“Schedule” means the work schedule for the Deliverables as set forth in Appendix A.

“Scheduled Downtime” shall mean a period of time, specified in length and interval, for which the LYNXeon™ Data System is unavailable to perform Analytics. The Scheduled Downtime shall be no more than six (6) hours per week and shall occur on Saturdays and Sundays. Due to the nature of data processing downtime may occasionally occur unexpectedly or need to be scheduled. In both cases the State will need to be immediately notified and the downtime shall count against the agreed upon 95.0% system availability.

“Source Code” shall mean any collection of computer instructions and comments written using some human-readable computer language, usually as text.

“State” means the State of Connecticut, including OPM, DSS, and any office, department, board, council, commission, institution or other agency of the State.

“State Parties” means any and all departments, commissions, boards, bureaus, agencies, institutions, public authorities, offices, councils, associations, instrumentalities, entities or political subdivisions of the State that make use of LYNXeon™ in accordance with this Agreement.

The Parties acknowledge that, as of the Effective Date, the only State Parties are OPM and DSS. In the event that other State Parties are to be added to the Agreement in the future, any such addition may only be made through a written amendment to the Agreement in form and substance reasonably satisfactory to the Parties and to be approved by the Connecticut Office of the Attorney General. Among other things, such amendment may require revisions to Section 25 of this Agreement.

"State Tax Information" shall mean Data that includes (1) any tax or information return, declaration of estimated tax, or claim for refund required by, or provided for or permitted under, the statutory authority of the State of Connecticut Department of Revenue Services (DRS) by, on behalf of, or with respect to any person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to, or part of, the return so filed; (2) a taxpayer's identity, the nature, source, or amount of his income, sales tax, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, over assessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the DRS with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense; (3) any part of any written determination or any background file document relating to such written determination which is not open to public inspection under State law; (4) any advance pricing agreement entered into by a taxpayer and DRS and any background information related to such agreement or any application for an advance pricing agreement, and (5) any tax payer agreement, and any background information related to such an agreement or request for such an agreement, but such term does not include data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer. Nothing in the preceding sentence, or in any other provision of law, shall be construed to require the disclosure of standards used or to be used for the selection of returns for examination, or data used or to be used for determining such standards, if the DRS determines that such disclosure will seriously impair assessment, collection, or enforcement under the DRS laws.

"Statement of Work (SOW)" means the portion of the Agreement describing a specific set of activities and/or Deliverables by the Contractor, which may include Work Product and Intellectual Property Rights that Contractor shall provide the State, issued pursuant to the Agreement.

"Termination" means an end to the Agreement prior to the end of its Term whether effected pursuant to a right which the Contract creates or for a breach.

The **"Title"** of any matter or thing (whether tangible or intangible) means all ownership, title, licenses, rights and other property interests of any kind, whether real, personal or intellectual, including, but not limited to, the perpetual use of such property interests of any kind, whether real, personal or intellectual.

"Work Product" means any and all Deliverables produced by Contractor for the State under a Statement of Work issued pursuant to this Agreement, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the Effective Date of the Agreement, including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs,

computer programs, computer software, scripts, object code, Source Code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided to the State under the Agreement or Statement of Work, and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use or benefit of the State in connection with this Agreement or Statement of Work, or with funds appropriated by or for the State or the State's benefit: (a) by any Contractor personnel or State personnel, or (b) any State personnel who then became personnel to Contractor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Contractor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with the State.

SECTION 4 CONTRACT PERIOD

The term (the "Term") of this Agreement shall commence on the Effective Date and shall conclude on the Expiration Date.

Renewal Option. At the mutual agreement of the Parties, the Term of the Agreement may be extended for one or two one (1) year option terms (provided that the total Term, including any renewal, will not exceed five (5) years) on conditions mutually satisfactory to the Parties. The Parties agree to work cooperatively and in good faith to come to an agreement on any such renewal. The negotiations to extend the Term must be completed no later than six months prior to the Expiration Date.

SECTION 5 TERMINATION PROVISION

- A. Notwithstanding any provisions in this Agreement, OPM, with or without cause, through a duly authorized employee, may Terminate the Agreement with thirty (30) days written notice whenever OPM makes a determination that such Termination is in the best interests of the State. OPM shall notify the Contractor in writing of Termination pursuant to this subsection, which notice shall specify the effective date of Termination and the extent to which the Contractor must complete its Performance under the Agreement prior to such date.

- B. Notwithstanding any provisions in this Agreement, OPM, through a duly authorized employee, may, after making a written determination that the Contractor has breached the Contract, Terminate the Agreement in accordance with the provisions in the Breach section of this Agreement.
- C. OPM shall send the notice of Termination via certified mail, return receipt requested, to the Contractor at the most current address which the Contractor has furnished to OPM for purposes of correspondence, or by hand delivery. Upon receiving the notice from OPM, the Contractor shall immediately discontinue all services affected in accordance with the notice, undertake all commercially reasonable efforts to mitigate any losses or damages, and deliver to OPM all Records and Data and any Deliverables that had not been previously provided. The Records and Data are deemed to be the property of the State and the Contractor shall deliver them to OPM no later than thirty (30) days after the Termination of the Agreement or fifteen (15) days after the Contractor receives a written request from OPM for the Records and Data. The Contractor shall deliver those Records and Data that exist in electronic, magnetic or other intangible form in a non-proprietary format, such as, but not limited to, ASCII or TXT.
- D. Upon receipt of a written notice of Termination from OPM, the Contractor shall cease operations as OPM directs in the notice, and take all actions that are necessary or appropriate, or that OPM may reasonably direct, for the protection, and preservation of the Records or Data and any other property. Except for any work which OPM directs the Contractor to Perform in the notice prior to the effective date of Termination, and except as otherwise provided in the notice, the Contractor shall terminate or conclude all existing subcontracts and purchase orders related to this Agreement and shall not enter into any further subcontracts, purchase orders or commitments related to this Agreement.
- E. **Clawback.** During the first year of the Agreement, if OPM terminates the Agreement within the first four (4) months, the Contractor acknowledges and agrees that it is only entitled to keep payment up until the time of an Event of Default, of any pre-paid fixed fee amount(s) related to its Performance rendered and accepted by OPM in accordance with the SOW and this Agreement prior to the date of Termination. Accordingly, Contractor acknowledges and agrees that it shall reimburse the State for any pre-paid fixed fee for any remaining time on or after the date of Termination. For example, if Contractor has been paid a fixed fee during the first three months of the Agreement, and if OPM terminates the Agreement on a date which is two months after the Effective Date and the Contractor had rendered Performance which OPM has accepted in accordance with the SOW and this Agreement prior to the Termination, Contractor acknowledges and agrees that it shall be required and responsible for reimbursing the State 1.75 months of the first year fixed fee within forty-five (45) days after the Termination. However, the Contractor is not entitled to receive and the State is not obligated to tender to the Contractor any payments for anticipated or lost profits in the case of a Termination.

- F. For year one after the passage of 3.75 months, and for years two (2) and three (3), the State shall, within forty-five (45) days after the effective date of Termination, reimburse the Contractor only for its pro-rated fixed annual rate stemming from Performance rendered and accepted by OPM in accordance with the SOW and this Agreement. However, the Contractor is not entitled to receive and OPM is not obligated to tender to the Contractor any payments for anticipated or lost profits in the case of a Termination.
- G. Upon request by OPM, the Contractor shall assign to OPM, or any replacement contractor which OPM designates, all subcontracts, purchase orders and other commitments, deliver to OPM all Data and Records and other information pertaining to its Performance, and remove from State premises, whether leased or owned, all of Contractor's property, equipment, waste material and rubbish related to its Performance, all as OPM may request.
- H. For Breach, non-Performance, an Event of Default or violation of any of the provisions in the section concerning Representations and Warranties, OPM may Terminate the Agreement in accordance with its terms and revoke any consent to assignments given as if the assignments had never been requested or consented to, without liability to the Contractor or Contractor Parties or any third party.
- I. 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 with respect to factors and incidents occurring prior to Termination to the extent not otherwise limited in the Agreement and without each one of them having to be specifically mentioned in the Agreement.
- J. In addition to the requirements of this section, in the event of Termination, Contractor shall conduct any wind down activities as OPM may direct.
- K. Termination of the Agreement pursuant to this section shall not be deemed to be a Breach of contract by OPM.

SECTION 6 NOTICE

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

State: State of Connecticut
Office of Policy and Management
450 Capitol Ave. - MS# 55SEC
Hartford, CT 06106-1379

Attention: Secretary

State of Connecticut
Office of Policy and Management
450 Capitol Ave. - MS# 55SEC
Hartford, CT 06106-1379
Attention: Legal Office

Contractor: 21CT, Inc.
6011 W Courtyard Drive
Building 5, Suite 300
Austin, Texas 78730
Attention: Irene Williams

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

SECTION 7 STATEMENT OF WORK

The Statement of Work is attached to this Agreement as Appendix A, which is attached and incorporated hereto and made a part of this Agreement.

SECTION 8 COST AND SCHEDULE OF PAYMENTS

Appendix B attached and incorporated hereto and made a part of this Agreement sets forth the cost of the project outlined in this Agreement and the schedule of payments to the Contractor.

SECTION 9 OWNERSHIP AND USE OF DATA

Data Confidentiality and Privacy

- A. Database. It is the intention of the Parties hereto that Contractor shall participate with OPM and DSS (and all other State Parties both now and in the future, being added to the Agreement via a Change Order) in creating a present and historical Data collection system ("**LYNXeon™ Data System**") which enables Contractor to perform the Analytics in accordance with this Agreement.
- B. Confidentiality. All Data brought and/or entered into the LYNXeon™ Data System shall be treated by the Contractor as Personally Identifiable Information or Protected Health Information (hereinafter collectively referred to as "**Confidential Information**"), unless OPM specifically allows otherwise. Only Contractor's personnel that have been sanctioned and approved by OPM or DSS may review the Data. Absolutely no Data may be used to provide market intelligence on any matters

including, but not limited to, contract labor rate trends or information about Medicaid clients. Contractor and any permitted subcontractors, if any, shall not sell, disseminate or otherwise transfer any Data or information to third parties or any Agency unless expressly permitted in this Agreement.

C. Encryption & Security Breaches. All Data is deemed Confidential Information and such Data shall be encrypted. Contractor acknowledges and agrees to electronic data segregation, and shall notify OPM in writing of any Data security Breaches as set forth in Section 14.

D. Statutes and Regulations. The Contractor shall comply with all local, state and federal statutes and regulations applicable to storing, managing, importing and exporting, and destroying Confidential Information as permitted by OPM. All such requirements are attached as Appendix C and are specifically incorporated and made a part of this Agreement.

E. Compliance. Contractor shall instruct each person and subcontractor having any involvement with the collection, storage, or development of Data or Data security information on appropriate procedures to ensure that Contractor fulfills its obligations under this Agreement. Any and all requirements, responsibilities and duties; or both, created by this Agreement must be incorporated in any subcontract by the Contractor.

Contractor shall immediately after the Effective Date of this Agreement establish and maintain a program for conducting periodic risk analyses to ensure that appropriate, cost-effective safeguards are incorporated into the LYNXeon™ Data System and Data Center.

Contractor shall perform risk analyses whenever significant system changes occur. A significant system change shall include, but not be limited to mean:

1. Making extensive changes to existing code or adding large portions of new code
2. Going to a new coding language
3. A major redesign of the data warehouse database schema
4. Changing to a new database format
5. Changing systems, such as going from an IBM based system to a Microsoft or Sun based system
6. A significant change in the network infrastructure or processing location

Contractor shall review the system security of installations involved in the administration of the United States Social Security Administration (SSA), the United States Department of Health and Human Services (HHS), DRS, DSS and other State Data on a biennial basis. At a minimum, system security installations reviews shall include an evaluation of physical and Data security operating procedures and personnel practices. The Contractor shall maintain reports on its biennial system

security reviews, together with pertinent supporting documentation, for SSA, HHS, DRS or DSS on-site reviews.

- F. Access to Native Data. Contractor shall not be authorized to inquire into native Data located on State's servers, but will be given Data by OPM or other Agencies or State Parties ~~at OPM's direction to the extent allowed by this Agreement and governing~~ state and federal laws. Contractor will not have direct access to view Data located on the State's servers. Contractor shall create and maintain the LYNXeon™ Data System and shall maintain the LYNXeon™ Data System as a secure and protected source.
- G. Access to Data by the State. State Data is an asset and property of the State and shall be made available by Contractor to the State in a timely and secure manner.
- H. Data Ownership. All Data and Investigative Data, collected, maintained, scrubbed, massaged or developed in the Performance of the Agreement shall be the property of the State. This also may include, but is not limited to, supporting information, which Contractor may store, report upon, and/or perform an analysis during the life of the Agreement. DSS authorizes Contractor to use the Data it is legally permitted to share with the Contractor for the exclusive purpose of performing in accordance with this Agreement, for the Term of this Agreement only. Contractor shall organize, maintain and develop such Data in a form dictated by and acceptable to OPM. Any Data that DSS is not legally authorized to share with the Contractor may only be transferred to the Contractor by the State Party legally authorized to do so, and any such State Party must be added to this Agreement as a State Party by means of an amendment to the Agreement which shall, among other things, clearly set forth the authority of the newly added State Agency to transfer such Data to Contractor.
- I. Return of Materials Pertaining to Work Product. Upon the request of OPM, but in any event upon Termination or Expiration of this Agreement or a Statement of Work, Contractor shall surrender to OPM all Data, Records, Cases, documents and other items or information pertaining to the Work Product, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, Data, and all other documents or materials (and copies of same) generated or developed by Contractor or furnished by Contractor to the State, including all materials embodying the Work Product, any PII, PHI or Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete within 5 days after Termination or Expiration in a format stipulated by OPM. Within 30 days, following Termination or Expiration, the Contractor shall permanently delete all State Data from any and all data storage devices in its custody and provide OPM with written notice that this has occurred. This section is intended to apply to all Work Product as well as to all documents and items or information furnished to Contractor by the State or by anyone else that pertains to the Work Product. In the event of a contractual default all data stored on the LYNXeon™ Data System shall be provided to OPM on a hardware medium readable by the State. The Data shall be provided in a flat file format utilizing either ASCII or EBCDIC character encoding as previously

agreed upon by 21CT and the State. At the same time Data file layouts data dictionary definitions of data elements, meta data pertaining to data elements complete with data element interactions with each other, and system data flow charts will be provided using mediums readable by the State along with written instructions regarding any key or database schema structures which will aid in rendering the data useful to the State.

- J. Contractor shall maintain sufficient hardware and facilities, at no additional cost to the State, to ensure LYNXeon™ functions to its specified capabilities and is maintained to the highest reasonable industry standards in accordance with this Agreement.
- K. Contractor shall not backup any Data to the Data Center that has not been approved by OPM.
- L. Daily backups of Data shall be performed by the Contractor on a nightly basis. The backups can be either whole or incremental. The backups shall be written to a stable medium and stored at a location located at least twenty five (25) miles from the site where the original data resides. The backups shall be encrypted with a FIPS 140-2 Validated encryption product using AES-256 encryption with a properly secured key. The facility where the backups are stored shall be compliant with IRS, SSA, HHS and State data security requirements.
- M. Any rack space leased at the Data Center must be caged on all sides including the top, and shall have Plexiglas added to the cage walls for additional security.
- N. Any codes, keys, or other methods of authentication for the Data Center must be changed within 24 hours of the departure of any Data Center or Contractor employee who had access to such codes, keys, or other methods of authentication.

The provisions of this Section shall survive the Expiration or earlier Termination of this Agreement.

SECTION 10 CONTRACTORS OF ELECTRONIC INFORMATION EXCHANGE PARTNERS

The terms and conditions of this Section are in addition to the Personally Identifiable Information (PII) requirements set forth in Section 11 of this Agreement.

- A. **Background.** In accordance with the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988 (CMPPA), 5 U.S.C. § 552a, contractors of **Electronic Information Exchange Partners (EIEP)** are held to the same security requirements as are employees of the EIEP. For the purposes of this Section 10, DSS and OPM are referred to collectively as "EIEP" or "the EIEP". As such, the EIEP is responsible for oversight and compliance of its contractors with the Social Security Administration's (SSA) security requirements. The EIEP must be able to provide proof of the contractual agreement between itself and its contractors (e.g.,

copy of the contract) who are authorized by the EIEP to perform on its behalf and who have access to or are involved in the processing, handling, storage, maintenance or transmission of information provided to the EIEP by SSA. The EIEP must also explain the role of those contractors within the EIEP's operations.

The EIEP may perform onsite reviews of the Contractor's facility being used to process, handle or transmit information provided to the EIEP by SSA to ensure that the following meet SSA's requirements:

1. Safeguards for sensitive information;
2. Computer system safeguards;
3. Security controls and measures to prevent, detect, and resolve unauthorized access to, use of, and re-disclosure of SSA-provided information; and
4. Continuous monitoring of the EIEP contractors network infrastructures and assets.

B. Requirements. Contractor shall ensure that means, methods, and technology by which SSA-provided information is processed, maintained, transmitted, or stored neither prevent nor impede the Contractor's ability to:

1. Safeguard the information in conformance to CMPPA requirements;
2. Efficiently investigate fraud, breach, or security events that involve SSA-provided data, or instances of misuse of SSA-provided data.
 - a. Utilization of data or applications to be hosted on equipment owned by a third party is expressly prohibited in this Agreement.
 - b. The electronic connection established between the Agencies and the State Parties on the one hand, and Contractor on the other hand, will be used only in support of the Agreement.
 - c. The software and/or devices provided to the Contractor by SSA or any Agency or State Party, if any, must be used only in support of the Agreement.
 - d. Contractor is prohibited from modifying any software or devices provided to the Contractor by SSA or any Agency.
 - e. Contractor shall ensure that SSA or State-provided Data is not processed, maintained, transmitted, or stored in or by means of data communications channels, electronic devices, computers, or computer networks that are located in geographic or virtual areas *not* subject to U.S. law or outside the continental United States.

f. Contractor shall restrict access to SSA or State-provided Data to authorized users who need it to perform their work under this Agreement.

g. Contractor shall store information received from SSA or any Agency or State Party in a manner that, at all times, is physically and electronically secure from access by unauthorized persons.

h. Contractor shall ensure that SSA or State-provided information will be processed under the immediate supervision and control of authorized personnel.

i. Contractor shall employ both physical and technological safeguards to ensure against unauthorized retrieval of SSA or State-provided information or Data by means of computer, remote terminal, or any other means.

j. Contractor shall have in place formal PII incident response procedures. This means that, when faced with a security incident whether caused by malware, unauthorized access, software issues, acts of nature, or any other means, Contractor must be able to respond in a manner that protects SSA or State-provided information or Data affected by the incident.

k. Contractor shall have an active and robust employee security awareness program that is mandatory for all employees who may have access to SSA or State-provided information or Data. Training materials will mention the SSA by name. OPM shall have the right to request a copy of the program materials for review.

l. Contractor shall advise its employees with access to SSA or State provided information or Data of the confidentiality of the information, the safeguards required to protect the information, and the civil and criminal sanctions for non-compliance contained in the applicable Federal and State laws.

m. At its discretion, SSA, OPM, the State Parties or their respective designees, will have the option to conduct onsite security reviews at Contractor's places of business or make other provisions including, but not limited to, auditing training manuals, training logs, and security procedure manuals and protocols to ensure that the Contractor maintains adequate security controls to safeguard the SSA or State provided information or Data.

C. Incident Reporting

The Contractor shall develop and implement policies and procedures for responding to the breach or loss of PII and explain how they conform to SSA's requirements. The procedures will include the following information statement:

*If [name of Contractor] experiences or suspects a breach or loss of PII or a security incident which includes SSA or State-provided data, it must notify the United States Computer Emergency Readiness Team (US-CERT) **within one hour** of discovering*

the incident. [Name of Contractor] must also notify the following persons: the SSA point of contact, Shannon Keady, Data Exchange Coordinator, Center for Programs Support, JFK Federal Bldg, Rm 1925, Boston, MA 02203, 617-565-2855, e-mail Shannon.Keady@ssa.gov, and the OPM point of contact, Robert Dakers, 860-418-6422, e-mail Robert.Dakers@ct.gov. If within 1 hour of discovering the incident [name of Contractor] has been unable to make contact with both of the above-named persons, [name of Contractor] must call SSA's National Network Service Center (NNSC) toll free at 877-697-4889 (select "Security and PII Reporting" from the options list). [Name of Contractor] will provide updates as they become available to the SSA point of contact, as appropriate.

The Contractor must agree that if SSA determines that the risk presented by the breach or security incident requires the notification of the individuals whose information is involved and/or remedial action, the Contractor will perform those actions without cost to SSA or the State.

- D. The Contractor shall comply with CMPPA security controls and standards, and any future amendments thereto, and certifies compliance for the duration of the Agreement. OPM may Terminate the Agreement if there is a security breach resulting from Contractor negligence.

The CMPPA Agreement between SSA and the State of Connecticut is attached herein as Appendix K. All of the foregoing protocols are further defined and described in Appendix K, attached to and made a part of this Agreement.

SECTION 11 PERSONALLY IDENTIFIABLE INFORMATION (PII)

A. Contractor shall keep confidential all PII as follows:

1. Contractor and Contractor's Parties at their own expense, have a duty to and shall protect from a PII Breach any and all PII which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with current industry and legal standards.
2. Contractor and Contractor's Parties shall develop, implement and maintain a comprehensive data-security program for the protection of PII. The safeguards contained in such program shall be consistent with and comply with the safeguards for protection of PII, and information of a similar character, as set forth in all applicable Federal and State law and written policy of the State concerning the confidentiality of PII. Such data-security program shall include, but not be limited to, the following:
 - (a) A security policy for employees related to the storage, access and transportation of data containing PII;

- (b) Annual confidentiality training and written logs showing who took the training, as well as a certification by the attendees showing that they acknowledge what they have been taught.
- (c) Reasonable restrictions on access to records containing PII, including access to any locked storage where such records are kept;

(d) A process for reviewing policies and security measures at least annually;

(e) Creating secure access controls to PII, including but not limited to passwords; and

(f) Policies for mobile computing and storage devices that require:

- i. Encrypting of PII that is stored on laptops or portable devices (data at rest) must be consistent with NIST Special Publication 800-111, *Guide to Storage Encryption Technologies for End User Devices*. Valid encryption processes for data in motion must be those which comply, as appropriate, with NIST Special Publications 800-52, *Guidelines for the Selection and Use of Transport Layer Security (TLS) Implementations*; 800-77, *Guide to IPsec VPNs*; or 800-113, *Guide to SSL VPNs*, or others which are Federal Information Processing Standards (FIPS) 140-2 validated.

- ii. Adhering to the Connecticut Department of Administrative Services ("DAS") BEST's IT Security policy called *Security for Mobile Computing and Storage Devices*. This is found at <http://www.ct.gov/best/cwp/view.asp?a=1245&q=394672>

3. Contractor and Contractor's Parties shall notify OPM, DSS and the State of 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 PII which Contractor or Contractor's Parties possess or control has been subject to a PII Breach. If a PII Breach has occurred, Contractor shall, within three (3) business days after the notification, present a credit monitoring and protection plan to the Commissioner of the DAS, OPM, DSS and the State of Connecticut Office of the Attorney General, for review and approval. Such credit monitoring or protection plan shall be made available by Contractor at its own cost and expense to all individuals affected by the PII 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 PII Breach. Contractor's costs and expenses for the credit monitoring and protection plan shall not be

recoverable from OPM, DSS, any State of Connecticut entity or any other affected individuals.

4. Contractor shall incorporate the requirements of this Section in all subcontracts requiring each Contractor Party to safeguard PII in the same manner as provided for in this Section.
5. Nothing in this Section shall supersede in any manner Contractor's or Contractor's Parties obligations pursuant to HIPAA or the provisions of this Agreement concerning the obligations of the Contractor as a Business Associate of the State.

B. Without limiting the generality of the foregoing:

1. Contractor and Contractor's Parties, at their own expense, have a duty to and shall protect from a PII Breach any and all PII which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with current industry standards.
2. Contractor or Contractor's Parties shall implement and maintain a comprehensive data-security program for the protection of PII. The safeguards contained in such program shall be consistent with and comply with the safeguards for protection of PII, and information of a similar character, as set forth in all applicable federal and state laws and written policy of the State concerning the confidentiality of PII.
3. Contractor and Contractor's Parties, at their own expense, shall encrypt any and all PII which they come to possess or control, wherever and however stored or maintained, and which data the DAS' Bureau of Enterprise Systems and Technology (BEST) or any applicable Agency or State Party, at any time, classifies as confidential or restricted. Contractor and Contractor's Parties shall encrypt the data in accordance with the Connecticut Enterprise Architecture – Technology Architecture (CTEA-TA) protocols. The Contractor and Contractor's Parties shall have a continuing obligation always to keep and maintain the data encryption consistent with CTEA-TA, as CTEA-TA may change from time to time.
4. The Contractor and Contractor's Parties shall notify OPM, BEST, and the State of 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 and all PII which Contractor has come to possess or control has been subject to a "Data Breach." For purposes of this Section, a "Data Breach" is an occurrence where (1) any or all of the Data is misplaced, lost, stolen or in any way compromised; or (2) one or more third parties have had access to or taken control or possession of any or all of the Data without prior written authorization from BEST or the State.
5. In addition to the notification requirements, should a PII Breach occur, Contractor shall, within three (3) business days after the notification, present to BEST, OPM and the State of Connecticut Office of the Attorney General, for review and approval, a

credit monitoring or protection plan that Contractor shall make available at its own cost and expense to all individuals affected by the PII Breach. Unless otherwise agreed to in writing by the State of Connecticut Office of the Attorney General, such a plan will be offered to each such individuals free of charge and will consist of, at a minimum, the following:

- a. Reimbursement for the cost of placing and lifting one (1) security freeze per credit file pursuant to Connecticut General Statutes § 36a-701a;
- b. Credit monitoring services consisting of automatic daily monitoring of at least three (3) relevant credit bureau reports;
- c. Fraud resolution services, including writing dispute letters, initiating fraud alerts and security freezes, to assist affected individuals to bring matters to resolution; and
- d. Identity theft insurance with at least \$25,000 coverage.

Such credit monitoring or protection plans will cover a length of time commensurate with circumstances of the PII Breach, but under no circumstances will Contractor's credit monitoring and protection plan be for less than two (2) calendar years from the plan start date. Contractor's costs and expenses for the credit monitoring and protection plan shall not be recoverable from DAS/BEST, OPM or any State of Connecticut entity.

6. Contractor and Contractor's Parties shall use all reasonable efforts to ensure that confidentiality of PII is preserved, including, without limitation, by taking such reasonable security precautions as State may request and such precautions as are taken by Contractor to protect its own confidential information.
7. Contractor and Contractor's Parties shall adhere to all written State policies, standards; and guidelines applicable to the security of information.
8. Contractor and Contractor's Parties shall only disclose PII to those persons with a "need-to-know", or in response to a subpoena, warrant, order, or demand of a court of law.
9. Contractor or Contractor's Parties shall promptly notify the State in the event of any actual or suspected unauthorized use or disclosure of any PII of which Contractor becomes aware.
10. Contractor shall maintain security standards consistent with written security policies of State. These policies include strictly controlling access to Data and maintaining confidentiality of information gained while carrying out its duties.

11. From time to time, the State Parties may have access to information Contractor has requested that State Parties keep confidential. Subject to FOIA, subparagraph c., below, and Section 20 of this Agreement, State Parties agree to keep confidential any and all information with respect to Contractor which it has received or may in future receive in connection with this Agreement and shall only disclose such information:

- a. to its employees or consultants who have a need to know such information for the purpose of Performance under this Agreement, exercising the rights granted under this Agreement and who have entered into a non-disclosure agreement at least as protective of Contractor's confidential information as this Agreement; or
- b. to the extent required by applicable law or during the course of or in connection with any litigation, arbitration or other proceeding based upon or in connection with the subject matter of this Agreement, provided that the State Parties shall make reasonable efforts to give Contractor reasonable notice prior to such disclosure and shall comply with any applicable protective order or equivalent. In no event will the State Parties have any liability for failure to so notify Contractor. The State Parties agree to hold Contractor's confidential information in confidence and to take all reasonable steps, which shall be no less than those steps it takes to protect its own confidential and proprietary information, to protect Contractor's confidential information.
- c. The State Parties will afford due regard to the Contractor's request for the protection of proprietary or confidential information which the State receives. However, all materials associated with the Agreement are subject to FOIA and all corresponding rules, regulations and interpretations. In making such a request, the Contractor may not merely state generally that the materials are proprietary or confidential in nature and not, therefore, subject to release to third parties. Rather, in the request the Contractor shall identify those particular sentences, paragraphs, pages or sections that the Contractor believes are exempt from disclosure under FOIA and shall provide an explanation and rationale sufficient to justify each exemption consistent with FOIA. The Contractor shall state its explanation and rationale in terms of the prospective harm to the Contractor that would result if the identified material were to be released and the reasons why the materials are legally exempt from release pursuant to FOIA.

12. Contractor and Contractor's Parties, at their own expense, have a duty to and shall protect PII and PHI which they come to possess or control from any PII or PHI breaches, whenever and however stored or maintained, in a commercially reasonable manner in accordance with current industry and legal standards.

Personally Identifiable Information or PII 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, PII shall also include any additional information that the State Parties, OPM or DSS classify as "confidential" or "restricted." Without limiting the foregoing, PII shall also include any information that State and Federal law and DSS, State of Connecticut Department of Revenue Services (DRS), State of Connecticut Department of Labor (DOL) or State of Connecticut Department of Motor Vehicles (DMV), or any future State signatories classifies as "confidential" or "restricted", including but not limited to income and eligibility verification data, tax, medical, health or disability information. PII 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.

PII Breach shall mean, generally, an instance where an unauthorized person or entity accesses PII in any manner, including but not limited to the following occurrences: (1) any PII 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 PII that is not encrypted or protected without prior written authorization from the State; (3) the unauthorized acquisition of encrypted or protected PII together with the confidential process or key that is capable of compromising the integrity of the PII; (4) the system environment for the Proprietary Software is designed in any way, or such PII is maintained in a manner, that allows for or causes a substantial risk of identity theft or fraud to an individual, Contractor, OPM, DAS or the State; or (5) there is a substantial risk of identity theft or fraud to the Contractor, consumers, OPM, DSS, DRS, DOL, DMV or the State.

The provisions of this Section shall survive the Expiration or earlier Termination of this Agreement.

SECTION 12 DATA SECURITY AND INTERNAL CONTROLS

The Contractor shall provide to OPM a third-party audit of its security procedures and process in the form of an SSAE-16 Type I (SOC2) Report no later than the Effective Date of the Agreement. The SSAE-16 Type II (SOC2) Report shall be provided by the end of calendar year 2014.

The Contractor shall comply with the following protocols applicable to storing, managing, importing and exporting, and destroying Confidential Information as permitted by OPM:

A. The Contractor shall implement an Information Security Continuous Monitoring (ISCM) program in accordance with NIST Special Publication 800-137, and all future amendments thereto.

B. The Contractor shall comply with NIST Special Publication 800-53, and all future amendments thereto.

C. When an applicable SOW is executed adding Confidential Taxpayer Information to a project scope in connection with this Agreement, the Contractor shall comply with the Connecticut Department of Revenue Services Requirements for Safeguarding Confidential Taxpayer Information, and any future amendments thereto.

D. The Contractor shall comply with FIPS PUB 199, Federal Information Processing Standards Publication, Standards for Security Categorization of Federal Information and Information Systems, and any future amendments thereto.

E. The Contractor shall comply with Electronic Information Exchange Security Requirements and Procedures for State and Local Agencies Exchanging Electronic Information of the Social Security Administration, and any future amendments thereto.

F. The Contractor shall comply with DAS BEST IT Security policy Security for Mobile Computing and Storage Devices, and any future amendments thereto.

All of the foregoing protocols are further defined and described in Appendix D, attached to and made a part of this Agreement.

SECTION 13

SERVICE LEVEL GUARANTEES AND DISASTER RECOVERY

A. The Contractor acknowledges and agrees to 95.0% system availability excluding Scheduled Downtime ("**Service Level Agreement**").

B. In the event of a disaster, the Contractor acknowledges and agrees to a Recovery Point Objective (RPO) of one (1) day and Recovery Time Objective (RTO) of three (3) weeks.

C. The Contractor acknowledges and agrees to provide the State with a full month credit of costs in the event these Service Level Agreements are not met.

**SECTION 14
OWNERSHIP AND USE OF SOFTWARE**

A. Additional Definitions. For purposes of this Agreement, including this Section 14, the following terms shall be defined as follows:

1. **"Contractor's Proprietary Software"** means LYNXeon™ Analytic Server, LYNXeon™ Analyst Studio, and LYNXeon™ Connect Software that was developed by Contractor itself, or that was developed by a subcontractor of Contractor as a "work for hire" and is currently owned by Contractor hereof.
2. **"Documentation"** means the foundation documents that describe the details, functional characteristics, and operating requirements of the Software including, without limitation, all hardware, software and communications components thereof.
3. **"Interface Application Software"** means all Software required for the operation of the interface that allows communications between the State and the Contractor in both object code and Source Code.
4. **"Modifications"** means Source Code and object code that is developed by Contractor or by its subcontractor(s) to modify or integrate existing Contractor's Proprietary Software, Subcontractor's Software and/or Third-Party Software to meet the performance requirements of the Interface Application Software. A Modification for purposes of this Contract must be a discrete and identifiable section of code which is not so imbedded in Contractor's Proprietary Software, Subcontractor's Software or Third Party Software as to be inseparable or indistinguishable therefrom.
5. **"New System Software"** means object code that does not exist as of the Effective Date, and which is/was developed by Contractor or by its subcontractor(s) to meet the Performance requirements in accordance with this Agreement, and Interface Application Software.
6. **"Software"** means all object code for all Contractor's Proprietary Software, New System Software, Modifications, and Updates (as such term is defined in Section 15), used in any way in accordance with this Agreement or otherwise required for the State or a successor entity to operate and maintain LYNXeon™ to perform the analysis in accordance with this Agreement upon the Agreement's Expiration or Termination, but excluding Third-Party Software.
7. **"Subcontractor's Software"** means software that was developed by, and remains the intellectual property of, a subcontractor of Contractor and is licensed, on an exclusive or non-exclusive basis, to Contractor for use in accordance with this Agreement.
8. **"Third-Party Software"** means object code developed by any third-party other than Contractor or Contractor's subcontractor(s), which is incorporated into or used in the in accordance with this Agreement, or creation of the LYNXeon™ Data System, including any Updates installed pursuant to Section 15.

Appendix E, attached to and made a part of this Agreement, identifies all Software by function (e.g., LYNXeon™, Interface Application Software, and Software for the LYNXeon™ Data System) and by type (i.e., Contractor's Proprietary Software, Subcontractor's Software, Third-Party Software, Modifications, or New System Software). Contractor shall, with the prior, written approval of OPM, update ~~Appendix E to reflect all additions or modifications implemented during the term of~~ this Agreement, including any extensions thereof, within thirty (30) Days following installation of any new or modified Software or Third-Party Software.

B. Ownership of LYNXeon™. The Source Code and object code of LYNXeon™ and Modifications whether developed by Contractor or by its subcontractor(s), shall not be deemed to be a "work for hire" and all rights, Title and interest therein shall vest in the Contractor or its subcontractors and all such code shall be and remain the property of the Contractor. The Contractor's ownership rights include the right to copy, use, disclose, publish, create derivative works from or duplicate such code in any manner and for any Contractor purposes without compensation to or approval by the State, provided that the Contractor agrees that it will not license or in any way transfer (directly or indirectly) the Interface Application Software or the Modifications to any competitor of Contractor, unless such competitor replaces or succeeds Contractor as a Party to the Agreement.

C. Rights of Ownership.

OPM and DSS acknowledge that no Title to the intellectual property in the Software is transferred to it. Title, ownership, rights, and intellectual property rights in and to the Software shall remain that of Contractor. The Software is protected by copyright and patent laws of the United States and international treaties.

Except as specifically agreed to the contrary in the Agreement or in the SOW, all intellectual property rights in Contractor's Software shall remain the property of Contractor.

Unless otherwise agreed to in Appendix A or a future Change Order, to the extent that the SOW or future Change Order provides that Contractor will deliver any Deliverable that involves the creation of Source Code or object code specifically developed by Contractor for the State, the State will own any such Deliverables. In such an event, the Parties agree to amend this Agreement as necessary to incorporate statutory requirements or language reasonably required by the State. Furthermore, unless otherwise agreed to in an applicable Schedule or future Change Order, Contractor hereby irrevocably assigns, transfers and conveys to the State all rights, Title and interest in and to such Deliverables, and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables, including copyrights, patents, trademarks, trade secrets, trade dress, mask work, utility design, derivative works, and all other rights and interests therein or related thereto ("**State-Owned Deliverables**"). Unless otherwise agreed to in Appendix A or a future Change Order, Contractors (and Contractor's employees, agents, subcontractors,

subsidiaries and affiliates) shall not retain any property interests or other rights in and to the State-Owned Deliverables and shall not use any State-Owned Deliverables, in whole or in part, for any purpose, without the prior written consent of the State and the payment of such royalties or other compensation as the State deems appropriate. The parties understand and agree that no Deliverables in the Appendix A require the creation of Source Code or object code specifically developed by Contractor.

Notwithstanding anything to the contrary herein, each Party and their respective personnel and contractors shall be free to use and employ their general skills, know-how, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, or skills gained or learned during the course of any assignment, so long as they acquire and apply such information without disclosure of any confidential information of the other Party.

- D. Upon termination, the State must remove and destroy or return all copies, if any, of the Software.

SECTION 15 GRANT OF SOFTWARE LICENSE

- A. Subject to the terms and conditions below, Contractor hereby grants the State a non-exclusive, non-transferable license to use LYNXeon™ including any and all Updates over the life of the Agreement. Such license will be sufficient to allow up to ten (10) State employees to use the software in the future pursuant to Task 9 in Appendix A.
- B. Except as otherwise provided under this Agreement, this license shall automatically terminate upon the Termination or Expiration of this Agreement, except in the case of an Event of Default. In the Case of a Termination of the Agreement due to an Event of Default, (1) the license granted herein to the State shall continue in full force for a period of one (1) year from the date of the Termination and (2) such an event shall constitute a Release Condition as defined herein. Under this license: (i) the State may use the Software for internal use; and (ii) the State may not distribute the Software to non-State Parties without first obtaining the required licenses, where applicable.

In the Event for a Termination for Default, Contractor will provide Software maintenance and support at no additional cost for Defect Correction, training and Telephone Support for a period of one year.

- 1. **“Correction”** means workarounds, support releases, component replacements, patches, and/or documentation changes made available by Contractor.
- 2. **“Defect”** means: (i) a failure of the Software to operate substantially in accordance with the Documentation as it exists at the time the Software is delivered; or (ii) defective media upon which the Software is delivered (if tangible delivery).

3. **“Telephone Support”** means reasonable telephone support so as to allow the State designated maintenance contact to report problems and seek assistance in the use of the Software during Contractor’s standard business hours.

In the event that the training described in Task 9 of Exhibit A has not been completed by the date of Termination for Default, Contractor shall complete Task 9 during the period of one year following Termination for Default.

- C. **Escrow.** Upon the Agreement’s Effective Date, Contractor shall place a copy of the Software and all future Updates and all Documentation related thereto (including a list of any Third-Party Software used to develop, test, install, configure, run, maintain or service any and all components of the Software) (collectively the **“Escrow Deposit Materials”**), in escrow pursuant to an Escrow Agreement substantially in the form of the agreement attached hereto as Appendix M with an escrow agent reasonably acceptable to OPM. Contractor agrees that it shall update the Escrow Deposit Materials to reflect all changes made to such Software within thirty (30) Days following the implementation of any change. All fees associated with the establishment and maintenance of the Escrow account shall be borne by Contractor.
- D. **Maintenance.** Contractor shall provide maintenance and support for the Software required to perform its function.
- E. It is a condition of holding this license that the State Parties do not: (i) reverse engineer, decompile, or disassemble the Software or attempt to discover the Source Code; (ii) modify, or create derivative works based upon the Software in whole or in part without the express written consent of Contractor; (iii) distribute copies of the Software; (iv) remove any proprietary notices or labels on the Software; or (v) resell, lease, rent, transfer, sublicense, or otherwise transfer rights to the Software.
- F. All copies of any of the Contractor’s Proprietary Software and Subcontractor’s Software will bear Contractor’s and/or its suppliers’ copyright notice(s) and such other proprietary legends as may appear on such Software upon its receipt by the State. The State Parties shall not remove any such notices or legends.
- G. The State Parties shall treat all Contractor’s Proprietary Software and Subcontractor’s Software as confidential and shall not use, copy, disclose, or permit any State personnel to use, copy, or disclose, such Software for any purpose that is not specifically authorized under this Agreement. Any party other than an Agency or State Party desiring to use such Software may do so only with specific prior written consent of Contractor or its subcontractor (as applicable) and a mutual written agreement between such party and Contractor and/or subcontractor. This subsection is subject to the Connecticut Freedom of Information Act, as amended (“FOIA”).

H. All rights in the Contractor's Proprietary Software and Subcontractor's Software not expressly granted herein are reserved to Contractor and its subcontractor(s), which shall retain ownership of all such Software.

G. Upgrades, Enhancements and New Releases.

1. During the Term of this Agreement, including any extension thereof, Contractor and, if applicable, Contractor's subcontractor, shall install, run and maintain all upgrades, enhancements, and new releases (each, an "Update") of Contractor's Proprietary Software and the Subcontractor's Software, including but not limited to LYNXeon™ and any future editions, at no additional cost to the State.
2. During the Term of this Agreement, including any extensions thereof, Contractor shall install, run and maintain all Updates of Third-Party Software if such Update is required to maintain the performance and functionality of the Software, or any component thereof, at no additional cost to the State.
3. During the Term of this Agreement, including any extensions thereof, Contractor shall develop, test, install, run and maintain any Modification to the Interface Application Software or other System Software (if any) that is required to comply with new or revised security requirements adopted by DAS, the State or the federal government.

H. Export. The State agrees that it will not export or re-export the Software outside of Connecticut without the appropriate United States or foreign government licenses.

**SECTION 16
DEPARTMENT OF REVENUE SERVICES DATA**

If the State Parties secure and provide tax information and data held by the Department of Revenue Services to Contractor, this section shall apply to the accumulation, storage, maintenance, use and handling of such data by the Contractor.

I. PERFORMANCE

In Performance of this Agreement, the Contractor agrees to comply with and assume responsibility for compliance by its employees with the following requirements:

- (1) All work will be performed under the supervision of the Contractor or the Contractor's responsible employees.
- (2) Any State Tax Information made available shall be used only for the purpose of carrying out the provisions of this Agreement. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the Performance of this Agreement. Inspection by or disclosure to anyone other than an officer or employee of the Contractor is prohibited.

(3) All State Tax Information shall be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.

~~(4) No work involving State Tax Information furnished under this Agreement will be subcontracted in violation of this Agreement and without prior written approval of the OPM and DRS.~~

(5) The Contractor will maintain a list of employees authorized access State Tax Information. Such list will be provided to DRS and OPM.

(6) The Contractor will provide OPM or DRS with copies of or access to such documentation and information as DRS may reasonably request, including but not limited to:

- i. Contractor's security policies
- ii. Contractor's security risk assessment
- iii. Contractor's network diagrams
- iv. Contractor's data flow diagram(s)
- v. Contractor's building layout and
- vi. Contractor's list of assets (including make, model, and serial number) that support DRS Data hardware assets

(7) The Contractor certifies that the State Tax Information processed during the Performance of this Agreement will be completely purged from all Data storage components of their computer facility, and no output will be retained by the Contractor at the time the work is completed. If immediate purging of all State Tax Information storage components is not possible, the Contractor certifies that any State Tax Information or other DRS Data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.

(8) Any spoilage or any intermediate hard copy printout that may result during the processing of DRS data will be given to the Commissioner of DRS or his or her designee. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the Commissioner of DRS or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.

(9) All computer systems receiving, processing, storing, or transmitting State Tax Information must meet the requirements prescribed by DRS prior to any Data transfer and import. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to State Tax Information.

(10) OPM shall have the right to void and Terminate the Agreement if the Contractor fails to provide the safeguards required by this Section 16.

II. CRIMINAL/CIVIL SANCTIONS

(1) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Agreement. Information contained in such material shall be treated as confidential PII and shall not be divulged or made known in any manner to any person except as may be necessary in the Performance of this Agreement. Inspection by or disclosure to anyone without an official need to know constitutes a violation of C.G.S. § 12-15 punishable upon conviction by a fine or imprisonment for as long as one (1) year, or both, together with the costs of prosecution.

(2) Before obtaining access to State Tax Information, Contractor must certify to OPM and DRS that each individual who will have access to such information understands DRS' security policy and procedures for safeguarding State Tax Information. If and once Contractor has been granted access to State Tax Information, Contractor shall further provide such certification on an annual basis throughout the Term of this Agreement. The initial certification and recertification must be documented and placed in DRS's files for review and a copy will be provided to OPM. For both the initial certification and the annual certification, the Contractor should sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

III. INSPECTION

If Contractor is supplied with State Tax Information, it agrees to allow the DRS and the State officials and employees to inspect offices and plants of the Contractor being used for the Performance of any work under this Agreement. On the basis of such inspection, specific measures may be required in cases where the Contractor is found to be noncompliant with contract safeguards.

The provisions of this Section shall survive the Expiration or earlier Termination of this Agreement.

SECTION 17 PERSONNEL

A. In Performance of this Agreement and for key project positions, Contractor shall use only qualified personnel that have passed a criminal background check conducted by an entity approved by OPM, as prescribed in Section 22. Contractor shall assign a minimum of [REDACTED] dedicated full time equivalent employees to the State's account. "Key Project Positions" shall include the following unless otherwise agreed to in writing:

• [REDACTED]
• [REDACTED]

OPM has the right to approve or disapprove the project member assigned as Project Manager and all other investigators, analysts and personnel working on the project outlined by this Agreement.

- B. No substitution for Key Project Positions may be made without prior written approval from OPM, which approval may not be unreasonably withheld.
- C. The Parties agree that Contractor personnel, including Key Project Positions, will not be considered employees of State and will not be entitled to any of the rights, benefits or privileges arising from an employment relationship with State. Contractor expressly acknowledges that it is an independent contractor of State and no agency, partnership or employment relationship is intended or created by this Agreement between Contractor and State.
- D. OPM and Contractor shall meet on a regular basis or as otherwise required to discuss both operational and contractual issues, as they arise. Frequency of meetings, as well as distribution and participants will be determined by the Parties.

SECTION 18 CHANGE ORDER PROCESS

- A. OPM shall have the right to change the Statement of Work if: (i) such change is reasonably acceptable to the Contractor; and (ii) the Parties mutually agree on the terms applicable to any such change, including changes to Contractor's fees (if any); and (iii) any such change is set forth in a written amendment to the SOW (**Change Order**) detailing the nature and impact of such changes, which is executed by the authorized representatives of both Parties.
- B. If OPM requests Contractor to change the SOW or to produce Deliverables which Contractor considers outside the scope of the Schedule or to otherwise materially impact the Schedule, Contractor shall immediately, upon noticing such scope deviation or potential scope deviation, send a proposed Change Order to State.
- C. If Contractor is of the opinion that some aspect of the changed SOW or the Deliverables will fall outside the scope of the Schedule, Contractor will immediately, upon noticing such scope deviation or potential scope deviation, send a Change Order to State.

In the case of (B) or (C) above, the Change Order shall contain the following information:

1. A description of the applicable Deliverables including Contractor's reasons for considering them outside the scope of the Schedule.
2. An estimated, itemized description of the cost to perform the changed SOW or produce the Deliverables; and
3. A description of the consequences of performing or not performing the changed SOW or producing or not producing the Deliverables including any effects on the Schedule.
4. The Parties shall mutually determine whether the changed SOW or Deliverables in the Change Order are within or outside the scope of the Schedule.
5. If OPM considers the Deliverables specified in the Change Order within the scope of the Schedule, OPM shall provide Contractor with written notice.
6. If OPM considers the changed SOW or Deliverables specified in the Change Order outside the scope of the Schedule, OPM may decide not to have the tasks outlined in the Change Order completed or request Contractor to complete some or all of the tasks at a mutually agreed upon cost as outlined in the Change Order.

Neither Party will have any obligation to perform services beyond what is set forth in or required by this Agreement or to provide payment with respect to any such services unless and until a Change Order is duly executed by both Parties. Notwithstanding the foregoing, in the event that the Parties mutually agree in writing to proceed with services that fall beyond the scope of the existing Schedule and in the absence of a Change Order, Contractor may elect to proceed with the provision of services hereunder on a "time and materials" basis at a then-agreed-upon rate, which amounts shall be invoiced by Contractor on a monthly basis and payable by the applicable State Party in accordance with the Agreement.

Notwithstanding the foregoing requirements in this Section, in the event OPM elects to add a new investigation module, (e.g., a new topic or track which goes beyond the analysis of HHS as described in Appendix A), Contractor will charge a [REDACTED] fixed fee for the same. By way of example, if the State elects to have Contractor conduct tax fraud cases, a Change Order would be issued solely for the purpose of describing the new investigation track and Contractor would charge a fee of [REDACTED] for this new investigation track and module, to be paid to the Contractor in accordance with the terms and conditions of this Agreement.

SECTION 19
WARRANTY AND LIABILITY

Contractor's Representations and Warranties. Contractor represents and warrants to the State that:

Among other things, the following warranty terms set forth Contractor's entire obligation and the State's sole and exclusive remedy for defective Software.

- A. The execution and delivery of this Agreement is within the power and authority of Contractor and is not in contravention of any law, organizational document, bylaw, agreement or undertaking to which Contractor is a party and no consent, license or approval is or will be necessary for the valid execution and delivery of this Agreement;
- B. In addition to the warranty in the Agreement, Contractor warrants that its services will be performed to the standards of care and diligence normally practiced by recognized software and technology driven analytic firms performing services of a similar nature, and that the deliverables will meet the functional and performance specifications described in the design documents in all material respects. The State's first recourse of remedy for any breach of this warranty will be the right to require Contractor to re-perform the services and cure any breach;
- C. Contractor is duly and validly existing under the laws of its respective state of organization and authorized to conduct business in the State of Connecticut in the manner contemplated by the Agreement. Further, as appropriate, it has taken all necessary action to authorize the execution, delivery and performance of the bid and the Agreement and has the power and authority to execute, deliver and perform its obligations under the Agreement;
- D. Contractor shall comply with all applicable State and Federal laws in satisfying its obligations to the State under and pursuant to the Agreement, including, but not limited to (i) Connecticut General Statutes Title 1, Chapter 10, concerning the State's Codes of Ethics, (ii) Title 4a concerning State purchasing, and (iii) all information technology protocols;
- E. 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) an Event of Default under any of the following, as applicable: (i) any provision of law; (ii) any order of any court or the State; or (iii) any indenture, agreement, document or other instrument to which it is a party or by which it may be bound;
- F. Contractor has all permits, licenses, franchises and other similar authorizations necessary for its Performance under this Agreement and is not aware of any state of facts that would make it impossible or impractical to obtain any similar authorization necessary for such performance. Contractor is not in violation, nor will the Agreement

cause a violation of the terms or provisions of any such franchise, permit, license or similar authorization;

- G. Contractor warrants that the Deliverables and/or Work Product will fully comply with the Agreement and will be performed with reasonable care in a diligent, workmanlike and competent manner that shall comply with all federal, state and local laws, regulations, mandates and/or requirements, and Contractor shall cure defects, if any, in a reasonable time;
- H. Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any governmental entity;
- I. Contractor has no pending claims, actions, suits, proceedings pending against it for any security breaches, data breaches, commingling of data, improper or illegal use of client data or software licensing violations;
- J. As applicable, Contractor has not, within the three (3) years preceding the Agreement, in any of its current or former jobs, been convicted of, or had a civil judgment rendered against it 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;
- K. Contractor is not presently indicted for or otherwise criminally or civilly charged by any governmental entity with commission of any of the offenses listed above;
- L. Contractor has not within the three (3) years preceding the Agreement had one or more contracts with any governmental entity terminated;
- M. Contractor has not employed an employee who has been determined to be a source for any security Breach;
- N. Contractor has not employed or retained any entity or person, other than a bonafide employee working solely for it, to solicit or secure the Agreement and it has not paid or agreed to pay any entity or person, other than a bonafide employee working solely for it, 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;
- O. To the best of its knowledge, there are no Claims involving Contractor or Contractor's 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;

P. Contractor shall disclose, to the best of its knowledge, to the State in writing any Claims involving it that might reasonably be expected to materially adversely affect its ~~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 it should have become aware of any such Claims. For purposes of the Contractor's obligation to disclose any Claims to the State, the ten (10) days in the section of this Agreement concerning Disclosure of Contractor's Parties litigation shall run consecutively with the ten (10) days provided for in this representation and warranty;

Q. There is no action, lawsuit, proceeding or investigation at law, in equity, or before any court, public board, arbitrator, or body, pending or, to Contractor's knowledge, threatened against or affecting it, which could or might materially adversely affect its obligations hereunder or any of the transactions contemplated hereunder;

R. Contractor's participation in the procurement process is not a conflict of interest or a breach of ethics under the provisions of Title 1, Chapter 10 of the Connecticut General Statutes concerning the State's Code of Ethics;

S. The Agreement was not made with collusion or fraud;

T. Contractor is able to perform under the Agreement using its own resources or the resources of a third-party;

U. Contractor shall obtain in a written acknowledgement all of the representations and warranties in this section from any Contractor's Parties and require that such representations and warranties be included in any contracts and purchase orders with such Contractor's Parties;

V. Contractor has paid all applicable workers' compensation second injury fund assessments concerning all previous work done in Connecticut;

W. Contractor has a record of compliance with Occupational Safety and Health Administration (OSHA) regulations without any unabated, willful or serious violations;

X. Contractor owes no unemployment compensation contributions;

Y. Contractor is not delinquent in the payment of any taxes owed or, it has filed a sales tax security bond, and it has, if and as applicable, filed for motor carrier road tax stickers and has paid all outstanding road taxes;

Z. All of Contractor's vehicles have current registrations and, unless such vehicles are no longer in service, it shall not allow any such registrations to lapse;

- AA. Contractor has vested plenary authority to bind the Contractor's 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 State, such information as the State may require to evidence, in the State's sole determination, compliance with this section;
- BB. With regard to third party products provided with the Deliverables, Contractor shall transfer all licenses which they are permitted to transfer in accordance with the applicable third-party license;
- CC. Contractor shall not copyright, register, distribute or claim any rights in or to the Deliverables after the Effective Date of the Contract without OPM's prior written consent;
- DD. Contractor either owns or has the authority to use all Title of and to all relevant software, and such Title is not the subject of any encumbrances, liens or claims of ownership by any third party;
- EE. Contractor's software does not (a) infringe or misappropriate any patent, trade secret or other intellectual property rights of a third party; or (b) violate any law, statute, ordinance or regulation;
- FF. Except with respect to Third-Party Software and Data, Contractor holds all rights, Title and interest in, or has sufficient right, Title and interest to grant the licenses and rights to the Software granted to the State hereunder and, with respect to Third-Party Software and Subcontractor's Software (if any), Contractor has entered into license agreements which permit Contractor to use such Third-Party Software and Subcontractor's Software, and to permit the State and third parties to use such Third-Party Software and Subcontractor's Software, as expressly permitted under this Agreement;
- GG. The Software shall perform substantially in accordance with all plans, specifications and schedules which are incorporated into this Agreement, including, without limitation, the Performance requirements set forth in Appendix A, but Contractor does not warrant that the Software will be uninterrupted or error free;
- HH. State's use of any Contractor-owned software shall not infringe or misappropriate any patent, trade secret or other intellectual property rights of a third party;
- II. If Contractor procures any software that is delivered to the State as part of the Deliverables in this Agreement, Contractor shall sub-license such software and the State shall be afforded the full benefits of any manufacturer or subcontractor licenses for the use of such software;

JJ. Contractor shall assign or otherwise transfer to the State, or afford the State the full benefits of any manufacturer's warranty for any relevant software, to the extent that such warranties are assignable or otherwise transferable to the State.

KK. Third Party Warranties. Contractor hereby warrants the assignability and assigns to the State any and all express and implied warranties, including (if applicable) implied warranties of merchantability and fitness for a particular purpose, that are furnished by its vendors or manufacturers to Contractor for any equipment Contractor transfers to the State.

The provisions of this Section shall survive the Expiration or earlier Termination of this Agreement.

SECTION 20 FREEDOM OF INFORMATION ACT

The State is a "public agency" for purposes of FOIA. Accordingly, this Contract and any correspondence, documents or other information delivered to the State in connection therewith will be considered public records and will be subject to disclosure under FOIA. Under Connecticut General Statutes § 1-210(b), FOIA includes exemptions for "trade secrets" and "commercial or financial information given in confidence, not required by statute", but only the particular information falling within one of these exemptions can be withheld by the State if the State receives a FOIA request that encompasses such information. In particular, Contractor should be aware that:

1. The State has no obligation to notify the Contractor of any FOIA request received by the State.
2. The State may disclose materials claimed to be exempt if in its judgment such materials do not appear to fall within a statutory exemption.
3. The State Parties shall use all reasonable efforts to notify Contractor of FOIA requests and/or of complaints made to the Freedom of Information Commission concerning items for which an exemption has been claimed by Contractor, but the State Parties have no obligation to initiate, prosecute or defend any legal proceeding or to seek to secure any protective order or other relief to prevent disclosure of any information pursuant to a FOIA request.
4. Contractor will have the burden of establishing the availability of any FOIA exemption in any such legal proceeding.
5. In no event shall the State or any of its officers, directors, or employees have any liability for the disclosure of documents or information in the State's possession where the State, or such officer, director, or employee, in good faith believes the disclosure to be required under FOIA or other law.

6. If the Contractor receives any freedom of information request, subpoena, notice or other request for any of the Data, Records, Deliverables, or documentation relating to this Agreement, Contractor shall notify the State of such requests within three (3) business days, but Contractor has no obligation to initiate, prosecute or defend any legal proceeding or to seek to secure any protective order or other relief to prevent disclosure of any information.
7. To the extent that any other provision or part of the Agreement conflicts or is in any way inconsistent with this section, this section controls and the conflicting provision or part shall not be given effect.

SECTION 21 TIME OF ESSENCE

The Parties understand that significant savings have been assumed in the FY 2014 – 2015 biennial budget to reflect the reduction of fraud, waste and abuse in various state-funded programs and therefore time is of the essence under this Agreement. It is critical that Contractor identify fraud, abuse or waste cases that help the State meet the State budgetary assumptions within the State's fiscal years as set forth in the Schedule.

SECTION 22 BACKGROUND CHECKS

Contractor and Contractor's Parties shall undergo criminal background checks in a commercially reasonable manner in accordance with current industry and legal standards. The Contractor and Contractor's Parties shall cooperate fully as necessary or reasonably requested with the State and its agents in connection with such background checks.

SECTION 23 CONTINUED PERFORMANCE

The Contractor and Contractor's Parties shall continue to Perform their obligations under the Contract while any dispute concerning the Contract is being resolved.

SECTION 24 WORKING AND LABOR SYNERGIES

The Contractor shall be responsible for maintaining a tranquil working relationship between the Contractor work force, the Contractor's Parties and their work force, State employees, and any other contractors present at the work site. The Contractor shall quickly resolve all labor disputes which result from the Contractor's or Contractor's Parties' presence at the work site, or other action under their control. Labor disputes shall not be deemed to be sufficient cause to allow the Contractor to

make any claim for additional compensation for cost, expenses or any other loss or damage, nor shall those disputes be deemed to be sufficient reason to relieve the Contractor from any of its obligations under the Contract.

SECTION 25
HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996

As used in this section only, Business Associate shall mean Contractor, OPM, or both. All other definitions set forth in this section shall apply only to this section.

- (a) Contactor is a Business Associate of Agency, a covered entity, 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 Contract. If the Contractor is not a Business Associate under HIPAA, this Section of the Contract 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) For purposes of this section only, "Agency" shall mean those State Parties that fall within the definition of "covered entity" as set forth in 45 C.F.R. § 160.103. 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) Definitions
 - (1) "Breach" shall, for the purposes of this Section 25 only, have the same meaning as the term is defined in section 45 C.F.R. 164.402 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 or her designee.
- (11) "More stringent" shall have the same meaning as the term "more stringent" in 45 C.F.R. § 160.202.
- (12) "This Section of the Contract" refers to the HIPAA Provisions stated herein, in their entirety.
- (13) "Security Incident" shall have the same meaning as the term "security incident" in 45 C.F.R. § 164.304.
- (14) "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. part 160 and part 164, subpart A and C.

- (15) "Unsecured protected health information" shall have the same meaning as the term as defined in 45 C.F.R. 164.402.

(g) Obligations and Activities of Business Associates.

- (1) Business Associate agrees not to use or disclose PHI other than as permitted or required by this Section of the Contract or as Required by Law.
- (2) Business Associate agrees to use and maintain appropriate safeguards and comply with applicable HIPAA Standards with respect to all PHI and to prevent use or disclosure of PHI other than as provided for in this Section of the Contract and in accordance with HIPAA standards.
- (3) Business Associate agrees to use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Covered Entity.
- (4) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by Business Associate in violation of this Section of the Contract.
- (5) Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Section of the Contract or any security incident of which it becomes aware.
- (6) Business Associate agrees, in accordance with 45 C.F.R. 502(e)(1)(ii) and 164.308(d)(2), if applicable, to ensure that any subcontractors that create, receive, maintain or transmit 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 Contract, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder. Business Associate agrees at the Covered Entity's direction to provide an accounting of disclosures of PHI directly to an Individual in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.
- (12) Business Associate agrees to comply with any state or federal law that is more stringent than the Privacy Rule.
- (13) Business Associate agrees to comply with the requirements of the HITECH Act relating to privacy and security that are applicable to the Covered Entity and with the requirements of 45 C.F.R. §§ 164.504(e), 164.308, 164.310, 164.312, and 164.316.

(14) In the event that an Individual requests that the Business Associate

(A) Restrict disclosures of PHI;

~~(B) Provide an accounting of disclosures of the Individual's PHI;~~

(C) Provide a copy of the Individual's PHI in an electronic health record; or

(D) Amend PHI in the Individual's designated record set,

the Business Associate agrees to notify the Covered Entity, in writing, within five 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 Contract, any breach of unsecured Protected Health Information, or any Security Incident, it shall notify the Covered Entity of such breach in accordance with Subpart D of Part 164 of Title 45 of the Code of Federal Regulations and this Section of the Contract.

(B) Such notification shall be provided by the Business Associate to the Covered Entity without unreasonable delay, and in no case later than thirty (30) days after the breach is discovered by the Business Associate, or a subcontractor of the Business Associate, except as otherwise instructed in writing by a law enforcement official pursuant to 45 C.F.R. 164.412. A breach is considered discovered as of the first

day on which it is, or reasonably should have been, known to the Business Associate or its subcontractor. The notification shall include the identification and last known address, phone number and email address of each individual (or the next of kin of the individual if the individual is deceased) whose unsecured 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 website and a postal address. Business Associate agrees to include in the notification of a breach by the Business Associate to the Covered Entity, a written description of the procedures that have been established to meet these requirements. Costs of such contact procedures will be borne by the Contractor.
 - (G) Business Associate agrees that, in the event of a breach, it has the burden to demonstrate that it has complied with all notification requirements set forth above, including evidence demonstrating the necessity of a delay in notification to the Covered Entity.
- (h) Permitted Uses and Disclosure by Business Associate.
- (1) General Use and Disclosure Provisions. Except as otherwise limited in this Section of the Contract, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this 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 Contract, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

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

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

(i) Obligations of Covered Entity.

- (1) Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices of Covered Entity, in accordance with 45 C.F.R. § 164.520, or to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- (2) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual(s) to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- (3) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- (4) Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Standards if done by the Covered Entity, except that Business Associate may use and disclose PHI for data aggregation, and management and administrative activities of Business Associate, as permitted under this Section of the Contract.

(k) Term and Termination.

- (1) Term. The Term of this Section of the Contract shall be effective as of the date the Agreement is effective and shall terminate when the information collected in accordance with provision (g)(10) of this Section of the Contract is provided to the Covered Entity and all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- (2) Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
 - (A) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate the Agreement if Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity; or
 - (B) Immediately terminate the Agreement if Business Associate has breached a material term of this Section of the Contract and cure is not possible; or
 - (C) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
- (3) Effect of Termination.
 - (A) Except as provided in (k)(2) of this Section of the Contract, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity. Business Associate shall also provide the information collected in accordance with section (g)(10) of this Section of the Contract to the Covered Entity within ten (10) business days of the notice of termination. This section shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
 - (B) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the

conditions that make return or destruction infeasible. Upon documentation by Business Associate that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Section of the Contract to such PHI and limit further uses and disclosures of PHI to those purposes that make return or destruction infeasible, for as long as Business Associate maintains such PHI. Infeasibility of the return or destruction of PHI includes, but is not limited to, requirements under state or federal law that the Business Associate maintains or preserves the PHI or copies thereof.

(I) Miscellaneous Sections.

- (1) Regulatory References. A reference in this Section of the Contract to a section in the Privacy Rule means the section as in effect or as amended.
- (2) Amendment. The Parties agree to take such action as is necessary to amend this Section of the Contract from time to time as is necessary for Covered Entity to comply with requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, P.L. No. 104-191.
- (3) Survival. The respective rights and obligations of Business Associate shall survive the termination of this Agreement.
- (4) Effect on Agreement. Except as specifically required to implement the purposes of this Section of the Contract, all other terms of the Agreement shall remain in force and effect.
- (5) Construction. This Section of the Contract shall be construed as broadly as necessary to implement and comply with the Privacy Standard. Any ambiguity in this Section of the Contract shall be resolved in favor of a meaning that complies, and is consistent with, the Privacy Standard.
- (6) Disclaimer. Covered Entity makes no warranty or representation that compliance with this Section of the Contract will be adequate or satisfactory for Business Associate's own purposes. Covered Entity shall not be liable to Business Associate for any claim, civil or criminal penalty, loss or damage related to or arising from the unauthorized use or disclosure of PHI by Business Associate or any of its officers, directors, employees, contractors or agents, or any third party to whom Business Associate has disclosed PHI contrary to the sections of this Agreement or applicable law. Business Associate is solely responsible for all decisions made,

and actions taken, by Business Associate regarding the safeguarding, use and disclosure of PHI within its possession, custody or control.

- (7) Indemnification. The Business Associate shall indemnify and hold ~~the Covered Entity harmless from and against any and all claims,~~ liabilities, judgments, fines, assessments, penalties, awards and any statutory damages that may be imposed or assessed pursuant to HIPAA, as amended or the HITECH Act, including, without limitation, attorney's fees, expert witness fees, costs of investigation, litigation or dispute resolution, and costs awarded thereunder, relating to or arising out of any violation by the Business Associate and its agents, including subcontractors, of any obligation of Business Associate and its agents, including subcontractors, under this Section of the Contract, under HIPAA, the HITECH Act, and the HIPAA Standards.

The provisions of this Section shall survive the Expiration or earlier Termination of this Agreement.

SECTION 26 EVENT OF DEFAULT

- A. For purposes of this Agreement, any of the following shall be deemed an "Event of Default by Contractor" when not cured within the applicable grace period provided for in Section 26:
1. Bankruptcy; or
 2. a Default, meaning a material failure to perform any material covenant or condition of this Agreement on the part of Contractor or a material breach of a representation or warranty or legal duty by Contractor.
- B. **Notice of an Event of Default and Cure Periods.** Upon the occurrence of any event under Section 26 hereof, OPM shall give notice to Contractor specifying such Event of Default by Contractor and giving Contractor the right to cure such Event of Default within thirty (30) days after notice thereof.

Following the occurrence of an Event of Default by Contractor, then, in addition to other rights provided herein, but subject to Section 26, OPM shall have all rights and remedies available at law or in equity, or the right to terminate this Agreement.

**SECTION 27
OTHER CONDITIONS**

A. Entire Agreement.

This Agreement embodies the entire agreement between the Parties 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 all Parties, and approved by the State of Connecticut Office of the Attorney General. 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 OPM, Contractor shall promptly estimate their monetary effect and so notify OPM. 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 OPM determines that any change materially affects the cost or time of performance of this Agreement as a whole, Contractor and OPM 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 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 OPM, at the time of the execution of this Agreement, as evidence that such are in full force and effect.

D. Labor and Personnel.

At all times, Contractor shall utilize approved, qualified Key Project Positions and any State approved subcontractors necessary to perform the services under this Agreement. Contractor shall advise OPM 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. OPM may then, at its option, ask Contractor to arrange for a temporary employee(s) or subcontractor(s) satisfactory to OPM 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 OPM, reassign from the State's account any employee or authorized representatives whom OPM, in its sole discretion, determines is incompetent, dishonest, or uncooperative. In requesting the reassignment of an employee under this paragraph, OPM shall give ten (10) days' notice to Contractor of OPM'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 OPM still desire reassignment, then no later than five (5) days thereafter, the employee shall be reassigned from the State's account.

E. 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 OPM for clarification. OPM 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 OPM will be at Contractor's risk.

F. Indemnity.

1. The Contractor shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, subcontractors, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with the Agreement, including the acts of commission or omission (collectively, the "Acts") of the Contractor or Contractor's Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or the Agreement. The Contractor shall use counsel reasonably acceptable to the State in carrying out its obligations under this section. The Contractor's obligations under this section to indemnify, defend and hold harmless against Claims includes Claims concerning confidentiality of any part of or all of the Contractor's bid, proposal or any Records, any U.S. intellectual property rights, other U.S. proprietary rights of any person or entity, U.S. copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the Performance arising from the Software provided or the

services performed under this Agreement or the States permitted use of LYNXeon™.

2. Subject to Section 28 (Limitation of Liability) the Contractor shall not be responsible for indemnifying or holding the State harmless from any liability arising ~~due to the negligence of the State or any third party acting under the direct control or supervision of the State.~~

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

4. The Contractor's duties under this section shall remain fully in effect and binding in accordance with the terms and conditions of the 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.

5. The Contractor shall carry and maintain at all times during the term of the Agreement, and during the time that any provisions survive the Term of the Agreement, sufficient general liability insurance to satisfy its obligations under this Agreement. The Contractor shall name the State as an additional insured on the policy and shall provide a copy of the policy to OPM prior to the Effective Date of the Agreement. The Contractor shall not begin Performance until the delivery of the policy to OPM. 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.

6. This section shall survive the Termination of the Agreement but shall relate solely to the Contractor's acts or omissions that occurred prior to Termination or Expiration of the Agreement and shall not be limited by reason of any insurance coverage.

G. Nondisclosure.

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

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

1. The State and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State's Attorney and their respective agents, may, at reasonable hours, inspect and examine all of the parts of the Contractor's

and Contractor Parties' plants and places of business which, in any way, are related to, or involved in, the Performance of this Agreement.

2. The Contractor agrees to provide the State with an audited annual financial statement no less than four months after the close of the Contractor's fiscal year.

3. The Contractor shall maintain, and shall require each of its subcontractors to maintain, accurate and complete Records and accounting records as it relates to this Agreement. The Contractor shall make all of its and the Contractor Parties' Records available at all reasonable hours for audit and inspection by the State and its agents.

4. 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.

5. All audits and inspections shall be at the Contractor's expense.

6. The Contractor shall keep and preserve or cause to be kept and preserved all of its and Contractor's 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.

7. The Contractor shall cooperate fully with the State and its agents in connection with an audit or inspection. Following any audit or inspection, the State may conduct and the Contractor shall cooperate with an exit conference.

8. The Contractor shall incorporate this entire Section verbatim into any contract or other agreement that it enters into with any Contractor's Party.

I. 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 the Agreement, the following types and amounts of insurance on the terms specified in this Section, all at no cost to the State:

1. Comprehensive Commercial General Liability Insurance, including contractual liability coverage, in an amount not less than \$1,000,000 combined single limit (the "CSL") for each occurrence with respect to loss of life, bodily and/or personal injury and/or damage to property under or in connection with this Agreement. Subject to the foregoing, the total (or aggregate) limit of coverage for all accidents during each

year of this Agreement shall be a minimum of two (2) times the CSL. The coverage under such policy shall cover claims arising from acts or omissions of Contractor and the Contractor's officers, directors, partners, members, agents and employees, as applicable.

2. Worker's Compensation and Employer's Liability Insurance in compliance with the laws of the State of Connecticut, which coverage shall include Employer's Liability Insurance with minimum limits no less than:

- (a) \$100,000 - Each Accident (bodily injury by accident);
- (b) \$100,000 Disease - Each Employee (bodily injury by disease); and
- (c) \$500,000 Disease - Policy limit (bodily injury by disease).

3. Comprehensive Automobile Liability Insurance which covers all motor vehicles, including those hired or non-owned, used in connection with this Agreement with a total limit of liability of not less than \$1,000,000 for all damages arising out of bodily injuries to or death of all persons and/or damage to or destruction of property in any one accident or occurrence.

4. Errors and Omissions Insurance which covers any computer system or software architecture, engineering, design, accounting, legal or other professional services under or in connection with this Agreement, at such party's sole cost and expense, in an amount not less than \$2,000,000 per occurrence. In the case of any computer system or software engineer, architect or other design professional, each such policy must be kept in effect for a period of seven (7) years after substantial completion of the project on or for which any such services are rendered; otherwise the professional involved shall maintain such coverage for a period of at least three (3) years following completion of its work hereunder. If coverage is procured by any professional on a claims made basis, the retroactive date must be the date prior to the professional's commencement of any work under or pursuant to this Agreement or the project to which it relates, whichever is earlier.

All of the Contractor's insurers shall be licensed by the State of Connecticut and be rated A-(VIII) or better by the latest edition of A. M. Best's Rating Guide or, if such guide is no longer available, any generally recognized replacement therefor. Each policy of insurance maintained pursuant to this Agreement also shall be written to provide at least those coverages provided under standard forms therefor as have been approved by the State of Connecticut's Insurance Commissioner. Except as otherwise provided above with respect to errors and omissions insurance, all insurance required hereunder also shall be written on an "occurrence" (as opposed to "claims made") basis.

The State and its officers, agents and employees (herein, the "**State Indemnified Parties**") shall be named as additional insured under any and all liability insurance policies which cover any of the Contractor's activities under or related to this Agreement (other than Worker's Compensation and Errors and Omissions

insurance). Each insurance policy shall state that the insurance company shall agree to investigate and defend the insured against all claims for damages, even if groundless.

Each liability insurance policy procured or maintained by the Contractor which covers any of the Contractor's activities under, or during the term of, this Agreement shall state that it is primary and non-contributory and shall not be in excess of any other insurance. Any insurance maintained by the State shall be in excess of any and all insurance maintained by the Contractor, and shall not contribute to it.

The Contractor shall be fully and solely responsible for and thus shall pay any and all costs and expenses as a result of any and all coverage deductibles and/or self-insured retentions under any policy(ies) of insurance maintained by it. The Contractor also shall assume and pay all costs and billings for premiums and audit charges earned and payable under all insurance that is maintained by it.

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. Without limiting the foregoing: (i) none of the Contractor's insurers shall have any right of subrogation or recovery against the State or any of the State's officers, agents or employees, all of which rights are hereby waived by the Contractor, and (ii) unless requested otherwise by the State, the Contractor and its respective insurers shall waive sovereign immunity as a defense and shall not use the defense of sovereign immunity in the adjustment of claims or in the defense of any suit brought against any of them or any State Indemnified Parties, unless, and then only if and when, approved in writing by the State, which approval may be withheld in its sole and absolute discretion.

The Contractor shall deliver Certificates of Insurance relating to all of the above-referenced coverages to the State 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 (and the policies for which it provides evidence of coverage) 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. The Contractor shall produce, and shall require its contractors to produce, within five (5) business days, a copy or copies of all applicable insurance policies when requested by the State. In providing such policies, the Second Party and/or its Contractors, as appropriate, may redact provisions of any policy that are clearly proprietary.

The provisions of this Section shall survive the Expiration or earlier Termination of this Agreement to the extent they require the Contractor to maintain insurance coverage for a specific period of time that has not as yet expired as of the Expiration or earlier Termination of this Agreement or relate to or specify any rights, remedies and/or terms that apply to any insurance

coverage which applies to any claims that arise or are made in connection with this Agreement whether before or after the Expiration or earlier Termination of this Agreement.

J. Promotion.

Unless specifically authorized in writing by the Secretary of OPM, 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:

- (1) in any advertising, publicity, promotion; or
- (2) to express or to imply any endorsement of Contractor's products or services; or
- (3) in any other manner (whether or not similar to uses prohibited by subparagraphs (1) and (2) above), except 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.

K. Subpoenas.

In the event the Contractor's records are subpoenaed pursuant to Connecticut General Statutes § 36a-43, the Contractor shall, within twenty-four (24) hours of service of the subpoena, notify the person designated for the State in Section 6 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 6 of this Agreement.

L. 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.

M. 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.

N. Non-Discrimination.

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

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

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

agency of a subdivision, agency, state or government described in the immediately preceding enumerated items (1), (2), (3), (4) or (5).

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

(c) Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: the Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.

(d) The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.

(e) The Contractor shall include the provisions of subsection (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a ~~contract with the State and such provisions shall be binding on a subcontractor,~~ vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

(f) The Contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this 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.

O. Executive Orders.

This Agreement is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of the Agreement as if they had been fully set forth in it. The Agreement may also be subject to the applicable parts of Executive Order No. 7C of Governor M. Jodi Rell, promulgated July 13, 2006, concerning contracting reforms and Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services and Executive Order No. 19 of Governor M. Jodi Rell, promulgated June 19, 2008 concerning use of System Development, in accordance with their respective terms and conditions. If Executive Orders 7C, 14 and 19 are applicable, they are deemed to be incorporated into and are made a part of the Agreement as if they had been fully set forth in it. At the Contractor's request, OPM shall provide a copy of these orders to the Contractor.

P. Sovereign Immunity.

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

The provisions of this Section shall survive the Expiration or earlier Termination of this Agreement.

Q. Assignment.

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

R. Severability.

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

S. Headings.

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

T. Third Parties.

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

U. Non-Waiver.

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

V. Contractor Certification.

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

W. Large State Contracts.

Pursuant to Connecticut General Statutes §§ 4-250 and 4-252, Contractor must present at the execution of each large State contract (having a total cost to the State of more than \$500,000 in a calendar or fiscal year) an executed gift certification, which Contractor shall update on an annual basis in accordance with paragraph 8 of Governor M. Jodi Rell's Executive Order No. 1. In addition, pursuant to paragraph 8 of Governor M. Jodi Rell's Executive Order No. 1, anyone who executes and files said gift certification shall also execute and file a campaign contribution certification disclosing all contributions made to campaigns of candidates for statewide public office or the General Assembly.

X. State Contracting Standards Board.

Pursuant to paragraph 6(a) of Governor M. Jodi Rell's Executive Order No. 7C, Contractor acknowledges and accepts that, for cause, the State Contracting Standards Board may review and recommend, for OPM's consideration and final OPM determination, termination of this contract. "For Cause" means: (1) a violation of the State ethics laws (Chapter 10 of the Connecticut General Statutes) or Connecticut General Statutes § 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.

Y. Summary of State Ethics Laws.

Pursuant to the requirements of section 1-101qq of the Connecticut General Statutes, the summary of State ethics laws developed by the State Ethics Commission pursuant to section 1-81b of the Connecticut General Statutes is incorporated by reference into and made a part of the Contract as if the summary had been fully set forth in the Agreement. A copy of the Summary is attached and incorporated herein as Appendix I.

Z. Disclosure of Consulting Agreements.

Pursuant to Connecticut General Statutes § 4a-81, the chief official of the Contractor, for all contracts with a value to the State of fifty thousand dollars or more in any calendar or fiscal year, shall attest in an affidavit as to whether any consulting agreement has been entered into in connection with such contract. Such affidavit shall be required if any duties of the consultant included communications concerning business of such State agency, whether or not direct contact with a State agency, State or public official or State employee was expected or made. As used herein "consulting agreement" means any written or oral agreement to retain the services, for a fee, of a consultant for the purposes of (A) providing counsel to a contractor, vendor, consultant or other entity seeking to conduct, or conducting, business with the State, (B) contacting, whether in writing or orally, any executive, judicial, or administrative office of the State, including any department, institution, bureau, board, commission, authority, official or employee for the purpose of solicitation, dispute resolution, introduction, requests for information or (C) any other similar activity related to such contract. Consulting agreement does not include any agreements entered into with a consultant who is registered under the provisions of Chapter 10 of the general statutes as of the date such affidavit is submitted in accordance with the provisions of Connecticut General Statutes § 4a-81.

AA. Whistleblowing.

This Agreement may be subject to the provisions of Section 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of the Contractor takes or threatens to take any personnel action against any employee of the Contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of such statute, the Contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of this Contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with subsection (f) of such statute, each large state contractor, as defined in the statute, shall post a notice of the provisions of the statute relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the Contractor.

BB. Campaign Contribution and Solicitation Prohibitions.

For all State contracts as defined in Connecticut General Statutes § 9-612(g)(1)(2) having a value in a calendar year of \$50,000 or more or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Agreement expressly acknowledges receipt of the State Elections Enforcement Commission's notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice, as set forth in "Notice to Executive Branch State Contractors and Prospective State Contractors of Campaign Contribution and Solicitation Limitations" attached as Appendix J.

CC. Non-Discrimination Certification.

Pursuant to Connecticut General Statutes §§ 4a-60(a)(1) and 4a-60a(a)(1), every Contractor is required to provide the State with a non-discrimination certificate for all State contracts regardless of type, term, cost or value. The appropriate form must be submitted to the awarding State agency prior to contract execution. Copies of "nondiscrimination certification" forms that will satisfy the statutory requirements may be found on OPM's website. The applicable certification form must be signed by an authorized signatory of the Contractor (or, in the case of an individual contractor, by the individual).

DD. Iran Certification.

Effective October 1, 2013, OPM Iran Certification Form 7 must be submitted for any large state contract, as defined in section 4-250 of the Connecticut General Statutes. OPM Iran Certification Form 7 must always be submitted with the bid or proposal, or if there was no bid process, with the resulting contract, regardless of where the principal place of business is located. Entities whose principal place of business is located outside of the United States are required to complete the entire form, including the certification portion of the form. United States subsidiaries of foreign corporations are exempt from having to complete the certification portion of the form. Those entities whose principal place of business is located inside of the United States must also fill out the form, but do not have to complete the certification portion of the form.

EE. Forum and Choice of Law.

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

however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Contractor waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

The provisions of this Section shall survive the Expiration or earlier Termination of this Agreement.

FF. Setoff.

In addition to all other remedies that the State may have, the State, in its sole discretion, may setoff (1) any costs or expenses that the State incurs resulting from the Contractor's unexcused non-performance or Event of Default under the Agreement and under any other agreement or arrangement that the Contractor has with the State and (2) any other amounts that are due or may become due to the Contractor under the Agreement, or under any other agreement or arrangement that the Contractor has with the State. The State's right of setoff shall not be deemed to be the State's exclusive remedy for the Contractor's or Contractor Parties' breach of the Agreement, all of which shall survive any setoffs by the State. Such right shall include, but not be limited to, the right to setoff and retain any or all of the retainage described in Appendix B.

The provisions of this Section shall survive the Expiration or earlier Termination of this Agreement.

GG. Disclosure of Records.

This Agreement may be subject to the provisions of section 1-218 of the Connecticut General Statutes. In accordance with this statute, each contract in excess of two million five hundred thousand dollars between a public agency and a person for the performance of a governmental function shall (a) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (b) indicate that such records and files are subject to FOIA and may be disclosed by the public agency pursuant to FOIA. No request to inspect or copy such records or files shall be valid unless the request is made to the public agency in accordance with FOIA. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of sections 1-205 and 1-206 of the Connecticut General Statutes.

**SECTION 28
LIMITATION OF LIABILITY**

LIMITATION OF LIABILITY. IN NO EVENT WILL CONTRACTOR'S LIABILITY EXCEED \$24 MILLION FOR ANY CLAIM OR CAUSE OF ACTION ARISING UNDER OR RELATED TO THE AGREEMENT, EXCEPT FOR CLAIMS OR CAUSES OF ACTION FOR (I) CONTRACTOR'S VIOLATIONS OF THE CONNECTICUT FALSE CLAIMS ACT, THE CONNECTICUT ANTITRUST ACT, OR THE CONNECTICUT

UNFAIR TRADE PRACTICES ACT (CUTPA), (II) FRAUD OR INTENTIONAL TORTS
OR (III) CRIMINAL CONDUCT.

SUBJECT TO THE FOREGOING, IN NO EVENT SHALL CONTRACTOR BE LIABLE
FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE
DAMAGES, OR LOST PROFITS FOR ANY CLAIM OR DEMAND OF ANY NATURE
OR KIND, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR
THE PERFORMANCE OR BREACH THEREOF.

[Remainder of page intentionally blank; signature page follows]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as a sealed instrument by their respective duly authorized agents, as of the date and year first set forth above.

ATTEST:

CONTRACTOR

Rita Diamond
Witness Rita Diamond

21CT, Inc.

Jamie Drobny
Witness Jamie Drobny

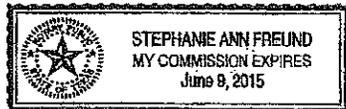
BY: Irene Williams
Irene Williams
Title: CEO
Duly Authorized

STATE OF TEXAS }
 } SS:
COUNTY OF TRAVIS }

On this the 15th day of November, 2013, before me, Stephanie Ann Freund the undersigned officer, personally appeared Irene Williams, CEO of 21CT, Inc., known to me (or satisfactorily proven) to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand.

Stephanie Ann Freund
Notary Public
My Commission Expires: 6-9-2015



STATE OF CONNECTICUT
OFFICE OF POLICY AND
MANAGEMENT

Kathleen Taylor
Witness
KATHLEEN TAYLOR

BY: Benjamin Barnes
Benjamin Barnes
Title: Secretary

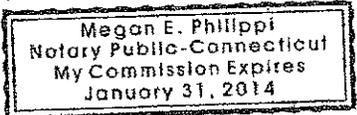
Laura J. Mirante
Witness
LAURA J. MIRANTE

STATE OF CONNECTICUT }
 }
COUNTY OF HARTFORD } ss:

On this the 15th day of November, 2013, before me,
Megan E. Philippi, the undersigned officer, personally appeared Benjamin
Barnes, Secretary of the State of Connecticut Office of Policy and Management, known
to me (or satisfactorily proven) to be the person described in the foregoing instrument,
and acknowledged that he executed the same in the capacity therein stated and for the
purposes therein contained.

In witness whereof I hereunto set my hand.

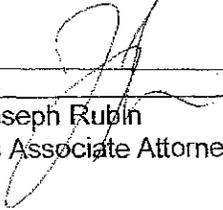
Megan E. Philippi
Notary Commissioner of the Superior Court
My Commission Expires: 1/31/2014



Approved as to Form:

OFFICE OF THE ATTORNEY GENERAL

By: _____


Joseph Rubin
Its Associate Attorney General

Date signed: _____

11/10/17

APPENDIX A

Statement of Work

This section describes the high level scope of work to be performed, the location of the work, and period of Performance.

Scope of Work Overview

For the fee of \$8 million per year, Contractor shall:

1. Provide Investigative Services for the purpose of Case Deliverables based on analysis of health and human services related Data including, but not limited, to Medicaid, SNAP, Employee and Retiree Health [e.g., State of Connecticut Comptroller], other human services agencies' data [e.g., Departments of Developmental Services, Mental Health and Addiction Services, Children and Families]; and Workers' Compensation medical claims (collectively herein HHS).
2. Take and review unlimited Data transfer/imports from the State and Contractor will not restrict or limit the Data for successful HHS Case development. An example, for illustration purposes only, may include the Contractor importing hunting/fishing license addresses from Department of Energy and Environmental Protection to further HHS investigations. How and when Data is transferred and imported shall be performed subject to the Parties' ongoing mutual collaboration regarding Data selections or exclusions made for the purpose of supporting quality investigations and results.
3. If HHS investigations yield information, tips or leads for another fraud, abuse, or waste investigation outside the HHS rubric, Contractor shall provide such information, tips, or leads to OPM and the applicable State Party to allow the State Party to conduct its own review and investigation. Impacted State Parties may provide Contractor with some limited Data which may further such investigations. This type of possible investigation tip shall not be deemed to be new investigation and there will be no charge or need for Change Order for such Cases.
4. If OPM elects to add a new investigation module, (e.g., a new topic or track which goes beyond the analysis of HHS), Contractor will charge a [REDACTED] fixed fee for any new investigation track. By way of example, if the State elects to have Contractor review State Tax Information to identify tax fraud cases, a Change Order would be issued and Contractor would charge a fee of [REDACTED] for this new investigation track and module, to be paid to the Contractor in accordance with the terms and conditions of this Agreement.

Location of Work

Work performed during the Term of the Agreement shall be split between Contractor's offices in Austin, Texas and at State offices in Hartford, Connecticut as described below.

Work Description	Location
Project planning and discovery	State offices – Hartford, CT
Create repository, prepare data, develop and apply models	Contractor offices – Austin, TX
Deliver findings, recommendation, training	State offices – Hartford, CT

To ensure strong communication throughout the project being implemented pursuant to the Agreement (the "Project"), there shall be regular interactions and meetings between Contractor and the State. A suggested schedule is provided below. The type of interactions and frequency shall be adjusted via mutual agreement by the Parties as needed to ensure Project success.

Work Description	Frequency/Schedule	Format
Project planning and discovery	Daily for up to the first ten (10) business days following the Effective Date	In person (Hartford)
Create repository, prepare data, develop and apply models	Weekly for months 1-3 Monthly for months 4-36	Via teleconference or WebEx
Deliver findings and recommendations	As soon as ready during the first quarter, thereafter quarterly	In person (Hartford)
Attend Fraud Oversight Workgroups	As requested	In person (Hartford)
Attend IT subcommittee workgroups	As requested	In person (Hartford)

Project Tasks

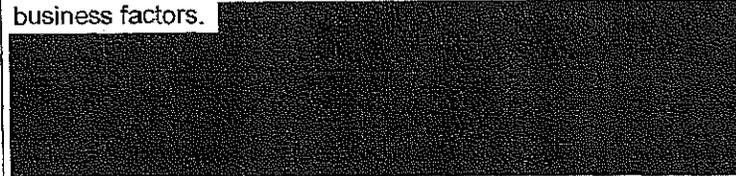
This section defines the project tasks that Contractor shall perform to satisfy the Project Objectives and SOW. Each task includes a description of the work activities, definition of State responsibilities, resulting Deliverables, and expected Schedule.

Conduct Project planning and discovery meetings with stakeholders

<p>Task 1 Conduct project kickoff and initial planning meetings with stakeholders</p>	<p>Description: Contractor shall conduct an initiation and orientation Project planning meeting, as well as other Project discovery meetings with State business stakeholders (collectively hereinafter "Project and Discovery Meetings"). These Project and Discovery Meetings will be used to finalize and define the associated business objectives and requirements, and define the</p>
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	<p>metrics to be used for Project evaluation. It is expected these Project and Discovery Meetings will also serve to identify potential Data sources relevant to OPM's objective for evaluation. These Project and Discovery Meetings will also define target timetables for responses to questions raised by the Parties, for follow-up on any task actions, and for reviews deemed necessary by the Parties.</p>
	<p>State Responsibilities: During the Task 1 time period, OPM or the State Parties will make appropriate personnel available to Contractor in order to assist in the identification of business, legal and regulatory requirements as well as structure and plan future activities necessary to move forward with the Project. OPM anticipates that Contractor will interface with primary stakeholders (i.e., schedule meetings, and hold in-person meetings) to fully understand the State's business goals and requirements.</p> <p>Deliverables: Contractor shall provide approved and agreed upon written requirements memorializing the objectives, requirements, timetable and metrics for the Project.</p> <p>Schedule: The Project initiation and orientation meeting will occur within ten (10) business days after the Effective Date of the Agreement or a date mutually agreeable by both parties. All task activities will be concluded within ten (10) business days after the initial meeting. The State Parties shall use all reasonable efforts to provide comments to Deliverables in a timely fashion. Contractor shall issue final Deliverables within 2 business days after receipt of formal comments from OPM and any State Parties.</p>

Identify technical objectives and requirements

<p>Task 2 Identify technical objectives and requirements</p>	<p>Description: Contractor shall schedule and conduct substantive meetings with appropriate state investigators, technicians, management, attorneys and subject matter experts to understand the State investigative processes, policies, Data and IT systems.</p> <p>Contractor shall work with the State Parties to establish clearly defined investigative and technical objectives and requirements. Contractor shall work with the State Parties to identify potential government Data sources considering multiple investigative and business factors.</p> 
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	<p>State Responsibilities: Starting as early during the ten (10) business day Project planning and discovery period described in Task 1 (i.e. the ten (10) business day period following the initial meeting described in Task 1), the State Parties will make appropriate personnel available to assist in the definition of objectives, requirements and Data sources as described above.</p>
	<p>The State Parties will make available appropriate resources related to State investigations, policy, governance, data context, and information technology systems. [REDACTED]</p>
	<p>Deliverable: Contractor shall deliver a technical requirements document approved and agreed upon by OPM based upon the activities described above, including but not limited to identifying initial Investigative Services to be performed by Contractor, providing a Data roadmap, Data file layouts and Data dictionary for target Data sources; and initial Data extracts for prioritized Data sources.</p>
	<p>Schedule: All Project meetings related to Task 2 will be concluded within 10 business days after the initial meeting described in Task 1. The State Parties shall use all reasonable efforts to provide formal comments to Contractor in a timely fashion. Contractor shall issue final Deliverables within 5 business days after receipt of formal comments from the State Parties.</p>

Develop a project work plan and schedule

<p>Task 3 Develop a project work plan and schedule</p>	<p>Description: Contractor shall deliver a written Project plan and schedule to the State that defines the detailed work plan, tasks; and timing for all initial Investigative Services defined in the ten (10) business day Project planning and discovery phase. This plan will cover the full period of Performance and incorporate the output from Tasks 1 and 2 above, including input from State business stakeholders and technical resources and Contractor project personnel.</p>
	<p>State Responsibilities: The State Parties shall make available program directors, legal, investigative staff, and technical resources to review and approve the Project plan and schedule.</p>
	<p>Deliverables: Contractor shall produce and deliver a Project plan and schedule approved by OPM.</p>
	<p>Schedule: The State Parties shall use all reasonable efforts to</p>

provide comments to any Deliverables in a timely fashion. Contractor shall issue final Deliverables within 2 business days after receipt of formal comments from the State Parties. The final Project Objectives and schedule shall be agreed to by the Parties and shall be incorporated and expressly made a part of the Agreement. The parties shall later include the final Project plan and schedule as Appendix G to the Agreement.

[REDACTED]

Task 4

[REDACTED]

Description:

[REDACTED]

State Responsibilities: The State Parties will implement the plan for Data transmission described in Task 4. The State Parties will implement the proper infrastructure for the delivery of Data sets to Contractor through a mutually agreed upon protocol (e.g., secure File Transfer Protocol, encrypted files, or other agreed upon method), frequency, and according to the format specified by Contractor and approved by OPM. File Transfer Protocol or FTP shall mean a standard protocol used to transfer files from one host to another host over a TCP-based network, such as the internet. [REDACTED]

Deliverables: Contractor shall deliver to OPM monthly status reports on Data acquisition in format agreed upon among the Parties.

Schedule: Contractor shall provide Data requests in a timely fashion and the State Parties will, to the extent permitted by State and Federal law, fulfill reasonable Data requests from the

	Contractor in a timely fashion.
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Prepare data for modeling

Task 5	Description: [REDACTED]
Prepare data for modeling	[REDACTED]
	How and when to add new Data sources to enhance the analysis, will be discussed and mutually agreed to by the Parties. Contractor shall work with the Agency IT representatives to facilitate Data transfers when such decisions are made.
	State Responsibilities: The State Parties shall dedicate IT personnel as necessary throughout the curation process to support any additional Data feeds that may be necessary pursuant to this Task 5. The State Parties shall also provide resources, as deemed reasonable and necessary, to assist in answering questions from the Contractor about the Data sources and context.
	Deliverables: [REDACTED]
	Schedule: This task will be ongoing throughout the Project. The State Parties shall use all reasonable efforts to provide responses to any questions in a timely fashion.

Develop analytical models

Task 6	Description: [REDACTED]
Develop analytical models	[REDACTED]
	It is expected that there will be a regular exchange of questions and clarifications between Contractor and the State around the Data as models are developed. Multiple iterations and revisions

	<p>of Data feeds may be required to obtain the accuracy and fidelity necessary for investigative purposes. It is possible that this task may result in additional Data requests of the State Parties.</p> <p>State Responsibilities: [REDACTED]</p>
	<p>Deliverables: N/A.</p> <p>Schedule: This task will be ongoing throughout the Project. The State Parties will use all reasonable efforts to fulfill all requisite Data requests and to answer all questions in a timely fashion.</p>

[REDACTED]

<p>Task 7</p> <p>[REDACTED]</p>	<p>Description: [REDACTED]</p> <p>State Responsibilities: [REDACTED]</p> <p>[REDACTED] The State will support additional Data requests as reasonably needed by the Contractor, to the extent permitted by State and Federal law.</p> <p>Deliverables: [REDACTED]</p> <p>Schedule: This task will be ongoing throughout the Project. The State Parties will use all reasonable efforts to fulfill Data requests and answer all questions from the Contractor in a timely fashion.</p>
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Deliver findings and recommendations

<p>Task 8</p> <p>Deliver findings and make recommendations</p>	<p>Description: Contractor shall produce findings and recommendations for review with the State Parties.</p> <p>State Responsibilities: The State Parties shall provide feedback on the findings as needed. [REDACTED]</p> <p>[REDACTED]</p>
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	Deliverables:
	Schedule:

Train State auditors, analysts and investigators

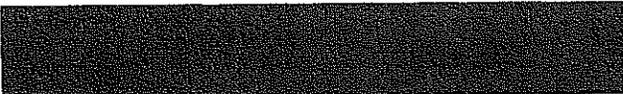
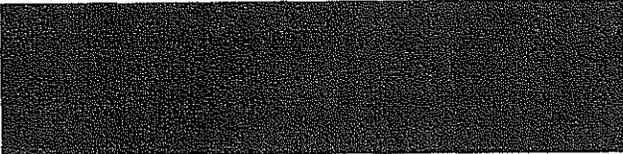
Task 9	Description:
	State Responsibilities:
	Deliverables:
	Schedule: To be determined mutually by the Parties, based on the State's interest.

Track the progress/success and return on investment

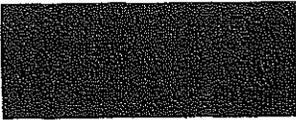
Task 10	Description: Contractor accepts and agrees to the form of OPM's performance log attached as Appendix H. The log will serve as a tool to track the number of Cases delivered by the
Track the progress/success	

and return on investment	Contractor and the Parties' Performance in the pursuit of fraud, waste and abuse.
	State Responsibilities: N/A
	Deliverables: Contractor and OPM shall continuously and mutually update the performance log at the quarterly meetings when Cases are delivered to the State described in Task 9.
	Schedule: Quarterly assessment throughout the Project. The State Parties shall provide feedback on the Deliverables and the performance log and written reports.

Program Management and Other Technical Services

Task 11 Program management and other technical services	Description: In addition to the tasks above, Contractor shall provide the following technical and program management services: <ul style="list-style-type: none"> •  • Regular discussions and interactions with OPM and the State Parties on Project status • 
	State Responsibilities: The State Parties shall designate relevant State personnel for regular meetings to discuss Project status with Contractor.
	Deliverables: Contractor shall provide regular Project status briefings in accordance with the below Schedule.
	Schedule: Weekly briefings for months 1-3 of the Term; Monthly briefings for months 4-36 of the Term.

Litigation Support

Task 12 	Description: On an as needed basis, in the event of legal proceedings or litigation arising from Contractor's Cases and Deliverables, Contractor agrees to provide  or other relevant personnel to serve as witnesses in any criminal, civil or administrative proceeding necessary to support any of the State's recovery efforts. Such support includes but is not limited to, authenticating data, describing Case backgrounds, findings and recommendations
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	Contractor has made.
	State Responsibilities: OPM or the requisite State Party would provide Contractor reasonable advance notice for such testimony, including providing the necessary preparation time.
	Deliverables: Contractor shall provide deposition, trial or administrative hearing testimony only as needed by the State.
	Schedule: On an as needed basis as decided by the State Parties.

Schedule

The chart below describes the projected Schedule.

No.	Description	Month																																								
		1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12					
1	Conduct project kickoff and initial planning meetings with stakeholders																																									
2	Identify technical objectives and requirements																																									
3	Develop a project work plan and schedule																																									
4																																										
5																																										
6																																										
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10																																										
11																																										

- 12. FY 2014 – Contractor shall provide Investigative Services to support the State's efforts to achieve \$65 million in savings by June 30, 2014.
- 13. FY 2015 – Contractor shall provide Investigative Services to support the State's efforts to achieve \$104 million in savings by June 30, 2105.
- 14. FY 2016 – Contractor shall provide Investigative Services to support the State's efforts to achieve \$104 million in savings by June 30, 2016.

APPENDIX B

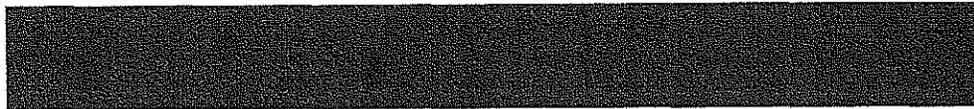
The Contractor shall be compensated for fees based upon work performed, documented, and accepted by the State as follows:

A. Fixed Fee

DSS will pay Contractor a fixed fee for its Deliverables and any configurable software licenses as follows:

1. The State shall pay the Contractor Eight Million USD (\$8 million) per year for three (3) years for a total amount not to exceed Twenty-Four Million USD (\$24 million).

2. In the first year of the Agreement, the State shall pre-pay the Contractor Two Million Five Hundred Thousand Dollars (USD) (\$2.5 million) as an initial payment within 45 days from the Effective Date.



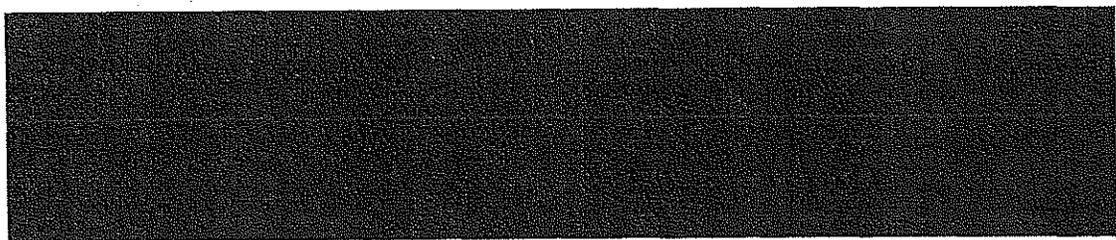
4. Notwithstanding the foregoing, the State shall retain 15% per month for retainage from each monthly payment, except that no retainage shall be taken from the initial payment of \$2.5 million as set forth in subsection 2, above.

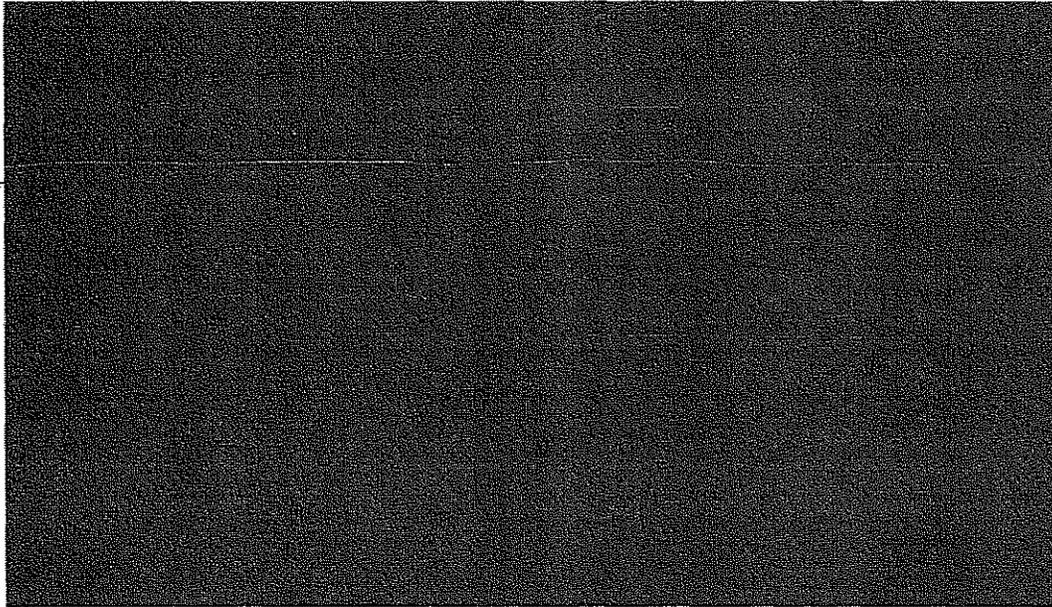
5. The State shall start paying monthly installments to the Contractor three and three quarter months from the Effective Date. The State shall make a first monthly payment of \$141,667 (\$166,667 - \$25,000 retainage) in the fourth week of February 2014. Thereafter, the State shall pay Contractor \$566,667 (\$666,667 - \$100,000 retainage) thirty days in arrears for each month on the first of the subsequent month.

6. For each year during the Term that the Agreement has not been Terminated, provided that the Contractor has completed Performance in a manner satisfactory to OPM, OPM shall release the retainage for the previous year to the Contractor on an annual basis within thirty (30) days after the occurrence of each Agreement Anniversary Date. Contractor expressly agrees to forfeit any right to the retainage if a Termination occurs before the occurrence of each Agreement Anniversary Date.

Payment Structure – November 18th start date

Contract Period	Pre-Payment	Scheduled Regular Monthly Payments	Monthly Retainer (Withhold)	Actual Monthly Payment	November Payment to Complete Contract Year	Retainage Paid end of November if Performance Satisfactory to State	Fixed Fee Amount per Contract Year
November 18, 2013 – November 17, 2014	\$2,500,000 in start-up to cover payments through March 9th	\$666,667 beginning April 2014 (\$460,728 for balance of March 2014)	(\$100,000) beginning April 2014 (\$69,110 for balance of March 2014)	\$566,667 (\$391,618 for balance of March 2014)	\$316,713 (\$372,603 less retainage of \$55,890)	\$825,000	\$8,000,000
November 18, 2014 – November 17, 2015	N/A	\$666,667 (\$294,064 in November 2014)	(\$100,000) (\$44,110 in November 2014)	\$566,667 (\$249,954 in November 2014)	\$316,713 (\$372,603 less retainage of \$55,890)	\$1,200,000	\$8,000,000
November 18, 2015 – November 17, 2016	N/A	\$666,667 (\$294,064 in November 2015)	(\$100,000) (\$44,110 in November 2015)	\$566,667 (\$249,954 in November 2015)	\$316,713 (\$372,603 less retainage of \$55,890)	\$1,200,000	\$8,000,000





The Contractor shall be allowed no separate expenses for mileage, costs of travel including airfare and hotels, meals, and office expenses such as phone calls, copying, postage and package delivery incurred in connection with the service pertaining to this Agreement.

Invoices for Deliverables stemming from any future Change Orders shall include an identification or description of the Deliverable and the date that the Deliverable was provided to the State.

The State has no liability for payment for services under the terms of this Agreement until the Contractor is notified that the Agreement has been accepted by the applicable State Party, and if applicable, approved by OPM and/or by the Attorney General of the State.