

Exhibit 1

CONTRACT 12PSX0153

Between

THE STATE OF CONNECTICUT

Acting by its

DEPARTMENT OF ADMINISTRATIVE SERVICES

AND

Awarded Contractor

FOR
ENERGY SAVINGS PERFORMANCE CONTRACTING SERVICES

_____, 201
Contract Award Date

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This Contract (the “Contract”) is made by and between, _____
(the “Contractor” or “QESP”) with a principal place of business at _____
_____, acting by _____, its _____
and the State of Connecticut, Department of Administrative Services (“DAS”), with a principal
place of business at 165 Capitol Ave, Hartford, Connecticut 06106-1659, acting by Martin W.
Anderson, Ph.D., its Deputy Commissioner, in accordance with Sections 4a-2 and 4a-51 of the
Connecticut General Statutes.

The Contractor and the State agree as follows:

1. Definitions. Unless otherwise indicated, the following terms shall have the following corresponding definitions for this Contract and all exhibits, unless otherwise noted in the exhibits, in which case the definition in the exhibit controls:
 - (a) Acts: Those acts of commission and omission.
 - (b) Amend (in any part of speech, however conjugated): Any altering, by addition, deletion, modification or otherwise, of any part of this Contract, including extensions, or its exhibits or Final Exhibits.
 - (c) Claims: All actions, suits, claims, demands, investigations and proceedings of any kind, open, pending or threatened, whether mature, unmatured, contingent, known or unknown, at law or in equity, in any forum.
 - (d) Confidential Information: Any information about a client, including but not limited to first name and last name, or first initial and last name, in combination with any one or more of the following related to such client: (a) Social Security Number; (b) driver’s license number or State-issued identification card number; (c) date of birth; and (d) financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to a client’s financial account. Without limiting the foregoing, Confidential Information shall also include any information that the Department classifies as “confidential” or “restricted.” Confidential Information shall not include information that may be lawfully obtained from publicly available sources or from federal, state, or local government records which are lawfully made available to the general public.
 - (e) Confidential Information Breach: An instance where an unauthorized person or entity accesses Confidential Information in any manner, including but not limited to the following occurrences: (1) any Confidential Information that is not encrypted or protected is misplaced, lost, stolen or in any way compromised; (2) one or more third parties have had access to or taken control or possession of any Confidential Information that is not encrypted or protected without prior written authorization from the State; (3) the unauthorized acquisition of encrypted or protected Confidential Information together with the confidential process or key that is capable of compromising the integrity of the Confidential Information; or (4) if there is a substantial risk of identity theft or fraud to the client, the Contractor, the Department or State.

- (f) Contractor Parties: A Contractor's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Contractor is in privity of oral or written contract and the Contractor intends for such other person or entity to Perform under the Contract in any capacity.
- (g) Cost Effective: The savings resulting from the energy-savings measures outweigh the costs of the measures, including, but not limited to, any financing costs, provided the payback period for any financing provided pursuant to 2011 Conn. Pub. Acts 80, Section 23 ("Public Act 11-80") is less than the functional life of the proposed energy-savings measures and the payback period does not exceed fifteen years.
- (h) Day: All calendar days other than Saturdays, Sundays and days designated as national or State of Connecticut holidays upon which banks in Connecticut are closed.
- (i) Department: Any and all State Agencies and Municipalities who participate in the ESPCP.
- (j) Energy-Savings Measure (ESM): Any improvement to facilities or other energy-consuming systems designed to reduce energy or water consumption and operating costs and increase the operating efficiency of facilities or systems for their appointed functions. "Energy-savings measure" includes, but is not limited to, one or more of the following:
1. Replacement or modification of lighting and electrical components, fixtures or systems, including daylighting systems, improvements in street lighting efficiency or computer power management software;
 2. Class I renewable energy or solar thermal systems;
 3. Cogeneration systems that produce steam or forms of energy, such as heat or electricity, for use primarily within a building or complex of buildings;
 4. Automated or computerized energy control systems;
 5. Heating, ventilation or air conditioning system modifications or replacements;
 6. Indoor air quality improvements that conform to applicable building code requirements;
 7. Water-conserving fixtures, appliances and equipment or the substitution of non-water-using fixtures, appliances and equipment, or water-conserving landscape irrigation equipment; and
 8. Changes in operation and maintenance practices;
 9. Replacement or modification of windows or doors; and
 10. Installation or addition of insulation.
- (k) Energy-Savings Performance Contract (ESPC): A contract between the State Agency or Municipality and a qualified energy service provider for evaluation, recommendation and implementation of one or more energy-savings measures. An energy-savings performance contract shall be a guaranteed energy-savings performance contract, which shall include, but not be limited to, (A) the design and installation of equipment and, if applicable, operation and maintenance of any of the measures implemented; and (B) guaranteed annual savings that meet or exceed the total annual contract payments made by the State Agency or Municipality for such contract, including financing charges or capital costs to be incurred by or on behalf of the State Agency or Municipality over the life of the contract.

- (l) Equipment: Goods which the QESP is to install in accordance with and as set forth in Schedule R, Equipment to be Installed by QESP, to Exhibit A to this Contract, Energy-Savings Performance Project Statement of Work (“SOW”).
- (m) Final Exhibits: The Exhibits attached to this Contract as of its effective date in blank or template form and which the Department and Contractor subsequently negotiate, fill in, finalize, sign and date in order to implement a project under this Contract in accordance with the ESPCP.
- (n) Force Majeure: Events that materially affect the cost of the Work or the time schedule within which to Perform and are outside the control of the party asserting that such an event has occurred, including, but not limited to, labor troubles unrelated to the Contractor, failure of or inadequate permanent power, unavoidable casualties, fire not caused by the Contractor, extraordinary weather conditions, disasters, riots, acts of God, insurrection or war.
- (o) Goods: All things which are movable, including, but not limited to, supplies, materials, equipment, hardware, software, specially manufactured things, a component incorporated into another thing and things that are attached to real property and that may be severed from the real property without material harm to the things, together and with any and all additions, modifications, attachments, replacements and parts.
- (p) Investment-Grade Energy Audit or (IGEA): A study by the QESP selected for a particular energy-savings performance contract project which includes detailed descriptions of the improvements recommended for the project, the costs of the improvements, and the utility and operations and maintenance cost savings projected to result from the recommended improvements.
- (q) Municipality: A town, consolidated town and city, consolidated town and borough, city or borough, including a local board of education.
- (r) Operation and Maintenance Cost Savings: A measurable decrease in operation and maintenance costs and future replacement expenditures that is a direct result of the implementation of one or more utility cost savings measures. Such savings shall be calculated in comparison with an established baseline of operation and maintenance costs.
- (s) Perform (in any part of speech, however conjugated): All Acts and things of the Contractor and Contractor Parties necessary or appropriate to execute, fulfill or accomplish fully this Contract and the Final Exhibits according to their terms.
- (t) Qualified Energy Service Provider (QESP): A corporation approved by the Department of Administrative Services with a record of successful energy performance contract projects experienced in the design, implementation and installation of energy efficiency and facility improvement measures, the technical capabilities to ensure such measures generate energy and operational cost savings, and the ability to secure the financing necessary to support energy savings guarantees.
- (u) Records: All working papers and such other information and materials as may have been accumulated by the Contractor in performing the Contract, including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries and correspondence, kept or stored in any form.

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- (v) Services: The performance of labor or work, as specified in the applicable Final Exhibits.
- (w) Solicitation: The State request inviting proposals for Work resulting in this Contract. This Contract shall be governed by the statutes, regulations and procedures of the State of Connecticut, Department of Administrative Services.
- (x) Standardized Energy-Savings Performance Contract Process (ESPCP): Standard procedures for entering into an energy-savings performance contract and standard energy-savings performance contract documents established by the Department of Energy and Environmental Protection (DEEP).
- (y) State Agency: has the same meaning as provided in Conn. Gen. Stat. Sec. 1-79 and means any office, department, board, council, commission, institution, constituent unit of the state system of higher education, vocational-technical school or other agency in the executive, legislative or judicial branch of state government.
- (z) Termination: An end to the Contract or SOW, as applicable, prior to the end of their respective terms whether effected pursuant to a right which the Contract or SOW creates or for a breach.
- (aa) Title: all ownership, title, licenses, rights and interest, including, but not limited to, perpetual use, of and to the Work or Goods, as applicable.
- (bb) Utility Cost Savings: Any utility expenses eliminated or avoided on a long-term basis as a result of equipment installed or modified, or services performed by a qualified energy service provider; "utility cost savings" does not include merely shifting personnel costs or similar short-term cost savings.
- (cc) Work: Equipment or Services or both to be Performed in accordance with the Final Exhibits.

2. Term of Contract; Contract Extension.

- (a) Subject to the remainder of this provision, and unless Terminated in accordance with any other provision of this Contract, the Contract shall have a term of four years from its effective date, which is the date that the Connecticut Attorney General's Office approves it, which Termination is only for purposes of contracting for any new or additional work. **From and after this or any other Termination date, a Department shall not issue any new or additional requests (taking the form of a purchase order, or an RFP seeking proposals for a Feasibility Analysis or any other document) to the Contractor seeking work beyond that already set forth in any applicable Final Exhibit. If the Contractor nevertheless receives such a request from a Department, the Contractor shall decline to comply with the request, since this Contract will have Terminated for purposes of any new or additional work. The Contract, however, shall continue in full force and effect, but only for the duration of the term, and for and to the extent of the work set forth, in the applicable Final Exhibits.**
- (b) The parties may extend this Contract, prior to Termination one or more times for a combined total period of extensions that do not exceed the complete length of the original term, and only in accordance with the Contract Amendments Section in this Contract.

3. Rejected Items; Abandonment.

- (a) The Contractor may deliver, cause to be delivered, or, in any other way, bring or cause to be brought, to any Department premises or other destination, Equipment, as samples or otherwise, and other supplies, materials, equipment or other tangible personal property. The Department may, by written notice and in accordance with the terms and conditions of the Contract, direct the Contractor to remove any or all such Equipment (the "Rejected Equipment") and any or all other supplies, materials, equipment or other tangible personal property (collectively, the "Contractor Property") from and out of Department premises and any other location which the Department manages, leases or controls. The Contractor shall remove the Rejected Equipment and the Contractor Property in accordance with the terms and conditions of the written notice. Failure to remove the Rejected Equipment or the Contractor Property in accordance with the terms and conditions of the written notice shall mean, for itself and all Contractor Parties that:
- (1) they have voluntarily, intentionally, unconditionally, unequivocally and absolutely abandoned and left unclaimed the Rejected Equipment and Contractor Property and relinquished all Title to the Rejected Equipment and Contractor Property with the specific and express intent of (A) terminating all of their Title to the Rejected Equipment and Contractor Property, (B) vesting Title to the Rejected Equipment and Contractor Property in the Department and (C) not ever reclaiming Title or any future rights of any type in and to the Rejected Equipment and Contractor Property;
 - (2) there is no ignorance, inadvertence or unawareness to mitigate against the intent to abandon the Rejected Equipment or Contractor Property;
 - (3) they vest authority, without any further act required on their part or the Department's part, in the Department to use or dispose of the Rejected Equipment and Contractor Property, in the Department's sole discretion, as if the Rejected Equipment and Contractor Property were the Department's own property and in accordance with law, without incurring any liability or obligation to the Contractor or any other party;
 - (4) if the Department incurs any costs or expenses in connection with disposing of the Rejected Equipment and Contractor Property, including, but not limited to, advertising, moving or storing the Rejected Equipment and Contractor Property, auction and other activities, the Department shall invoice the Contractor for all such cost and expenses and the Contractor shall reimburse the Department no later than thirty (30) days after the date of invoice; and
 - (5) they do remise, release and forever discharge the Department and its employees, departments, commissions, boards, bureaus, agencies, instrumentalities or political subdivisions and their respective successors, heirs, executors and assigns (collectively, the "Department and Its Agents") of and from all Claims which they and their respective successors or assigns, jointly or severally, ever had, now have or will have against the Department and Its Agents arising from the use or disposition of the Rejected Equipment and Contractor Property.
- (b) The Contractor shall secure from each Contractor Party, as appropriate, such document or instrument as necessary or appropriate as will vest in the Contractor plenary authority to bind the Contractor Parties to the full extent necessary or appropriate to give full effect to all of the terms and conditions of this Section. The Contractor shall provide, no later than fifteen (15) days after receiving a request from the Department, such information as the Department

may require to evidence, in the Department's sole determination, compliance with this Section.

4. Compliance with ESPCP

The QESP shall comply with all applicable terms and conditions of the ESPCP. DEEP and DAS shall perform an annual review of the QESP and monitor its compliance with the ESPCP.

5. Cost-Effective Feasibility Analysis.

Department shall contact a number of QESPs forwarding to them a technical facility profile, which will detail information on the Department's buildings and energy and water use, and requesting each QESP to submit a letter of interest ("LOI") if the QESP is interested in receiving an RFP for a particular project. The Department shall provide to the QESPs a form of LOI, which indicates QESP's interest in submitting a Cost-Effective Feasibility Analysis ("Feasibility Analysis"). The requirements for the Feasibility Analysis are set forth in a certain request for proposals ("RFP"), attached as Exhibit B. Based upon the LOIs received, the Department will select at least three QESPs to receive the RFP and to have the opportunity for a brief walk-through of facilities on the potential Project Site(s). Not all QESPs will receive the RFP.

6. IGEA Process.

Pursuant to Public Act 11-80, the Feasibility Analysis, which the QESP will prepare as part of its proposal in response to the RFP, will serve as the selection document for purposes of selecting a QESP to conduct an IGEA and draft an IGEA Report. The QESP will conduct the IGEA and draft the IGEA Report and Project Development Proposal in accordance with Exhibit C.

7. Energy-Savings Performance Project Statement of Work.

The Department and QESP shall use the IGEA Report as the basis for negotiating the SOW, the form of which is attached as Exhibit A. Exhibit A shall become a Final Exhibit A once the parties negotiate, finalize, execute and date it.

8. Order and Delivery.

The Contract shall bind the Contractor to furnish and deliver the Work in accordance with all applicable Final Exhibits.

9. Contract Amendments. No amendment to or modification or other alteration of the Contract, including extensions, shall be valid or binding upon the parties unless made in writing, signed by the parties and, if applicable, approved by the Connecticut Attorney General.

10. Assignments.

- (a) The Contractor shall not assign any of its rights or obligations under the Contract, voluntarily or otherwise, in any manner without the prior written consent of DAS. DAS may void any purported assignment in violation of this Assignments Section and declare the
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Contractor in Material Breach. Any Termination by DAS for a Material Breach is without prejudice to DAS's or the Department's rights or possible Claims.

- (b) The Final Exhibit A may include provisions concerning assignments and purported assignments applicable to the Final Exhibit A, in whole or in part, but if, and only if, those provisions are limited to supplementing this Assignments Section and do not modify or abrogate anything in this Assignments Section. Those assignment provisions in the Final Exhibit A shall be consistent with this Assignments Section; if they are not, then this Assignments Section shall govern.

11. Termination.

- (a) Notwithstanding any provisions in this Contract, DAS, through a duly authorized employee, may Terminate the Contract whenever DAS makes a written determination that such Termination is in the best interests of the State. DAS shall notify the Contractor in writing of Termination pursuant to this Section, which notice shall specify the effective date of Termination and the extent to which the Contractor must complete its Performance prior to such date.
- (b) Notwithstanding any provisions in this Contract, DAS, through a duly authorized employee, may Terminate the Contract for a Material Breach, but only after making a written determination that the Contractor is in Material Breach under the Material Breach Section of this Contract.
- (c) Notwithstanding any provisions in this Contract, DAS, through a duly authorized employee, may Terminate the Contract for a breach other than a Material Breach, but only after making a written determination that the Contractor is in breach of Contract and has failed to cure the breach in accordance with the Other Breaches Section of this Contract.
- (d) DAS 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 DAS for purposes of correspondence, or by hand delivery. Upon receiving the notice from DAS, the Contractor shall immediately discontinue all services affected in accordance with the notice, undertake all commercially reasonable efforts to mitigate any losses or damages, and deliver to the appropriate Department all Records. The Records are deemed to be the property of the Department and the Contractor shall deliver them to the Department no later than thirty (30) days after the Termination of the Contract or fifteen (15) days after the Contractor receives a written request from DAS for the Records. The Contractor shall deliver those Records that exist in electronic, magnetic or other intangible form in a non-proprietary format, such as, but not limited to, ASCII or .TXT.
- (e) Upon receipt of a written notice of Termination from DAS, the Contractor shall cease operations as DAS directs in the notice, and take all actions that are necessary or appropriate, or that DAS may reasonably direct, for the protection, and preservation of the Equipment and any other property. Except for any work which DAS directs the Contractor to Perform in the notice prior to the effective date of Termination, and except as otherwise provided in the notice, the Contractor shall terminate or conclude all existing subcontracts and purchase orders and shall not enter into any further subcontracts, purchase orders or commitments.
- (f) Department shall, within forty-five (45) days of the effective date of Termination, and if appropriate in accordance with Exhibit D, Cost and Pricing, reimburse the Contractor for its Performance to the extent rendered and accepted by the Department and that is appropriate in accordance with the applicable Final Exhibits. However, the Contractor is not entitled to
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receive and the Department is not obligated to tender to the Contractor any payments for anticipated or lost profits. Upon request by the Department, the Contractor shall assign to the Department, or any replacement contractor which the Department designates, all subcontracts, purchase orders and other commitments, deliver to the Department all Records and other information pertaining to its Performance, and remove from Department premises, whether leased or owned, all of Contractor's property, equipment, waste material and rubbish related to its Performance, all as the Department may request.

- (g) For breach or violation of any of the provisions in the Representations and Warranties Section, DAS may Terminate the Contract in accordance with its terms and revoke any consents to assignments given as if the assignments had never been requested or consented to, without liability to the Contractor or Contractor Parties or any third party.
- (h) Upon Termination of the Contract, all rights and obligations shall be null and void, so that no party shall have any further rights or obligations to any other party, except with respect to the sections which survive Termination. All representations, warranties, agreements and rights of the parties under the Contract shall survive such Termination to the extent not otherwise limited in the Contract and without each one of them having to be specifically mentioned in the Contract.
- (i) Termination of the Contract pursuant to this Section shall not be deemed to be a breach of contract by DAS.

12. Events of Material Breach; Right to Cure. The occurrence of any one or more of the following events shall constitute a material breach ("Material Breach") of this Contract; this section shall apply to Contractor Parties, such that if a Contractor Party commits a Material Breach then the Contractor shall be responsible in all respects for that Material Breach and its consequences under this Contract as if the Contractor itself had committed the Material Breach:

- (a) The failure of Contractor or Department to comply, respectively, with any material covenant or condition of this Contract, which failure is not cured within fifteen (15) days after receipt of notice of such failure from the non-failing party; provided that if such failure is one that cannot be cured within fifteen (15) days with the exercise of reasonable diligence, such failure shall not be deemed to be a Material Breach if the failing party is diligently proceeding to cure such failure; provided further that such extended cure period shall not exceed an additional thirty (30) days beyond the fifteen (15) days without the prior written consent of the non-failing party, which consent shall not be unreasonably withheld.
- (b) The failure of Contractor to Perform materially, including, but not limited to, complying fully with all terms and conditions of the ESPCP and Performing in accordance with the applicable Final Exhibits, which failure is not cured within fifteen (15) days after receipt of notice of such failure from the Department; provided that if such failure is one that cannot be cured within fifteen (15) days with the exercise of reasonable diligence, such failure shall not be deemed to be a Material Breach if the Contractor is diligently proceeding to cure such failure; provided further that such extended cure period shall not exceed an additional thirty (30) days beyond the fifteen (15) days without the prior written consent of the Department, which consent shall not be unreasonably withheld.
- (c) The appointment of any receiver for the Contractor, or the execution of any other process or any action by a court of competent jurisdiction against the Contractor which is not vacated,

dismissed or set aside or for which the Contractor fails to take steps and diligently prosecute, toward the vacation, dismissal or set aside, within a period of thirty (30) days from such appointment or execution and which materially interferes with the Contractor's ability to Perform under this Contract.

- (d) A writ of attachment or execution is levied on any part of the Equipment, and is attributable to the Contractor, and is not vacated, dismissed or set aside, or for which the Contractor fails to take steps and diligently prosecute, toward the vacation, dismissal or set aside, within thirty (30) days from such levy.
- (e) The filing of any vendor's, mechanic's, laborer's, materialman's or other similar lien or encumbrance (collectively, "Liens") based upon furnishing of Work, which the QESP does not discharge within one hundred twenty (120) calendar days after it receives notice of the Liens.
- (f) Any representation or warranty of the Contractor or Department that is false or misleading (collectively, "Falsehood") in any material respect and which Falsehood is not cured within fifteen (15) days of receipt of notice of such Falsehood from the other party; provided that, if such Falsehood fails to be cured within fifteen (15) days with the exercise of reasonable diligence, such failure shall not be deemed to be a Material Breach if the party who made the representation or warranty is diligently proceeding to cure such Falsehood; provided further that such extended cure period shall not exceed an additional thirty (30) days beyond the fifteen (15) days without the prior written consent of the other party, which consent shall not be unreasonably withheld.
- (g) The Contractor abandons Performance, or, in the reasonable judgment of the Department, fails to provide sufficient materials or qualified workers to adequately prosecute the work in accordance with the applicable Final Exhibits.
- (h) Any proceeding is instituted against the Contractor seeking to adjudicate it as bankrupt or insolvent, and the Contractor is not appointed debtor in possession by the court.
- (i) (1) the Contractor makes a general assignment for the benefit of creditors, (2) a receiver is appointed on account of the insolvency of the Contractor, or (3) the Contractor files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up or composition or reorganization of debts and, in the case of any proceeding in referred to in this subsection, such proceeding is not dismissed, or as to which the Contractor fails to take steps and diligently prosecute toward a dismissal, within sixty (60) days after such filing.
- (j) There is a material adverse change in the financial condition or operations or the business of the Contractor that substantially affects its ability to Perform in accordance with this Contract.
- (k) An assignment or purported assignment, in whole or in part, of the Contract or any Final Exhibit, including specifically Final Exhibit A, without the prior written approval of DAS or

the Department, as appropriate.

(l) Any other event or condition which Final Exhibit A identifies as a Material Breach.

13. Other Breaches; Right to Cure; Exercise of Remedies. This Section governs all breaches except Material Breaches. If either party breaches the Contract in any respect, the non-breaching party shall provide written notice of such breach to the breaching party and afford the breaching party an opportunity to cure the breach within ten (10) days from the date that the breaching party receives such notice. Any other time provided for in the notice shall trump such ten (10) days. Such right to cure period shall be extended if the non-breaching party is satisfied that the breaching party is making a good faith effort to cure but the nature of the breach is such that it cannot be cured within the right to cure period. If a breach remains uncured after the expiration of a right to cure period, including any allowed extensions, then the following remedies are available to the parties:

(a) if the QESP breaches, then the Department may exercise and any all remedies at law or equity, including the filing of any Claim;

(b) if a Municipality breaches, then the QESP may exercise and any all remedies at law or equity, including the filing of any Claim, subject, however, to the Municipality's governmental immunity privilege, as applicable; and

(c) if a State Agency breaches, then the sole and exclusive remedy for the QESP shall be in accordance with Chapter 53 of the Connecticut General Statutes, such that the QESP shall not initiate legal proceedings in any State or federal court in addition to, or in lieu of, said Chapter 53 proceedings.

14. Notice of Breach. Any notice of breach under either the Material Breach or Other Breaches provisions may include an effective Contract Termination date if the breach is not cured by the stated date and, unless otherwise modified by the non-breaching party in writing prior to the Termination date, no further action shall be required of any party to effect the Termination as of the stated date. If the notice does not set forth an effective Contract Termination date, then the non-breaching party may Terminate the Contract by giving the breaching party no less than twenty four (24) hours' prior written notice.

15. Withholding of Payment. This Section shall not be interpreted to be a limitation on or adversely affect the rights of the Department in "Events of Material Breach; Right to Cure" or the "Other Breaches; Right to Cure; Exercise of Remedies" Sections of this Contract. If QESP is in Material Breach or Other Breach of this Contract, then, the Department may withhold payment in whole or in part that is due or will become due under any of the Final Exhibits pending resolution of the Material Breach or Other Breach issue. However, the Department may do so only provided, that, the Department notifies the Contractor in writing prior to the date that the payment would have been due and provided further that withholding payment does not create a default or breach under the documents comprising Schedule I of Exhibit A.

16. Waivers.

(a) No waiver of any breach of the Contract shall be interpreted or deemed to be a waiver of any other or subsequent breach.

(b) A party's failure to insist on strict performance of any provision of the Contract shall only be deemed to be a waiver of rights and remedies concerning that specific instance of

Performance and shall not be deemed to be a waiver of any subsequent rights, remedies or breach.

17. Remedies. All remedies afforded in the Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided in the Contract or at law or in equity.

18. Purchase Orders.

- (a) The Contract itself is not an authorization for the Contractor to begin Performance in any way. The Contractor may begin Performance only in accordance with the applicable Final Exhibits and only after it has received a duly issued purchase order against the Contract for Performance in accordance with the applicable Final Exhibits.
- (b) The Department shall issue a purchase order against the Contract, and only in accordance with an applicable Final Exhibit, directly to the Contractor and to no other party. The Contractor may not commence Performance unless the purchase order is issued directly to the Contractor and to no other party.
- (c) For a State Agency, purchase orders shall be in written or electronic form, bear the Contract number and comply with all other applicable State requirements, particularly the State Agency's requirements concerning procurement. Only those purchase orders issued in compliance with such requirements shall be deemed to be "duly issued."
- (d) A Contractor making delivery without a duly issued purchase order in accordance with this Section does so at the Contractor's own risk.
- (e) The Department may, in its sole discretion, deliver to the Contractor any or all duly issued purchase orders via electronic means only, such that the Department shall not have any additional obligation to deliver to the Contractor a "hard copy" of the purchase order or a copy bearing any hand-written signature or other "original" marking.

19. Indemnification.

- (a) The Contractor shall indemnify, defend and hold harmless the Department and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with the Contract and all applicable Final Exhibits, including the negligent Acts of the Contractor or Contractor Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or the Contract. The Contractor shall use counsel reasonably acceptable to the Department in carrying out its obligations under this Section. The Contractor's obligations under this Section to indemnify, defend and hold harmless against Claims includes Claims concerning confidentiality of any part of or all of the Contractor's bid, proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the Performance.
- (b) The Contractor shall not be responsible for indemnifying or holding the Department harmless from any liability arising due to the negligence of the Department or any other person or entity acting under the direct control or supervision of the Department.
- (c) The Contractor shall reimburse the Department for any and all damages to the real or personal property of the Department caused by the Acts of the Contractor or any Contractor Parties. The Department shall give the Contractor reasonable notice of any such Claims.

- (d) The Contractor's duties under this Section shall remain fully in effect and binding in accordance with the terms and conditions of the Contract, without being lessened or compromised in any way, even where the Contractor is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims and/or where the Department is alleged or is found to have contributed to the Acts giving rise to the Claims.
- (e) The Contractor shall carry and maintain at all times during the term of the Contract, and during the time that any provisions survive the term of the Contract, sufficient general liability insurance to satisfy its obligations under this Contract. The Contractor shall name the Department as an additional insured on the policy and shall provide a copy of the policy to the Department prior to the effective date of the Contract. The Contractor shall not begin Performance until the delivery of the policy to the Department. The Department shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that the Department is contributorily negligent.
- (f) This Section shall survive the Termination of the Contract and shall not be limited by reason of any insurance coverage.
20. Forum and Choice of Law. The parties deem the Contract to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of the Contract to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the Department, 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.
21. Contractor Guaranties. Contractor shall:
- (a) Perform fully under the Contract;
 - (b) Guarantee the Work against defective material or workmanship and to repair any damage or marring occasioned in transit or, at the Department's option, replace them;
 - (c) Furnish adequate protection from damage for all work and to repair damage of any kind, for which its workers are responsible, to the premises, Equipment, the Contractor's work or that of Contractor Parties;
 - (d) With respect to the provision of Services, pay for all permits, licenses and fees and give all required or appropriate notices; and
 - (e) Adhere to all Contractual provisions ensuring the confidentiality of Records that the Contractor has access to and are exempt from disclosure under the State's Freedom of Information Act or other applicable law.
22. Implied Warranties. The implied warranty of fitness for a particular purpose and the warranty of merchantability are not disclaimed, excluded or modified for any of the Equipment.
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23. Equipment, Standards and Appurtenances. Any Equipment delivered must be standard new Equipment, latest model, except as otherwise specifically stated in the SOW.

Remanufactured, refurbished or reconditioned equipment may be accepted but only to the extent allowed under the SOW. Where the SOW does not specifically list or describe any part or nominal appurtenances of equipment for the Equipment, it shall be understood that the Contractor shall deliver such parts and appurtenances as are usually provided with the manufacturer's stock model.

24. Delivery.

(a) Delivery shall be made as ordered and in accordance with the provisions of the applicable Final Exhibits. Unless otherwise specified in the provisions of Final Exhibit A, delivery shall be to a loading dock or receiving platform. The Contractor or Contractor's shipping designee shall be responsible for removal of Equipment from the carrier and placement on the Department loading dock or receiving platform. The receiving personnel of the Department are not required to assist in this process. The decision of DAS as to reasonable compliance with delivery terms shall be final and binding. The burden of proof of proper receipt of the order shall rest with the Contractor.

(b) In order for the time of delivery to be extended, the Department must first approve a request for extension from the time specified in the Contract, such extension applying only to the particular item or shipment.

(c) Equipment shall be securely and properly packed for shipment, according to accepted standard commercial practice, without extra charge for packing cases, baling or sacks. The containers shall remain the property of the Department unless otherwise stated in QESP's proposal.

(d) All risk of loss and damage to the Equipment transfers to the Department upon Title vesting in the Department.

25. Equipment Inspection. The Department shall determine the manner and prescribe the inspection of all Equipment and the tests of all samples submitted to determine whether they comply with all of the specifications in the Contract. If any Equipment fail in any way to meet the specifications in the Contract, the Department may, in its sole discretion, either reject it and owe nothing or accept it and pay for it on an adjusted price basis, depending on the degree to which the Equipment meets the specifications. Any decision pertaining to any such failure or rejection shall be final and binding.

26. Setoff. In addition to all other remedies that DAS and the Department may have, the Department, in its sole discretion, may setoff (1) any costs or expenses that the Department incurs resulting from the Contractor's unexcused non-Performance under the Contract and under any other agreement or arrangement that the Contractor has with the Department, or with the State if the Department is a State Agency and (2) any other amounts that are due or may become due from the Department to the Contractor, against amounts otherwise due or that may become due to the Contractor under the Contract, or under any other agreement or arrangement that the Contractor has with the Department, or with the State if the Department is a State Agency. The Department's right of setoff shall not be deemed to be the Department's exclusive remedy for the Contractor's or Contractor Parties' breach of the Contract, all of which shall survive any setoffs by the Department.

27. Force Majeure. The Department and the Contractor shall not be excused from their obligation to Perform in accordance with the Contract except in the case of Force Majeure

events and as otherwise provided for in the Contract. In the case of any such exception, the nonperforming party shall give immediate written notice to the other, explaining the cause and probable duration of any such nonperformance.

28. Advertising. The Contractor shall not refer to any State Agency for advertising or promotional purposes, including, but not limited to, posting any material or data on the Internet, without DAS's prior written approval.
29. Americans With Disabilities Act. The Contractor shall be and remain in compliance with the Americans with Disabilities Act of 1990 ("ADA Act"), to the extent applicable, during the term of the Contract. DAS may Terminate the Contract if the Contractor fails to comply with the ADA Act.
30. Representations and Warranties. The Final Exhibit A may include additional representations and warranties that are in addition to, and do not modify or abrogate, the ones in this Representation and Warranties Section. The Contractor represents and warrants to DAS for itself and Contractor Parties, as appropriate, that:
- (a) if they are entities, they are duly and validly existing under the laws of their respective states of organization and authorized to conduct business in the State of Connecticut in the manner contemplated by the Contract. Further, as appropriate, they have taken all necessary action to authorize the execution, delivery and Performance and the Contract and have the power and authority to execute, deliver and Perform their obligations under the Contract;
 - (b) they will comply with all applicable State and Federal laws and municipal ordinances in satisfying their obligations to the Department under and pursuant to the Contract, including, but not limited to (1) Connecticut General Statutes Title 1, Chapter 10, concerning the State's Codes of Ethics and (2) Title 4a concerning State purchasing, including, but not limited to 22a-194a concerning the use of polystyrene foam;
 - (c) the execution, delivery and Performance of the Contract will not violate, be in conflict with, result in a breach of or constitute (with or without due notice and/or lapse of time) a default under any of the following, as applicable: (1) any provision of law; (2) any order of any court or the State; or (3) any indenture, agreement, document or other instrument to which it is a party or by which it may be bound;
 - (d) they are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into a contract with any governmental entity;
 - (e) as applicable, they have not, within the three years preceding the Contract, in any of their current or former jobs, been convicted of, or had a civil judgment rendered against them or against any person who would Perform under the Contract, 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, making false statements, or receiving stolen property;
 - (f) they are not presently indicted for or otherwise criminally or civilly charged by any governmental entity with commission of any of the offenses listed above;
 - (g) they have not within the three years preceding the Contract had one or more contracts with any governmental entity terminated;

- (h) they have not employed or retained any entity or person, other than a bona fide employee working solely for them, to solicit or secure the Contract and that they have not paid or agreed to pay any entity or person, other than a bona fide employee working solely for them, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of the Contract or any assignments made in accordance with the terms of the Contract;
- (i) to the best of their knowledge, there are no Claims involving the Contractor or Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract and any projects under the ESPCP;
- (j) they shall disclose, to the best of their knowledge, to DAS and the Department in writing any Claims involving them that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract and any projects under the ESPCP, no later than ten (10) Days after becoming aware or after they should have become aware of any such Claims. For purposes of the Contractor's obligation to disclose any Claims, the ten (10) Days in the Disclosure of Contractor Parties Litigation Section of this Contract shall run consecutively with the ten (10) Days provided for in this representation and warranty;
- (k) their participation in the Solicitation process is not a conflict of interest or a breach of ethics under the provisions of Title 1, Chapter 10 of the Connecticut General Statutes concerning the State's Code of Ethics;
- (l) the proposal in response to the Solicitation was not made in connection or concert with any other person, entity or proposer, including any affiliate (as the term "Affiliate" is defined in the Tangible Personal Property Section of this Contract) of the QESP, submitting a proposal for the same Work, and is in all respects fair and without collusion or fraud;
- (m) they are able to Perform under the Contract using their own resources;
- (n) the Contractor shall obtain in a written contract all of the representations and warranties in this Section from any Contractor Parties and to require that provision to be included in any contracts and purchase orders with Contractor Parties;
- (o) they have paid all applicable workers' compensation second injury fund assessments concerning all previous work done in Connecticut;
- (p) they have a record of compliance with Occupational Health and Safety Administration regulations without any unabated, willful or serious violations;
- (q) they owe no unemployment compensation contributions;
- (r) they are not delinquent in the payment of any taxes owed, or, that they have filed a sales tax security bond, and they have, if and as applicable, filed for motor carrier road tax stickers and have paid all outstanding road taxes;
- (s) all of their vehicles have current registrations and, unless such vehicles are permanently removed from service, they shall not allow any such registrations to lapse;
- (t) each Contractor Party has vested in the Contractor plenary authority to bind the Contractor Parties to the full extent necessary or appropriate to ensure full compliance with and Performance in accordance with all of the terms and conditions of the Contract and that all

appropriate parties shall also provide to DAS, no later than fifteen (15) days after receiving a request from DAS, such information as DAS may require to evidence, in DAS's sole determination, compliance with this Section;

- (u) except to the extent set forth in Final Exhibit A, all Title shall pass to the Department upon complete installation, testing and acceptance of the Work and payment by the Department;
- (v) if either party Terminates the Contract, for any reason, they shall relinquish to the Department all Title to the Equipment delivered, accepted and paid for (except to the extent any invoiced amount is disputed) by the Department;
- (w) with regard to third party products provided with the Equipment, they shall transfer all licenses which they are permitted to transfer in accordance with the applicable third party license;
- (x) they shall not copyright, register, distribute or claim any rights in or to the Equipment after the effective date of the Contract without Department's prior written consent;
- (y) they either own or have the authority to use all Title of and to the Equipment, and that such Title is not the subject of any encumbrances, liens or claims of ownership by any third party;
- (z) the Equipment does not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;
- (aa) the Department's use of any Equipment shall not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;
- (bb) if they procure any Equipment, they shall sub-license such Equipment and that the Department shall be afforded the full benefits of any manufacturer or subcontractor licenses for the use of the Equipment;
- (cc) they shall assign or otherwise transfer to the Department, or afford the Department the full benefits of any manufacturer's warranty for the Equipment, to the extent that such warranties are assignable or otherwise transferable to the Department; and
- (dd) at all times during the term of the Contract and throughout QESPS's subsequent involvement in the ESPCP, including especially the term of the SOW, QESP shall always maintain employed staff who is licensed by the State of Connecticut as Professional Engineers in mechanical and electrical engineering.

31. Representations and Warranties Concerning Motor Vehicles. If in the course of Performance or in any other way related to the Contract the Contractor at any time uses or operates "motor vehicles," as that term is defined by Conn. Gen. Stat. §14-1(53) (including, but not limited to such services as snow plowing, sanding, hauling or delivery of materials, freight or merchandise, or the transportation of passengers), the Contractor, represents and warrants for itself and the Contractor Parties, as appropriate, that:

- (a) It is the owner of record or lessee of record of each such motor vehicle used in the Performance of the Contract, and each such motor vehicle is duly registered with the Connecticut Department of Motor Vehicles ("ConnDMV") in accordance with the provisions of Chapter 246 of the Connecticut General Statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV, for any reason or cause. If such motor vehicle is not registered with ConnDMV, then it shall be duly registered with another state or commonwealth in accordance with such other state's or

commonwealth's applicable statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by such other state or commonwealth for any reason or cause.

- (b) Each such motor vehicle shall be fully insured in accordance with the provisions of Sections 14-12b, 14-112 and 38a-371 of the Connecticut General Statutes, as amended, in the amounts required by the said sections or in such higher amounts as have been specified by ConnDMV as a condition for the award of the Contract, or in accordance with all substantially similar provisions imposed by the law of the jurisdiction where the motor vehicle is registered.
- (c) Each Contractor Party who uses or operates a motor vehicle at any time in the Performance of the Contract shall have and maintain a motor vehicle operator's license or commercial driver's license of the appropriate class for the motor vehicle being used or operated. Each such license shall bear the endorsement or endorsements required by the provisions of Section 14-36a of the Connecticut General Statutes, as amended, to operate such motor vehicle, or required by substantially similar provisions imposed by the law of another jurisdiction in which the operator is licensed to operate such motor vehicle. The license shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV or such other jurisdiction for any reason or cause.
- (d) Each motor vehicle shall be in full compliance with all of the terms and conditions of all provisions of the Connecticut General Statutes and regulations, or those of the jurisdiction where the motor vehicle is registered, pertaining to the mechanical condition, equipment, marking and operation of motor vehicles of such type, class and weight, including, but not limited to, requirements for motor vehicles having a gross vehicle weight rating of 18,000 pounds or more or motor vehicles otherwise described by the provisions of Conn. Gen. Stat. § 14-163c(a) and all applicable provisions of the Federal Motor Carrier Safety Regulations, as set forth in Title 49, Parts 382 to 399, inclusive, of the Code of Federal Regulations.
32. Disclosure of Contractor Parties Litigation. The Contractor shall require that all Contractor Parties, as appropriate, disclose to the Contractor, to the best of their knowledge, any Claims involving the Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract, no later than ten (10) Days after becoming aware or after they should have become aware of any such Claims. Disclosure shall be in writing.
33. Entirety of Contract. The Contract is the entire agreement between the parties with respect to its subject matter, and supersedes all prior agreements, proposals, offers, counteroffers and understandings of the parties, whether written or oral. The Contract has been entered into after full investigation, neither party relying upon any statement or representation by the other unless such statement or representation is specifically embodied in the Contract.
34. Exhibits. All exhibits referred to in and attached to this Contract are incorporated into this Contract by such reference. Some of these exhibits attached to this Contract are blank forms or templates. In addition, the Final Exhibits are also deemed to be a part of this Contract as of the effective dates indicated in the Final Exhibits. Since DAS and the Contractor are the sole signatories to this Contract, only they, and not a Department, shall be a party to an Amendment to this Contract. Accordingly, since Department and Contractor will negotiate and complete the Final Exhibits sometime after the effective date of this Contract, notwithstanding this or any other provision in this Contract or the Final Exhibits, the content of the Final Exhibits shall be restricted to memorializing only that specific Performance which is necessary or appropriate in order to carry out the particular Work that Department and Contractor include in the Final Exhibits. Final Exhibits, which may include attachments as the parties deem to
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be necessary or appropriate, shall not include any term that Amends any part of this Contract. Other than complying with the procedures set forth in the Contract Amendments Section of this Contract, any intentional Acts to Amend this Contract, or any unintentional Acts which may be interpreted as an Amendment (like engaging for any period in a course of conduct that differs from that which this Contract provides), shall be void *ab initio*.

35. **Executive Orders.** This Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of the Contract as if they had been fully set forth in it. The Contract may also be subject to Executive Order No. 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, in accordance with their respective terms and conditions. If Executive Orders 7C and 14 are applicable, they are deemed to be incorporated into and are made a part of the Contract as if they had been fully set forth in it. At the Contractor's request, the Department or DAS shall provide a copy of these orders to the Contractor.

36. **Non-discrimination.** References in this section to "contract" shall mean this Contract and references to "contractor" shall mean the Contractor.

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

(1) "Commission" means the Commission on Human Rights and Opportunities;

(2) "Contract" and "contract" include any extension or modification of the Contract or contract;

(3) "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor;

(4) "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.

(5) "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;

(6) "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;

(7) "marital status" means being single, married as recognized by the state of Connecticut, widowed, separated or divorced;

(8) "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;

(9) "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

(10) "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

For purposes of this Section, the terms "Contract" and "contract" do not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, (2) a quasi-public agency, as defined in Conn. Gen. Stat. Section 1-120, (3) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in Conn. Gen. Stat. Section 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.

37. Tangible Personal Property.

(a) The Contractor on its behalf and on behalf of its Affiliates, as defined below, shall comply with the provisions of Conn. Gen. Stat. §12-411b, as follows:

(1) For the term of the Contract and any projects as set forth in Final Exhibit A, the Contractor and its Affiliates shall collect and remit to the State of Connecticut, Department of Revenue Services, any Connecticut use tax due under the provisions of Chapter 219 of the Connecticut General Statutes for items of tangible personal property sold by the Contractor or by any of its

Affiliates in the same manner as if the Contractor and such Affiliates were engaged in the business of selling tangible personal property for use in Connecticut and had sufficient nexus under the provisions of Chapter 219 to be required to collect Connecticut use tax;

- (2) A customer's payment of a use tax to the Contractor or its Affiliates relieves the customer of liability for the use tax;
 - (3) The Contractor and its Affiliates shall remit all use taxes they collect from customers on or before the due date specified in the Contract, which may not be later than the last day of the month next succeeding the end of a calendar quarter or other tax collection period during which the tax was collected;
 - (4) The Contractor and its Affiliates are not liable for use tax billed by them but not paid to them by a customer; and
 - (5) Any Contractor or Affiliate who fails to remit use taxes collected on behalf of its customers by the due date specified in the Contract shall be subject to the interest and penalties provided for persons required to collect sales tax under chapter 219 of the general statutes.
- (b) For purposes of this Section of the Contract, the word "Affiliate" means any person, as defined in section 12-1 of the general statutes, that controls, is controlled by, or is under common control with another person. A person controls another person if the person owns, directly or indirectly, more than ten per cent of the voting securities of the other person. The word "voting security" means a security that confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business, or that is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. "Voting security" includes a general partnership interest.
- (c) The Contractor represents and warrants that each of its Affiliates has vested in the Contractor plenary authority to so bind the Affiliates in any agreement with the State of Connecticut. The Contractor on its own behalf and on behalf of its Affiliates shall also provide, no later than 30 days after receiving a request by the State's contracting authority, such information as the State may require to ensure, in the State's sole determination, compliance with the provisions of Chapter 219 of the Connecticut General Statutes, including, but not limited to, §12-411b.
38. **Whistleblowing.** This Contract may be subject to the provisions of Section 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of the Contractor takes or threatens to take any personnel action against any employee of the Contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of such statute, the Contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of this Contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with subsection (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.

39. **Notice.** All notices, demands, requests, consents, approvals or other communications required or permitted to be given or which are given with respect to this Contract (for the purpose of this Section collectively called "Notices") shall be deemed to have been effected at such time as the notice is placed in the U.S. mail, first class and postage pre-paid, return receipt requested or placed with a recognized, overnight express delivery service that provides for a return receipt. All such Notices shall be in writing and shall be addressed as follows:

If to DAS:

State of Connecticut, Department of Administrative Services
165 Capitol Ave, 5th Floor South
Hartford, CT 06106-1659
Attention: Paul Greco

If to the Contractor:

COMPANY NAME: _____

NAME: _____

ADDRESS Line 1: _____

ADDRESS Line 2: _____

City: _____ State: _____ Zip: _____

Attention: Company: _____

Signatory Name: _____ Title: _____

State of Connecticut Department of Administrative Services
165 Capitol Ave, 5th Floor South
Hartford, CT 06106-1659
Attention: Paul Greco

40. **Insurance.** Before commencing Performance, the Contractor shall obtain and maintain at its own cost and expense for the duration of the Contract and any projects under the ESPCP, the following insurance as described in (a) through (h) below. Contractor shall assume any and all deductibles in the described insurance policies. The Contractor's insurers shall have no right of recovery or subrogation against the State of Connecticut or a Department and the described Contractor's insurance shall be primary coverage. Any failure to comply with the claim reporting provisions of the policy shall not affect coverage provided to the Department.

(a) Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. Coverage shall include, Premises and Operations, Independent Contractors, Products and Completed Operations, Contractual Liability and Broad Form Property Damage coverage. If a general aggregate is used, the general aggregate limit shall apply separately to the project or the general aggregate limit shall be twice the occurrence limit.

(b) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury. Coverage extends to owned, hired and non-owned automobiles. If the vendor/contractor

does not own an automobile, but one is used in the execution of the contract, then only hired and non-owned coverage is required. If a vehicle is not used in the execution of the contract then automobile coverage is not required.

- (c) **Workers' Compensation and Employers Liability:** Statutory coverage in compliance with the Compensation laws of the State of Connecticut. Coverage shall include Employer's Liability with minimum limits of \$100,000 each accident, \$500,000 Disease – Policy limit, \$100,000 each employee.
 - (d) **Umbrella Liability:** Excess/umbrella liability insurance may be included to meet minimum requirements. Umbrella coverage must indicate the existing underlying insurance coverage.
 - (e) **Claims Made:** Not acceptable with the exception of Professional Liability when specified.
41. **Headings.** The headings given to the sections in the Contract are inserted only for convenience and are in no way to be construed as part of the Contract or as a limitation of the scope of the particular section to which the heading refers.
42. **Number and Gender.** Whenever the context so requires, the plural or singular shall include each other and the use of any gender shall include all genders.
43. **Parties.** To the extent that any Contractor Party is to participate or Perform in any way any projects under the ESPCP, any reference in the Solicitation, the Contract or any other document under the ESPCP to "Contractor" shall also be deemed to include "Contractor Parties" as if such reference had originally specifically included "Contractor Parties" since it is the parties' intent for the term "Contractor Parties" to be vested with the same respective rights and obligations as the term "Contractor."
44. **Contractor Changes.** The Contractor shall notify DAS and the Department in writing no later than ten (10) Days from the effective date of any change in:
- a) its certificate of incorporation or other organizational document;
 - b) more than a controlling interest in the ownership of the Contractor; or
 - c) the individual(s) in charge of the Performance (only the Department, not DAS).

This change shall not relieve the Contractor of any responsibility for the accuracy and completeness of the Performance. DAS or the Department, after receiving written notice by the Contractor of any such change, may require such agreements, releases and other instruments evidencing, to their satisfaction, that any individuals retiring or otherwise separating from the Contractor have been compensated in full or that provision has been made for compensation in full, for all work performed under terms of the Contract. The Contractor shall deliver such documents to DAS or the Department in accordance with the terms of DAS's or the Department's written request. DAS or the Department may also require, and the Contractor shall deliver, a financial statement showing that solvency of the Contractor is being maintained. The death of any Contractor Party, as applicable, shall not release the Contractor from the obligation to Perform under the Contract; the surviving Contractor Parties, as appropriate, must continue to Perform under the Contract until Performance is fully completed.

45. **Further Assurances.** The parties shall provide such information, execute and deliver any instruments and documents and take such other actions as may be necessary or reasonably requested by the other party which are not inconsistent with the provisions of this Contract
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and which do not involve the vesting of rights or assumption of obligations other than those provided for in the Contract, in order to give full effect to the Contract and to carry out the intent of the Contract.

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

- (a) The Department and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State's Attorney and their respective agents, may, at reasonable hours, inspect and examine all of the parts of the Contractor's and Contractor Parties' plants and places of business which, in any way, are related to, or involved in, the performance of this Contract.
- (b) The Contractor shall maintain, and shall require each of the Contractor Parties to maintain, accurate and complete Records. The Contractor shall make all of its and the Contractor Parties' Records available at all reasonable hours for audit and inspection by the Department and its agents.
- (c) The Department 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 Department suspects fraud or other abuse, or in the event of an emergency, the Department is not obligated to provide any prior notice.
- (d) All audits and inspections shall be at the Contractor's expense.
- (e) The Contractor shall keep and preserve or cause to be kept and preserved all of its and Contractor Parties' Records until three (3) years after the latter of (i) final payment under this Contract, or (ii) the earlier termination of this Contract, as the same may be modified for any reason. The Department may request an audit or inspection at any time during this period. If any Claim or audit is started before the expiration of this period, the Contractor shall retain or cause to be retained all Records until all Claims or audit findings have been resolved.
- (f) The Contractor shall cooperate fully with the Department and its agents in connection with an audit or inspection. Following any audit or inspection, the Department may conduct and the Contractor shall cooperate with an exit conference.
- (g) The Contractor shall incorporate this entire Section verbatim into any contract or other agreement that it enters into with any Contractor Party.

47. Background Checks. The State may require that the Contractor and Contractor Parties undergo criminal background checks as provided for in the State of Connecticut Department of Emergency Services and Public Protection Administration and Operations Manual or such other State document as governs procedures for background checks. The Contractor and Contractor Parties shall cooperate fully as necessary or reasonably requested with the Department and its agents in connection with such background checks.

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

49. Working and Labor Synergies. The Contractor shall be responsible for maintaining a tranquil working relationship between and among the Contractor work force, the Contractor Parties and their work force, Department employees, and any other parties present at the work site. The Contractor shall quickly resolve all labor disputes which result from the Contractor's or Contractor 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.

50. Contractor Responsibility.

- (a) The Contractor shall be responsible for the entire Performance under the Contract regardless of whether the Contractor itself performs. The Contractor shall be the sole point of contact concerning the management of the Contract, including Performance and payment issues. The Contractor is solely and completely responsible for adherence by the Contractor Parties to all applicable provisions of the Contract. Notwithstanding any provisions in the Contract, the Final Exhibits or any subcontract, nothing shall be interpreted as establishing privity of contract between the Department and any subcontractor.
- (b) The Contractor shall exercise all reasonable care to avoid damage to the Department's property or to property being made ready for the Department's use, and to all property adjacent to any work site. The Contractor shall promptly report any damage, regardless of cause, to the Department.

51. Severability. If any term or provision of the Contract or its application to any person, entity or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder of the Contract or the application of such term or provision shall not be affected as to persons, entities or circumstances other than those as to whom or to which it is held to be invalid or unenforceable. Each remaining term and provision of the Contract shall be valid and enforced to the fullest extent possible by law.

52. Confidentiality of Contractor Information. The Department will afford due regard to the Contractor's request for the protection of proprietary or confidential information which the Department receives. However, all materials associated with any Contractor submittal to a Department or the Contract are subject to the terms of the Connecticut Freedom of Information Act ("FOIA") and all corresponding rules, regulations and interpretations. In making such a request for protection, 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. Those particular sentences, paragraphs, pages or sections that the Contractor believes are exempt from disclosure under the FOIA must be specifically identified as such. Convincing explanation and rationale sufficient to justify each exemption consistent with the FOIA must accompany the request. The rationale and explanation must be stated in terms of the prospective harm to the competitive position of 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 the FOIA. To the extent that any other provision or part of the Contract, especially including the Final Exhibits, and the Records, conflicts or is in any way inconsistent with this Section, this Section controls and shall apply and the conflicting provision or part shall not be given effect. If the Contractor indicates that certain documentation is submitted in confidence, by specifically and clearly marking said documentation as CONFIDENTIAL, the Department will endeavor to keep said information confidential to the extent permitted by law. The Department, however, has no obligation to initiate, prosecute or defend any legal proceeding or to seek a protective order or other similar relief to prevent disclosure of any information that is sought pursuant to a FOIA request. The Contractor shall have the burden of establishing the availability of any FOIA exemption in any proceeding where it is an issue. In no event shall a Department have any liability for the disclosure of any documents or information in its possession which the Department believes are required to be disclosed pursuant to the FOIA or other requirements of law.

53. Interpretation. The Contract contains numerous references to statutes and regulations. For all purposes, the content of those statutes and regulations shall govern over the content of the reference in the Contract to those statutes and regulations.
54. Cross-Default.
- (a) If the Contractor or Contractor Parties breach, default or in any way fail to Perform satisfactorily under the Contract, then DAS may, in its sole discretion, without more and without any action whatsoever required of a Department, treat any such event as a breach, default or failure to Perform under any or all other agreements or arrangements (“Other Agreements”) that the Contractor and Contractor Parties may have with the State of Connecticut. Accordingly, DAS may then exercise at its sole option any and all of its rights or remedies provided for in the Contract or Other Agreements, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of a Department, as if the Contractor or Contractor Parties had suffered a breach, default or failure to Perform under the Other Agreements.
- (b) If the Contractor or Contractor Parties breach, default or in any way fail to Perform satisfactorily under any or all Other Agreements, then DAS may, in its sole discretion, without more and without any other action whatsoever being required, treat any such event as a breach, default or failure to Perform under the Contract. Accordingly, DAS may then exercise at its sole option any and all of rights or remedies provided for in the Other Agreements or the Contract, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of a Department or the State, as if the Contractor or Contractor Parties had suffered a breach, default or failure to Perform under the Contract.
55. Disclosure of Records. This Contract may be subject to the provisions of section 1-218 of the Connecticut General Statutes. In accordance with this statute, each contract in excess of two million five hundred thousand dollars between a public agency and a person for the performance of a governmental function shall (a) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (b) indicate that such records and files are subject to 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.
56. 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 Contract.
57. Sovereign Immunity. The parties acknowledge and agree that nothing in the Solicitation or the Contract shall be construed as a modification, compromise or waiver by the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the Department or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of the Contract. To the extent that this Section conflicts with any other Section, this Section shall govern.
58. Time of the Essence. Time is of the essence with respect to all provisions of this Contract that specify a time for Performance; provided, however, that this provision shall not be
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construed to limit or deprive a party of the benefits of any grace or use period allowed in this Contract.

59. Prevailing Wages. Some or all of the Performance in the Final Exhibit A may be subject to prevailing wages. Accordingly, the following provision is included in this Contract in accordance with the requirements of Conn. Gen. Stat. Sec. 31-53(a):

The wages paid on an hourly basis to any person performing the work of any mechanic, laborer or worker on the work herein contracted to be done and the amount of payment or contribution paid or payable on behalf of each such person to any employee welfare fund, as defined in subsection (i) of this section, shall be at a rate equal to the rate customary or prevailing for the same work in the same trade or occupation in the town in which such public works project is being constructed. Any contractor who is not obligated by agreement to make payment or contribution on behalf of such persons to any such employee welfare fund shall pay to each mechanic, laborer or worker as part of such person's wages the amount of payment or contribution for such person's classification on each pay day

Without modifying the foregoing, or affecting QESP's obligation to pay prevailing wages, if QESP is unable to secure the prevailing wage rates from the Connecticut Department of Labor, then the Department shall do and perform all that is necessary to do the same and forward the rates to the QESP.

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

61. Health Care Portability and Accountability Act.

- (a) If the Contactor or Contractor Parties is a Business Associate under the requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Contractor or Contractor Parties must comply with all terms and conditions of this Section of the Contract. If the Contractor or Contractor Parties is not a Business Associate under HIPAA, this Section of the Contract does not apply to the Contractor or Contractor Parties for this Contract.
- (b) The Contractor or Contractor Parties is required to safeguard the use, publication and disclosure of information on all applicants for, and all clients who receive, services under the Contract in accordance with all applicable federal and state law regarding confidentiality, which includes but is not limited to HIPAA, more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E; and
- (c) The Department is a "covered entity" as that term is defined in 45 C.F.R. § 160.103; and
- (d) The Contractor or Contractor Parties, on behalf of the Department, performs functions that involve the use or disclosure of "individually identifiable health information," as that term is defined in 45 C.F.R. § 160.103; and

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- (e) The Contractor or Contractor Parties is a “business associate” of the Department, as that term is defined in 45 C.F.R. § 160.103; and
- (f) The Contractor or Contractor Parties and the Department 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 (the HITECH Act), (Pub. L. 111-5, sections 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, and E.
- (g) Definitions. For the purposes of this Section of the Contract:
- (1) “Breach” shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. §17921(1)).’
 - (2) “Business Associate” shall mean the or Contractor or Contractor Parties.
 - (3) “Covered Entity” shall mean the Department.
 - (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, limited to information created or received by the Business Associate from or on behalf of the Covered Entity.
 - (9) “Required by Law” shall have the same meaning as the term “required by law” in 45 C.F.R. § 164.103.
 - (10) “Secretary” shall mean the Secretary of the Department of Health and Human Services or his designee.
 - (11) “More stringent” shall have the same meaning as the term “more stringent” in 45 C.F.R. § 160.202.
 - (12) “This Section of the 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.
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(15) "Unsecured protected health information" shall have the same meaning as the term as defined in § 13402(h)(1)(A) of HITECH. Act. (42 U.S.C. §17932(h)(1)(A)).

(h) 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 appropriate safeguards to prevent use or disclosure of PHI other than as provided for in this Section of the Contract.
- (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 to insure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate, on behalf of the Covered Entity, agrees to the same restrictions and conditions that apply through this Section of the Contract to Business Associate with respect to such information.
- (7) Business Associate agrees to provide access, at the request of the Covered Entity, and in the time and manner agreed to by the parties, 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.
- (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 agreed to by the parties.
- (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 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 determining Covered Entity's compliance with the Privacy Rule.
- (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 agreed to by the parties, information collected in accordance with clause h. (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 that 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. sections 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; or (c) provide a copy of the individual's PHI in an electronic health record, the Business Associate agrees to notify the covered entity, in writing, within two business days of the request.
- (15) Business Associate agrees that it shall not directly or indirectly receive any remuneration in exchange for PHI of an individual without (1) the written approval of the covered entity, unless receipt of remuneration in exchange for PHI is expressly authorized by this Contract and (2) 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 of a breach of unsecured protected health information, it shall notify the Covered Entity of such breach in accordance with the requirements of section 13402 of HITECH (42 U.S.C. § 17932(b) and the provisions of this section of the contract.
- (B) Such notification shall be provided by the Business Associate to the Covered Entity without unreasonable delay, and in no case later than 30 days after the breach is discovered by the Business Associate, except as otherwise instructed in writing by a law enforcement official pursuant to section 13402 (g) of HITECH (42 U.S.C. § 17932(g)) . A breach is considered discovered as of the first day on which it is, or reasonably should have been, known to the Business Associate. 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 brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known.

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 individuals take to protect themselves from potential harm resulting from the breach.
4. A detailed description of what the Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches.
5. Whether a law enforcement official has advised either verbally or in writing the Business Associate that he or she has determined that notification or notice to individuals or the posting required under section 13402 of the HITECH Act would impede a criminal investigation or cause damage to national security and contact information for said official.

(D) Business Associate agrees to provide appropriate staffing and have established procedures to ensure that individuals informed by the Covered Entity of a breach by the Business Associate have the opportunity to ask questions and contact the Business Associate for additional information regarding the breach. Such procedures shall include a toll-free telephone number, an e-mail address, a posting on its Web site and a postal address. Business Associate agrees to include in the notification of a breach by the Business Associate to the Covered Entity, a written description of the procedures that have been established to meet these requirements. Costs of such contact procedures will be borne by the Contractor or Contractor Parties.

(E) Business Associate agrees that, in the event of a breach, it has the burden to demonstrate that it has complied with all notifications requirements set forth above, including evidence demonstrating the necessity of a delay in notification to the Covered Entity.

(i) Permitted Uses and Disclosure by Business Associate.

(1) General Use and Disclosure Provisions Except as otherwise limited in this Section of the Contract, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Contract, provided that such use or disclosure would not violate the Privacy Rule 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).

(j) 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 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.

(k) 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 Privacy Rule 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.

(l) Term and Termination.

- (1) Term. The Term of this Section of the Contract shall be effective as of the date the Contract is effective and shall terminate when the information collected in accordance with clause h. (10) of this Section of the Contract is provided to the Covered Entity and all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- (2) Termination for Cause Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
 - (A) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate the Contract if Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity; or
 - (B) Immediately terminate the Contract if Business Associate has breached a material term of this Section of the Contract and cure is not possible; or
 - (C) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
- (3) Effect of Termination.

- (A) Except as provided in (1)(2) above, upon termination of this Contract, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Business Associate shall also provide the information collected in accordance with clause h. (10) of this Section of the Contract to the Covered Entity within ten business days of the notice of termination. This provision 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.

(m) Miscellaneous Provisions.

- (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, Pub. L. No. 104-191.
- (3) Survival. The respective rights and obligations of Business Associate shall survive the termination of this Contract.
- (4) Effect on Contract. Except as specifically required to implement the purposes of this Section of the Contract, all other terms of the Contract shall remain in force and effect.
- (5) Construction. This Section of the Contract shall be construed as broadly as necessary to implement and comply with 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 provisions of this Contract or applicable law. Business Associate is solely responsible for all decisions made, and actions taken, by Business Associate regarding the safeguarding, use and disclosure of PHI within its possession, custody or control.
- (7) Indemnification. The Business Associate shall indemnify and hold the Covered Entity harmless from and against any and all claims, liabilities, judgments, fines, assessments,
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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, the Privacy Rule and the Security Rule.

62. Protection of Confidential Information.

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

lifting one (1) security freeze per credit file pursuant to Connecticut General Statutes § 36a-701a. Such credit monitoring or protection plans shall be approved by the State in accordance with this Section and shall cover a length of time commensurate with the circumstances of the Confidential Information Breach. The Contractors' costs and expenses for the credit monitoring and protection plan shall not be recoverable from the Department, any State of Connecticut entity or any affected individuals.

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

63. Governmental Enactments. All references in this Contract to any statute, public act, regulation, code or executive order shall mean such statute, public act, regulation, code or executive order, respectively, as it has been amended, replaced or superseded at any time. Notwithstanding any language in this Contract that relates to such statute, public act, regulation, code or executive order, and notwithstanding a lack of a formal amendment to this Contract, this Contract shall always be read and interpreted as if it contained the most current and applicable wording and requirements of such statute, public act, regulation, code or executive order as if their most current language had been used in and requirements incorporated into this Contract at the time of its execution.

The parties are signing this Contract on the date below their respective signatures.

[AWARDED CONTRACTOR]

STATE OF CONNECTICUT
Department of Administrative Services

By: _____

By: _____

Print Name

Print Name

Title: _____

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM
State of Connecticut
Office of the Attorney General

By: _____

Title: _____

Date: _____