

CONTRACT AWARD
SP-38 Rev. 01/08

STATE OF CONNECTICUT
DEPARTMENT OF INFORMATION TECHNOLOGY
CONTRACTS & PURCHASING DIVISION
101 EAST RIVER DRIVE, 4th Floor
EAST HARTFORD, CT 06108-3274

Purchasing Contact:
Elizabeth Basso, AFAO

Telephone Number:
(860) 622-2037

Contract Award # 10ITZ0108
Contract Award Date December 21, 2010
Expiration Date December 31, 2013

CONTRACT AWARD

IMPORTANT: THIS IS NOT A PURCHASE ORDER. DO NOT PRODUCE OR SHIP WITHOUT AN AGENCY PURCHASE ORDER.

COMMODITY CLASS/SUBCLASS & DESCRIPTION: 5022, Data Capture/Verifying/Imaging/Indexing Services

FOR:	Department of Revenue Services 25 Sigourney Street Hartford, CT 06106	DELIVERY DATE REQ'D: 12/21/10 - 12/31/13
		TERM OF CONTRACT: Date of Award through December 31, 2013 with a one year extension option at the States sole discretion
		AGENCY REQUISITION NUMBER: DRSM1-212

IN STATE (NON-SB) CONTRACT VALUE	DAS CERTIFIED SMALL BUSINESS CONTRACT VALUE	OUT OF STATE CONTRACT VALUE	TOTAL CONTRACT AWARD VALUE
\$	\$	\$1,300,000.00	\$1,300,000.00

NOTICE TO CONTRACTORS: This notice of award is not an order to ship. The using agency or agencies on whose behalf the contract is made will furnish purchase orders against contracts. Send invoices directly to the using/ordering agency per instructions on purchase order.

NOTE: Dollar amounts listed next to each contractor are possible award amounts, however, they do not reflect any expected purchase amounts (actual or implied). They are for CHRO use only.

NOTICE TO AGENCIES: A complete explanatory report shall be furnished promptly to the Director concerning items delivered and/or services rendered on orders placed against awards listed herein which are found not to comply with the specifications or which are otherwise unsatisfactory from the agency's viewpoint, as well as failure of the contractor to deliver within a reasonable period of time specified. Please issue orders and process invoices promptly.

- ▶ **CASH DISCOUNTS:** Cash discounts, if any, shall be given SPECIAL ATTENTION, but such cash discount shall not be taken unless payment is made within the discount period.
- ▶ **PRICE BASIS:** Unless otherwise noted, prices include delivery and transportation charges fully prepaid f.o.b. agency. No extra charge is to be made for packing or packages.

CONTRACTOR INFORMATION:

Company Name: **The Data Entry Company**

Address: 4920 Elm Street, Suite 200, Bethesda, MD 20814

Tel. No.: 301.718.0703

Fax No.: 301.718.1615

Contract Value: \$1,300,000.00

Contact Person: John DuFour

Vendor ID #: 0000136070

Delivery: As Required

Certification Type: none
(SBE, MBE, WBE or None)

Terms: Net 45 Days

Supply to Political Sub-Divisions: No

Company E-mail Address: jdufour@tdec.com

www.tdec.com

APPROVED _____
Elizabeth Basso
Assoc. Fiscal Administrative Officer
IT Contracts & Purchasing Division
(Original Signature on Document in Procurement Files)

APPROVED _____ **Date:** ___/___/___
Richard R. Bailey
Deputy Chief Information Officer
(Original Signature on Document in Procurement Files)

Date Issued: December 21, 2010

STATE OF CONNECTICUT
DOIT - CONTRACTS & PURCHASING DIVISION

Award Number 10ITZ0108

Purchasing Contact:
Elizabeth Basso, AFAO

Telephone Number:
(860) 622-2037

E-Mail Address:
elizabeth.basso@ct.gov

CONTRACT AWARD SCHEDULE
10ITZ0108

CONTRACT AWARD DATE December 21, 2010	
DELIVERY As Required	
PAYMENT TERMS Net 45 Days	CASH DISCOUNT -- % -- Days

Pricing includes all transportation charges FOB State Agency.

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VENDOR NAME:
The Data Entry Company

VENDOR ID#: 0000136070

Department of Information Technology is issuing this contract award for
The Department of Revenue Services
for
Data Capture/Verifying/Imaging/Indexing Services

Price includes network startup costs, programming costs, ongoing network costs, electronic file transfer of image, index and data files, transportation charges, communication expenses, overtime or other expenses incurred in connection with any work done for the Dept. of Revenue Services.

ITEM #	DESCRIPTION OF COMMODITY AND/OR SERVICE	Est. Annual Qty. to Data Capture/Verify/Image and Index	UNIT OF MEASURE	UNIT PRICE	TOTAL PRICE
1	CT-941, Withholding Quarterly Reconciliation	116,000	Each	\$0.274	\$31,784.00
2	CT-W3, Withholding Annual Reconciliation	38,000	Each	\$0.146	\$5,548.00
3	CT-1120, Corporation	13,000	Each	\$1.46	\$18,980.00
4	OP-236, Real Estate Conveyance	69,000	Each	\$0.582	\$40,158.00
5	OP-424, Business Entity	25,000	Each	\$0.205	\$5,125.00
6	CT-1065/1120SI, Composite Income Tax	93,000	Each	\$2.703	\$251,379.00
7	OS-114, Sales and Use Tax	117,000	Each	\$0.706	\$82,602.00

Estimated Annual \$435,576.00

Primary Vendor Contact: John DuFour

Address: 4920 Elm Street, Suite 200, Bethesda, MD 20814

Phone: 301.718.0703 x308 FAX: 301.718.1615 E-mail: jdufour@tdec.com

Secondary Vendor Contact: Dennis DuFour

Address: 4920 Elm Street, Suite 200, Bethesda, MD 20814

Phone: 301.718.0703 FAX: 301.718.1615 E-mail: ddufour@tdec.com

NOTES:

1. Vendor must comply with the Standard & Special Bid and Contract Terms and Conditions
2. Prices include equipment, installation including all software/cards/memory necessary, cables, delivery, and warrantee. All hardware components and software must be installed and configured before delivery. Everything must be Year 2000 Compliant.

All correspondence regarding this contract award must be in writing and submitted to:

Elizabeth Basso, AFAO, Contract Award # **10ITZ0108**
DOIT - Contract & Purchasing Division
101 East River Drive, 4th Floor
East Hartford, CT 06108

AGENCY SPECIFICATIONS
AND
SPECIAL BID AND CONTRACT TERMS AND CONDITIONS

Contract Award 10ITZ0108
Data Capture/Verifying/Imaging/Indexing Services

SECTION #1

SCOPE:

- 1) This Invitation to Bid (ITB) requests Data Capture/Verifying/Imaging/Indexing Services for the period beginning approximately January 1, 2011 and ending December 31, 2013 for Connecticut tax returns listed in section 2, #1. (Actual contract period – Award date through December 31, 2013.)
- 2) As part of the evaluation process for this bid, vendors must demonstrate their ability to data capture, verify, image and index the volumes described in section 2, #1. All means of data capture will be considered, the method must be approved by the Department of Revenue Services (DRS) prior to a contract award.
- 3) The vendor must comply with the data capture instructions as specified by the Agency. The Agency reserves the right to change the instructions as necessary.
- 4) Vendor questions regarding this bid must be e-mailed to: Elizabeth.Basso@ct.gov by 5:00 pm, **November 8, 2010**. All questions received by the deadline will be answered in writing via a bid addendum. No additional technical questions will be answered after that date.
- 5) The State reserves the right to add new forms or schedules on an as needed basis. The vendor will be expected to offer a rate for said new forms or schedules commensurate with their original offers based on comparable keystrokes and content.
- 6) Time Line:
 - 10/27/10** = Bid posted
 - 11/05/10** = Deadline to request sample forms and instructions. See section 2, #18
 - 11/08/10** = Deadline on questions. See section 1, #4
 - 11/10/10** = Answers to all questions will be posted via a bid addendum
 - 11/16/10** = Bid due date

SECTION # 2

BID REQUIREMENTS:

- 1) The vendor must submit a pricing for the following estimated **YEARLY** quantities of returns outsourced. The quantities are based on historical information and should not necessarily be considered actual volumes. Due to changing budgetary priorities, the Agency reserves the right to utilize in-house staff to perform portions of this work.
 - Item 1) CT-941, Withholding Quarterly Reconciliation – **116,000**
 - Item 2) CT-W3, Withholding Annual Reconciliation – **38,000**
 - Item 3) CT-1120, Corporation – **13,000**
 - Item 4) OP-236, Real Estate Conveyance – **69,000**
 - Item 5) OP-424, Business Entity – **25,000**
 - Item 6) CT-1065/1120SI, Composite Income Tax – **93,000**
 - Item 7) OS-114, Sales and Use – **117,000**
- 2) All pricing must include network startup costs, programming costs, ongoing network costs, electronic file transfer of image, index and data files, transportation charges, communication expenses, overtime or other expenses incurred in connection with any work done for DRS or contract user.

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- 3) Data files, image and corresponding index files will be transmitted to DRS or other designated location, in a format to be provided by DRS, via a secure VPN connection provided by the Department of Information Technology. The images must be indexed to correlate to the taxpayer identification number in a format provided by DRS as indicated in the document titled **“Image Retrieval – Images and Index Specification” (Exhibit A)**. A back-up copy of the index and image files will be created by the vendor on CD, DVD or other media as determined by DRS after images have been deemed acceptable. The back-up copy will be provided to DRS in a secure manner. Data, image and index files must be archived for a 45-day period on a secured server. Back-ups created by the vendor must be maintained by the vendor in a secure location.
- 4) Images must meet or exceed the State Library requirements and the vendor must receive certification of compliance for digital imaging standards for public records. <http://www.cslib.org/publicrecords/optical.htm>
- 5) Data transmission schedules will be supplied by the Department of Revenue Services.
- 6) Minimum transmission of source data requirement will be one (1) per day. DRS reserves the right to prioritize work for each data transmission.
- 7) The designated method of data delivery is electronic. **The vendor must have a high speed internet connection, T-1 or better, in place and working at time of inspection, capable of transmitting the data and image files multiple times a day in a reasonable amount of time and with good reliability.** A secure VPN connection will be provided to the vendor for the purpose of delivering data files to our network.
- 8) Files must be delivered to our network with a naming convention designated by the Agency. Image and index files must be compressed using Winzip version 12.1 or a similar product subject to approval by DRS. It is expected the image and index files will contain no more than 5 boxes of tax returns.
- 9) The contractor must provide a detailed document outlining contractors process and quality control measures that are in place prior to the start of this contract and maintained throughout the contract. This plan must be approved by DRS and maintained by the vendor, any changes must also be approved in writing by DRS before implementation.
- 10) Insurance - Vendor shall not commence work under this contract until it has provided evidence of all insurance required under this section to DRS, nor shall the vendor allow any approved subcontractor to commence work on its subcontract until all similar insurance required of the subcontractor has been obtained.
 - 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 Board Form Property Damage coverage. If a general aggregate is used, the general aggregate limit shall apply either separately to the project or the general aggregate limit shall be twice the occurrence amount.
 - B) 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.
 - C) Automobile Liability
\$1,000,000 Combined Single Limit Automobile Liability insurance shall be maintained against claims for damages resulting from bodily injury, including wrongful death, and property damage which may arise from the operations of any owned, hired or non-owned automobiles used by or for the vendor in any capacity in connection with carrying out this contract.
 - D) Minimum Scope of Insurance

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All Liability insurance policies shall be written on an "occurrence" basis only. All insurance coverage is to be placed with insurers authorized to do business in the State of Connecticut and must be placed with an insurer that has an A.M. Best's Rating of no less than A-, VII. All certificates of insurance shall be filed with the Department of Revenue Services on the standard Accord Certificate of Insurance form showing the specified insurance and limits within 30 days of the contract award. The State of Connecticut Department of Revenue Services shall be named as an Additional Insured. The vendor's insurer shall have no right of recovery of subrogation against the State and the vendor's insurance shall be primary coverage.

- 11) The contractor will pay for losses that are sustained as a result of acts committed by the contractor, the contractor's staff or its subcontractors. The contractor will pay for losses resulting from dishonesty acts committed by the contractor, the contractor's staff or its subcontractors. It is the contractor's responsibility to safeguard DRS information while it is in the contractor's possession. If there is a security breach that affects DRS information while that information is in the possession of the contractor, the contractor will pay for all costs incurred with that security breach. This will include but not be limited to credit protection for all affected taxpayers for a minimum of 2 years and all expenses incurred by the State of Connecticut in connection with the security breach. It is the contractor's responsibility to immediately notify the Department of Information Technology @ (860) 622-2300, the Department of Revenue Services @ (860) 297-4900 and James Norton (860) 297-5608 as soon as a loss or breach of DRS information is suspected.
- 12) The vendor must have the capability to data capture, image and index tax returns per the following schedule. See the attached file named "**Exhibit B – Outsourcing History Document.**" The figures in this document are based on the previous year's filings. Actual volumes may vary due to electronic filing mandates, initiatives and alternatives. Failure to meet this schedule will be considered as a basis for contract termination and monetary penalties as outlined in section 7, #3.

 - Item 1, CT-941) 10 working days from receipt
 - Item 2, CT-W3) 15 working days from receipt
 - Item 3, CT-1120) 15 working days from receipt
 - Item 4, OP-236) 20 working days from receipt
 - Item 5, OP-424) 5 working days from receipt
 - Item 6, CT-1065/1120SI) 20 working days from receipt
 - Item 7, OS-114) 10 working days from receipt
- 13) The vendor must currently be in the data capture business for a minimum of three (3) years. Vendor must demonstrate experience in processing comparable volumes, form complexity, time constraints and the ability to data capture from image outlined herein.
- 14) The vendor is to supply the company names and addresses of no less than three (3) major data capture accounts with which they are currently doing business. These accounts must be of comparable volumes, form complexity and time constraints.
- 15) The vendor must be in good standing with State of Connecticut Agencies and DRS throughout the contract period.
- 16) The vendor will be required to provide annual statistical reports. These reports must reflect the number of fields captured per form type and the frequency each distinct field is data captured.
- 17) The vendor must submit the original bid along with two copies and one electronic copy in a PDF format on CD.

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- 18) The contractor must comply with the data capture instructions and sample forms, which can be obtained by submitting an e-mail request to: Don.Knybel@po.state.ct.us Include bid number, your name, company name, mailing address and telephone number. **IMPORTANT: You must request the sample forms and keypunch instructions. Your bid will be disqualified if you did not request the sample forms and keypunch instructions.**
- 19) The Department of Revenue Services will require a performance bond equal to one-third (1/3) of the total dollar value of the contract award. Performance bond shall hereby be defined as a performance surety binding the contractor faithfully to fulfill the obligations of their bid as accepted. Such surety may be submitted in the form of a performance bond of a licensed surety company, certified check or irrevocable letter of credit from a Connecticut banking institution naming the Department of Revenue Services as the primary beneficiary. The performance bond must be received within 30 days of contract award. Failure to do so will be grounds for contract termination.

SECTION # 3

ERRORS:

- 1) Errors created by the vendor shall be corrected by the vendor at no cost to the State. Identified errors must be researched immediately, and a written explanation supplied to the Agency within 24 hours along with steps undertaken by the vendor to prevent such errors in the future.

SECTION # 4

DOCUMENT PICKUP & DELIVERY:

- 1) All new work (tax returns), as well as all completed work, must be transported in a manner as to insure against damage, theft or loss
- Minimum Criteria for Transportation of information:
1. Secure locking mechanism for holding area during transport.
 2. Limited view of contents of vehicle.
 3. Number of drivers required is dependent upon length of trip. Travel time of more than 2 hours requires 2 drivers.
 4. Communication devices that work on route to be taken – testing will be done daily.
 5. Established written procedures for vehicle breakdown or accident – approval must be obtained from DRS.
 6. Bonded Courier (if subcontracted)
 7. Insurance to replace the contents – that includes all lost DRS time and required resources.
 8. Sign-off's from DRS to Vendor for receipt of information each will contain the signature and printed name.
 9. Sign-off's from Vendor to DRS for return of information each will contain the signature and printed name.

- 2) Document pickup and delivery schedules will be supplied by the Agency.

Maximum delivery/pick-up requirement of physical tax returns will be three (3) days per week.

Minimum delivery/pick-up requirement of physical tax returns will be one (1) day per week.

DRS reserves the right to prioritize work.

All materials are handled on pallets. The contractor must have a vehicle capable of transporting pallets of boxes. Each wrapped pallet will hold no more than 48 boxes. Work being returned should be on wrapped pallets.

Pallet sizes vary between 36" X 48" and 40" X 48" with a maximum height of 66".

Box size is 16"w X 10"h X 13"d

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Loading dock height is 44" from the ground.

- 3) The vendor will go directly to and from DRS to their facility when DRS information is being transported.

SECTION # 5

INSPECTION/PERFORMANCE:

- 1) Vendor must allow for inspections by DRS internal audit staff as well as the State of Connecticut Auditors of Public Accounts. The State reserves the right to inspect the facility of the vendor and/or subcontractor(s) approved by DRS before an award is made and anytime during the contract period. The vendor must have appropriate equipment and personnel to meet the contract requirements. If it is found that the vendor is not qualified to perform the work as specified, the State has the right to seek reimbursement from the vendor for the inspection. This includes ALL costs, such as airfare, car rental, hotel, meals and the salary of the individuals(s) performing the site inspection. The right is also reserved to inspect work in progress at any time. Part of the inspection will require the vendor to show its ability to maintain security of all materials in a manner satisfactory to the Department of Revenue Services.
- 2) The State requires a performance test of data capture and electronic transmission before making an award. Test to be completed within ten business days of DRS request.
- 3) The vendor must complete all required testing to the satisfaction of the Agency and be ready for live production according to the following schedule.

Item 1, CT-941) 15 days after the contract award
Item 2, CT-W3) 15 days after the contract award
Item 3, CT-1120) 15 days after the contract award
Item 4, OP-236) 20 days after the contract award
Item 5, OP-424) 20 days after the contract award
Item 6, CT-1065/1120SI) 20 days after the contract award
Item 7, OS-114) 20 days after the contract award

- 4) In the event of format changes, the vendor must complete all required programming and testing to the satisfaction of the Agency within ten business days of such changes.

SECTION # 6

SOURCE DATA:

- 1) The vendor agrees that all tax return images, data and/or reproduction thereof are the property of DRS.
- 2) The vendor agrees that should tax return images, or data be destroyed, inaccessible or damaged while in the possession of the vendor, the vendor will be required to pay the cost for the re-creation of such material and any interest and expenses incurred by the State.

SECTION # 7

PENALTIES / DEFAULTING CONTRACTOR:

- 1) Should the vendor default on the accepted schedule, the State shall recover all source data and be given immediate possession of any data captured/verified work that has been accomplished as of the date of recovery. Regular

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contract price will be paid (subject to section 7, #3) for completed work recovered, provided such work is acceptable to DRS.

- 2) In the event that a vendor defaults, the defaulting vendor will be required to pay the additional cost, if any, of having the work completed elsewhere.
- 3) The State reserves the right to reduce the invoice percentage of material not processed as stated in section 2, #12 of this bid; i.e., 20 boxes of work released and only 15 boxes of work delivered means that 25% has not been delivered. Therefore, the State would reduce the invoice and payment by 25%.
- 4) Failure of a vendor to maintain the file transmission schedules of tax return data acceptable to DRS or maintain a reasonable degree of accuracy will result in the cancellation of the contract.
- 5) Should the vendor fail to electronically transmit the data, the State reserves the right to invoice the vendor for time and expenses incurred to achieve the required result.
- 6) The State reserves the right to bill the vendor for travel expenses related to on-site problem resolution.
- 7) The Department of Information Technology, IT Contracts & Purchasing Division, or their duly authorized representative, reserves the right to remove from the mailing list for future bids for an undetermined period the name of any vendor for unsatisfactory performance of the contract.
- 8) The State may cancel the contract with thirty- (30) days' prior written notice at any time.
- 9) The vendor will be required to notify the Department of Information Technology and DRS immediately in the event of a change in ownership. Failure to do so is cause for cancellation of the contract.

SECTION # 8
INVOICING:

- 1) Invoices must be itemized, referencing file name, box numbers, form type, return count and cost per box. In addition, an electronic breakdown (spreadsheet) must be submitted to correspond with each invoice submitted.
- 2) The vendor must submit invoices on a weekly basis, in arrears, to the Business Office of the DRS. The vendor must also provide a corrected invoice if there are any changes, additions and/or deletions.
- 3) All invoices must be sent to the Department of Revenue Services, Attn: Business Office, 25 Sigourney Street, Hartford, CT 06106-5032.

SECTION # 9
VENDOR PERFORMANCE REQUIREMENTS:

- 1) Tax returns which are not legible shall be returned to DRS for clarification, correction or recreation, whichever is deemed necessary by DRS.
- 2) All jobs require 100% verification. The vendor must provide a verification process deemed acceptable by DRS. This process must ensure 100% verification. The required degree of accuracy is defined as 99.7% at the field level. Should the vendor fail to meet the stated degree of accuracy, the State reserves the right to invoice the vendor for time and expenses incurred to investigate and correct the data. Sight verification is not acceptable and will be grounds for immediate termination of this contract.

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SECTION # 10
SECURITY CONFIDENTIALITY REQUIREMENTS

- 1) All data capture must take place in a secure location within the continental United States. Imaging, indexing and the physical storage of DRS provided documents must take place in a secure location within a 150 mile radius of the Department of Revenue Services, Hartford, Connecticut. At no time shall any DRS information leave the continental United States.
- 2) The vendor will comply with the DRS “Contractor Policies” that pertain to the safeguarding of tax information published by the DRS and DRS Policy Compliance Officer. Copies of these policies are attached. See “Requirement for Safeguarding Taxpayer Information”.
- 3) The State may immediately cancel the contract and remove all DRS data from the contractor and subcontractor if DRS determines that the contractor or subcontractor is not adequately protecting DRS information.
- 4) The contractor must provide a network diagram showing the process flow of data as it pertains to this contract. The contractor will also provide DRS with their policies and procedures on access to data, securing data and data wiping in addition to documenting how these policies are enforced.
- 5) DRS information shall not be commingled with any other information.

SECTION # 11
MISCELLANEOUS:

- 1) Section 7 titled:

Department of Revenue Services
Requirements for Safeguarding Confidential
Taxpayer Information

is an important component of this bid package. It is the responsibility of all bidders to ensure that they have read and understand this section and have factored these requirements into their quote.

SECTION 7
REQUIREMENTS FOR SAFEGUARDING CONFIDENTIAL TAXPAYER INFORMATION

Contract Award 10ITZ0108
Data Capture/Verifying/Imaging/Indexing Services

Section 7

Department of Revenue Services

Requirements for Safeguarding Confidential Taxpayer Information

The Department of Revenue Services is entrusted with information that is among the most sensitive in government. Therefore, it is critical that we safeguard and maintain the confidentiality of tax return and tax return information, as well as confidential information received from other agencies whether it is State or Federal data. As a Contractor with the Department of Revenue Services you too will be entrusted with safeguarding and maintaining the confidentiality of this information. Failure to do so may result in the cancellation of the contract and/or potential criminal prosecution. The attached policies, exhibits, rules and requirements outline additional responsibilities that you as a Contractor will be required to follow.

SECTION 7
REQUIREMENTS FOR SAFEGUARDING CONFIDENTIAL TAXPAYER INFORMATION

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Table of Contents

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- Additional Contractor Requirements
- Disclosure and Inspection Rules and Procedures for State and Federal Tax Return Information
- Internal Revenue Service Exhibit 7
- Viewing of Contractors Safeguards Video Memorandum (will be provided to the successful vendor upon issuance of a purchase order)
- Disclosure of Tax Information form (will be provided to the successful vendor upon issuance of a purchase order)

SECTION 7
REQUIREMENTS FOR SAFEGUARDING CONFIDENTIAL TAXPAYER INFORMATION

Contract Award 10ITZ0108
Data Capture/Verifying/Imaging/Indexing Services

Policy for Access to and Safeguarding of DRS Confidential or Restricted Data by Contractors

Policy Number: P-4001

Version: 1.1

Date Issued (revised): January 21, 2010

Date Effective: immediately

Purpose

This Policy outlines the confidentiality and security requirements for Contractors of the State of Connecticut or an agency thereof that, as part of their contractual relationship, are authorized to access and view DRS confidential or restricted data.

Scope

This policy covers all DRS contractors, who as part of their contractual relationship, are authorized to have access to DRS confidential or restricted data or DRS technology systems.

Should a conflict exist between this policy and a State-wide policy, the more restrictive policy would take precedence.

Authority

The Policy Compliance Officer is responsible for developing, implementing and enforcing policies that regulate the storage, access to, and use of confidential and restricted data.

Policy Statements

1. Before accessing, in any manner, any DRS confidential or restricted data, each contractor will confirm that it has reviewed, read and understands the DRS/IRS confidentiality requirements material. The Contractor will be provided with a copy of the Contractor Safeguards Program. Each of the Contractor's employees who may come in contact with DRS confidential or restricted data must confirm that he or she has viewed and understands the confidentiality requirements.
2. Except as provided herein, contractors who are working on site at a DRS location, will be required to utilize only DRS supplied equipment to connect to DRS technology systems. If DRS determines that access to its technology systems is necessary to fulfill the contractor's obligations under the contract and the contract provides for such access, the Policy Compliance Officer, in consultation with the Information Services Division (ISD) Director, shall determine in what manner and under what conditions will such access be provided. The Policy Compliance Officer will also determine what, if any, non-DRS equipment will be allowed to access or store DRS confidential or restricted data. The Contractor will provide the designated equipment for inspection before connection to the DRS technology systems. Additionally, such equipment will be subject to additional inspections as deemed necessary by the Policy Compliance Officer. The following conditions must be met in order for Contractor's equipment to be allowed access to the DRS technology systems:

SECTION 7

REQUIREMENTS FOR SAFEGUARDING CONFIDENTIAL TAXPAYER INFORMATION

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- a. Contractor's computer equipment must be virus free and loaded with the most current version of anti-virus software
 - b. Contractor will sign the DRS Acceptable Use statement
 - c. Contractor will agree to install software and configure software and hardware on its equipment as is required by the Policy Compliance Officer.
 - d. Contractor will agree to restrictions on the removal of its equipment from DRS premises as determined by the Policy Compliance Officer.
 - e. Contractor will agree to requirements for locking and/or securing of its equipment as determined by the Policy Compliance Officer.
3. For contractors whose contract provides for remote access to the DRS technology systems, the DRS Policy Compliance Officer, in consultation with the ISD Director, shall determine in what manner and under what conditions such access will be allowed. The Policy Compliance Officer will determine what equipment of the Contractor will be allowed to access or store DRS confidential or restricted data. Such equipment will be made available for inspection by the Policy Compliance Officer prior to connection to the DRS technology systems and will be subject to additional inspections as deemed necessary by the Policy Compliance Office. The following conditions must be met in order for Contractor's equipment to be allowed access to the DRS technology systems:
- a. Contractor's computer equipment must be virus free and loaded with the most current version of anti-virus software
 - b. Contractor will sign the DRS Acceptable Use statement
 - c. Contractor will agree to install software and configure software and hardware on its equipment as is required by the Policy Compliance Officer.
 - d. Contractor will agree to requirements for locking and/or securing of its equipment as determined by the Policy Compliance Officer.
4. On DRS supplied equipment, the DRS may install software that will be required to remain on such equipment until the project has been completed and a final inspection of such equipment has been conducted.
5. DRS may disable all USB ports, storage saving and transfer devices from the DRS supplied equipment provided to Contractor. Should there be a need to transfer information the Contractor shall follow procedures established by the Policy Compliance Officer.
6. The use of Flash Drives and other media used by Contractors to store or transfer DRS confidential or restricted data is prohibited.
7. All requirements pertaining to the access of DRS confidential or restricted data, including, but not limited to, the method and location of storage, safeguarding and destruction will be determined solely by the Policy Compliance Officer.
8. Contractors will provide DRS with their policies regarding:
- a. Replacing/recycling personal computers and Multi Functional Printing devices
 - b. Remote access

SECTION 7
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- c. Restrictions or prohibitions on the storing or transfer of client information
- d. Employee termination procedures (including exit checklists)
- e. Procedures for violation of Contractor's policies
- f. Process used to conduct any required background checks.

When applicable, the Contractor, or individual employees thereof, will provide the Compliance Officer with a written inventory of all DRS confidential or restricted information currently in its possession. The Contractor, or its individual employees, will be required to sign the inventory document attesting to its accuracy.

9. Lost or stolen keys, fobs , access codes, badges or any other item that are used in connection with any DRS assignment will be immediately reported using the protocol provided .
10. For Contractors who are working on site at a DRS location, the Contractor will inform the Policy Compliance Officer at least 5 business days prior to a Contractor's employee leaving the DRS assignment. In no case shall such employee leave DRS without the Contractor's equipment being inspected as determined by the Policy Compliance Officer. Once the review has been completed, such employee will not be allowed to connect to any DRS technology systems or store any DRS confidential or restricted data on the previously inspected equipment.
11. Any Contractor who has access to or is in possession of DRS confidential or restricted data must comply with all provisions of the State of Connecticut Security for Mobile Computing and Storage Devices Policy.
12. DRS reserves the right to inspect any of the Contractors' facilities used at anytime throughout the contract period.
13. Prior to working on site at a DRS location, a Contractor must disable all wireless internet and communication capabilities on its equipment. Additionally, throughout the period of its contract, the Contractor must be prepared to demonstrate to the Policy Compliance Officer that such capabilities remain disabled.

Definitions

Contractor

Any individual or company that enters into any agreement either with the State of Connecticut or an Agency thereof to perform services. This includes all of the employees of this individual or company and any subcontractors that they may contract with.

Contractor's Equipment

Any equipment that the contractor uses in connection with the performance of the contract.

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Contractor Safeguard Program

A program that will guide and assist contractors in meeting their responsibilities to safeguard and protect DRS confidential and restricted information.

DRS Confidential or Restricted Data

Confidential or restricted State data includes but is not limited to;

Tax return or return information and/or personally identifiable information that is not in the public domain and if improperly disclosed could be used to steal an individual's identity, violate the individual's right to privacy or otherwise harm the individual;

Organizational information that is not in the public domain and if improperly disclosed might: cause a significant or severe degradation in mission capability; result in significant or major damage to organizational assets; result in significant or major financial loss; or result in significant, severe or catastrophic harm to individuals.

DRS/IRS Confidentiality Training Material

Shall include any material supplied to the contractor to guide them in the safeguarding of confidential taxpayer information.

DRS Location

Any facility or portion thereof, under the direct control of DRS, in which an agency function is performed. In certain cases, this definition can also include other State agencies and other DRS contracted vendors who, under the control of DRS, supply necessary support services.

DRS Supplied Equipment

Any equipment supplied by the State of Connecticut or any Agency thereof to any contractor performing services to DRS

DRS Technology Systems

Shall include computer hardware, software, firmware applications, information and communications pertaining to any State of Connecticut or an Agency thereof computer system or network.

Policy Compliance Officer

The DRS employee designated by the Commissioner to act as the single point of contact between DOIT and DRS for issues that relate to the State of Connecticut's policy on Data Storage, Security for Mobile Computing and Storage Devices.

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Additional Contractor Requirements

SAFEGUARDING INFORMATION

The contractor must provide a detailed document outlining contractors process and quality control measures that are in place prior to the start of this contract and maintained throughout the contract. This plan must be approved by DRS and maintained by the vendor, any changes must also be approved in writing by DRS before implementation.

All DRS information in the vendors possession must be documented and remain a secure location within the Continental United States. All electronic information shall remain encrypted when at rest or not in use.

The contractor will pay for losses that are sustained as a result of acts committed by the contractor, the contractors' staff or its subcontractors. The contractor will pay for losses resulting from dishonesty acts committed by the contractor, the contractors' staff or its subcontractors. It is the contractors' responsibility to safeguard DRS information while it is in the contractors' possession. If there is a security breach that affects DRS information while that information is in the possession of the contractor, the contractor will pay for all costs incurred with that security breach. This will include but not be limited to credit protection for all affected taxpayers for a minimum of 2 years and all expenses incurred by the State of Connecticut in connection with the security breach. It is the contractor's responsibility to immediately notify the Department of Information Technology @ (860) 622-2300, the Department of Revenue Services @ (860) 297-4900 and James Norton (860) 297-5608 as soon as a loss or breach of DRS information is suspected.

All vendor and subcontractor employees, on-site or off-site, who perform functions that put them in contact with State of Connecticut tax returns or tax return information, must sign a Department of Revenue Services confidentiality statement. In addition, a background check must be performed on anyone who has access to the tax returns or tax return information. The background checks are the responsibility of the vendor and the subcontractor including all costs associated there with. If the vendor's process is determined by DRS to be sufficient to protect the identity and confidentiality of the taxpayer the vendor may request that some of the background check requirements be waived. This must be approved in writing by DRS. DRS has the right to inspect the personnel files and any aspect of the background check. Notwithstanding the aforementioned provisions of this paragraph, any vendor, subcontractor or employee of the vendor or subcontractor who has been convicted of a tax crime, embezzlement, forgery or other financial crimes or offences that pertain to or involve a fiduciary trust or responsibility is prohibited or ineligible from working with any part of this contract.

The vendor will comply with the "*Policy for Access to and Safeguarding of DRS Confidential or Restricted Data by Contractors*" published by the DRS and DRS Policy Compliance Officer.

The vendor must provide a security plan which establishes their auditing and logging capabilities utilizing the following requirements: 1. All transaction access to the DRS Information must be logged and maintained for the period legally required based upon the information being accessed. 2. The contractor must house and maintain these logs. 3. If requested by the DRS, the contractor will be required to provide state and federal auditors and authorized employee's access to the logs

If determined necessary by the Policy Compliance Officer the vendor will submit a completed monthly "Security Measures Checklist" to the DRS Policy Compliance Officer. The checklist will be developed by DRS once the company's facility is inspected and process for completing the contract is approved.

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All DRS information must be expunged at the end of the contract. The Contractor will get approval from the DRS to and will document the process and certify that all DRS data was expunged. The contractor will certify that the data will be destroyed on site by individuals who have been previously approved by DRS to have access to the DRS Information and will utilize the NIST 800-88 approved destruction methodology. The contractor must provide evidence that it has the capabilities in place to assure that DRS will be notified and has approved the destruction or relocation of all equipment used by the contractor during the term of the contract. Prior to destroying or sending the equipment containing DRS information off-site, the contractor must certify, in writing, that it has wiped all electronic media capable of storing the DRS Information

INSPECTION/PERFORMANCE:

The Department requires that all materials in the possession of the vendor be maintained in a secure manner that is approved by the Department of Revenue Services.

Vendor must allow for inspections by DRS internal audit staff as well as the State of Connecticut Auditors of Public Accounts. The State reserves the right to inspect the facility of the vendor and/or subcontractor(s) approved by DRS before an award is made and anytime during the contract period. The vendor must have appropriate equipment and personnel to meet the contract requirements. If it is found that the vendor is not qualified to perform the work as specified, the State has the right to seek reimbursement from the vendor for the inspection. This includes ALL costs, such as airfare, car rental, hotel, meals and the salary of the individuals(s) performing the site inspection. The right is also reserved to inspect work in progress at any time. Part of the inspection will require the vendor to show its ability to maintain security of all materials in a manner satisfactory to the Department of Revenue Services.

The vendor and any subcontractor(s) approved by DRS must have working fire suppressant and security systems on-site, which must meet the approval of the Agency at the time of the initial inspection, and be maintained throughout the contract period. The vendor must submit proof, such as inspection certificates, in regards to working fire and security systems.

SUBCONTRACT:

When subcontracting may be permitted, it is understood and agreed that the vendor shall not assign, transfer, convey, sublet or otherwise dispose of their contract or their right of title, or portion thereof, to any person, firm or corporation without previous written consent of the Connecticut Department of Revenue Services and the Connecticut Department of Administrative Services. Failure to do so is cause for cancellation of the contract.

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DEPARTMENT OF REVENUE SERVICES
Internal Audit Division
MEMORANDUM

DATE: May 20, 2010

TO: All DRS Contractors & Subcontractors

FROM: James E. Norton **TELEPHONE:** (860) 297-5608
Policy Compliance Officer

SUBJECT: Disclosure and inspection rules and procedures for state and federal tax return information

As Contractors or Subcontractors of the Department of Revenue Services, you may come in contact with information that is among the most sensitive in government. Therefore, it is critical that you maintain the confidentiality of tax return and tax return information, as well as confidential information received from other state and federal agencies you may come in contact with. The purpose of this memorandum is to remind you of the need for strict adherence to the following guidelines. Failure to comply with the confidentiality standards discussed below will result in actions by the Department of Revenue Services. Should the particular facts and circumstances warrant it, a violation may result in termination of the contract, potential criminal prosecution and civil monetary damages.

- Confidential tax information that you access must relate directly to your individual responsibilities as a Contractor or Subcontractor.
- Confidential information should never be in open view when you are transporting confidential documents and records outside of your work area.
- Confidential tax information may be discussed only with authorized individuals and shared with employees who have a specific business need for such information.
- All confidential tax information must be properly destroyed. Paper documents must be shredded to 5/16 – inch strips or cross shredded inserted in a perpendicular direction. Microfilm and Microfiche must be shredded to 1/35 –inch by 3/8 inch strips. After shredding has occurred it may be used for pulp and recycled.
- Confidential taxpayer information must not be stored on a mobile computing device or mobile storage device. The term "mobile computing device" refers to portable or mobile computing and telecommunications devices that can execute programs. This definition includes, but is not limited to notebooks, palmtops, BlackBerry devices, PDAs, iPods and cell phones with internet browsing capability. The term "mobile storage devices" includes but is not limited to, mobile computing devices, diskettes,

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magnetic tapes, external/removable hard drives, flash cards (e.g., SD, Compact Flash), thumb drives (USB keys), jump drives, compact disks, digital video disks, etc.

- “Inspection” (e.g. “browsing”) or “Disclosure” of tax returns and tax return information by Contractors or Subcontractors of any Connecticut or federal agency, including former Contractors or Subcontractors who has or had access to returns or return information or any current or former officer or employee of any contractor or subcontractor, whether the contractor or subcontractor was involved in the processing, storage, transmission, or reproduction of returns or return information, the programming, maintenance, repair, testing, or procurement of equipment, or the providing of any other service to DRS is subject to the penalties stated in Conn. Gen Stat. §12-15.

In addition to complying with the general guidelines above, you are required to understand and adhere to the federal and state laws relative to the confidentiality of tax information listed below.

Penalties for Unlawful Disclosure or Inspection of State and Federal Tax Return Information

1. State Penalties

C.G.S. §12-15

(f) Returns and return information shall, without written request, be open to inspection by or disclosure to: (1) Officers and employees of the Department of Revenue Services whose official duties require such inspection or disclosure for tax administration purposes; (2) officers or employees of an agency or office in accordance with subdivision (1) or (13) of subsection (b) of this section whose official duties require such inspection; and (3) officers or employees of any person in accordance with subdivision (12) of subsection (b) of this section, whose duties require such inspection or disclosure.

(g) Any person who violates any provision of this section shall be fined not more than one thousand dollars or imprisoned not more than one year, or both.

2. Federal Penalties

In 1997, the U.S. Congress passed and the President signed into law H.R. 1226 known as the “Taxpayer Browsing Protection Act.” The major impact of this bill was to include “inspection,” i.e., “browsing,” as subject to the kind of penalties that previously applied only to “disclosure.” Within this bill inspection is defined as, “any examination of a return or return information.” The second impact of this Bill is that a taxpayer shall be notified of any unauthorized disclosure or inspection of their return. Anyone making an unlawful disclosure or inspection of federal tax return information could be subject to the following penalties:

I. R. C. § 6103: Prohibits unauthorized disclosure of federal tax returns or return information by employees and former employees of state and IV-D agencies.

I. R. C. § 7213: Makes any unauthorized disclosure of federal tax returns or return information a felony punishable by a fine of up to \$5,000 and/or imprisonment for not more than five years, together with the costs of prosecution.

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I. R. C. § 7213A: Prohibits the unauthorized willful inspection (“browsing”) of federal tax returns or return information and makes such inspection punishable by a fine of up to \$1,000 and/or imprisonment for not more than one year, together with the costs of prosecution.

I. R. C. § 7431: Permits a taxpayer to bring a civil action for damages in a federal district court. Damages that can be brought would be the greater of \$1,000 for each unauthorized disclosure or inspection or the actual damages sustained by the taxpayer, plus punitive damages.

Information obtained from other State Agencies

Any and all information received from other state agencies is regarded as Confidential Information and may not be redisclosed.

Reporting Improper Inspections or Disclosures

Upon suspecting or discovering a possible improper inspection or disclosure of tax information, including breaches and security incidents, the individual suspecting, making the observation or receiving the information must immediately contact the Internal Audit Division, Mary Kate Speer (860) 297-4967 or James Norton (860) 297-5608. Any incident that may contain FTI must be reported to the Treasury Inspector General for Tax Administration (TIGTA), we will contact TIGTA concerning this matter.

If you are aware of any potential violations of the confidentiality statutes or the Department’s policy governing unauthorized access, please refer this information immediately to the Department of Revenue Services Policy Compliance Officer listed above.

If you should have any questions regarding the use, disclosure, or inspection of the tax information, I can be reached at (860) 297-5608 or by email james.norton@po.state.ct.us .

You should retain a copy of this memorandum either in electric or paper format for future reference. Attached is a form for you to sign as an acknowledgment that you have received, read and understand the standards governing the access to, and disclosure of, confidential information.

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INTERNAL REVENUE SERVICE

EXHIBIT 7

CONTRACT LANGUAGE FOR GENERAL SERVICES

I. PERFORMANCE

In performance of this contract, the contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- (1) All work will be done under the supervision of the contractor or the contractor's employees.
- (2) Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Disclosure to anyone other than an officer or employee of the contractor will be prohibited.
- (3) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
- (4) The contractor certifies that the data processed during the performance of this contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- (5) Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.
- (6) All computer systems processing, storing, or transmitting Federal tax information must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal tax information.
- (7) No work involving Federal tax information furnished under this contract will be subcontracted without prior written approval of the IRS.
- (8) The contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.
- (9) The agency will have the right to void the contract if the contractor fails to provide the safeguards described above.
- (10) (Include any additional safeguards that may be appropriate.)

II. CRIMINAL/CIVIL SANCTIONS:

- (1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

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(2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC section 7213A and 7431.

(3) Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

III. INSPECTION:

The IRS and the Agency shall have the right to send its officers and employees into the offices and plants of the contractor for inspection of the facilities and operations provided for the performance of any work under this contract. On the basis of such inspection, specific measures may be required in cases where the contractor is found to be noncompliant with contract safeguards.

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A video pertaining to confidential DRS/IRS tax return information and confidentiality will be provided to the vendor upon issuance of a purchase order.

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STATE OF CONNECTICUT
DEPARTMENT OF REVENUE SERVICES
25 SIGOURNEY STREET HARTFORD, CT 06106

DISCLOSURE OF TAX INFORMATION FORM

As an employee, agent or vendor of the Connecticut Department of Revenue Services, you may come in contact with state and/or federal tax returns, and tax return information. **All tax information, in whatever form, is strictly confidential**; and you may not disclose any such information during or after your employment or contract period with this Department. Unauthorized disclosure or inspection of any federal or state tax information may result in dismissal, criminal prosecution and civil suit as prescribed by federal and state statutes. (**Connecticut General Statute 12-15 and 7213A, 7431 of the Internal Revenue Code.**)

As an employee, agent or vendor of this Department, if there is any doubt as to what information can be furnished (even when persons represent themselves as the taxpayer), you should consult your supervisor or agency contact. **As an agent of this Department** unauthorized disclosure of a tax return or return information is prohibited.

I have read the above information on disclosure and inspection of tax return information and understand that this is a condition of employment or contract with this Department. Please sign and return to the **Department of Revenue Services; Business Office; Attn: Don Knybel; 25 Sigourney Street; Hartford, CT 06106.**

Print Name

Name of Company

Signature

Date

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Purchasing Contact: Elizabeth Basso, AFAO		
Telephone Number: (860) 622-2037		

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SPECIAL TERMS AND CONDITIONS

1. Bidders must include all ancillary costs associated with the acquisition of a product or service in their bid. Failure to include specific reference to an applicable cost will be interpreted as that cost being included in the product or service price.
2. Bidders must be able, at the State's option, to demonstrate any/all proposed hardware/software products. Any required benchmark demonstration must be provided at a site approved by the State and without cost to the State.
3. Bidders must certify that their bid is good for the term of the contract award.
4. The State reserves the right to request complete documentation for any item proposed. Failure to provide said documentation upon request might result in disqualification from an award.

5. TANGIBLE PERSONAL PROPERTY PROVISION

For the entire term of the Agreement and any and all of its extensions, the Contractor, on its own behalf and on behalf of all of its Affiliates, shall comply fully with the provisions of Conn. Gen. Stat. §12-411b, including, but not limited to, the following: (1) The Contractor and its Affiliates shall collect and remit to the State of Connecticut, Department of Revenue Services, on behalf of its customers 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 no later than the last day of the month of the calendar quarter that follows the effective date of this Agreement or the last day of the tax collection period during which the tax was collected, whichever is later.

Notwithstanding the previous sentence, if the Agreement provides for an earlier date, then that earlier date shall control; (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) If the Contractor or its Affiliates fail to remit use taxes collected on behalf of their customers by the date required above, then they shall be subject to the interest and penalties provided for persons required to collect sales tax under Chapter 219 of the Connecticut General Statutes. For purposes of this section of the Agreement, the word "Affiliate" means any person, as defined in Conn. Gen. Stat. §12-1, that controls, is controlled by, or is under common control with another person. A person controls another person if the person owns, directly or indirectly, more than ten 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. 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

SPECIAL TERMS AND CONDITIONS Rev. 01/08	<p style="text-align: center;">STATE OF CONNECTICUT DEPARTMENT OF INFORMATION TECHNOLOGY CONTRACTS & PURCHASING DIVISION 101 EAST RIVER DRIVE, 4th Floor EAST HARTFORD, CT 06108-3274</p>	Award Number 10ITZ0108
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Telephone Number: (860) 622-2037		

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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.

6. Bidders must list maintenance cost for hardware and software, if applicable. In describing your company's maintenance plans include: location of support center and guaranteed response times. Any award for said maintenance would be at the option of the state.
7. Bidder awards normally are made utilizing the Purchasing Division STANDARD BID AND CONTRACT TERMS AND CONDITIONS (SP-7A) or as specifically amended by the Special Bid and Contract Terms and Conditions contained herein. The State reserves the right to reject any bid that does not comply with the State's contractual requirements.
8. **SUPPLIER DIVERSITY PROVISION**
Pursuant to Connecticut General Statute 4a-60g, State Agencies are required to set-aside at least twenty-five percent (25%) of all contracts available for the purchase of goods and services from certified small business. It is the intent of the State to identify Set Aside vendor(s) as part of this Invitation to Bid. Please note that certified businesses must provide with their response a copy of their current certificate from the Department of Administrative Services Supplier Diversity Program. Certified Connecticut Small Business enterprises are those businesses who hold a current certificate from the State of Connecticut’s Department of Administrative Services Supplier Diversity Program. For more information on this program and if your company might qualify, go to:
http://www.das.state.ct.us/Purchase/New_PurchHome/busopp_template.asp?F_ID=25



STATE OF CONNECTICUT
DEPARTMENT OF INFORMATION TECHNOLOGY
CONTRACTS & PURCHASING DIVISION
101 EAST RIVER DRIVE, 4th Floor
EAST HARTFORD, CT 06108-3274
www.ct.gov/doit

AWARD NUMBER 10ITZ0108
Purchasing Contact: Elizabeth Basso, AFAO
E-mail Address: elizabeth.basso@ct.gov
Fax: (860) 610-0672

STANDARD BID/CONTRACT TERMS AND CONDITIONS (SP-7A)

In consideration of these presents, the Invitation to Bid and the Contract, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree to these Standard Bid and Contract Terms and Conditions (the "Terms and Conditions"), the terms of the Invitation to Bid and the Contract.

ALL INVITATIONS TO BID ISSUED BY THE DEPARTMENT OF INFORMATION TECHNOLOGY ("DOIT") WILL BIND BIDDERS TO THESE TERMS AND CONDITIONS, WHICH, UNLESS OTHERWISE SPECIFICALLY NOTED, MAY BE ABROGATED, MODIFIED OR SUPPLEMENTED IN WHOLE OR IN PART BY THE SPECIAL BID AND CONTRACT TERMS AND CONDITIONS (THE "SPECIFICATIONS") ISSUED IN CONNECTION WITH ANY INDIVIDUAL INVITATION TO BID. BY SUBMITTING A BID, THE BIDDER REPRESENTS AND WARRANTS THAT IT IS AGREEING TO ALL OF THE PROVISIONS IN THE INVITATION TO BID, INCLUDING THESE TERMS AND CONDITIONS.

1. Definitions. Unless otherwise indicated, the following definitions shall apply to all Specifications, Invitations to Bid, awards, Contracts, etc., issued by DOIT:

- (a) **Agency:** Any office, department, board, council, commission, institution or other agency of the State.
- (b) **Alternate Bids:** Bids submitted in addition to the bidder's primary response to the invitation to bid. Such bids are intended to act as an alternative to the primary bid or be exchanged for, take the place of, replace or substitute for the primary bid should such primary bid be rejected.
- (c) **Bid:** An offer submitted in response to an Invitation to Bid.
- (d) **Bidder:** As defined in Section 4a-50, Chapter 58 of the Connecticut General Statutes, and as it may be modified, a person, firm or corporation submitting a competitive bid in response to a solicitation.
- (e) **Bidder Parties:** A Bidder'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 Bidder is in privity of oral or written contract and the Bidder intends for such other person or entity to perform under the Contract in any capacity.
- (f) **Cancellation:** An end to the Contract effected pursuant to a right which the Contract creates due to a breach.
- (g) **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.
- (h) **Conditional Bid:** Bid that substantially limits or modifies any of the terms and conditions, specifications or requirements of the invitation to bid.
- (i) **Contract:** The agreement, as of its effective date, between the Bidder and DOIT for any, or all, Systems, Systems Properties or ALL IP Rights, and any associated services, at the Bid price. The Contract shall include the Invitation to Bid and the Bid.
- (j) **Contractor:** A Bidder who accepts or who is deemed to have accepted a Contract.
- (k) **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.
- (l) **Business Day:** Unless otherwise specifically noted, all calendar days other than Saturdays, Sundays and days designated as national or State of Connecticut holidays.
- (m) **Expiration:** An end to the Contract due to the completion in full of the mutual performances of the parties or due to the Contract's term being completed.
- (n) **Information Systems:** As defined in Title 4d, Chapter 61 of the Connecticut General Statutes, and as it may be modified, the combination of data processing hardware and software in the collection, processing and distribution of data to and from interactive computer-based systems to meet informational needs.
- (o) **Invitation to Bid:** The document through which DOIT solicits sealed competitive Bids for any, or all, Systems and associated services through particular Specifications. The Invitation to Bid shall include these Terms and Conditions, the Specifications and all such other documents that DOIT deems it to be appropriate to include in the solicitation.
- (p) **Lowest Responsible Qualified Bidder:** As defined in Title 4a, Chapter 58 of the Connecticut General Statutes, and as it may be modified, the Bidder whose Bid is the lowest of those Bidders possessing the skill, ability and integrity necessary to faithful performance of the work based on objective criteria set forth in the Invitation to Bid and considering past performance and financial responsibility.
- (q) **Multiple Bids:** More than one Bid submitted in response to the same invitation to bid by the same bidder, whether on a separate bid form or attached to the initial bid form. Such bids are intended to be separate and distinct from each other and are meant to be evaluated as individual bids without reference to any other bid.
- (r) **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.
- (s) **State:** The State of Connecticut.
- (t) **Systems:** Information Systems and Telecommunication Systems, or separately as the context may require.
- (u) **Systems Properties:** Records, source and object programs, documentation, specifications, modifications, designs, models, intellectual property rights, all ideas, concepts, know-how, expressions, and methodologies developed or initially conceived jointly or individually by the parties and the right to obtain and hold patents, copyrights, registrations and other similar protections.
- (v) **Telecommunication Systems:** As defined in Title 4d, Chapter 61 of the Connecticut General Statutes, and as it may be modified, the telephone equipment and transmission facilities, either alone or in combination with Information Systems, for the electronic distribution of all forms of information, including voice, data and images.
- (w) **Termination:** An end to the Contract effected pursuant to a right which the Contract creates, other than for a breach.



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Fax: (860) 610-0672

2. Bid Submission Process. Bidders must submit Bids on and in accordance with DOIT forms. DOIT will not accept Telephone or facsimile Bids under any circumstances. The Invitation to Bid sets forth the time and date that DOIT will open Bids. DOIT will not consider Bids arriving after the specified time and date. Bidders must submit Bids in a sealed package to DOIT at such address as the Invitation to Bid specifies.

The outside of sealed Bid package must clearly indicate the Invitation to Bid number as well as the date and time of the opening of the Bids. The name and address of the Bidder should appear in the upper left-hand corner of the Bid package. Bids may be submitted for all or any part of total quantities or for any or all agency requirements listed in the Invitation to Bid, unless otherwise specifically indicated.

3. Bid Preparation, Content, Execution and Copies. Bids must include all information required in the Invitation to Bid in order for the Bid to be accepted and not rejected. Failure to provide such information will result in the rejection of the Bid. Bidders must verify the contents of their Bids before submission, as DOIT will not consider amendments to any Bids after the time specified for the opening of Bids. Bidders must submit one original and one copy of the Bid to DOIT. Bids shall be handwritten in ink, typewritten, or computer prepared. DOIT will reject all Bids prepared in pencil. A person duly authorized to sign Bids on behalf of the Bidder shall sign all Bids. **DOIT shall reject all unsigned Bids. All signatures shall be original signatures**, unless there is specific authorization from DOIT for the use of non-manual forms of signature. The person signing the Bid or his authorized designee shall initial and date all erasures, alterations or corrections on both the original and copy of any documentation submitted to DOIT. Failure to do so may result in rejection of the Bid for those items erased, altered or corrected and not initialed

4. Addenda to Invitation to Bid. If DOIT issues any addendum to the Invitation to Bid, the Bidder should sign it and return it with the Bid or before the Bid opening. In the event that it is not, vendors will still be held to the obligation of whatever change/modification is set forth in the Addendum

5. Conditional Bids. **Conditional Bids may be rejected in whole or in part.**

6. Alternate and Multiple Bids. Alternate Bids or Multiple Bids may be rejected in whole or in part.

7. No Substitute Specification. Unless limited by the term "no substitute," the use of the name of a manufacturer or of any particular make, model, or brand in describing a System, does not restrict Bidders to that manufacturer or specific System or System Properties. Such use simply and only indicates the character or quality of the System in which the State is interested. The System offered must be of similar character and quality and include any applicable options, accessories, etc. and serve the purpose for which it is to be used equally as well as the one specified. By submitting the Bid, the Bidder so warrants the System. Bids on comparable Systems must clearly state the exact System offered including any and all applicable options, accessories, etc., and the Bidder shall furnish such other information concerning the System as will be helpful in evaluating its acceptability for the purposes intended. If the Bidder does not indicate that the System offered is other than as specified, it will be understood that the Bidder is offering the System exactly as specified.

8. Pricing. Prices must be in decimals, not fractions, net, and shall include transportation and delivery charges fully prepaid by the Contractor, FOB, to the destination specified in the Invitation to Bid. In the event of a discrepancy between the unit price and the extension

price, the unit price shall govern. Any discrepancy between the original and the copy of the Bid may result in rejection of the Bids for the System items so affected, except in the event of Bids awarded on a total basis, in which case DOIT shall consider the lower total price in making the award.

9. Tax Exemption. In accordance with section 12-412 of the Connecticut General Statutes, the State is exempt from the payment of excise, transportation and sales taxes imposed by the Federal Government and/or the State. Such taxes must not be included in Bid prices.

10. Bid Opening. DOIT will open and read all Bids publicly, unless otherwise provided by law. Bidders may be present or be represented at all openings. After DOIT makes the award, Bids are subject to public inspection by appointment during DOIT's normal business hours. DOIT will not prepare, discuss or communicate summaries of Bids in any way.

11. Right to Cancel or Amend. DOIT may amend an Invitation to Bid at any time prior to the date and time of Bid opening. DOIT may cancel an Invitation to Bid at any time prior to the date and time of Contract award. Such cancellation shall not be deemed to be a breach of contract by DOIT.

12. Samples. If the Invitation to Bid requires that Bidders submit samples of Systems, the samples must meet at a minimum all Specifications. Bidders must submit samples when required and strictly in accordance with instructions, or DOIT may reject the Bid. If DOIT accepts a sample that does not meet the Specifications, this does not indicate or mean that DOIT has lowered or modified the Specifications. However, if any Bid sample is superior in quality to the Specifications, all deliveries shall have the same identity and quality as the Bid sample. If DOIT requests samples subsequent to the opening of Bids, the Bidder shall deliver them as specified in the Bid, free of any charges or fees and be accompanied by a descriptive memorandum indicating the Bidder desires for their return. The State shall return any samples in accordance with such memorandum, provided that they have not been used or made useless by testing. The State may hold samples for comparison with deliveries.

13. Rejected Items; Abandonment. If DOIT notifies Bidders that they must retrieve samples, or any other Systems, goods or equipment (collectively, the "Rejected Items") belonging to the Bidder, wherever located, the Bidder must do so within forty-eight (48) hours after notification unless public health and safety require immediate destruction or other disposal of the Rejected Items. The Bidder agrees and acknowledges that its failure to retrieve and remove from any State premises the Rejected Items within such time shall be deemed to be an abandonment of the Rejected Items and, without more required of any party, shall vest authority in DOIT or any Agency to use or dispose of the Rejected Items as if they were the State's own property, as they deem it to be appropriate and in accordance with the law without incurring any liability or obligation to the Bidder or any other party. To the extent that DOIT and/or any Agency incurs any costs or expenses in connection with the Rejected Items, including, but not limited to, disposing of the Rejected Items, the Bidder shall reimburse the appropriate State entity no later than thirty (30) days after the date of invoice for such costs and expenses. All samples will be set up at DOIT unless DOIT indicates another location.

14. Award Criteria. DOIT shall award Contracts to the Lowest Responsible Qualified Bidder, in accordance with the factors set forth in 4a-59 of the Connecticut General Statutes, in the corresponding regulations and in the Invitation to Bid. Past performance, financial responsibility, the quality of the Systems to



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be supplied, their conformity with Specifications, their suitability to the requirements of the State, the delivery terms and administrative costs to the State shall always be factors in making contract awards.

15. Right to Manage Award. DOIT may award by System item, or part thereof, groups of Systems, or all Systems in the Invitation to Bid; reject any and all Bids in whole or in part; waive or correct minor irregularities and omissions if, in DOIT's judgment, the best interest of the State will be served; or correct inaccurate awards, as it deems to be appropriate, resulting from clerical or administrative errors. If in the case of an irregularity, omission or mistake, the intended correct Bid is clearly evident on the face of the Bid, the Bidder shall be given an opportunity to correct the Bid to reflect the correct intent. Examples of mistakes that are clearly evident on the face of the Bid include but are not limited to, typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.

16. Effective Date. The Contract shall be deemed to exist and be effective from the time that the Bidder accepts DOIT's Contract award notice to the Bidder. Bidder acceptance shall occur the earlier of the date of Bidder's written acceptance to DOIT in response to the Contract award notice or, absent such written acceptance, ten (10) days from the date of the Contract award notice. If any Bidder refuses or fails to accept DOIT's Contract award within ten (10) days from the date of the Contract award notice, DOIT may award the Contract to the next Lowest Responsible Qualified Bidder, and so on until the Contract is awarded and accepted. Refusal to accept a Contract after the ten (10) day period shall be deemed to be a breach of Contract and the Contractor shall be subject to the section in these terms and conditions concerning Open Market Purchases.

17. Bidder Obligations Concerning the Bid. A Bidder, if requested, must present evidence of experience, ability, service facilities, factory authorization and financial standing necessary to meet satisfactorily the requirements set forth or implied in the Invitation to Bid.

18. Discounts. Bidders may offer a discount for prompt payment, but such discount will not be taken into consideration in determining lowest price, except in the case of a price tie.

19. Rejection of Bids for Malfeasance. DOIT may, in its sole discretion, reject the Bid of any Bidder if at the time of Bid submittal the Bidder or Bidder Parties is in breach of any of the applicable representations and warranties listed in the Representations and Warranties section of these Terms and Conditions

20. Order and Delivery. The Contract shall bind the Bidder to furnish and deliver the Systems and/or services at the prices set forth in the Bid and in accordance with the Invitation to Bid, including these Terms and Conditions. Subject to the sections in these terms and conditions concerning Force Majeure, Termination, Cancellation and Expiration and Open Market Purchases, the Contract shall bind the State to order the Systems and any associated services from the Contractor, and to pay for the accepted Systems and any associated services at the Contract prices. The State may order and the Contractor shall deliver accordingly up to ten (10) percent more or less than the quantity listed in the Invitation to Bid. Subject to Contractor acceptance, Agencies not originally or specifically mentioned in the Invitation to Bid may purchase Systems and associated services from the Contractor. Agencies mentioned in the Invitation to Bid may transfer Systems and any associated services that they would have

ordered to one or more other Agencies and the Contractor shall perform accordingly, subject to an adjustment in transportation costs, if applicable, resulting from any possible change in delivery sites. Provided further that such transportation costs are based on separately determined delivery costs to individual Agencies.

21. Contract Amendments. No alterations or variations of the Contract shall be valid or binding upon the State unless made in writing and signed by both parties.

22. Term. Contracts will remain in force for the full period specified in the Invitation to Bid or until:

- Terminated or Cancelled in accordance with these Terms and Conditions; or
- Extended in accordance with section 4a-59a of the Connecticut General Statutes, upon written authorization of the CIO and acceptance by the contractor, to permit ordering of unordered balances or additional quantities at the contract price and in accordance with the contract terms.
- Expired.

23. Assignment. 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 DOIT. DOIT may void any purported assignment in violation of this section and to declare the Contractor in breach of Contract. If the Contractor assigns its rights or obligations under the Contract without the consent of DOIT, DOIT may Cancel the Contract in accordance with the Termination, Cancellation and Expiration section of these Terms and Conditions, effective as of the assignment's occurrence or such other time as DOIT specifies in the Cancellation notice. Any Cancellation is without prejudice to DOIT's rights or possible Claims.

24. Termination, Cancellation and Expiration.

- Notwithstanding any provisions in the Invitation to Bid, including these Terms and Conditions, DOIT's Chief Information Officer ("CIO"), or the CIO's designee, may Terminate or Cancel the Contract whenever the CIO makes a written determination that such Termination or Cancellation is in the best interests of the State. DOIT shall notify the Contractor in writing of Termination or Cancellation pursuant to this section, which notice shall specify the effective date of Termination or Cancellation and the extent to which the Contractor must complete performance under the Contract prior to such date.
- The CIO shall send the notice of Termination or Cancellation via registered mail, return receipt requested, to the Contractor at the most current address which the Contractor has furnished to the State for purposes of correspondence, or by hand delivery. Upon receiving such notice from the State, the Contractor shall immediately discontinue all services and take all actions affected in accordance with the notice, undertake all commercially reasonable efforts to mitigate any losses or damages, and deliver to the State all Records. The Records are deemed to be the property of the State and the Contractor shall deliver them to DOIT no later than thirty (30) days after the Termination, Cancellation or Expiration of the Contract or fifteen (15) days after the Contractor receives a written request from the State 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, ASCEE or .TXT.
- Upon receipt of a written notice of Termination or Cancellation from the State, the Contractor shall cease operations as directed by the State in the notice, and take all actions that are



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necessary or appropriate, or that the State may reasonably direct, for the protection and preservation of the Systems, Systems Properties and any other property. Except for any work which DOIT directs the Bidder to perform in the notice prior to the effective date of Termination or Cancellation, 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.

- (d) In the case of any Termination or Cancellation, the State shall, within forty-five (45) days of the effective date of Termination or Cancellation, reimburse the Contractor for its performance rendered and accepted by the State in accordance with the compensation provisions of the Contract, in addition to all actual and reasonable costs incurred after Termination or Cancellation in completing those portions of the performance which the Contractor was required to complete by the notice. However, the Contractor is not entitled to receive and the State is not obligated to tender to the Contractor any payments for anticipated or lost profits. Upon request by the State, the Contractor shall assign to the State, or any replacement contractor which the State designates, all subcontracts, purchase orders and other commitments, deliver to the State all Records and other information pertaining to its performance, and remove from State premises, whether leased or owned, all such equipment, waste material and rubbish related to its performance as the State may request.
- (e) For breach or violation of any of the provisions in the section of these Terms and Conditions concerning Representations and
- (f) Warranties, the State may Cancel 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.
- (g) Upon Termination, Cancellation or Expiration 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, Cancellation or Expiration of the Contract. All representations, warranties, agreements and rights of the parties under the Contract shall survive such Termination, Cancellation or Expiration to the extent not otherwise limited in the Contract and without each one of them having to be specifically mentioned in the Contract.
- (h) Termination or Cancellation of the Contract pursuant to this section shall not be deemed to be a breach of contract by the State.

25. Breach. 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, or such other time as provided in the notice, the Invitation to Bid or these Terms and Conditions, whichever is latest. 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. The notice may include an effective Contract cancellation 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 cancellation date, no further action shall be required of any party to effect the cancellation as of the stated date. If the notice does not set forth an effective Contract cancellation date, then the non-breaching party may Cancel the Contract by giving the breaching party no less

than twenty four (24) hours' prior written notice. If the State believes that the Contractor has not performed according to the Contract, the State may withhold payment in whole or in part pending resolution of the performance issue, provided that DOIT notifies the Contractor in writing prior to the date that the payment would have been due in accordance with the Payment section of these Terms and Conditions. For notice purposes, a lesser payment period shall not apply. If a cash discount for prompt payment is invoiced, the withholding of payments as provided for in this section shall not deprive the State of the right to take such cash discount.

26. Waiver.

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

27. Open Market Purchases. Except to the extent that the Contractor is performing within a right to cure period, failure of the Contractor to perform within the time specified in the Contract, or failure to replace rejected or substandard Systems or fulfill unperformed services when so requested and as the Contract provides or allows, constitutes a breach of the Contract and as a remedy for such breach, such failure shall constitute authority for DOIT, if it deems it to be necessary or appropriate in its sole discretion, to Cancel the Contract and/or to purchase on the open market, Systems and associated services to replace those which have been rejected, not delivered, or not performed. The State shall invoice the Contractor for all such purchases to the extent that they exceed the costs and expenses in Contractor's Bid and the Contractor shall pay the State's invoice immediately after receiving the invoice. If DOIT does not Cancel the Contract, the State will deduct such open market purchases from the Contract quantities. However, if the CIO deems it to be in the best interest of the State, DOIT may accept and use the Systems delivered which are substandard in quality, subject to an adjustment in price to be determined by DOIT.

28. Purchase Orders. The Contract itself is not an authorization for the Contractor to ship any Systems or to begin performing in any way. The Contractor may begin performing only after it has received a duly issued purchase order against the Contract for performance. The Agency using the Contract will issue a purchase order against the Contract directly to the Contractor. All purchase orders must be in writing, bear the Contract number and comply with all other State requirements, particularly the Agency's requirements concerning procurement. A Contractor making delivery without a formal written purchase order does so at his own risk.

29. Non-responsibility. If (a) a Bidder fails to accept a Contract within ten (10) days, as specified in the Effective Date section of these terms and conditions; (b) a Contractor suffers an unexcused material breach of the Contract and fails to cure that breach in accordance with the procedures set forth in the Breach section of these terms and conditions; or (c) a Contractor fails to reimburse the State for open market purchases as set forth in the Open Market Purchases section of these terms and conditions, then DOIT will take that into consideration in future Invitations to Bid when evaluating the Bidder's responsibility. The consideration of this factor may lead to a "not responsible" finding against the Bidder and



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make a Bidder ineligible to receive one or more future contract awards.

30. Indemnification.

- a. The Contractor shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with the Contract, including the acts of commission or omission (collectively, the "Acts") of the Contractor or Contractor Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or the Contract. The Contractor shall use counsel reasonably acceptable to the State and without charge to the State in carrying out its obligations under this section. The Contractor's obligations under this section to indemnify, defend and hold harmless against Claims includes Claims concerning any intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the performance of the Contract.
- b. The Contractor shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of the Contractor or any Contractor Parties. The State shall give the Contractor reasonable notice of any such Claims.
- c. The Contractor's duties under this section shall remain fully in effect and binding in accordance with the terms and conditions of the Contract, without being lessened or compromised in any way, even where the Contractor is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims and/or where the State is alleged or is found to have contributed to the Acts giving rise to the Claims.
- d. 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 section. The Contractor shall name the State as an additional insured on the policy.
- e. The rights provided in this section for the benefit of the State shall encompass the recovery of attorneys' and other professionals' fees expended in pursuing a Claim against a third party.

This section shall survive the Termination, Cancellation or Expiration of the Contract, and shall not be limited by reason of any insurance coverage.

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

irrevocably submits to such jurisdiction in any suit, action or proceeding.

32. Contractor Guaranties. Contractor shall:

- a. Perform fully under the Contract, the Invitation to Bid and the Bid in accordance with their terms.
- b. Guarantee the Systems and, as applicable, Systems Properties, against defective material or workmanship and to repair any damage or marring occasioned in transit or, at the State'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 Systems or System Properties, to 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;
- 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; and
- f. Neither disclaim, exclude nor modify the implied warranties of fitness for a particular purpose or of merchantability.

The contractual provisions concerning the confidentiality provisions guarantee in this section shall include civil sanctions for the unauthorized disclosure of the Records. The Contractor and Contractor Parties shall be treated as State employees with respect to any civil or criminal statutes providing for civil or criminal sanctions for unauthorized disclosures.

- 33. Systems' Standards and Appurtenances.** Any Systems delivered must be standard new Systems, latest model, except as otherwise specifically stated in the Invitation to Bid. Where the Invitation to Bid or Bid do not specifically list or describe any part or nominal appurtenances of equipment for the Systems, it shall be understood that the Contractor shall deliver such equipment and appurtenances as are usually provided with the manufacturer's stock model.

34. Delivery.

- (a) Any Systems delivered shall be standard new equipment, latest model, except as otherwise stated in the Invitation to Bid. Remanufactured, refurbished or reconditioned equipment may be accepted but only to the extent allowed under the Invitation to Bid. Where any part or nominal appurtenances of equipment are not described, it shall be understood that all equipment and appurtenances, which are usually provided in the manufacturer's stock model, shall be furnished.
- (b) Delivery shall be made as ordered and in accordance with the Invitation to Bid. Unless otherwise specified in the Invitation to Bid, delivery shall be to a loading dock or receiving platform. The Contractor or Contractor's shipping designee shall be responsible for removal of Systems from the carrier and placement on the agency loading dock or receiving platform. State receiving personnel are not required to assist in this process. The decision of the CIO 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.
- (c) In order for the time of delivery to be extended, DOIT must first approve a request for extension from the time specified in the Contract, such extension applying only to the particular item or shipment.



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- (d) Systems 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 State unless otherwise stated in the Bid.
- (e) All risk of loss and damage to the Systems and Systems Properties transfers to the State upon Title vesting in the State.
- 35. System Inspection.** DOIT shall determine the manner and prescribe the inspection of all Systems and the tests of all samples submitted to determine whether they comply with all of the Specifications in the Invitation to Bid. If any System fails in any way to meet the Specifications in the Invitation to Bid, DOIT 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 System meets the Specifications. Any decision pertaining to any such failure or rejection shall be final and binding.
- 36. Payment.** Payment shall be made only after the Agency receives the Systems or services and after acceptance of the Systems or services and presentation of a properly completed invoice. Unless otherwise specified in the Invitation to Bid, payment for all accepted Systems and/or associated services shall be due within forty-five (45) days after acceptance of the Systems or services. Bids that require payment in less than forty-five (45) days shall be rejected, unless DOIT determines in its sole discretion that the Bid's requiring a lesser period is not material.
- 37. Invoicing.** The Contractor shall send all invoices directly to the Agency at the address indicated on the purchase order and shall make all inquiries regarding the status of unpaid invoices also only to such ordering Agency.
- 38. Force Majeure.** The State and the Contractor shall not be excused from their duty 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.
- 39. Advertising.** The Contractor shall not refer to sales to the State for advertising or promotional purposes without DOIT's prior written approval.
- 40. American with Disabilities Act.** The Contractor shall be and remain in compliance with the Americans with Disabilities Act of 1990 ("Act"), to the extent applicable, during the term of the Contract. The State may Cancel the Contract if the Contractor fails to comply with the Act.
- 41. Representations and Warranties.** The Contractor, and the Bidder, as appropriate, represent and warrant to the State for itself and Contractor Parties and Bidder Parties, as appropriate, that:
- (a) if they are entities, they are duly and validly existing under the laws of its state 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 of the Bid 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 State 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) Titles 4a and 4d concerning State purchasing, including, but not limited to Sections 4a-60 and 4a-60a, concerning nondiscrimination, 22a-194a concerning the use of polystyrene foam, 4d-32 concerning subcontracts, 4d-34 concerning ownership rights and integrity of public records, 4d-35 concerning applicability of the Connecticut Freedom of Information Act, 4d-36 concerning nondisclosure of public records, 4d-37 concerning prohibition on selling, marketing or profiting from public records and 4d-38 concerning notice to DOIT for violation of certain laws.
- (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 any Agencies; or (3) any indenture, agreement, document or other instrument to which it is a party or by which it may be bound;
- (d) they are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or state department or agency;
- (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 public (Federal, state or local) transaction or contract. 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 a governmental entity (Federal, state or local) with commission of any of the offenses listed above;
- (g) they have not within the three years preceding the Contract had one or more public transactions (Federal, state or local) cancelled for cause or breach;
- (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 Bidder, Bidder Parties, 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;
- (j) they shall disclose annually on the anniversary date of the effective date of the Contract, any and all 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;
- (k) its participation in the Invitation to Bid 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 code of ethics;



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E-mail Address: elizabeth.basso@ct.gov
Fax: (860) 610-0672

- (l) the Bid is not made in connection or concert with any other person, entity or Bidder, including any affiliate of the Bidder, submitting a Bid for the same Systems, and is in all respects fair and without collusion or fraud;
 - (m) it has not participated in any communications concerning the Invitation to Bid with any person or entity who submits a Bid, including, but not limited to, any manufacturers and/or dealers;
 - (n) it is able to perform under the Contract using its own resources or the resources of a party who is not a Bidder;
 - (o) each Systems or each developed, modified or remediated Systems delivered under the Contract shall: (1) accurately assess, present or process date and time data (including, but not limited to, management, manipulation, processing, comparing, sequencing and other use of date data, including single and multi-century formulae and leap years) from, into and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations; (2) properly exchange date and time data when used in combination with other Systems; and (3) perform as a System, if so stipulated in the Contract;
 - (p) it shall obtain in a written contract all of the representations and warranties in this section from any subcontractor that it contracts with in connection with the Contract and to require that provision to be included in any lower tier subcontracts and purchase orders;
 - (q) it has paid all applicable workers' compensation second injury fund assessments concerning all previous work done in Connecticut;
 - (r) it has a record of compliance with Occupational Health and Safety Administration regulations without any unabated, willful or serious violations;
 - (s) it owes no unemployment compensation contributions;
 - (t) it is not delinquent in the payment of any taxes owed, or that it has filed a sales tax security bond, and it has, if and as applicable, filed for motor carrier road tax stickers and has paid all outstanding road taxes; all of its vehicles have current registrations and, unless such vehicles are no longer in service, it shall not allow any such registrations to lapse;
 - (U) each Contractor Party or Bidder Party has vested in the Contractor and Bidder plenary authority to bind them to the extent necessary or appropriate in any agreement with the State in accordance with these representations and warranties and that they shall also provide, no later than fifteen (days) days after receiving a request from DOIT, such information as DOIT may require to evidence, in the State's sole determination, compliance with this section;
 - (v) it shall afford the State the lowest rates available for the Systems and any associated services and shall provide an annual written statement that it has complied with such representation and warranty;
 - (w) except to the extent modified or abrogated in the Specifications, all ownership, title, licenses, rights and interest (including, but not limited to, perpetual use) (collectively, "Title") of and to the Systems and Systems Properties shall pass to the State upon complete installation, testing and acceptance of the Systems and associated services and payment by the State;
 - (x) if either party Terminates or Cancels the Contract, for any reason, the Contractor shall relinquish to the State all Title to the Systems and Systems Properties delivered, accepted and paid for (except to the extent any invoiced amount is disputed) by the State;
 - (y) with regard to third party products provided with the Systems, and Systems Properties, the Contractor shall transfer all licenses which it is permitted to transfer in accordance with the applicable third party license;
 - (z) the Contractor shall not copyright, register, distribute or claim any rights in or to the Systems and Systems Properties after the effective date of the Contract without DOIT's prior written consent;
 - (aa) it either owns or has the authority to use all Title of and to the Systems, Systems Properties and that such Title is not the subject of any encumbrances, liens or claims of ownership by any third party;
 - (bb) the Systems and Systems Properties do not infringe or misappropriate any patent, trade secret or other intellectual property right of a third Party;
 - (cc) the State's use of any Systems and Systems Properties shall not infringe or misappropriate any patent, trade secret or other intellectual property right of a third Party;
 - (dd) if the Contractor procures any Systems, Systems Properties Rights, the Contractor shall sub-license such Systems, Systems Properties and that the State shall be afforded the full benefits of any manufacturer or subcontractor licenses for the use of the Systems and Systems Properties;
 - (ee) the Contractor shall disclose to DOIT all software license and software escrow agreements that it has with any manufacturers or Contractor Parties; and
 - (ff) the Contractor shall assign or otherwise transfer to DOIT, or afford DOIT the full benefits of any manufacturer's warranty for the Systems, Systems Properties and All IP Rights, to the extent that such warranties are assignable or otherwise transferable to DOIT.
- 42. Disclosure of Contractor Parties Litigation.** The Contractor shall require that all Contractor Parties, as appropriate, disclose to the Contractor annually on the anniversary date of the effective date of the Contract, 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. The Contractor shall provide such information to DOIT no later than ten (10) days after the Contractor receives such information. Disclosure shall be in writing.
- 43. Bidder Communications with State.** The only Agency with which Bidders may communicate concerning the Invitation to Bid and their Bid is DOIT. They may not contact the requesting Agency or any of its employees unless the Bidder has received prior written approval from DOIT. Any alleged oral agreement or arrangement made by a Bidder or Contractor with any Agency or any of its employees shall not bind DOIT or the State.
- 44. Entirety of Contract.** The Contract is the entire agreement between the parties with respect to the its subject matter, and supersedes all prior agreements, proposals, offers, counteroffers and understandings of the parties, whether written or oral. No alteration, modification or interpretation of the Contract shall be valid or binding unless in writing and signed by both parties. 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.
- 45. Price Reduction.** The parties may agree to a reduction in the Bid price for any part or all of the System and/or associated services after the Contractor begins to perform.
- 46. Executive Orders.** The Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill,



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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. At the Contractor's request, the Client Agency shall provide a copy of these orders to the Contractor. The Contract may also be subject to Executive Order No. 7C of Governor M. Jodi Rell, promulgated July 13, 2006, concerning contracting reforms, Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services, Executive Order No. 19 of Governor M. Jodi Rell, promulgated June 19, 2008 concerning use of System Development Methodologies in accordance with their respective terms and conditions.

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

The following subsections are set forth here as required by section 4a-60 of the Connecticut General Statutes:

(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, 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. 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, 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; (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 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 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 sections 46a-68e and 46a-68f and with each regulation or relevant order issued by said commission pursuant to sections 46a-56, 46a-68e and 46a-68f; (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 section 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 project.

"Minority business enterprise" means any small contractor or supplier of materials fifty-one per cent 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 section 32-9n; and "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations. "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.

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.

The contractor shall develop and maintain adequate documentation, in a manner prescribed by the commission, of its good faith efforts.

The contractor shall include the provisions of sections (a) and (b) above 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 section 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.

The following subsections are set forth here as required by section 4a-60a of the Connecticut General Statutes:

(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 of 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 section 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 section 46a-56.

The contractor shall include the provisions of section (g) above 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



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subcontract or purchase order as the commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with section 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.

For the purposes of this entire Non-Discrimination section, "contract" includes any extension or modification of the contract, "contractor" includes any successors or assigns of the contractor, "marital status" means being single, married as recognized by the state of Connecticut, widowed, separated or divorced, and "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. For the purposes of this section, "contract" does 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).

48. Whistleblowing. The Contract is subject to the provisions of §4-61dd of the Connecticut General Statutes. In accordance with this section any person having knowledge of any matter involving corruption, violation of state or federal laws or regulations, gross waste of funds, abuse of authority or danger to the public safety occurring in any large state contract, may transmit all facts and information in his possession concerning such matter to the Auditors of Public Accounts. In accordance with subsection (e) if an officer, employee or appointing authority of a large state 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 the Auditors of Public Accounts or the Attorney General under the provisions of this section, 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 the 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 executive head of the state or quasi-public agency may request the Attorney General to 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) each large state contractor shall post a notice of the provisions of this section relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the contractor.

49. Headings. The headings given to the Sections in these Terms and Conditions 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.

50. 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.

51. Parties. To the extent that any Contractor Party or Bidder Party is to participate or perform in any way, directly or indirectly in connection with the Bid or the Contract, any reference in the Invitation to Bid, the Bid and the Contract to "Contractor" or "Bidder" shall also be deemed to include "Contractor Parties" or "Bidder Parties," respectively, as if such reference had originally specifically included "Contractor Parties"

or "Bidder Parties," since it is the parties' intent for the terms "Contractor Parties" and "Bidder Parties" to be vested with the same rights and obligations as the terms "Contractor" and "Bidder."

52. Contractor Changes. The Contractor shall notify DOIT in writing of any change in its certificate of incorporation, a change in more than a controlling interest in the ownership of the Contractor or a change in the individual(s) in charge of the performance to be completed under the Contract. This change shall not relieve the Contractor of any responsibility for the accuracy and completeness of the performance. DOIT, after receiving written notice by the Contractor of any such change, may require such agreements, releases and other instruments evidencing, to DOIT's 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 DOIT in accordance with the terms of DOIT's written request. DOIT may also require, and the Contractor shall deliver, a financial statement showing that solvency of the Contractor is 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 it is fully performed.

53. 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 provision of the Contract and which do not involve the 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.

54. Audit and Inspection of Records. The Contractor shall make all of its and the Contractor Parties' Records available at all reasonable hours for audit and inspection by DOIT and any Agency, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State's Attorney and their respective agents. Requests for any audit or inspection shall be in writing, at least ten (10) days prior to the requested date. All audits and inspections shall be at the State's expense. The State may request an audit or inspection at any time during the Contract term and for three (3) years from Termination, Cancellation or Expiration of the Contract. The Contractor shall cooperate fully with the State and its agents in connection with an audit or inspection. Following any audit or inspection, the State may conduct and the Contractor shall cooperate with an exit conference.

55. Background Checks. The Contractor and Contractor Parties shall be subject to criminal background checks as provided for in the State of Connecticut Department of Public Safety Administration and Operations Manual.

56. 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.

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



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sufficient reason to relieve the Contractor from any of its obligations under the Contract.

58. Contractor Responsibility. The Contractor shall be required to assume responsibility 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.

The Contractor shall exercise all reasonable care to avoid damage to the State's property or to property being made ready for the State's use, and to all property adjacent to any work site. The Contractor shall promptly report any damage, regardless of cause, to the State.

59. 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.

60. Most Favored Nation. The terms of all Systems and services in the Contract are equivalent to or better than those for comparable Contractor offerings to any other state or local government under like terms and conditions. If during the term of the Contract the Contractor provides more favorable terms for said offerings to another such state or local government, the Contract shall be deemed to be amended, automatically and without any act required of any party, to provide the same terms to the State.

61. Confidential Information. DOIT will afford due regard to the Bidder's and Contractor's request for the protection of proprietary or confidential information which DOIT receives. However, all materials associated with the Bid and 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, the Bidder or 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 vendor 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 Bidder or 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 Bid and the Specifications, conflicts or is in any way inconsistent with this Section, this Section controls and shall apply.

62. Interpretation. The Contract contains numerous references to statutes and regulations. For purposes of interpretation, conflict resolution and otherwise, the content of those statutes and regulations shall govern over the content of the reference in the Contract to those statutes and regulations.

63. Cross-Default. If the Contractor or Contractor Parties breach, default or in any way fail to perform satisfactorily under the Contract, then the State may, in its sole discretion, without more and without any action whatsoever required of the State, 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 or Contractor Parties have with the State. Accordingly, the State 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 the State, as if the Contractor or Contractor Parties had suffered a breach, default or failure to perform under the Other Agreements.

If the Contractor or Contractor Parties breach, default or in any way fail to perform satisfactorily under any or all other agreements or arrangements ("Other Agreements") that the Contractor or Contractor Parties have with the State, then the State may, in its sole discretion, without more and without any action whatsoever required of the State, treat any such event as a breach, default or failure to perform under the Contract. Accordingly, the State may then exercise at its sole option any and all of its 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 the State, as if the Contractor or Contractor Parties had suffered a breach, default or failure to perform under the Contract.

64. Disclosure of Records. The Contract may be subject to the provisions of §1-218 of the Connecticut General Statutes. In accordance with this section, 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 (1) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (2) indicate that such records and files are subject to the Freedom of Information Act and may be disclosed by the public agency pursuant to the Freedom of Information Act. 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 the Freedom of Information Act. 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.

65. Notice of Consulting Affidavit. Section 4a-81 of Connecticut Statutes requires that this solicitation include a notice of the consulting affidavit requirements described in the Statute. Accordingly, pursuant to the Statute, vendors are notified as follows:
No state agency shall execute a contract for the purchase of goods or services, which contract has a total value to the state of fifty thousand dollars or more in any calendar or fiscal year, unless the state agency obtains the written affidavit described in subsection (b) of this section.

(1) The chief official of the vendor awarded a contract described in subsection (a) of this section or the individual awarded such contract who is authorized to execute such contract, shall attest in an affidavit as to whether any consulting agreement has been entered into in connection with such contract. Such affidavit shall be required if any duties of the consultant included communications concerning business of such state agency, whether or not direct contact with a state agency, state or public official or state employee was expected or made. "Consulting agreement" means any written or oral agreement to retain the services, for a fee, of a consultant for the purposes of (A) providing counsel to a contractor, vendor, consultant or other entity seeking to conduct, or conducting, business with the State, (B) contacting, whether in writing or orally, any executive, judicial, or administrative office of the state, including any department, institution, bureau, board, commission, authority, official or employee for the purpose of solicitation, dispute resolution, introduction or requests for information or (C) any other similar activity related to such contract. "Consulting agreement" does not



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include any agreements entered into with a consultant who is registered under the provisions of Chapter 10 of the Connecticut General Statutes concerning the State's Codes of Ethics, as of the date such affidavit is submitted. (2) Such affidavit shall be sworn as true to the best knowledge and belief of the person signing the certification on the affidavit and shall be subject to the penalties of false statement. (3) Such affidavit shall include the name of the consultant, the consultant's firm, the basic terms of the consulting agreement, a brief description of the services provided, and an indication as to whether the consultant is a former state employee or public official. If the consultant is a former state employee or public official, such affidavit shall indicate his or her former agency and the date such employment terminated. (4) Such affidavit shall be amended whenever the vendor awarded the contract enters into any new consulting agreement during the term of the contract. If a vendor refuses to submit the affidavit required under subsection (b) of this section, then the state agency shall not award the Contract to such vendor and shall award the contract to the next highest ranked vendor or the next lowest responsible qualified bidder or seek new bids or proposals.

This section is set forth here only for purposes of providing notice of the requirements of the Act. Accordingly, it is neither intended nor should it be interpreted nor relied upon to be a complete and full reiteration of the Act's contents. Any interpretation or understanding of the Act's requirements or content by any party must come only from reading the full text of the Act itself.

66. Summary of State Ethics Laws. Pursuant to the requirements of Section 1-101qq of 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.

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

68. Time is of the Essence. Time is of the essence with respect to all provisions of this Agreement that specify a time for performance; provided, however, that this provision shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.

69. Continuity of Systems. (a) The Contractor acknowledges that the state agency information system and telecommunication system facilities and equipment (the "Systems") and associated services are important to the function of State government and that they must continue without interruption. If the work under the Contract, any subcontract, or amendment to either, is transferred back to the State or to another contractor at any time for any reason, then the Contractor shall cooperate fully with the State, and do and perform all acts and things that DOIT deems to be necessary or appropriate, to ensure continuity of the Systems and services so that there is no disruption or interruption in performance as required or permitted in the Contract. The Contractor shall not enter into any subcontract for any part of the performance under the Contract without prior written approval of such subcontract by DOIT, as required by Conn. Gen. Stat. §4d-32. The Contractor shall include in such subcontract a provision containing all of the substantive terms and conditions of this section, such that the subcontractor will be obligated to DOIT in the same way as the

Contractor is obligated to DOIT under this section. The Contractor shall make a full and complete disclosure of and delivery to DOIT or its representatives of all Records and "Public Records," as that term is defined in Conn. Gen. Stat. §4d-33, as it may be amended, in whatever form they exist or are stored and maintained and wherever located, directly or indirectly, concerning the Contract.

(b) The parties shall follow the following procedures in order to ensure the orderly transfer to the State of:

(1) such facilities and equipment-- Unless a shorter period is necessary or appropriate to ensure compliance with subsection (a) above, in which case that shorter period shall apply, the Contractor shall deliver to the State, F.O.B. East Hartford, Connecticut or other State location which DOIT identifies, all Systems related to or arising out of the Contract, subcontract or amendment, no later than 10 days from the date that the work under the Contract is transferred back to the State or to another contractor for any reason. The Contractor shall deliver the Systems to the State, during the State's business hours, in good working order and in appropriately protective packaging to ensure delivery without damage. Concurrent with this delivery, the Contractor shall also deliver all Systems-related operation manuals and other documentation in whatever form they exist and a list of all Systems passwords and security codes;

(2) all software, including all applicable licenses, purchased, created or modified pursuant to the Contract, subcontract or amendment-- Unless a shorter period is necessary or appropriate to ensure compliance with subsection (a) above, in which case that shorter period shall apply, the Contractor shall deliver to the State, F.O.B. East Hartford, Connecticut or other State location which DOIT identifies, all software, including all applicable licenses, purchased, created or modified pursuant to the Contract, subcontract or amendment no later than 10 days from the date that the work under the Contract is transferred back to the State or to another contractor for any reason. The Contractor shall deliver to the State, during the State's business hours, the software, including its source code, if applicable, in good working order, readily capable of being maintained and modified, and housed in appropriately protective packaging or hardware to ensure delivery without damage. Concurrent with this delivery, the Contractor shall also deliver all related operation manuals and other documentation in whatever form they exist and a list of all applicable passwords and security codes; and

(3) all Public Records, as defined in Conn. Gen. Stat. §4d-33, which the Contractor or Contractor Parties possess or create pursuant to the Contract, subcontract or amendment-- Unless a shorter period is necessary or appropriate to ensure compliance with subsection (a) above, in which case that shorter period shall apply, the Contractor shall deliver to the State, F.O.B. East Hartford, Connecticut or other State location which DOIT identifies, all Records and Public Records created or modified pursuant to the Contract, subcontract or amendment no later than the latter of (1) the time specified in the section in this Contract concerning Termination for the return of Records and (2) 10 days from the date that the work under the Contract is transferred back to the State or to another contractor for any reason. The Contractor shall deliver to the State those Records and Public Records that exist in electronic, magnetic or other intangible form in a non-proprietary format, such as, but not limited to, ASCII or .TXT. The Contractor shall deliver to the State, during the State's business hours, those Records and Public Records and a list of all applicable passwords and security codes, all in appropriately protective packaging to ensure delivery without damage.

(c) If the Contractor employs former State employees, the Contractor shall facilitate the exercising of any reemployment rights



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101 EAST RIVER DRIVE, 4th Floor
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AWARD NUMBER 10ITZ0108
Purchasing Contact: Elizabeth Basso, AFAO
E-mail Address: elizabeth.basso@ct.gov
Fax: (860) 610-0672

that such State employees may have with the State, including, but not limited to, affording them all reasonable opportunities during the workday to interview for State jobs. The Contractor shall include language similar to this section in all of its contracts with its subcontractors and applicable Contractor Parties so that they are similarly obligated.

70. Campaign Contribution and Solicitation Ban. With regard to a State contract as defined in P.A. 07-1 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 submission in response to the State's solicitation expressly acknowledges receipt of the State Elections Enforcement Commission's notice advising prospective state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice. See attached SEEC Form 11.

71. Conn. Gen. Stat. Sec. 4-252(e).

Conn. Gen. Stat. § 4-252 (the "Statute") requires that the Invitation to Bid, of which these Terms and Conditions are a part, include a notice of the vendor certification requirements described in the Statute. Accordingly, pursuant to the Statute, vendors are notified as follows:

(a) The terms "gift," "quasi-public agency," "state agency," "large state contract," "principals and key personnel" and "participated substantially" as used in this section shall have the meanings set forth in the Statute.

(b) No state agency or quasi-public agency shall execute a large state contract unless the state agency or quasi-public agency obtains the written certifications described in this section. Each such certification shall be sworn as true to the best knowledge and belief of the person signing the certification, subject to the penalties of false statement.

(c) The official of the person, firm or corporation awarded the contract, who is authorized to execute the contract, shall certify on such forms as the State shall provide:

(1) That no gifts were made between the date that the state agency or quasi-public agency began planning the project, services, procurement, lease or licensing arrangement covered by the contract and the date of execution of the contract, by (A) such person, firm, corporation, (B) any principals and key personnel of the person, firm or corporation, who participated substantially in preparing the bid or proposal or the negotiation of the contract, or (C) any agent of such person, firm, corporation or principals and key personnel, who participated substantially in preparing the bid or proposal or the negotiation of the contract, to (i) any public official or state employee of the state agency or quasi-public agency soliciting bids or proposals for the contract, who participated substantially in the preparation of the bid solicitation or request for proposals for the contract or the negotiation or award of the contract, or (ii) any public official or state employee of any other state agency, who has supervisory or appointing authority over such state agency or quasi-public agency;

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

(3) That the person, firm or corporation made the bid or proposal without fraud or collusion with any person.

(d) Any bidder or proposer that does not make the certifications required under subsection (c) of this section shall be disqualified and the state agency or quasi-public agency shall award the contract to the

next highest ranked proposer or the next lowest responsible qualified bidder or seek new bids or proposals.

(e) The date that the state agency or quasi-public agency began planning the project, services procurement, lease or licensing arrangement to be covered by the contract is.

72. Encryption of Confidential Data

Contractor, at its own expense, shall keep and maintain in an encrypted state any and all electronically stored data now or hereafter in its possession or control located on non-state owned or managed devices that the State, in accordance with its existing state policies, classifies as confidential or restricted. The method of encryption shall be compliant with the State of Connecticut Enterprise Wide Technical Architecture (EWTA). This shall be Contractor's continuing obligation for compliance with the EWTA standard as it may be amended or supplemented from time to time.

In the event of a breach of security or loss of State of Connecticut data, the Contractor shall notify the state agency which owns the data, the Connecticut Department of Information Technology and the Connecticut Office of the Attorney General as soon as practical but no later than 24 hours after the Contractor discovers or has reason to believe that a breach or loss as occurred or that such data has been compromised through breach or loss.

73. Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

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

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

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

(d) The Contractor, 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

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

(f) The Contractor 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 (hereinafter 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

(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 Contractor.



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- (3) "Covered Entity" shall mean the Department of the State of Connecticut named on page 1 of this Contract.
 - (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 parts 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 parts 164, subpart A and C.
 - (15) "Unsecured protected health information" shall have the same meaning as the term as defined in section 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 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



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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

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.

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.

The Business Associate agrees to include in the notification to the Covered Entity at least the following information:

A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known.

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).

The steps the Business Associate recommends that individuals take to protect themselves from potential harm resulting from the breach.

A detailed description of what the Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches.

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; if so, include contact information for said official.

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.

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



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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 (l)(2) of this Section of the Contract, upon termination of this Contract, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created 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 in necessary to amend this Section of the Contract from time to time as in 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, 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.