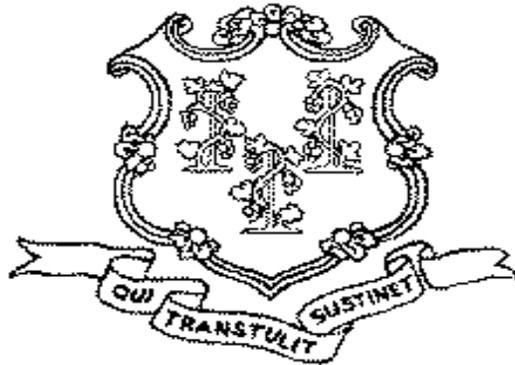


REQUEST FOR PROPOSAL (RFP)

**Social Impact Bond Project to Target Families Involved in
Child Protective Services and Impacted by Substance Use**



February 14, 2014

**State of Connecticut
Department of Children and Families**

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DEPARTMENT OF CHILDREN AND FAMILIES (DCF)

REQUEST FOR PROPOSALS (RFP)

PROGRAM TITLE: Social Impact Bond Project to Target Families Involved in Child Protective Services and Impacted by Substance Use

OVERVIEW

The Connecticut Department of Children and Family Services (“DCF”, or “the Department”) is interested in employing Social Impact Bonds in order to implement or expand effective services for families involved, or at risk of becoming involved, in the child protective services system, who are also impacted by substance use. DCF is excited to use this novel financing model, which brings together private and public sector actors, as a way to support innovative providers with flexible multiyear funding, to advance knowledge about how to best serve high-risk populations, and to ensure that taxpayer dollars are paying only for services that work.

Through this RFP, DCF is seeking an intermediary partner to identify promising interventions, assemble service provider(s), raise private sector capital to finance the project’s operating costs, monitor and track outcome measures, and manage provider performance during the course of a Social Impact Bond project. At this stage, DCF specifically seeks responses from intermediaries and plans to then jointly identify the intervention, provider(s), and an evaluator.

SCHEDULE

Event	Date
RFP Development	January 2013
RFP Published	February 14, 2014
Bidders Conference Registration Deadline	February 20, 2014
Bidders Conference	February 27, 2014 at 12:30 pm
Deadline for Submission of Questions	March 3, 2014 at noon
Questions and Answers Posted to Website	March 7, 2014
Deadline for Notice of Intent	March 12, 2014
Deadline for Receipt of Proposals	March 31, 2014 at noon
Interviews with Finalists	By April 15, 2014
Announcement of Finalist(s)	By May 1, 2014

SOURCE OF FUNDS

Performance-based payments for this project will be funded by state funds authorized for Social Impact Bonds or other sources. This competitive procurement process will determine the intermediary organization(s) with which DCF will negotiate the creation of a Social Impact Bond.

AMOUNT AND TERMS OF AWARD

The Department plans to fund at least one Social Impact Bond project via one or more providers for one or more interventions. The funding level will depend upon the appropriation by the Connecticut General Assembly. It is expected that the project would serve at least 200 people per year during a period of at least 3 years. The terms of the project, though, will depend upon appropriation by the Connecticut General Assembly and the Department’s need, and therefore may be higher or lower.

PERIOD OF AWARD

The funding period will be determined in conjunction with the contractor(s) based upon the anticipated start of the service and the length of the contract. Contracts will be multi-year and will include at a minimum a three-year and preferably no longer than a six-year intervention service delivery period. Sufficient time should be allowed before the start of the service delivery period to negotiate contract terms as well as to plan the operations and evaluation of the project. In addition, time will be necessary after the service delivery period for observation and evaluation of outcomes.

DISPOSITION OF PROPOSALS

The Department reserves the right to reject any and all proposals, or portions thereof, received as a result of this request, or to negotiate separately any service in any manner necessary to serve the best interests of the Department and those it serves. The Department reserves the right to contract for all or any portion of the scope of work contained within this RFP if it is determined that contracting for a portion or all of the work will best meet the needs of the Department and those it serves.

ELIGIBILITY

Applications will be accepted from private and public agencies in good standing with the State of Connecticut. A current investigation of Medicaid fraud or a judgment involving Medicaid fraud within the past five (5) years excludes a contractor from participation. Proposals from applicants who appear on the United States General Services Administration Excluded Parties List or the State Debarred Contractors List will not be considered. Consideration will be taken for applicants whose agency has required one or more corrective action plans in the past two years. Such applicants are not automatically ineligible but it may be a factor depending on circumstances.

SUBCONTRACTING

The intermediary will be expected to subcontract with service providers to reach the intended target population for the project. Subcontracting may be used to meet the qualifications for an intermediary. For instance, it is possible for an intermediary organization that has transaction and fundraising expertise to enter into a contract with DCF to construct the deal and to subcontract with another intermediary that has experience with the target population and policy area to manage the project after it has launched.

INSURANCE

The contractor will carry insurance (liability, fidelity bonding or surety bonding and/or other) during the term of this contract according to the nature of the work to be performed to “hold harmless” the State of Connecticut from any claims, suits or demands that may be asserted against it by reason of any act or omission of the contractor, subcontractor or employees in providing services hereunder, including but not limited to any claims or demands for malpractice. Certificates of such insurance shall be filed with the Department prior to the performance of services.

AFFIRMATIVE ACTION

All awarded agencies will be required to submit an affirmative action plan prior to the execution of a contract. It is not necessary for Applicants to submit an affirmative action plan at the time of the response.

BIDDERS CONFERENCE

A non-mandatory, Bidders Conference is scheduled for 12:30 pm on February 27, 2014 at the following location:

DCF's Middletown Area Office
2081 South Main Street
Middletown, CT

Parties interested in attending the Bidders Conference must register via email to DCF.SIB@ct.gov by February 20, 2014. The email should include the subject heading "SIB RFP: Bidders Conference" and state the following:

- Names, titles, phone numbers, and email addresses of attendees
- Organization (if any) and address

QUESTIONS CONCERNING THE RFP PROCESS

Questions concerning this RFP must be received by no later than noon on March 3, 2014 via email to DCF.SIB@ct.gov. DCF will post responses to questions posed at the Bidders' Conference and submitted via email to the following website by March 7, 2014:

<http://www.ct.gov/dcf/cwp/view.asp?a=2534&Q=534038>

Any form of ex parte contact regarding this RFP or any proposal being prepared or being considered under this RFP, whether directly or indirectly, is hereby strictly prohibited. This includes, but is not limited to, any contact with any Department employees asking them for advice, information, or support. Violations may result in the rejection of any and all proposals submitted under this RFP by such respondent(s). Any inquiries or requests regarding the RFP must be submitted to the RFP contact person via the Question and Answer process noted herein.

NOTICE OF INTENT

Organizations that plan to submit a proposal to this RFP are strongly encouraged to email DCF.SIB@ct.gov by March 12, 2014 indicating their interest. The subject line of the email should contain "Notice of Intent" and the content should briefly describe the proposal. Bidders that do not notify DCF of their intent may still submit a proposal.

PROPOSAL DEADLINE

Proposals must be received via email to DCF.SIB@ct.gov no later than March 31, 2014 by noon. The subject line of the email should contain "SIB RFP Proposal". Any responses or unsolicited amendments to responses received after the due date will not be accepted. In addition, 4 copies should be sent to the following address:

Elizabeth Duryea
Department of Children and Families
505 Hudson Street
Hartford, CT 06106
Attention: SIB RFP Proposal

Hardcopies must be postmarked by the due date.

BACKGROUND

DCF aims to support families and communities in an effort to improve child safety, ensure that more children have permanent families, and advance the overall well-being of children. Over the past four years, the Department has been working to fulfill its mission by emphasizing children's well-being as much as their safety and protection. As a result of these efforts, the number of children in out-of-home care has dropped from 4780 in January 2011 to 3970 today. Similarly, of those children who do require an out-of-home placement, the percentage placed in family care, rather than congregate care, has increased from 67.5% in January 2011 to 75.2% today. Therefore, more children in Connecticut are now able to grow up as part of a family.

Yet much remains to be done in order to prevent families from reaching the stage of an Order of Temporary Custody (OTC), a DCF considered removal process, or even having a child abuse or neglect case opened. DCF has identified dually-affected families with child protection and substance use concerns as a particularly underserved population that has great potential for improved outcomes if both concerns are tackled.

DCF recognizes that investing in interventions that improve parenting and inter-family relationships and simultaneously address substance use is likely to pay off through the positive impact on children and families as well as the savings accruing to DCF in terms of reduced foster care and adoption, and possibly to other Connecticut agencies and the federal government. Yet the evidence for many of these interventions is not conclusive, creating an opportunity for DCF to utilize the Social Impact Bond model to expand promising interventions while building an evidence base through a robust evaluation.

In the most commonly used Social Impact Bond model, which was first implemented in 2010 in the UK, the government contracts with an intermediary organization to achieve negotiated social outcomes. The intermediary raises the operating funds for the project from commercial and philanthropic investors, who provide the upfront capital in exchange for a share of the government payments that become available if the agreed-upon performance targets are met.

The intermediary uses these operating funds to finance the service provider(s) with which it enters into contracts to deliver the interventions necessary to meet the performance targets. The government pays the intermediary entirely or almost entirely based upon achievement of performance targets. Performance is rigorously measured by comparing the outcomes of individuals referred to (or enrolled with) the service provider relative to the outcomes of a comparison or control group that is not offered the services.

If the intermediary fails to achieve the minimum performance targets, then the government does not pay, ensuring that taxpayer funds are only spent on interventions if they are effective. Payments typically rise for performance that exceeds the minimum target, up to an agreed-upon maximum payment level.

Independent monitoring and evaluation of outcomes is critical in Social Impact Bonds, as government payment is predicated on the achievement of outcomes. Rigorous evaluation systems, which determine if pre-agreed upon targets have been reached, can deepen the State's understanding of which interventions actually work. This learning in turn enables the State to spend taxpayer funds more efficiently and scale promising, innovative interventions that have been proven to work in Connecticut.

DCF is receiving pro bono technical assistance from the Harvard Kennedy School Social Impact Bond Technical Assistance Lab (SIB Lab) to help the Department conduct analysis and coordinate the Social Impact Bond policy process. The Department issued a Request for Information (RFI) on November 1, 2013 to solicit ideas for Social Impact Bond projects and received fourteen responses, which were made publicly accessible on the Department's Social Impact Bond website. The ideas submitted in response to the RFI informed the development of this RFP.

APPLICANT REQUIREMENTS

In order to be considered for this RFP, applicants must provide clear documentation that they have the capacity to meet the qualifications and the willingness to undertake the functions outlined in the Application Questions and Content section.

SCOPE OF WORK

The selected intermediary will be expected to:

1. Raise requisite operating funds for the project from commercial and philanthropic investors and manage the relationship with investors.
2. Work collaboratively with partners to define key elements of the project, including the interventions, service provider(s), eligibility criteria for the target population, outcome measures for tracking savings and benefits and determining payment, operational plan as well as evaluation design. Intermediary should take the lead in constructing the budget and financial model for the project.
3. Manage monitoring, analysis and reporting of outcome data in order to improve performance during the course of the project.
4. Cooperate with and coordinate DCF, service provider(s), investors, independent evaluator and any other partners during the course of the project.
5. Commit staff with expertise and experience in the policy area of interest to develop and manage the project.

TARGET POPULATION

This project targets families that are involved with or at risk of entering child protective services, who are also impacted by caregiver/parental substance use.

During SFY13, DCF registered about 30,000 child protective services cases. Of these, DCF staff indicated in approximately 10,000 cases during the investigation phase that the family was impacted by substance use. These figures likely underrepresent substance use because: a) cases in which substance use was identified post-investigation are not included; b) not all data fields which DCF staff may have used to indicate substance use may have been included; and c) evidence or disclosure of substance use may have been inadequate or absent. DCF believes that substance use is likely present in about half, or 15,000, of the total child protective services cases annually.

The 10,000 child protective services cases with an indicator of substance use are distributed across CT regions as follows:

Region 1 (Bridgeport Office, Norwalk / Stamford):	28.2%
Region 2 (Milford Office, New Haven Office):	35.0%
Region 3 (Middletown Office, Norwich Office, Willimantic Office):	38.7%

Region 4 (Hartford Office, Manchester Office):	32.9%
Region 5 (Danbury Office, Torrington Office, Waterbury Office):	33.7%
Region 6 (Meriden Office, New Britain Office):	37.1%
Other:	11.3%

Of the child protective services cases in which substance use is recognized, children are aged 0 – 2 in 35% of cases, 3 – 5 in 27% of cases, 6 – 12 in 42% of cases, and 13 – 17 in 28% of cases.¹

A Social Impact Bond project could target a subgroup of this population, such as families with an OTC or families in which the child resides with the parents. Similarly, the intervention may be delivered to families at different points in time, such as before an abuse and / or neglect case is opened, or only after the child has been removed.

POTENTIAL SAVINGS AND BENEFITS

DCF anticipates that the greatest savings from a Social Impact Bond project may result from reduced out-of-home placement. For the purposes of responding to this RFP, applicants can use the following estimates:

- Of children in out-of-home care in Connecticut, 78.2% are in family care while the remaining 21.8% are in congregate care.
- Younger children are more likely to be in family care, while older children and adolescents are more likely to be in congregate care.
- Families are compensated by the Department for hosting foster children at a per diem rate of between \$28 and \$50.
- Congregate care is usually contracted on a yearly basis by the Department. Housing a child or youth in congregate care costs between \$361 and \$631 per day.²

DCF is also open to proposals that rely on quantifiable savings from other sources, including those that accrue to DCF and other Connecticut agencies, as well as to the Federal government. While DCF is particularly interested in interventions that create quantifiable savings, the Department will consider accounting for social value in selecting an intervention and determining repayment to investors based on the outcomes that are achieved. Proposals that account for social value resulting from interventions should recommend how to best quantify those benefits. In addition, DCF prefers interventions for which the short-term and intermediate-term savings and benefits outweigh the project’s costs during the course of the contract.

APPLICATION QUESTIONS AND CONTENT

DCF seeks proposals from organizations that can successfully perform the functions of an intermediary in a Social Impact Bond project. Proposals must demonstrate that the respondent meets the requisite qualifications of an intermediary. Please make sure to answer the questions in the stated order, and to number them accordingly.

For criteria listed under “Capacity for Structuring the Project” and “Managing Project Toward Success”, respondents are asked to select a research-based intervention as an example to illustrate their response in a realistic manner. Please note that the intervention used as an example in these sections is

¹ Percentages do not add up to 100% because some families have children in more than one age category.

² Connecticut Department of Children and Families, “Congregate Care Rightsizing and Redesign: Young Children, Voluntary Placements and a Profile of Therapeutic Group Homes,” August 4, 2011.

for illustrative purposes only. The answers will be used in order to evaluate the respondent's ability to answer the questions below, but the intervention chosen as an example will not necessarily be the intervention that will be implemented through the project.

Proposals will be scored on the basis of the responses provided in this section and the interviews that will be conducted with applicants.

1) 20 Points - Organizational Capacity, Including:

- Overview of your organization and the range of services currently provided. In particular, describe any experience related to Social Impact Bonds and specify any efforts related to addressing challenges faced by the target population for this project.
- Experience working with state government, service providers, investors, and evaluation experts. In particular, describe any experience working with CT state government, with providers in CT, and/or with providers that are focused on the target population of this project.
- Data management capacity for collecting, monitoring, and analyzing data to measure performance.
- Organizational capacity for committing qualified and experienced staff to the project. Adequate operating funds to collaborate with DCF at no compensation during the development of the project.

2) 20 Points - Ability to Raise Operating Capital for the Social Impact Bond Project, Including:

- Strategy for raising financing from commercial and philanthropic investors. Provide evidence to support the potential of your strategy to succeed in raising the requisite financing. Willingness to represent the interests of DCF in structuring the investment and in negotiating terms with the investors.
- Ability to maintain investor relations and provide reporting as required.

3) 20 Points – Partnership and Time Management, Including:

- Readiness and ability to engage various partners to reach agreement on complex project parameters.
- Identifying, evaluating, and performing due diligence of potential service providers in order to work with the state to select the service provider, or service provider team, to implement the intervention.
- Willingness to empower service provider(s) with target population expertise to participate in decisions related to deal construction.
- Readiness and ability to provide DCF with a significant role in developing and overseeing the project, particularly to enable it to protect the population being served from harm.
- Ability to create a work plan of activities necessary to develop the project for launch, including an associated timeline.

4) 20 Points – Managing Project Toward Success, Including:

Select and describe a promising intervention to illustrate your response to this criterion. Please note that the intervention used as an example in this section is for illustrative purposes only. The answers will be used in order to evaluate the respondent's ability to answer the questions below, but the intervention chosen as an example will not necessarily be the intervention that will be implemented through the project.

- Identifying a research-based intervention(s) to improve outcomes for the target population. Intervention should be cost-effective, with potential to produce significant savings and benefits to the public sector. Interventions that produce savings and benefits during the term of the project with the potential to cover the total costs of the project are preferred. Savings and benefits based on which the State is expected to repay investors should be realistic given the target population and the landscape of possible interventions.
- Overseeing and guiding service provider(s) toward achieving success, including through adherence to a research-based model.
- Managing a performance-based project through monitoring and analysis of outcome data during the course of the project.

5) 20 Points - Capacity for Structuring the Project, Including:

Use the intervention selected above to illustrate your response to this criterion. Please note that the intervention used as an example in this section is for illustrative purposes only. The answers will be used in order to evaluate the respondent's ability to answer the questions below, but the intervention chosen as an example will not necessarily be the intervention that will be implemented through the project.

- Specifying eligibility criteria for the target population and clearly defining outcome measures that capture public sector benefits and savings. Outcome measures should be measurable and provide a basis for the repayment of investors.
- Ability to recognize and minimize the risk of perverse incentives created by the selected outcome measures.
- Estimating target outcomes for an intervention based on evidence.
- Detailing a budget for the project (in accordance with the Estimated Budget and Budget Narrative section in this RFP), conducting a cost-benefit analysis, and building a financial model that connects public sector savings and benefits to repayment.
- Designing a project to enable a robust evaluation of outcomes, including a sufficiently large sample size and a credible estimate of the program's impact.

ESTIMATED BUDGET AND BUDGET JUSTIFICATION

Applicants should submit a realistic and cost-effective budget that outlines the costs of the project. The budget should detail the costs that would be covered by funds raised from investors and evaluation costs that will be incurred by DCF, as well as an adequate but reasonable maximum return to investors to incentivize them to take on the performance risk for this project. The maximum project size should include the capital raised, evaluation costs, and the maximum return to investors.

At any given level of performance, repayment to investors must be tied to the independently validated outcomes of the project and the associated savings and benefits. Consistent with the rest of the proposal, the budget should use the previously selected intervention to illustrate the service delivery costs and reflect the same assumptions as outlined earlier with respect to the time necessary for start-up of the project, service delivery period, and time for observation and measurement of outcomes.

In composing their budgets, respondents should refer to the Budget Form and assume that evaluation costs will be \$200,000 per year for the project.

Please note that it is anticipated that the figures used in the budget are estimates that will be refined in conjunction with partners. The budget justification should describe how the figures presented are

derived. In particular, respondents should detail the service cost and the intermediary costs that are accounted for in the project budget.

APPLICATION FORMAT

Submitted proposals must conform to the following formatting requirements:

Page Limit	40 pages, double-spaced, double-sided (excludes Cover Page, Table of Contents, Application Budget and Budget Narrative, and Appendices)
Font Size	Times New Roman, 12 pt
Paper Dimensions	8.5 x 11
Margins	1 inch all sides

Proposals should be in readable PDF format. The Application Budget and Budget Narrative section should be submitted as an Excel Spreadsheet.

Please number all pages. Proposals should include the following sections, in the order specified:

1. Cover Sheet
2. Table of Contents
3. Responses to Application Questions and Content
4. Application Budget
5. Application Budget Narrative
6. Appendices (see below)

DCF reserves the right to reject proposals that do not conform to these requirements.

APPENDICES

The following appendices must be included with the proposal:

Appendix 1	Organizational Structure / Chart
Appendix 2	Consulting Agreement Affidavit
Appendix 3	Notification to Bidders Form (Bidder's CHRO Compliance Package)
Appendix 4	Evidence of Nondiscrimination Form and Applicable Evidence material (Bidder's CHRO Compliance Package)
Appendix 5	Employment Information Form (Bidder's CHRO Compliance Package)

Attachments other than the appendices listed above are not permitted. In addition, these appendices are not to be used to extend or replace any required section of the application.

INTERVIEWS WITH FINALISTS

The application screening committee reserves the right to conduct interviews with respondents and ask respondents to submit additional information at the Department's discretion. The application screening committee reserves the right to adjust scoring based on the written submission(s) and interview(s). The State reserves the right to make an award without further clarification of the proposals received.

REVIEW CONTEXT

An application screening committee will include representation from DCF administration and the Regions. Scoring criteria are limited to the applicant's requirements, the applicant's response as prompted by the Application Questions and Content section, interviews with applicants, and additional information requested by the Department.

The Department is under no obligation to award the contract to the proposal with the highest scores or, for example, the proposals offering to provide the service at a lower amount than other applicants. The screening committee may use numerical point measures as a guide, but these measures are not binding on the Commissioner. The goal of the Department is to procure the highest quality services in the most fiscally responsible way.

Following the final selection, a contract will be negotiated and developed with the applicant(s) that details the program structure, services, budget, performance based criteria and reporting requirements. No financial obligation by the State can be incurred until the intermediary has raised necessary funding for the project and a contract with DCF is fully executed.

SOCIAL IMPACT BOND BUDGET FORM

Contractor: _____

Please outline a realistic budget for the maximum project size using the following categories.

Cost Categories:

- A. Intermediary Costs**
- B. Service Costs**
- C. Legal and Capital Raising Costs**
- D. Other Costs**
- E. Total Amount of Capital Raised by Investors (Sum A – D)**
- F. Evaluation Costs**
- G. Maximum Outcome-Based Returns**
- H. Maximum Project Size (Sum E, F, G)**

In the Budget Justification, please detail the expected costs and the assumptions / calculations used to arrive at each cost outlined above, e.g. mileage reimbursement: 300 miles per month X .56/mile X 12 months.

COVER SHEET

Social Impact Bond Project to Target Families Involved in Child Protective Services and Impacted by Parental / Care Giver Substance use

Request for Proposals

Name of Organization: _____

Address: _____

Application Contact Person: _____

Contact Person Phone & Fax: _____

Contact Person Email Address: _____

This application must be signed by the applicant's Executive Director or other individual with executive oversight.

By submitting this application, I attest that all the information included within the application is true.

Signature: _____ Date: _____

Name (Printed): _____

Title: _____

GENERAL PROPOSAL NOTICES AND REQUIREMENTS

A. Evaluation and Selection

It is the intent of the Department to conduct a comprehensive, fair and impartial evaluation of proposals received in response to this procurement. Only proposals found to be responsive to the RFP will be evaluated and scored. A responsive proposal must comply with all instructions listed in this RFP. Responsive proposals shall remain valid for possible award by the Department for a period of up to 12 months after the RFP's closing date.

B. Contract Execution

The pursuant contract developed as a result of this RFP is subject to Department contracting procedures, which includes approval by the Office of the Attorney General. Please note that contracts are executory and that no financial commitments can be made until, and unless, the contracts are approved by the Attorney General.

C. Applicant Debriefing

The Department will notify all applicants of any award issued by it as a result of this RFP. Unsuccessful applicants may, within thirty (30) days of the signing of the resultant contract, request a meeting for debriefing and discussion of their proposal by contacting the DCF Contact Person. Debriefing will not include any comparisons of unsuccessful proposals with other proposals.

D. Conditions

Any prospective applicants must be willing to adhere to the following conditions and must positively state them in the proposals:

- 1) **Conformance with Statutes:** Any contract awarded as a result of this RFP must be in full conformance with statutory requirements of State of Connecticut and the Federal Government.
- 2) **Ownership of Subsequent Products:** Any product, whether acceptable or unacceptable, developed under a contract awarded, as a result of this RFP is to be sole property of the Department unless stated otherwise in the RFP or contract.
- 3) **Timing Sequence:** Timing and sequence of events resulting from this RFP will ultimately be determined by the Department.
- 4) **Oral Agreement:** Any alleged oral agreement or arrangement made by an applicant with any agency or employee will be superseded by a written agreement.
- 5) **Amending or Canceling Requests:** The Department reserves the right to amend or cancel this RFP, prior to the due date and time, if it is in the best interest of the Department and the State.
- 6) **Rejection for Default or Misrepresentation:** The Department reserves the right to reject the proposal of any applicant in default of any prior contract or for misrepresentation.
- 7) **Department's Clerical Errors in Award:** The Department reserves the right to correct inaccurate awards resulting from its clerical errors.
- 8) **Rejection of Qualified Proposals:** Proposals are subject to rejection in whole or in part if they limit or modify any of the terms and conditions and/or specifications of the RFP.
- 9) **Applicant Presentation of Supporting Evidence:** An applicant, if requested, must be prepared to present evidence of experience, ability, service facilities, and financial standing necessary to satisfactorily meet the requirements set forth or implied in the proposal.

10) **Changes to Proposal:** No additions or changes to the original proposal will be allowed after submittal. While changes are not permitted, clarification at the request of the agency may be required at the applicant's expense.

11) **Collusion:** By responding, the applicant implicitly states that they are submitting a separate response to the RFP, and is in all respects fair and without collusion or fraud. It is further implied that the applicant did not participate in the RFP development process, had no knowledge of the specific contents of the RFP prior to its issuance, and that no employee of the Department participated directly or indirectly in the applicant's proposal preparation.

E. Proposal Preparation Expense

The State of Connecticut and the Department assume no liability for payment of expenses incurred by applicants in preparing and submitting proposals in response to this solicitation.

F. Incurring Costs

The Department is not liable for any costs incurred by the applicant prior to the effective date of a contract.

G. Freedom of Information

Due regard will be given to the protection of proprietary information contained in all proposals received. However, applicants should be aware that all materials associated with this RFP are subject to the terms of the Freedom of Information Act, the Privacy Act, and all rules, regulations and interpretations resulting there from. It will not be sufficient for applicants to merely state generally that the proposal is proprietary in nature and not therefore subject to release to third parties. Those particular pages or sections, which an applicant believes to be proprietary, must be specifically identified as such. Convincing explanation and rationale sufficient to justify each exception from release consistent with Section 1-210 of the Connecticut General Statutes must accompany the proposal. The rationale and explanation must be stated in terms of the prospective harm to the competitive position of the Applicant 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 above-cited statute. In any case, the narrative portion of the proposal may not be exempt from release. Between the applicant and the Department, the final administrative authority to release or exempt any or all material so identified rests with the Department.

H. Gratuities and Gifts

The applicant warrants that no state appropriated funds have been paid or will be paid by or on behalf of the applicant to contract with or retain any company or person, other than bona fide employees working solely for the applicant, to influence or attempt to influence an officer or employee of any state agency in connection with the awarding, extension, continuation, renewal, amendment, or modification of this agreement, or to pay or agree to pay any company or person, other than bona fide employees working solely for the applicant, any fee, commission, percentage, brokerage fee, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.

By submitting a response for selection and/or award consideration to this procurement, the applicant certifies that no elected or appointed official or employee of the State of Connecticut has or will benefit financially or materially from this contract. The Department may terminate a resulting contract if it is determined that gratuities of any kind were either offered or received by any of the aforementioned officials or employees from the applicant/contractor or its agents or employees.

In general, no one doing business with or seeking business from a state or quasi-public agency may give a gift to an official or employee of that agency. Connecticut's gift ban is strict, but has some exceptions. For example, under the Ethics Code, you may give: (1) food and drink up to \$50 per person per year, if the person paying, or his or her representative, is in attendance; and (2) tangible gifts up to \$10 per item up to \$50 per person per year. Also exempt are certain items such as informational materials or plaques costing less than

\$100. For a complete list of the Code's gift exceptions, consult Conn. Gen. Stat. § 1-79(e) or contact the Office of State Ethics.

Gifts for "major life events," including a wedding or the birth of a child, which were previously exempt from the gift ban, are now subject to the strict gift limits outlined above if the gifts are provided by any individual or entity doing business with or seeking business from the state.

I. Disclosure of Consulting Agreements

A consulting agreement affidavit must accompany submissions for the purchase of goods and services with a value of \$50,000 or more in a calendar or fiscal year, pursuant to Section 51 of Public Act 05-287. All such **submissions** must be accompanied by an affidavit in which the applicant discloses any agreement retaining the services of a consultant to assist in the applicant's participation in the procurement process. For additional information regarding the types of consulting agreements that must be disclosed in the affidavit and the required content and form of the affidavit, please see the attached "Consulting Agreement Affidavit."

J. Campaign Contribution(s)

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. [SEEC Form 11]"

K. Bidder's Commission on Human Rights and Opportunities (CHRO) Compliance Package

The Bidder's CHRO Compliance Package sets forth certain obligations on State agencies, as well as contractors doing business with the State of Connecticut to ensure that State agencies do not enter into contracts with organizations or businesses that discriminate against protected class persons. As required by Connecticut General Statute § 4a-60, the following forms, and applicable evidencing material, must accompany bids or proposals:

1. Notification to Bidders Form;
2. Evidence of Nondiscrimination Form and applicable evidencing material; and
3. Employment Information Form.

The CHRO Package should be accessed from the DCF Internet site

http://www.ct.gov/dcf/LIB/dcf/contract_management/pdf/Bidders_CHRO_Compliance_Package.pdf

Administrative Expectations

Please see Exhibit A to view the terms and conditions for state contractors.

SEEC FORM 11

NOTICE TO EXECUTIVE BRANCH STATE CONTRACTORS AND PROSPECTIVE STATE CONTRACTORS OF CAMPAIGN CONTRIBUTION AND SOLICITATION BAN

This notice is provided under the authority of Connecticut General Statutes 9-612(g)(2), as amended by P.A. 07-1, and is for the purpose of informing state contractors and prospective state contractors of the following law (italicized words are defined below):

Campaign Contribution and Solicitation Ban

No state contractor, prospective state contractor, principal of a state contractor or principal of a prospective state contractor, with regard to a *state contract* or *state contract solicitation* with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder of a valid prequalification certificate, shall make a contribution to, or *solicit* contributions on behalf of (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee;

In addition, no holder or principal of a holder of a valid prequalification certificate, shall make a contribution to, or solicit contributions on behalf of (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of State senator or State representative, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee.

Duty to Inform

State contractors and prospective state contractors are required to inform their principals of the above prohibitions, as applicable, and the possible penalties and other consequences of any violation thereof.

Penalties for Violations

Contributions or solicitations of contributions made in violation of the above prohibitions may result in the following civil and criminal penalties:

Civil penalties--\$2000 or twice the amount of the prohibited contribution, whichever is greater, against a principal or a contractor. Any state contractor or prospective state contractor which fails to make reasonable efforts to comply with the provisions requiring notice to its principals of these prohibitions and the possible consequences of their violations may also be subject to civil penalties of \$2000 or twice the amount of the prohibited contributions made by their principals.

Criminal penalties—Any knowing and willful violation of the prohibition is a Class D felony, which may subject the violator to imprisonment of not more than 5 years, or \$5000 in fines, or both.

Contract Consequences

Contributions made or solicited in violation of the above prohibitions may result, in the case of a state contractor, in the contract being voided.

Contributions made or solicited in violation of the above prohibitions, in the case of a prospective state contractor, shall result in the contract described in the state contract solicitation not being awarded to the prospective state contractor, unless the State Elections Enforcement Commission determines that mitigating circumstances exist concerning such violation.

The State will not award any other state contract to anyone found in violation of the above prohibitions for a period of one year after the election for which such contribution is made or solicited, unless the State Elections Enforcement Commission determines that mitigating circumstances exist concerning such violation.

Additional information and the entire text of P.A 07-1 may be found on the website of the State Elections Enforcement Commission, www.ct.gov/seec. Click on the link to “State Contractor Contribution Ban.”

EXHIBIT A

TERMS AND CONDITIONS CONTRACTS WITH AGENCIES

THE FOLLOWING TERMS AND CONDITIONS ARE HEREBY MADE A PART OF THIS CONTRACT:

1. Services to be provided

The Contractor shall provide the services described for the consideration stated herein.

2. Payments

The Department and the State of Connecticut assume no liability for payment under the terms of this contract until said contract is fully executed.

Contract funds may not be expended prior to the starting date or subsequent to the termination date of this contract.

Payments will be made as stated in this contract and will be contingent upon receipt and approval of all required services and/or deliverables in a timeframe established by the Department unless, in its sole discretion, the Department waives such a requirement.

The Department retains the right to adjust payments under this award to offset any unallowable expenditures or unexpended funds owed from a prior award or from a previously terminated grant award.

3. Establishment of Policies and Procedures

The Contractor assures that it will establish policies and provide procedures to assure sound fiscal control, effective management, and efficient use of contract funds. Fiscal control and accounting procedures will ensure proper disbursement and accounting of contract funds. Accounting procedures will provide for accurate and timely recording of receipt of funds by source, expenditures made from such funds, and unexpended balances. Controls will be adequate to ensure that expenditures charged to contract activities are for allowable purposes and documentation is readily available to verify that such charges are accurate.

4. Sub-contractors

No subcontract may be entered into by the Contractor for execution of project activities described unless incorporated into the approved application or approved in advance by the Department.

The Contractor will notify the Department of the name, address, telephone number and principal place of business of each sub-contractor if Contractor subcontracts any portion of the contract funds. The Contractor shall make good faith efforts to employ minority business enterprises as sub-contractors.

5. Funding Restrictions

(a) Restrictions on Supplanting Funds

It is understood and agreed by both the Department and the Contractor that in the event the Contractor receives funding from any source other than those detailed in the contract, which supplements or supplants the State share of expenses, for services provided for under this contract, the Department shall be advised of such funding within ten (10) days after the Contractor receives notice of such funding.

Further, the Contractor assures that contract funds will not be used to supplant Federal, State, or local funds, amount of funding that would, in the absence of these funds, be made available.

(b) Return of Funds

Any funds owing to the Department due to unanticipated funds received by the Contractor for the same services from other sources or unallowable expenditures shall be refunded by the Contractor within thirty (30) days within receiving notice from the Department. Any funds remaining unexpended upon the expiration of the contract will be returned to the Department within thirty (30) days.

6. Reporting Requirements

The Contractor agrees to provide the Department with such statistical, financial, and programmatic information as is deemed necessary by the Department for the purpose of determining payments, establishing Grant formulas, monitoring and evaluating programs, and establishing management information systems.

The Department will be granted access at any reasonable time to the books and records pertaining to the program funded by this contract. Statistical reports shall be in the form prescribed by the Department.

7. Evaluation

The Contractor, including all other recipients of assistance under this contract, whether by sub-contractor or sub grant, agrees to develop or enhance program evaluation strategy acceptable to the Department. The Contractor further agrees to cooperate with the Department to:

- a. determine whether program goals and objectives are attained;
- b. collect and maintain project and client data;
- c. supply project data to the Department or its designee; and
- d. permit access by the Department, or its designee, to any and all project information.

8. Rights of Acknowledgment

The contractor shall acknowledge the Department's support in all public statement, including annual reports, statements through the media, etc., to which State funds apply in whole or in part.

All records, assets, property, and documents of any nature, including any program materials and curricula, prepared or purchased by the contractor under this contract and subject to the terms of this agreement, is the property of the Department.

9. Copyrights

The State of Connecticut retains sole ownership, including copyright privileges over any documents, reports, or other products of this contract.

10. Alterations, Cancellation and Termination

(a) Contract Revisions and Amendments.

- (1) Contract amendments must be in writing and shall not be effective until executed by both parties to the contract, and, where applicable, approved by the Attorney General.
- (2) No amendments may be made to a lapsed contract.

(b) Contract Reduction.

- (1) The Department reserves the right to reduce the Contracted amount of compensation at any time in the event that:
 - (2) the Governor or the Connecticut General Assembly rescinds, reallocates, or in any way reduces the total amount budgeted for the operation of the Department during the fiscal year for which such funds are withheld; or
 - (3) federal funding reductions result in reallocation of funds within the Department.
 - (4) The Contractor and the Department agree to negotiate on the implementation of the reduction within thirty (30) days of receipt of formal notification of intent to reduce the contracted amount of compensation from the Department. If agreement on the implementation of the reduction is not reached within 30 calendar days of such formal notification and a contract amendment has not been executed, the Department may terminate the contract sixty (60) days from receipt of such formal notification. The Department will formally notify the Contractor of the termination date.

(c) Default by the Contractor.

- (1) If the Contractor defaults as to, or otherwise fails to comply with, any of the conditions of this contract the Department may:
 - A. withhold payments until the default is resolved to the satisfaction of the Department;
 - B. temporarily or permanently discontinue services under the contract;
 - C. require that unexpended funds be returned to the Department;
 - D. assign appropriate state personnel to execute the contract until such time as the contractual defaults have been corrected to the satisfaction of the Department;
 - E. require that contract funding be used to enter into a subcontract arrangement with a person or persons designated by the Department in order to bring the program into contractual compliance;
 - F. terminate this contract;
 - G. take such other actions of any nature whatsoever as may be deemed appropriate for the best interests of the state or the program(s) provided under this contract or both;

H. any combination of the above actions.

- (2) In addition to the rights and remedies granted to the Department by this contract, the Department shall have all other rights and remedies granted to it by law in the event of breach of or default by the Contractor under the terms of this contract.
- (3) If at any step in this process the Contractor fails to comply with the procedure and, as applicable, the agreed upon plan of correction, the Department may proceed with default remedies.

(d) **Non-enforcement Not to Constitute Waiver.** The failure of either party to insist upon strict performance of any terms or conditions of this agreement shall not be deemed a waiver of the term or condition or any remedy that each party has with respect to that term or condition nor shall it preclude a subsequent default by reason of the failure to perform.

(e) **Cancellation and Recoupment.**

- (1) This agreement shall remain in full force and effect for the entire term of the contract period, above, unless either party provides written notice sixty (60) days or more from the date of termination, except that no cancellation by the Contractor may be effective for failure to provide services for the agreed price or rate and cancellation by the Department shall not be effective against services already rendered, so long as the services were rendered in compliance with the contract during the term of the contract.
- (2) The Department reserves the right to cancel the contract without prior notice when the funding for the contract is no longer available
- (3) The Department reserves the right to recoup any deposits, prior payment, advance payment or down payment made if the contract is terminated by either party. Allowable costs incurred to date of termination for operation or transition of program(s) under this contract shall not be subject to recoupment. The Contractor agrees to return to the Department any funds not expended in accordance with the terms and conditions of the contract and, if the Contractor fails to do so upon demand, the Department may recoup said funds from any future payments owing under this contract or any other contract between the State and the Contractor.
- (4) The Department may immediately terminate the contract in whole or in part whenever the Department makes a determination that such termination is in the best interest of the State.

(f) **Mergers and Acquisitions.**

- (1) Contracts in whole or in part are not transferable or assignable without the prior written agreement of the Department.
- (2) At least ninety (90) days prior to the effective date of any fundamental changes in corporate status, including merger, acquisition, transfer of assets, and any change in fiduciary responsibility, the Contractor shall provide the Department with written notice of such changes.
- (3) The Contractor shall comply with requests for documentation deemed necessary by the Department to determine whether the Department will provide prior written agreement. The Department shall notify the Contractor of such determination not later

than forty-five (45) business days from the date the Department receives such requested documentation.

11. Insurance

The Contractor agrees that while performing services specified in this agreement that he will carry sufficient insurance (liability and/or other) according to the nature of the work to be performed to “save harmless” the State of Connecticut from any insurable causes whatsoever. Certificates of same are to be filed with the agency prior to the performance of the services, if requested.

12. Non-discrimination.

- (a) 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.
- (b) 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.
- (c) “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.

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

- (h) 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 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.
- (i) For the purposes of this entire Non-Discrimination section, “Contract” or “contract” includes any extension or modification of the Contract or contract, “Contractor” or “contractor” includes any successors or assigns of the Contractor or 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 C.G.S. § 1-120,
 - (3) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in C.G.S. § 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).

13. Special Conditions

The Contractor agrees to comply with any special conditions attached to this Agreement.

14. Sovereign Immunity

The Parties acknowledge and agree that nothing in this Agreement shall be construed as a modification, compromise or waiver by the State of any rights or defenses of sovereign immunity, which it may have had, now has or will have with respect to all matters arising out of this Agreement. To the extent that this provision conflicts with any other provision, this provision shall govern.

15. Choice of Law and Choice of Forum

The Contractor agrees to be bound by the law of the State of Connecticut and the federal government where applicable, and agrees that this contract shall be construed and interpreted in accordance with Connecticut law and federal law where applicable.

16. Litigation.

- (a) The Contractor shall provide written notice to the Department of any litigation that relates to the services directly or indirectly financed under this contract or that has the potential to impair the ability of the Contractor to fulfill the terms and conditions of this contract, including but not limited to financial, legal or any other situation which may prevent the Contractor from meeting its obligations under the contract.

- (b) The Contractor shall provide written notice to the Department of any final decision by any tribunal or state or federal agency or court which is adverse to the Contractor or which results in a settlement, compromise or claim or agreement of any kind for any action or proceeding brought against the Contractor or its employee or agent under the Americans with Disabilities Act of 1990, Executive Orders Nos. 3 & 17 of Governor Thomas J. Meskill and any other provisions of federal or state law concerning equal employment opportunities or nondiscriminatory practices.

17. Offer of Gratuities

By its agreement to the terms of this contract, the Contractor certifies that no elected or appointed official or employee of the State of Connecticut has or will benefit financially or materially from this contract. The Department may terminate this contract if it is determined that gratuities of any kind were either offered or received by any of the aforementioned officials or employees from the Contractor or its agents or employees. The contractor agrees to disclose to the Commissioner of the Department of Children and Families any items of value provided to DCF employees for which full payment has not been made.

18. Campaign Contribution Restrictions

On February 8, 2007, Governor Rell signed into law Public Act 07-1, An Act Concerning the State Contractor Contribution Ban and Gifts to State and Quasi-Public Agencies.

For all State contracts 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 Agreement expressly acknowledges receipt of the State Elections Enforcement Commission's notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice. See SEEC Form 11.

19. Independent Capacity of Contractor

The Contractor, its officers, employees, subcontractors, or any other agent of the Contractor in the performance of this contract will act in an independent capacity and not as officers or employees of the State of Connecticut or of the Department.

20. Indemnification.

- (a) The Contractor shall indemnify, defend and hold harmless the State of Connecticut and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all:
 - (1) claims arising directly or indirectly, in connection with the contract, including the acts of commission or omission (collectively the "Acts") of the Contractor or Contractor Parties; and
 - (2) liabilities, damages, losses, costs and expenses, including but not limited to attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or the contract. The Contractor shall use counsel reasonably acceptable to the State in carrying out its obligations under this contract. The contractor's obligations under this section to indemnify, defend and hold harmless against claims includes claims concerning confidentiality of any part of or all of the bid or any records, and intellectual property rights, other propriety 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 contract. The Contractor shall name the State as an additional insured on the policy and shall provide a copy of the policy to the Agency prior to the effective date of the contract. The Contractor shall not begin performance until the delivery of the policy to the Agency.
- (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.
- (f) This section shall survive the termination, cancellation or expiration of the Contract, and shall not be limited by reason of any insurance coverage.

21. Government Function

If the amount of this contract exceeds two million five hundred thousand dollars, and if the contract is for the performance of a government function as that term is defined in Conn. Gen. Stat. § 1-200(11), as amended by Public Act No. 01-169 and Public Act 02-130, the Department is entitled to receive a copy of the records and files related to the Contractor's performance of a government function.

All records and files related to the Contractor's performance of a government function, as that term is defined in [Conn. Gen. Stat. § 1-200(11), as amended by Public Act No. 01-169 and Public Act 02-130,] are subject to the Freedom of Information Act and may be disclosed by the Department pursuant to that Act.

22. Whistle-blower Protection

If the amount of this contract is or exceeds five million dollars, the contract is subject to Conn. Gen. Stat. Sec. 4-61dd (e). If an officer, employee or appointing authority of the Contractor takes or threatens to take any personnel action against any employee of the Contractor in retaliation for such employee's disclosure of information to the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of this statute, the Contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of 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.

23. Inspection of Contractor's or Sub-contractor's Plant or Place of Business

The Department may, at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract award, or to be awarded by the Department to ensure compliance with the contract.

24. Audit of Contractor's or Sub-contractor's Books and Records

The Department may audit the books and records of a contractor or any subcontractor

under any negotiated contract or subcontract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the expiration of the subcontract.

25. Protection of Personal Information

- (a) **“Confidential Information”** shall mean any name, number or other information that may be used, alone or in conjunction with any other information, to identify a specific individual including, but not limited to, such individual's name, date of birth, mother's maiden name, motor vehicle operator's license number, Social Security number, employee identification number, employer or taxpayer identification number, alien registration number, government passport number, health insurance identification number, demand deposit account number, savings account number, credit card number, debit card number or unique biometric data such as fingerprint, voice print, retina or iris image, or other unique physical representation. Without limiting the foregoing, Personal Information shall also include any information regarding clients that the Department classifies as “confidential” or “restricted.” Personal Information shall not include information that may be lawfully obtained from publicly available sources or from federal, state, or local government records which are lawfully made available to the general public.
- (b) **“Confidential Information Breach”** shall mean an instance where an unauthorized person or entity accesses Personal Information in any manner, including but not limited to the following occurrences:
- (1) any Personal Information that is not encrypted or protected is misplaced, lost, stolen or in any way compromised;
 - (2) one or more third parties have had access to or taken control or possession of any Personal Information that is not encrypted or protected without prior written authorization from the State;
 - (3) the unauthorized acquisition of encrypted or protected Personal Information together with the confidential process or key that is capable of compromising the integrity of the Personal Information; or
 - (4) if there is a substantial risk of identity theft or fraud to the client, the Contractor, the Department or the State.
- (c) Contractor and Contractor Parties, at their own expense, have a duty to and shall protect from a Personal Information Breach any and all Personal Information which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with current industry standards.
<http://www.ct.gov/doit/cwp/view.asp?a=1245&q=253968>
<http://www.ct.gov/doit/cwp/view.asp?a=1245&q=253968>
- (d) Each Contractor or Contractor Party shall implement and maintain a comprehensive data security program for the protection of Personal Information. The safeguards contained in such program shall be consistent with and comply with the safeguards for protection of Personal Information, and information of a similar character, as set forth in all applicable federal and state law and written policy of the Department or State concerning the confidentiality of Personal Information. Such data-security program shall include, but not be limited to, the following:
- (1) a security policy for employees related to the storage, access and transportation of data containing Personal Information;

- (2) reasonable restrictions on access to records containing Personal Information, including access to any locked storage where such records are kept;
 - (3) a process for reviewing policies and security measures at least annually;
 - (4) creating secure access controls to Personal Information, including but not limited to passwords; and
 - (5) encrypting of Personal Information that is stored on laptops, portable devices or being transmitted electronically.
- (e) The Contractor and Contractor Parties shall notify the Department and the Connecticut Office of the Attorney General as soon as practical, but no later than twenty-four (24) hours, after they become aware of or suspect that any Personal Information which Contractor or Contractor Parties possess or control has been subject to a Personal Information Breach. If a Personal Information Breach has occurred, the Contractor shall, within three (3) business days after the notification, present a credit monitoring and protection plan to the Commissioner of Administrative Services, the Department and the Connecticut Office of the Attorney General, for review and approval. Such credit monitoring or protection plan shall be made available by the Contractor at its own cost and expense to all individuals affected by the Personal Information Breach. Such credit monitoring or protection plan shall include, but is not limited to reimbursement for the cost of placing and lifting one (1) security freeze per credit file pursuant to Connecticut General Statutes § 36a-701a. Such credit monitoring or protection plans shall be approved by the State in accordance with this Section and shall cover a length of time commensurate with the circumstances of the Personal Information Breach. The Contractors' costs and expenses for the credit monitoring and protection plan shall not be recoverable from the Department, any State of Connecticut entity or any affected individuals.
- (f) The Contractor shall incorporate the requirements of this Section in all subcontracts requiring each Contractor Party to safeguard Personal Information in the same manner as provided for in this Section.
- (f) Nothing in this Section shall supersede in any manner Contractor's or Contractor Party's obligations pursuant to HIPAA or the provisions of this Contract concerning the obligations of the Contractor as a Business Associate of the Department.

26. Executive Orders

- (a) **Executive Order No. 3: Nondiscrimination.** This Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill promulgated June 16, 1971, and, as such, this Contract may be canceled, terminated or suspended by the State Labor Commissioner for violation of or noncompliance with said Executive Order No. 3 or any state or federal law concerning nondiscrimination, notwithstanding that the Labor Commissioner is not a party to this Contract. The parties to this Contract, as part of the consideration hereof, agree that said Executive Order No. 3 is incorporated herein by reference and made a part hereof. The parties agree to abide by said Executive Order and agree that the State Labor Commissioner shall have continuing jurisdiction in respect to Contract performance in regard to nondiscrimination, until the Contract is completed or terminated prior to completion. The Contractor agrees, as part consideration hereof, that this Contract is subject to the Guidelines and Rules issued by the State Labor Commissioner to implement Executive Order No. 3 and

that the Contractor will not discriminate in employment practices or policies, will file all reports as required, and will fully cooperate with the State of Connecticut and the State Labor Commissioner.

- (b) **Executive Order No. 7C: Contracting Standards Board** This contract is also subject to provisions of Executive Order No. 7C of Governor Jodi M. Rell, promulgated on July 13, 2006. The Parties to this Agreement, as part of the consideration hereof, agree that:
- (1) The State Contracting Standards Board (“the Board”) may review this contract and recommend to the state contracting agency termination of the contract for cause. The state contracting agency shall consider the recommendations and act as required or permitted in accordance with the contract and applicable law. The Board shall provide the results of its review, together with its recommendations, to the state contracting agency and any other affected party in accordance with the notice provisions in the contract no later than fifteen (15) days after the Board finalizes its recommendation. For the purposes of this Section, “for cause” means: (i.) a violation of the State Ethics Code (Conn. Gen. Stat. Chapter 10) or Section 4A-100 of the Conn. Gen. Statutes or (ii.) wanton or reckless disregard of any state contracting and procurement process by any person substantially involved in such contract or state contracting agency.
 - (2) For the purposes of this Section, “contract” shall not include real property transactions involving less than a fee simple interest or financial assistance comprised of state or federal funds, the form of which may include but is not limited to grants, loans, loan guarantees, and participation interests in loans, equity investments and tax credit programs. Notwithstanding the foregoing, the Board shall not have any authority to recommend the termination of a contract for the sale or purchase of a fee simple interest in real property following transfer of title.
 - (3) Effective January 1, 2006, notwithstanding the contract value listed in Conn. Gen. Stat. §§ 4-250 and 4-251, all procurements between state agencies and private entities with a value of \$50,000 (fifty thousand dollars) or more in a calendar or fiscal year shall comply with the gift affidavit requirements of said Sections. Certification by agency officials or employees required by Conn. Gen. Stat. § 4-252 shall not be affected by this Section.
- (c) **Executive Order No. 14: Procurement of cleaning products and services.** This Agreement is subject to the provisions of Executive Order No. 14 of Governor M. Jodi Rell promulgated April 17, 2006. Pursuant to this Executive Order, the contractor shall use cleaning and/or sanitizing products having properties that minimize potential impacts on human health and the environment, consistent with maintaining clean and sanitary facilities.
- (d) **Executive Order No. 16: Violence in the Workplace Prevention Policy.** This Contract is subject to provisions of Executive Order No. 16 of Governor John J. Rowland promulgated August 4, 1999, and, as such, this Contract may be cancelled, terminated or suspended by the Contracting agency or the State for violation of or noncompliance with said Executive Order No. 16. The parties to this Contract, as part of the consideration hereof, agree that:
- (1) Contractor shall prohibit employees from bringing into the state work site, except as may be required as a condition of employment, any weapon/dangerous instrument defined in Section 2 to follow;
 - (2) weapon means any firearm, including a BB gun, whether loaded or unloaded, any knife (excluding a small pen or pocket knife), including a switchblade or other knife having

an automatic spring release device, a stiletto, any police baton or nightstick or any martial arts weapon or electronic defense weapon. Dangerous instrument means any instrument, article or substance that, under the circumstances, is capable of causing death or serious physical injury;

- (3) Contractor shall prohibit employees from attempting to use, or threaten to use, any such weapon or dangerous instrument in the state work site and employees shall be prohibited from causing, or threatening to cause, physical injury or death to any individual in the state work site;
 - (4) Contractor shall adopt the above prohibitions as work rules, violation of which shall subject the employee to disciplinary action up to and including discharge. The Contractor shall require that all employees are aware of such work rules;
 - (5) Contractor agrees that any subcontract it enters into in the furtherance of the work to be performed hereunder shall contain the provisions 1 through 4, above.
- (e) **Executive Order No. 17: Connecticut State Employment Service Listings.** This Contract is subject to provisions of Executive Order No. 17 of Governor Thomas J. Meskill promulgated February 15, 1973, and, as such, this Contract may be canceled, terminated or suspended by the Contracting agency or the State Labor Commissioner for violation of or noncompliance with said Executive Order Number 17, notwithstanding that the Labor Commissioner may not be a party to this Contract. The parties to this Contract, as part of the consideration hereof, agree that Executive Order No. 17 is incorporated herein by reference and made a part hereof. The parties agree to abide by said Executive Order and agree that the Contracting agency and the State Labor Commissioner shall have joint and several continuing jurisdiction in respect to Contract performance in regard to listing all employment openings with the Connecticut State Employment Service.

27. Health Insurance Portability and Accountability Act of 1996

- (a) If the Contractor is a Business Associate under the requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as noted in this contract, the Contractor must comply with all terms and conditions of this Section of the Contract. If the Contractor is not a Business Associate under HIPAA, this Section of the Contract does not apply to the Contractor for this Contract.
- (b) The Contractor is required to safeguard the use, publication and disclosure of information on all applicants for, and all clients who receive, services under the Contract in accordance with all applicable federal and state law regarding confidentiality, which includes but is not limited to HIPAA, more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E; and
- (c) The State of Connecticut Agency named on page 1 of this Contract (hereinafter the "**Agency**") is a "covered entity" as that term is defined in 45 C.F.R. § 160.103; and
- (d) The Contractor is a "business associate" of the Agency, as that term is defined in 45 C.F.R. § 160.103; and
- (e) The Contractor and the Agency agree to the following in order to secure compliance with the HIPAA, the requirements of Subtitle D of the Health Information Technology for Economic and Clinical Health Act ("HITECH Act"), (Pub. L. 111-5, §§ 13400 to 13423), and more

specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, D and E (collectively referred to herein as the "HIPAA Standards").

(f) Definitions

- (1) "Breach shall have the same meaning as the term is defined in section 45 C.F.R. 164.402 and shall also include an use or disclosure of PHI that violates the HIPAA Standards.
- (2) "Business Associate" shall mean the Contractor.
- (3) "Covered Entity" shall mean the Agency of the State of Connecticut named on page 1 of this 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, and includes electronic PHI, as defined in 45 C.F.R. § 160.103, limited to information created, maintained, transmitted or received by the Business Associate from or on behalf of the Covered Entity or from another Business Associate of the covered entity.
- (9) "Required by Law" shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.103.
- (10) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- (11) "More stringent" shall have the same meaning as the term "more stringent" in 45 C.F.R. § 160.202.
- (12) "This Section of the Contract" refers to the HIPAA Provisions stated herein, in their entirety.
- (13) "Security Incident" shall have the same meaning as the term "security incident" in 45 C.F.R. § 164.304.
- (14) "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. part 160 and part 164, subpart A and C.
- (15) "Unsecured protected health information" shall have the same meaning

as the term as defined in 45 C.F.R. 164.402

(g) Obligations and Activities of Business Associates.

- (1)** Business Associate agrees not to use or disclose PHI other than as permitted or required by this Section of the Contract or as Required by Law.
- (2)** Business Associate agrees to use and maintain appropriate safeguards and comply with applicable HIPAA Standards with respect to all PHI and to prevent use or disclosure of PHI other than as provided for in this Section of the Contract and in accordance with HIPAA Standards.
- (3)** Business Associate agrees to use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic protected health information that it creates, receives, maintains, or transmits on behalf of the Covered Entity.
- (4)** Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by Business Associate in violation of this Section of the Contract.
- (5)** Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Section of the Contract or any security incident of which it becomes aware.
- (6)** Business Associate agrees in accordance with 45 C.F.R. 502(e)(1)(ii) and 164.308(d)(2), if applicable, to ensure that any subcontractors that create, receive, maintain or transmit protected health information on behalf of the business associate, agrees to the same restrictions, conditions and requirements that apply to the Business Associate with respect to such information.
- (7)** Business Associate agrees to provide access (including inspection, obtaining a copy or both), at the request of the Covered Entity, and in the time and manner designated by the Covered Entity, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524. Business Associate shall not charge any fees greater than the lesser of the amount charged by the Covered Entity to an Individual for such records; the amount permitted by state law; or the Business Associate's actual cost of postage, labor and supplies for complying with the request.
- (8)** Business Associate agrees to make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of the Covered Entity, and in the time and manner agreed to by the Covered Entity.
- (9)** Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created, maintained, transmitted or received by, Business Associate on behalf of Covered Entity, available to Covered Entity or to the Secretary in a time and manner agreed to by the parties or designated by the Secretary, for purposes of the Secretary investigating or determining Covered Entity's compliance with the HIPAA Standards.

- (10) Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.
- (11) Business Associate agrees to provide to Covered Entity, in a time and manner designated to by the Covered Entity, information collected in accordance with subsection (g)(10) of this Section of the Contract, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder. Business Associate agrees at the Covered Entity's direction to provide an accounting of disclosures of PHI directly to an individual in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.
- (12) Business Associate agrees to comply with any state or federal law that is more stringent than the Privacy Rule.
- (13) Business Associate agrees to comply with the requirements of the HITECH Act relating to privacy and security that are applicable to the Covered Entity and with the requirements of 45 C.F.R. §§ 164.504(e), 164.308, 164.310, 164.312, and 164.316.
- (14) In the event that an individual requests that the Business Associate
 - (A) restrict disclosures of PHI;
 - (B) provide an accounting of disclosures of the individual's PHI; or
 - (C) provide a copy of the individual's PHI in an electronic health record; or
 - (D) amend PHI in the individual's designated record set the Business Associate agrees to notify the covered entity, in writing, within five business days of the request.
- (15) Business Associate agrees that it shall not, and shall ensure that its subcontractors do not, directly or indirectly, receive any remuneration in exchange for PHI of an individual without
 - (A) the written approval of the covered entity, unless receipt of remuneration in exchange for PHI is expressly authorized by this Contract and
 - (B) the valid authorization of the individual, except for the purposes provided under section 13405(d)(2) of the HITECH Act,(42 U.S.C. § 17935(d)(2)) and in any accompanying regulations
- (16) **Obligations in the Event of a Breach**
 - A. The Business Associate agrees that, following the discovery by the Business Associate or by a subcontractor of the Business Associate of any use or disclosure not provided for by this section of the Contract, any breach of unsecured protected health information, or any Security Incident, it shall notify the Covered Entity of such breach in accordance with Subpart D of Part 164 of Title 45 of the Code of Federal Regulations and of this Section of the Contract.

- B.** Such notification shall be provided by the Business Associate to the Covered Entity without unreasonable delay, and in no case later than 30 days after the breach is discovered by the Business Associate, or a subcontractor of the Business Associate, except as otherwise instructed in writing by a law enforcement official pursuant to 45 C.F.R. 164.412. A breach is considered discovered as of the first day on which it is, or reasonably should have been, known to the Business Associate or its subcontractor. The notification shall include the identification and last known address, phone number and email address of each individual (or the next of kin of the individual if the individual is deceased) whose unsecured protected health information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during such breach.
- C.** The Business Associate agrees to include in the notification to the Covered Entity at least the following information:
- 1.** A description of what happened, including the date of the breach; and the date of the discovery of the breach; the unauthorized person, if known, who used the PHI or to whom it was disclosed; and whether the PHI was actually acquired or viewed.
 - 2.** A description of the types of unsecured protected health information that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code).
 - 3.** The steps the Business Associate recommends that Individual(s) take to protect themselves from potential harm resulting from the breach.
 - 4.** A detailed description of what the Business Associate is doing or has done to investigate the breach, to mitigate losses, and to protect against any further breaches.
 - 5.** Whether a law enforcement official has advised the Business Associate, either verbally or in writing that he or she has determined that notification or notice to Individuals or the posting required under 45 C.F.R. 164.412 would impede a criminal investigation or cause damage to national security and; if so, include contact information for said official.
- D.** If directed by the Covered Entity, the Business Associate agrees to conduct a risk assessment using at least the information in subparagraphs 1 and 4, inclusive of (g) (16) (C) of this Section and determine whether, in its opinion, there is a low probability that the PHI has been compromised. Such recommendation shall be transmitted to the covered Entity within 20 business days of the Business Associate's notification to the covered Entity.

- E. If the Covered Entity determines that there has been a breach, as defined in 45 C.F.R. 164.402, by the Business Associate or a subcontractor of the Business Associate, the Business Associate, if directed by the Covered Entity, shall provide all notifications required by 45 C.F.R. 164.404 and 45 C.F.R. 164.406.
- F. Business Associate agrees to provide appropriate staffing and have established procedures to ensure that individuals informed of a breach have the opportunity to ask questions and contact the Business Associate for additional information regarding the breach. Such procedure shall include a toll-free telephone number, an e-mail address, a posting on its Web site and a postal address. Business Associate agrees to include in the notification of a breach by the Business Associate to the Covered Entity, a written description of the procedures that have been established to meet these requirements. Costs of such contact procedures will be borne by the Contractor.
- G. Business Associate agrees that, in the event of a breach, it has the burden to demonstrate that it has complied with all notifications requirements set forth above, including evidence demonstrating the necessity of a delay in notification to the Covered Entity

(h) Permitted Uses and Disclosure by Business Associate.

- (1) **General Use and Disclosure Provisions:** Except as otherwise limited in this Section of the Contract, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Contract, provided that such use or disclosure would not violate the HIPAA Standards if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.
- (2) **Specific Use and Disclosure Provisions**
 - A. Except as otherwise limited in this Section of the Contract, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
 - B. Except as otherwise limited in this Section of the Contract, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
 - C. Except as otherwise limited in this Section of the Contract, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

(i) **Obligations of Covered Entity.**

- (1) Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices of Covered Entity, in accordance with 45 C.F.R. § 164.520, or to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- (2) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- (3) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

(j) **Permissible Requests by Covered Entity.** Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Standards if done by the Covered Entity, except that Business Associate may use and disclose PHI for data aggregation, and management and administrative activities of Business Associate, as permitted under this Section of the Contract.

(k) **Term and Termination.**

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

Section of the Contract to the Covered Entity within ten business days of the notice of termination. This section shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

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

(1) Miscellaneous Provisions.

- (1) Regulatory References.** A reference in this Section of the Contract to a section in the Privacy Rule means the section as in effect or as amended.
- (2) Amendment.** The Parties agree to take such action as is necessary to amend this Section of the Contract from time to time as is necessary for Covered Entity to comply with requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- (3) Survival.** The respective rights and obligations of Business Associate shall survive the termination of this Contract.
- (4) Effect on Contract.** Except as specifically required to implement the purposes of this Section of the Contract, all other terms of the Contract shall remain in force and effect.
- (5) Construction.** This Section of the Contract shall be construed as broadly as necessary to implement and comply with the Privacy Standard. Any ambiguity in this Section of the Contract shall be resolved in favor of a meaning that complies, and is consistent with, the Privacy Standard.
- (6) Disclaimer.** Covered Entity makes no warranty or representation that compliance with this Section of the Contract will be adequate or satisfactory for Business Associate's own purposes. Covered Entity shall not be liable to Business Associate for any claim, civil or criminal penalty, loss or damage related to or arising from the unauthorized use or disclosure of PHI by Business Associate or any of its officers, directors, employees, contractors or agents, or any third party to whom Business Associate has disclosed PHI contrary to the provisions of this Contract or applicable law. Business Associate is solely responsible for all decisions made, and actions taken, by Business Associate regarding the safeguarding, use and disclosure of PHI within its possession, custody or control.
- (7) Indemnification.** The Business Associate shall indemnify and hold the Covered Entity harmless from and against any and all claims, liabilities, judgments, fines, assessments, penalties, awards and any statutory damages that may be imposed or assessed pursuant to HIPAA, as amended or the HITECH Act, including, without limitation, attorney's fees, expert witness fees, costs of investigation, litigation or

dispute resolution, and costs awarded thereunder, relating to or arising out of any violation by the Business Associate and its agents, including subcontractors, of any obligation of Business Associate and its agents, including subcontractors, under this section of the contract, under HIPAA, the HITECH Act, and the HIPAA Standards.

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