

**CONNECTICUT STATE EMPLOYEE RETIREMENT COMMISSION  
REQUEST FOR PROPOSAL  
FOR  
LEGAL SERVICES**

The Connecticut State Employee Retirement Commission (the “Commission”), is seeking proposals from qualified law firms to provide a full range of legal services to the Commission and to act as its General Counsel.

The Commission, pursuant to C.G.S. §5-155a, is statutorily responsible for the general supervision and operation of several public retirement systems including, but not limited to, the State Employees Retirement System (SERS), the Alternate Retirement Program (ARP) and the Municipal Employee Retirement System (MERS) (the “Plans”).

The Retirement Services Division of the Office of the State Comptroller (the “Division”) is the administrative arm of the Commission. The Commission is the client for the purpose of the services requested in this Request For Proposal (the”RFP”). Selected counsel only will interact with Division staff at the direction of the Commission regarding the requested services and must work cooperatively with the Attorney General, when directed by the Commission. It may be necessary for the selected counsel to hold office hours in the Retirement Services Division from time to time.

**I. SCOPE OF SERVICE**

The Commission is soliciting responses to this RFP from qualified law firms to provide a full range of legal services to the Commission and to act as its General Counsel. Interested parties are asked to provide information regarding their qualifications as well as their availability to provide the services required.

The legal services described below are intended to provide general guidance concerning the scope of work to be provided by the Contractor and are not intended to be all inclusive.

- Attend meetings of the Commission (which are generally held twelve times per year) and as requested, of subcommittees of the Commission and the Medical Examining Board (generally once or twice a month). Also, as requested, prepare agendas and minutes for the subcommittee meetings, review for accuracy the minutes of the Commission meetings and assist in the conduct of executive sessions and deliberations for the Commission.
- Provide advice and counsel in resolving disputes or questions arising under the Plans, including the rights or obligations of persons applying for or receiving benefits from the Plans.

- Represent the Commission in administrative and judicial proceedings involving the Plans, and act as liaison to the Attorney General's Office (formal and informal opinions) on behalf of the Commission.
- Manage all Freedom of Information requests for the Commission and represent the Commission, if necessary, in front of the Freedom of Information Commission.
- Research and advise the Commission on matters pertaining to its fiduciary duties, litigation, legislation, regulations and policy.
- Render primary legal assistance to the Commission on all relevant legal issues; draft commission memorandums and prepare final decisions (declaratory rulings) of the Commission in contested cases.
- When appropriate, examine and cross-examine witnesses at Commission hearings.
- As requested by the Commission, assist in the communication of concerns involving pension fund issues to trustees, staff, consultants, advisors and other parties, including testifying before or responding to elected or appointment officials in the legislative and executive branches of the government.
- Review, analyze, investigate and research as necessary to carry out the services set forth above.

## **II. SELECTION CRITERIA**

The evaluation committee will evaluate firms on the basis of their written responses to this RFP and possibly oral interviews. Additional written information may be requested by the Commission. The goal of the evaluation will be to select the best combination of qualifications, relevant experience and cost. The evaluation committee will also consider the following non-exclusive factors in making the determination:

- A. Depth and quality of experience providing all of the services described in Section I Scope of Service.
- B. Qualification of personnel, including the experience and availability of the lead attorney(s) and the breadth and depth of experience of other partners, associates, and other professionals available to provide the requested services to the Commission.
- C. Demonstrated ability to work closely and cooperatively with clients.
- D. Results of reference checking.

- E. Reasonableness of rates proposed, and demonstrated efficiency in providing sound advice and counsel without unnecessary or excessive charges.
- F. Equal opportunity record as evidenced by the composition of the firm personnel and the firms' affirmative action and equal employment opportunity policies and practices.
- G. Record of compliance with all applicable ethical rules of professional conduct.
- H. The proposing firm will not be considered to have any irreconcilable conflict of interest because the firm or attorneys associated with the firm have in the past brought or are currently bringing litigation against the State of Connecticut, whether in court, mediation or arbitration, so long as that litigation does not concern the firm's involvement in matters related to and adverse to Commission related issues described herein. All potential conflicts with the State of Connecticut must be fully described and discussed in the proposal.

### III. SELECTION PROCESS AND SCHEDULE

#### Request for Proposal Questions and Response Phase:

February 19, 2019	Release of RFP
February 25, 2019	Questions, if any, due at <a href="mailto:osc.rfp@ct.gov">osc.rfp@ct.gov</a>
March 1, 2019	Answers to vendor questions released
<b>March 8, 2019</b>	<b>Proposals DUE</b>

#### Proposal Review and Proposer Selection Schedule:

March 18, 2019	Finalist Interviews, if necessary – Proposers must hold dates
March 21, 2019	Proposer Selection

### IV. PROPOSAL SUBMISSION REQUIREMENTS

#### A. Proposal Questions

From the date the Commission issues this RFP until the date that it awards the Contract to the successful proposer, interested parties should not contact any employee of the State of Connecticut for additional information concerning this RFP, except in writing via email to the following address: [osc.rfp@ct.gov](mailto:osc.rfp@ct.gov). Interested parties should submit questions no later than February 25, 2019. Late questions may not receive answers. The Commission will

answer all questions only in the form of one or more addenda to this RFP and will post them at <http://www.osc.ct.gov/vendor/index.html>.

B. Sealed Proposals

An authorized agent for the Proposer with authority to negotiate and contractually bind the Proposer must sign the proposal; such individual's title, address, and telephone number must also be provided. **The Proposer must submit one original, one unbound, plus five (5) copies of both their business proposal and their cost proposal in a sealed envelope or carton upon which a clear indication has been made of the RFP reference title and the date and time the proposal is submitted.**

Hard copies must also be accompanied by electronic PDF format on USB flash drive or CD. Proposers are also required to submit two (2) electronic copies of the redacted proposal.

Proposers may send the proposal by courier or overnight delivery service or deliver in person to the address below, arriving no later than **March 8, 2019 at 3:00 p.m. local time.** To avoid any delivery issues, proposals sent by U.S. Postal Service must arrive before 3:00 p.m. on the day prior to the due date. Proposals will not be publicly opened on the due date. Proposals received after the stated time herein may not be accepted. Postmark dates will not be considered as the basis for meeting any submission deadlines.

Proposals are to be submitted to:

STATE OF CONNECTICUT  
Office of the State Comptroller  
Administrative Services Division  
55 Elm Street  
Hartford, CT 06106  
Attention: Steve Cosgrove

C. Submission of Proposals:

To be considered, all submissions must contain the following information:

- a. All proposals must address all the requirements listed in the prescribed order in Section D below;
- b. All information and completed forms attached to this RFP;
- c. A statement affirming specifically all of the representations and warranties set forth in Special Terms and Conditions regarding Independent Price Determinations and Offer of Gratuities, below;
- d. The following completed forms:

- i. Agency Vendor Form (SP-26NB), available at: [http://das.ct.gov/Purchase/Info/Vendor\\_Profile\\_Form\\_\(SP-26NB\).pdf](http://das.ct.gov/Purchase/Info/Vendor_Profile_Form_(SP-26NB).pdf)
- ii. W-9 Form, available at: <http://www.irs.gov/pub/irs-pdf/fw9.pdf>
- iii. **“BizNet”**

The Connecticut Department of Administrative Services (“DAS”) requires that all firms seeking to do business with the State create a business profile on the DAS Business Network (“BizNet”) system. Additional required forms as described below must be submitted to or on file with the Biznet system by the deadline for submission of proposals. Paper or electronic copies need not be provided with the submission to the Comptroller's office.

Firms create an account on BizNet by using the following link: <https://www.biznet.ct.gov/AccountMaint/Login.aspx>.

Once your firm creates an account, login and select “CT Procurement” and then “Company Information” for access. If you experience difficulty establishing or otherwise managing your firm's account, please call DAS at 860-713-5095.

DAS has implemented the requirement to create a BizNet account to make doing business with the State of Connecticut more business friendly.

One benefit to using BizNet is that it eliminates certain redundancies, such as the former requirement to complete and submit forms even though the forms had been recently submitted in response to another Request for Proposals.

In addition to eliminating redundancy, BizNet has automated the completion and submission of required Ethics Affidavits and Non Discrimination forms. Firms must now upload these forms electronically to their BizNet account and update them on an annual basis, rather than submitting paper copies with each proposal. Firms will have the ability to view, verify and update their information, by logging in to their BizNet account, prior to submitting responses to an RFP.

For information about how to upload the Ethics Affidavits and Non-Discrimination forms please access the following page: <http://das.ct.gov/images/1090/Upload%20Instructions.pdf>

## **1. ETHICS AFFIDAVITS**

The following Ethics Forms must be signed, dated, notarized, uploaded or updated on BizNet. To obtain these forms, you must login to Biznet and follow the instructions referenced above.

- a. OPM Ethics Form 1: Gift & Campaign Contribution Certification;
- b. OPM Ethics Form 5: Consulting Agreement Affidavit; and
- c. OPM Ethics Form 6: Affirmation of Receipt of State Ethics Laws Summary

For information on how to complete these forms, please access the Office of Policy and Management website by using the following link:

[http://www.ct.gov/opm/cwp/view.asp?a=2982&q=386038&opmNAV\\_GID=1806](http://www.ct.gov/opm/cwp/view.asp?a=2982&q=386038&opmNAV_GID=1806)

## 2. **NON-DISCRIMINATION CERTIFICATION**

Choose one (1) of the forms listed below that applies to your business. Complete and upload or update the form on Biznet annually. To obtain a copy of these forms, you must login to Biznet and follow the instructions referenced above.

- a. Form A: Representation by Individual (Regardless of Value); or
- b. Form B: Representation by Entity (Valued at \$50,000 or less); or
- c. Form C: Affidavit by Entity (Valued at \$50,000 or more); or
- d. Form D: New Resolution by Entity; or
- e. Form E: Prior Resolution by Entity

For information on how to complete these forms, please access the Office of Policy and Management website by using the following link:

[http://www.ct.gov/opm/cwp/view.asp?a=2982&q=390928&opmNAV\\_GID=1806](http://www.ct.gov/opm/cwp/view.asp?a=2982&q=390928&opmNAV_GID=1806)

**3. COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES (“CHRO”) WORKPLACE ANALYSIS AFFIRMATIVE ACTION REPORT/EMPLOYMENT INFORMATION FORM**

The CHRO Workplace Analysis Affirmative Action Report/Employment Information must be completed in BizNet and updated as necessary. You must login to Biznet and follow the Instructions referenced above.

For information on how to complete these forms you may contact Diane Comeau at [Diane.Comeau@ct.gov](mailto:Diane.Comeau@ct.gov) for assistance.

- e. Concise answers are encouraged. Responses should be prepared on 8 ½ x 11 inch paper using at least 12 point type with standard margins.
- f. The submission of proposals shall constitute, without any further act required of the proposers or the Commission, acceptance of the requirements, administrative stipulations, and all of the terms and conditions of this RFP. Proposals must reflect compliance with such requirements. Failure of the proposal to so comply may result in the Commission’s rejection of the proposal. The Commission will reject any proposal that deviates materially from the specifications, terms or conditions of this RFP. Proposers submitting proposals with any minor or immaterial deviations must identify and fully justify such deviations in order for the Commission to consider their proposal.
- g. No additions or changes to any proposal will be allowed after the proposal due date, unless the Commission specifically requests such modifications. The Commission may, at its option, seek proposer retraction and/or clarification of any discrepancy or contradiction found during the review of the proposals.

**D. Information Required in the Proposal:**

- a. Provide the information requested below on the title page:

Name of Proposer  
Business Location  
Mailing Address  
Telephone Number  
E-mail Address

The Proposer must designate an authorized representative and one alternate who may speak and act on behalf of the Proposer in all dealings with the agency, if necessary. Provide the following information for each individual:

Names  
Telephone Numbers  
Normal Hours of Work

b. Transmittal Letter

A transmittal letter must accompany all proposals. A corporate officer or person who is authorized to represent the company must sign this letter. A letter of transmittal must meet the following requirements:

- i. Identify the submitting organization;
- ii. Explicitly indicate unequivocal acceptance of all of the requirements of this RFP and acknowledge receipt of any and all amendments to this RFP;
- iii. Bear the signature of the person with the requisite power and authority to submit and deliver the proposal and subsequently to enter into, execute and deliver and perform on behalf of the firm any contract or agreement with the Commission.
- iv. Explicitly warrant, represent and certify the following requirements have been met in connection with the RFP:
  1. The fees and costs proposed have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition as to any matter relating to such process with any other organization or with any competitor.
  2. Unless otherwise required by law, the costs quoted have not been knowingly disclosed by the firm prior to the deadline for submission of proposals directly or indirectly to any other organization or to any competitor; and
  3. No attempt has been made, or will be made, by the firm to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting completion.
- v. Explicitly represent that no elected or appointed official or employee of the State of Connecticut had benefited or will benefit financially or materially from any contract or agreement executed in connection with this RFP. Any contract or agreement executed in connection with this RFP may be terminated by the Commission if it is determined that gratuities of any kind were either offered to, or received by, any state officials or employees from the firm, the law firm's agent(s), representative(s) or employee(s). Such action on the part of the Commission shall not constitute a breach of contract on the part of the Commission.

c. Table of Contents



The Table of Contents should reference all materials required by this RFP and any additional information or material the Proposer wishes to supply.

d. Executive Summary

Proposers must provide an Executive Summary. This is to permit the Proposer to briefly summarize the most important aspects of each section of the Proposal. The Executive Summary must provide a high-level overview of the Proposal. The Proposer must summarize its understanding of the objectives of the State in issuing this RFP, the intended results of the services, the scope of work, and any issues which need to be addressed in this Project. The executive summary should, at a minimum, provide the following information:

- i. A summary of the Proposal to provide the services described in the RFP.
  - ii. Description of the key personnel to be used in providing the services.
  - iii. Discuss the risks and concerns arising from the RFP.
  - iv. Explain what would be needed from the Commission to begin the project.
- e. Explain the firm's qualifications in light of the Selection Criteria detailed in Section II above.
- f. Disclose any past or present assignments, relationships or other employment that your firm or any employee of your firm has had that may create a conflict of interest or the appearance of a conflict of interest in serving as counsel for the State in this matter.
- g. If you find any terms or provisions of the proposed draft contract in Appendix A unacceptable, identify the term, explain why it is unacceptable, and state whether failure to modify this term would result in the firm's failure to execute a contract in this matter.
- h. Discuss any pending complaints or investigations, or any made or concluded within the past five years, to or by any regulatory body or court regarding the conduct of your firm or its predecessors, or any of its present or former members, employees or associates.
- i. Include a detailed and specific fee proposal. You must include a fee proposal specific to hourly rates both for the specific personnel and for each category of person who will work on the assignment (excluding clerical staff, whose time may not be billed).
- j. Provide names and contact information of three (3) client references for whom you have performed services reasonably comparable to those sought in this RFP.

- k. Provide the name of your malpractice insurance carrier, the maximum amount of your coverage, and the deductible amount.

E. Conformity and Completeness of Proposals

To be considered acceptable, proposals must be complete and conform to all material RFP instructions and conditions. The Attorney General's Office, in its sole discretion, may reject in whole or in part any proposal if in its judgment the best interests of the State will be served.

F. Stability of Proposed Fees

Any fee proposals must be valid for the entire duration of the Contract. The total cost of this contract or these contracts will not exceed TWO MILLION FIVE HUNDRED THOUSAND DOLLARS (\$2,500,000.00).

**V. AMENDMENT OR CANCELLATION OF THIS RFP**

The Commission reserves the right to cancel, amend, modify or otherwise change this RFP at any time if it deems it to be in the best interest of the State to do so.

**VI. PRESENTATION OF SUPPORTING EVIDENCE**

Proposers must be prepared to provide evidence of experience, performance, ability, financial resources or other items as the Commission deems to be necessary or appropriate concerning the performance capabilities represented in their proposals.

**VII. MISREPRESENTATION OR DEFAULT**

The Commission may reject the proposal and void any award resulting from this RFP to a firm which makes any material misrepresentation in its proposal or other submittal in connection with this RFP.

**VIII. ERRORS**

The Commission reserves the right to correct clerical or administrative errors that may be made during the evaluation of proposals or during the negotiation of the contract and to change the contract award accordingly. In addition, the Commission reserves the right to re-evaluate proposals and the award of the contract in light of information either not previously known or otherwise not properly having been taken into account prior to contract award. In any case, this may include, in extreme circumstances, revoking the awarding of the contract already made to a firm and subsequently awarding the contract to another firm. Such action on the part of the Commission shall not constitute a breach of contract on the part of the Commission since the contract with the initial firm would be deemed void and of no effect as if no contract ever existed between the Commission and such firm. The Commission may waive minor irregularities found in proposals or allow the proposer to correct them, depending on which is in the best interest of

the State. "Minor irregularities" means typographical errors, informalities that are matters of form rather than substance and evident from the proposal itself, and insignificant mistakes that can be waived or corrected without prejudice to other proposers, as determined in the discretion of the Commission.

## **IX. OWNERSHIP OF PROPOSALS**

All proposals shall become the sole property of the State and will not be returned.

## **X. EXECUTION OF CONTRACT AND RELATED REQUIREMENTS**

A. This RFP is not a contract and, alone, shall not be interpreted as such. Rather, this RFP only serves as the instrument through which proposals are solicited. Once the evaluation of the proposals is complete and a firm is selected, the selected proposal and this RFP may then serve as the basis for a contract that will be negotiated and executed between the Commission, and the selected firm. If the Commission and the initial selected firm fail to reach agreement on all issues relative to the contract within a time determined solely by the Commission, then the Commission may commence and conclude contract negotiations with other proposers. The Commission may decide at any time to start this RFP process again.

B. Conn. Gen. Stat. § 4-252 requires that this RFP include a notice of the certification requirements described in this statute. Accordingly, pursuant to this statute, firms are notified as follows:

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

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

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

a) That no gifts were made between the date that the state agency or quasi-public agency began planning the project, services, procurement, lease or licensing arrangement covered by the contract and the date of execution of the contract, by:

(1) such person, firm, corporation;

(2) any principals and key personnel of the person, firm or corporation, who participated substantially in preparing the bid or proposal or the negotiation of the contract; or

(3) any agent of such person, firm, corporation or principals and key personnel, who participated substantially in preparing the bid or proposal or the negotiation of the contract, to:

(a) any public official or state employee of the state agency or quasi-public agency soliciting bids or proposals for the contract, who participated substantially in the preparation of the bid solicitation or request for proposals for the contract or the negotiation or award of the contract;

or

(b) any public official or state employee of any other state agency, who has supervisory or appointing authority over such state agency or quasi-public agency;

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

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

4. Any bidder or proposer that does not make the certifications required under this section shall be disqualified and the state agency or quasi-public agency shall award the contract to the next highest ranked proposer or the next lowest responsible qualified bidder or seek new bids or proposals.

C. Section 4a-81 of the Connecticut General Statutes requires that this RFP include a notice of the consulting affidavit requirements described in the statute. Accordingly, pursuant to the statute, vendors are notified as follows:

1. No state agency shall execute a contract for the purchase of goods or services, which contract has a total value to the state of fifty thousand dollars or more in any calendar or fiscal year, unless the state agency obtains the written affidavit described in subsection (ii) of this section.

2. The chief official of the vendor awarded a contract described in this section or the individual awarded such contract who is authorized to execute such contract, shall attest in an affidavit as to whether any consulting agreement has been entered into in connection with such contract. Such affidavit shall be required if any duties of the consultant included communications concerning

business of such state agency, whether or not direct contact with a state agency, state or public official or state employee was expected or made. "Consulting agreement" means any written or oral agreement to retain the services, for a fee, of a consultant for the purposes of (1) providing counsel to a contractor, vendor, consultant or other entity seeking to conduct, or conducting, business with the State, (2) contacting, whether in writing or orally, any executive, judicial, or administrative office of the state, including any department, institution, bureau, Commission, commission, authority, official or employee for the purpose of solicitation, dispute resolution, introduction or requests for information or (3) any other similar activity related to such contract. "Consulting agreement" does not include any agreements entered into with a consultant who is registered under the provisions of Chapter 10 of the Connecticut General Statutes concerning the State's Codes of Ethics, as of the date such affidavit is submitted.

3. Such affidavit shall be sworn as true to the best knowledge and belief of the person signing the certification on the affidavit and shall be subject to the penalties of false statement.

4. Such affidavit shall include the name of the consultant, the consultant's firm, the basic terms of the consulting agreement, a brief description of the services provided, and an indication as to whether the consultant is a former state employee or public official. If the consultant is a former state employee or public official, such affidavit shall indicate his or her former agency and the date such employment terminated.

5. The Office of Policy and Management ("OPM") has provided OPM Ethics Form 5 to satisfy the requirements of this statute. Accordingly, the firm must deliver this Form 5, available through BizNet as described in this section (C), together with its proposal and then deliver an updated Form 5 dated the date that the firm executes the contract. Such affidavit shall be amended whenever the vendor awarded the contract enters into any new consulting agreement during the term of the contract.

6. If a vendor refuses to submit the affidavit required under this section, then the Commission shall not award the contract to such vendor and shall award the contract to the next highest ranked vendor or the next lowest responsible qualified bidder or seek new bids or proposals.

7. This section is set forth here only for purposes of providing notice of the requirements of Section 4a-81 of the Connecticut General Statutes. Accordingly, it is neither intended nor should it be interpreted nor relied upon to be a complete and full reiteration of the Act's contents. Any interpretation or understanding of Section 4a-81 of the Connecticut General Statutes requirements or content by any party must come only from reading the full text of Section 4a-81 of the Connecticut General Statutes itself.

D. Pursuant to Governor M. Jodi Rell's Executive Order No. 1, paragraph 8, and Governor M. Jodi Rell's Executive Order No. 7C, paragraph 10(a), contractors executing state contracts with a value to the State of \$50,000 or more in a calendar or fiscal year shall execute a Gift and Campaign Contribution Certification (OPM Ethics Form 1) contemporaneously with the contract certifying that between the planning and start date and the execution date, neither the contract signatory nor extensively and substantially in the preparation of the proposal or in the negotiation of the contract gave a contribution to candidates for statewide public office or the General Assembly. The firm must execute the Contract and this Form 1 through the BizNet system as explained in Section III, above, and update the form at least annually. Contractors are then required to submit a contract certification annually to update previously submitted certification forms for state contracts. Contractors must use the Gift and Campaign (OPM Ethics Form 1) for this purpose.

E. Pursuant to Connecticut General Statutes §§ 4a-60(a)(1) and 4a-60a(a)(1), as amended by Public Act 07-245 and Sections 9 and 10 of Public Act 07-142, every contractor is required to provide the State with documentation in the form of a company or corporate policy adopted by resolution of the Commission of directors, shareholders, managers, members or other governing body of such contractor to support the contractor's nondiscrimination agreements and warranties which are included in such contractor's contract pursuant to said statutes. The applicable certification form must be completed and submitted through the BizNet system, as explained in Section C), above, and updated at least annually.

## **XI. ORAL AGREEMENT OR ARRANGEMENTS**

Any alleged oral agreements or arrangements made by firms with the Commission will be disregarded in any proposal evaluation or associated award.

## **XII. SUBLETTING OR ASSIGNING OF CONTRACT**

The contract or any portion thereof, or the work provided for therein, or the right, title, or interest of the firm therein or thereto may not be sublet, sold, transferred, assigned or otherwise disposed of to any person or entity without the prior written consent of the Commission. No person or entity, other than the firm to which the contract was awarded, is permitted to perform work without the prior written approval of the Commission.

## **XIII. FREEDOM OF INFORMATION ACT AND CONFIDENTIAL INFORMATION**

A. All proposals submitted in response to this RFP are to be the sole property of the Commission, subject to the terms of the Connecticut Freedom of Information Act (FOIA) and its corresponding rules, regulations, and interpretations. Those particular sentences, paragraphs, pages, or sections that the proposer believes are proprietary or confidential in nature, and therefore exempt from disclosure under the FOIA, must be specifically identified as such. If the Proposer indicates that certain documentation is submitted in confidence, by specifically and clearly marking said documentation as CONFIDENTIAL,

the Commission will endeavor to keep said information confidential to the extent permitted by law. The Commission, however, has no obligation to initiate, prosecute, or defend any legal proceeding or to seek a protective order or other similar relief to prevent disclosure of any information that is sought pursuant to a FOIA request. The proposer will have the burden of establishing the FOIA exemption in any proceeding where it is an issue. In no event will the Commission or the State have any liability for the disclosure of any documents in its possession which the Comptroller believes are required to be disclosed pursuant to the FOIA or other requirements of law.

B. The Commission expects that a proposer will in good faith mark only sentences, paragraphs, sections, or pages that qualify as proprietary or confidential under the FOIA. Without waiving the proposal due date and time noted in Section II(B) of this RFP, the Commission reserves the right to return any proposals having the majority of their pages marked as confidential or proprietary back to the proposer for compliance with this section.

C. With regard to the above Paragraph referring to the Freedom of Information Act and Confidential Information, the proposer will submit two (2) copies of a CD of its entire proposal (including all attachments) in a PDF format with: (1) all confidential and proprietary information redacted; (2) a description of those particular sentences, paragraphs, pages or sections that the Proposer believes are exempt from disclosure under the FOIA; and (3) an explanation and rationale sufficient to justify each exemption. The Division will submit a copy of the CD containing the redacted proposal as necessary in response to any relevant FOIA request it receives with regard to this RFP. Failure to provide such a CD will signify the Proposer's agreement with the disclosure of all submitted information relative to a FOIA request.

#### **XIV. AFFIRMATIVE ACTION**

The contract to be awarded is subject to contract compliance requirements mandated by Sections 4a-60 and 4a-60a of the Connecticut General Statutes; and, when the awarding agency is the State, Sections 46a-71(d) and 46a-81i(d) of the Connecticut General Statutes. There are Contract Compliance Regulations, codified at Section 46a-68j-21 through 43 of the Regulations of Connecticut State Agencies, which establish a procedure for awarding all contracts covered by Sections 4a-60 and 46a-71(d) of the Connecticut General Statutes. According to Section 46a-68j-30(9) of the Contract Compliance Regulations, every agency awarding a contract subject to the contract compliance requirements has an obligation to consider certain factors when reviewing the Proposer's qualifications under the contract compliance requirements. By submitting a bid, the Proposer is acknowledging that it has reviewed the applicable statutes and regulations as noted above and is aware of the factors that will be considered by the Commission in this area. More information about the State of Connecticut's Contract Compliance requirements is available on the Commission on Human Rights and Opportunities' web site at [www.state.ct.us/chro](http://www.state.ct.us/chro) under "Contract Compliance." The Proposer must complete and submit the CHRO's Workforce Analysis Affirmative Action Report-State Proposers form (attached) with the proposal.

## **XV. CONFORMANCE WITH FEDERAL, STATE AND OTHER REQUIREMENTS**

In the contract, the firm will represent and warrant that, at all pertinent and relevant times to the contract, it has been, is and will continue to be in full compliance with all Federal, State, municipal or other governmental department, commission, Commission, bureau, agency or instrumentality, codes, statutes, acts, ordinances, judgments, decrees, injunctions and regulations.

## **XVI. EXECUTIVE ORDERS**

The Contract shall be subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, the provisions of Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, and the provisions of Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999. The contract may also be subject to Executive Order No. 7C of Governor M. Jodi Rell, promulgated July 13, 2006, concerning contracting reforms, in accordance with its terms and conditions.

## **XVII. AMERICANS WITH DISABILITIES ACT**

The firm shall comply with the Americans with Disabilities Act and any other applicable federal laws and regulations.

## **XVIII. CAMPAIGN CONTRIBUTION AND SOLICITATION BAN**

With regard to a State contract, as defined in Conn. Gen. Stat. § 9-612, 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 the proposal in response to this RFP expressly acknowledges receipt of the State Elections Enforcement Commission's notice advising prospective state contractors of state campaign contribution and solicitation prohibitions as found at [http://www.ct.gov/seec/lib/seec/forms/contractor reporting /seec form 10 final.pdf](http://www.ct.gov/seec/lib/seec/forms/contractor%20reporting/seec%20form%2010%20final.pdf) as it may be revised from time to time as noted on the website of the Connecticut State Election Enforcement Committee found at <http://www.ct.gov/seec/site/default.asp> and will inform its principals of the contents of the notice.



**APPENDIX A**

DRAFT CONTRACT  
(Subject to Negotiation)

**AGREEMENT**

**BY AND BETWEEN**

**THE CONNECTICUT STATE EMPLOYEE RETIREMENT COMMISSION**

**AND**

\_\_\_\_\_

This Agreement (the “**Agreement**”) is made and entered into pursuant to Conn. Gen. Stat. §5-155a by and between the State of Connecticut, Employee Retirement Commission (the “**Commission**”) and \_\_\_\_\_ (the “**Contractor**,” and together with the **Commission** the “**Parties**”).

WHEREAS, the Commission seeks to engage the services of a qualified law firm to provide a full range of legal services to the Commission and to act as its General Counsel; and

WHEREAS, pursuant to an RFP issued on \_\_\_\_\_, the Contractor was selected to provide the legal services described herein; and

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, intending to be legally bound, the Commission and the Contractor, hereby agree as follows:

**1. TERM OF AGREEMENT.**

The term of this Agreement begins effective upon execution (the “**Effective Date**”), and shall expire three (3) years from the Effective Date, at which time the parties may agree to extend the Agreement for up to two (2) additional one (1) year periods.

**2. SCOPE OF SERVICES.**

The services to be performed by the Contractor shall consist of the following, collectively referred to as the “**Services**”:

[DESCRIPTION OF SERVICES]

**3. AGREEMENT ADMINISTRATION:**

A. The Person in charge of administering this Agreement on behalf of the COMMISSION is \_\_\_\_\_, whose contact information is as follows:

[CONTACT INFO]

- B. The Persons in charge of administering this Agreement on behalf of the Contractor is \_\_\_\_\_, whose contact information are as follows:

[CONTACT INFO]

#### **4. COMPENSATION AND REIMBURSEMENT.**

- A. The COMMISSION shall pay Contractor for Services actually performed and completed under the Agreement, dated of even date, between Contractor and the COMMISSION, which amount shall not exceed \_\_\_\_\_ (US\$ \_\_\_\_\_ .00).
- B. Billings are to be on a monthly basis. The billings must contain, at a minimum, a detailed description of the work performed, the date of the performance, the actual time spent performing the work, the name and position of the person(s) rendering the Service and the rate charged for the Service. The monthly bill must also be accompanied by a summary of time and charges billed for each attorney and paralegal itemized on the invoice.
- C. Upon request from the COMMISSION, the Contractor must submit a summary memorandum describing how the Service rendered furthered the resolution of the matter and the current status of the matter.
- D. The COMMISSION agrees to reimburse the Contractor for actual, necessary and reasonable out-of-pocket disbursements and expenses, including filing fees, court costs, computerized research (at cost), commercial messenger and delivery service (at cost) expert witnesses, consultants, mediators, investigative services, long distance telephone calls, and transcript or deposition costs.
- E. The COMMISSION shall not reimburse the Contractor for any overhead related expenses, including, but not limited to, duplicating, secretarial, facsimile (other than long distance telephone line charges), clerical staff, library staff, proofreading staff, meals and in-state transportation costs unless they are otherwise approved by the COMMISSION.
- F. The Contractor shall be reimbursed for reasonable expenses for transportation, parking and reasonable lodging and meals associated with interstate travel, specifically excluding first class airfare, as approved in advance by the COMMISSION. Reimbursable interstate travel shall not include travel to meet with staff of the COMMISSION and all such meetings shall be conducted in Hartford, Connecticut, unless otherwise specified by the COMMISSION.
- G. The Contractor shall not be compensated for time spent on background or elementary legal research or any legal training without prior written consent of the COMMISSION. Charges for legal research must be accompanied by a detailed description setting forth the purpose of the research and summarizing its nature. Any written material produced as a result of such research shall be available to the COMMISSION at on or before the third business day following the date of its written request. The COMMISSION shall make the final decision in all disputes to this Agreement under this subsection.

- H. The Contractor shall not be compensated for time spent in consultation with any other attorney or other employee of the COMMISSION concerning the administration of this Agreement and/or issues relating to billing. Unless otherwise authorized by the COMMISSION, compensation for communication between or among attorneys and/or staff within the Contractor's firm is limited to the time and billing rate of the most senior attorney or staff member participating in the communication. These charges must be accompanied by a detailed description setting forth the purpose of the communication and summarizing its details. The COMMISSION shall make the final determination, at its sole discretion, as to the adequacy of such description.
- I. Absent the consent of the COMMISSION or its designee, the Contractor shall not be compensated for the attendance or participation of more than one attorney representing the State at or during any meeting, conference or proceeding, in person or otherwise, in any forum, in connection with performing the Services. Where more than one attorney has attended or participated in any such meeting, conference or proceeding without the consent of the COMMISSION or his designee, the Contractor shall be compensated only for the time of the most senior attorney in attendance or participating.
- J. The Contractor shall not be compensated for the performance of paralegal or clerical type duties performed by an attorney. Paralegal duties or clerical duties include, by way of example and not limitation, routine proofreading of pleadings and other correspondence, preparation of trial or closing binders or notebooks, photocopying and coordinating the schedules of others.
- K. The COMMISSION shall approve for payment all undisputed fees and costs, as soon as the documentation can properly be processed in accordance with the usual State practice.
- L. Unless otherwise specified in the Agreement, payment shall be due within forty-five (45) days after COMMISSION's receipt of a properly completed, undisputed invoice. Invoices shall include detailed information for Services delivered and performed.
- M. In conformity with Connecticut General Statutes §41-72, the COMMISSION shall notify the Contractor within ten (10) business days of receiving an invoice, in writing, of any disputed charges under this Agreement for which the COMMISSION is withholding payment and describe, in reasonable detail, the reason for such withholding. In no event shall the COMMISSION withhold disputed payments or set off, in aggregate, any amounts in excess of five percent (5%) of the total value of this Agreement. Upon resolution of the dispute, any disputed amounts owed Contractor will be paid with interest, in accordance with Connecticut General Statutes §11-5, at the rate of the lesser of one and one-half percent (1.5%) per month or the highest rate allowed by law, calculated from the date the amounts were originally due.
- N. To the extent applicable, each Party will be responsible for its own income taxes, employment taxes, and property taxes. The Parties will cooperate in good faith to minimize taxes to the extent legally permissible. The State of Connecticut is exempt

from Federal Excise, State and Local Sales Taxes. Each Party will provide to the other Party any resale exemption, multiple points of use certificates, treaty certification and other exemption information reasonably requested by the other Party. The COMMISSION will reimburse Contractor for any deficiency relating to taxes that are the COMMISSION's responsibility under this Agreement.

## **5. REPRESENTATIONS AND WARRANTIES.**

The Contractor represents and warrants to the COMMISSION, for itself and for the Contractor Agents, as defined in the Indemnification Section of this Agreement, as applicable, that:

- A. Contractor is duly and validly existing under the laws of its state of organization and authorized to conduct business in the State of Connecticut in the manner contemplated by the Agreement. Further, as appropriate, it has taken all necessary action to authorize the execution, delivery and performance of the Agreement and have the power and COMMISSION to execute, deliver and perform its obligations under the Agreement;
- B. Contractor will comply with all State and Federal laws and municipal ordinances in satisfying its obligations under and pursuant to the Agreement, including, but not limited to Connecticut General Statutes Title 1, Chapter 10, concerning the State's Code of Ethics;
- C. The execution, delivery and performance of the Agreement will not violate, be in conflict with, result in a breach of or constitute (with or without due notice and/or lapse of time) a default under any of the following, as applicable: (1) any provisions of law; (2) any order of any court of the State; or (3) any indenture, agreement, document or other instrument to which it is a party or by which it may be bound;
- D. No employee of Contractor is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any governmental entity;
- E. As applicable, Contractor has not to the best of its knowledge, information and belief, within the three years preceding the Agreement, in any of Contractor's current or former jobs, been convicted of, or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a transaction or contract with any governmental entity. This includes, but is not limited to, violation of Federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- F. Contractor is not presently indicted for or otherwise criminally or civilly charged by any governmental entity with commission of any of the offenses listed above;
- G. Contractor has not within the last three years preceding the Agreement had one or more contracts with any governmental entity terminated for cause;

- H. Contractor has not improperly or illegally paid or agreed to pay any entity or person any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of the Agreement or any assignments made in accordance with the terms of the Agreement;
- I. To the best of its knowledge, there are no Claims, as defined in the Indemnification section of this Agreement, involving the Contractor that might reasonably be expected to materially adversely affect its business, operations, assets, properties, financial stability, business prospects or ability to perform fully under the Agreement;
- J. Contractor shall disclose, to the best of its knowledge, to the COMMISSION, in writing, any Claims involving them that might reasonably be expected to materially adversely affect their business, operations, assets, properties, financial stability, business prospects, or ability to perform fully under the Agreement, no later than ten (10) days after becoming aware of any such Claims;
- K. Contractor's participation in the RFP is not a conflict of interest or a breach of ethics under the provisions of Title 1, Chapter 10 of the Connecticut General Statutes concerning the State's Code of Ethics;
- L. Contractor has paid all applicable worker's compensation second injury fund assessments concerning all previous work done in Connecticut;
- M. Contractor owes no past due unemployment compensation contributions;
- N. Contractor is not delinquent in the payment of any taxes owed the State of Connecticut;
- O. Contractor shall not copy or divulge to any third party any information or any data in any form obtained or produced in connection with the performance of its duties and responsibilities pursuant to this Agreement other than in connection with the performance of those duties and responsibilities. The Contractor shall keep all confidential and privileged records, as defined, in secured areas and shall take reasonable precautions to protect the records from dangers of fire, theft, flood, natural disasters and other physical threats, as well as unauthorized access;
- P. During the course of this Agreement, the Contractor shall not represent any other client if such representation will materially affect its duties or obligations to the State of Connecticut or the COMMISSION or create an appearance of impropriety as determined under applicable legal ethics standards; and
- Q. The Contractor will not knowingly enter into or retain any business relationships or enterprise in which an COMMISSION member holds an interest, other than a nominal interest in a publicly held corporation, without the prior written consent of the COMMISSION.

- R. All professional personnel of Contractor performing services under this Agreement shall either be admitted to the bar in Connecticut or eligible to perform such services under Rule 5.5 of the Connecticut Rules of Professional Conduct.

## **6. AGREEMENT AMENDMENTS.**

No amendment to or modification or other alteration of the Agreement shall be valid or binding upon the COMMISSION unless made in writing, signed by both Parties and, if applicable as solely determined by the COMMISSION and evidenced by the COMMISSION's inclusion of the appropriate signature block, approved by the Connecticut Attorney General.

## **7. ASSIGNMENT.**

The Contractor shall not assign any of its rights or obligations under the Agreement, voluntarily or otherwise, in any manner without the prior written consent of the COMMISSION which consent shall not be unreasonably withheld. The COMMISSION may void any purported assignment in violation of this section and declare the Contractor in breach of Agreement. Any Termination by the COMMISSION for a breach is without prejudice to the COMMISSION's or the State's rights or possible Claims.

## **8. TERMINATION.**

- A. Notwithstanding any provisions in this Agreement, the COMMISSION, through a duly authorized representative, may terminate the Agreement whenever the COMMISSION makes a written determination that such Termination is in the best interests of the State. The COMMISSION shall notify the Contractor in writing of termination pursuant to this section, which notice shall specify the effective date of termination and the extent to which the Contractor must complete its existing performance obligations under the Agreement prior to such date.
- B. Upon receipt of a written notice of Termination from the COMMISSION, the Contractor shall cease operations as the COMMISSION directs in the notice, and take all actions that are necessary or appropriate, or that the COMMISSION may reasonably direct, for the protection and preservation of the Records, as this term is defined in the Indemnification Section of this Agreement. Except for any work which the COMMISSION directs the Contractor to perform in the notice prior to the effective date of Termination, and except as otherwise provided in the notice, the Contractor shall terminate or conclude all existing subcontracts and purchase orders and shall not enter into any further subcontracts, purchase orders or commitments.
- C. The COMMISSION shall, within forty-five (45) days of the effective date of termination, reimburse the Contractor for Services rendered by the Contractor in accordance with this Agreement, and all actual and reasonable costs incurred after termination in completing those portions of the Services which the notice required the Contractor to complete. However, the Contractor is not entitled to receive and the COMMISSION is not obligated to tender to the Contractor any payments for anticipated or lost profits. Upon request by

the COMMISSION, the Contractor shall assign to the COMMISSION, or any replacement contractor which the COMMISSION designates, all subcontracts, purchase orders and other commitments, deliver to the COMMISSION all COMMISSION Records and other information pertaining to its performance of the Services as necessary to facilitate the COMMISSION or a third party to take over the provisioning of Services, and remove from State premises, whether leased or owned, all of Contractor's property, equipment, waste material and rubbish related to its performance of the Services, all as the COMMISSION may request.

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

## **9. BREACH.**

If either Party breaches the Agreement in any material respect, the non-breaching Party shall provide written notice of such breach to the breaching Party and afford the breaching Party an opportunity to cure the breach within thirty (30) days from the date that the breaching Party receives such notice. Such right to cure period shall be extended if the non-breaching Party is satisfied that the breaching Party is making a good faith effort to cure but the nature of the breach is such that it cannot be cured within the right to cure period. The notice may include an effective Agreement termination date if the breach is not cured by the stated date and, unless otherwise modified by the non-breaching Party in writing prior to the termination date; no further action shall be required of any Party to effect the termination as of the stated date. If the notice does not set forth an effective Agreement termination date, then the non-breaching Party may terminate the Agreement by giving the breaching Party no less than thirty (30) days prior written notice.

## **10. WAIVER.**

- A. No waiver of any breach of the Agreement shall be interpreted or deemed to be a waiver of any other or subsequent breach. All remedies afforded in the Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided in the Agreement or at law or in equity.
- B. A Party's failure to insist on strict performance of any provision of the Agreement shall only be deemed to be a waiver of rights and remedies concerning that specific instance of performance and shall not be deemed to be a waiver of any subsequent rights, remedies or breach.



## 11. INDEMNIFICATION.

A. For the purposes of this section the following terms are defined as follows:

- (i) “Claims” means all actions, suits, claims, demands, investigations, and proceedings of any kind, open, pending or threatened, whether mature, unmatured, contingent, known or unknown, at law or in equity, in any forum.
- (ii) “Contractor’s Agent” means the Contractor’s members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees, or any one of them or any other person or entity with whom the Contractor is in privity of an oral or written contract and the Contractor intends for such person or entity to perform under the Agreement in any capacity.
- (iii) “Records” means all working papers and such other information and materials as may be accumulated by the Contractor or Contractor Agents in performing the Agreement, including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries and correspondence, kept or stored in any form.

B. The Contractor agrees to indemnify, defend and hold harmless the COMMISSION and its officers, representatives, agents, servants, employees, successors and assigns, including reasonable attorney’s fees and any damages finally awarded by a court of competent jurisdiction, from and against any and all third party: (1) Claims resulting from bodily injury or death of any person or damage to real and/or tangible personal property directly resulting from the willful misconduct or negligent acts or negligent omissions of the Contractor or Contractor Agent during performance of the Services; and (2) Claims of infringement or violation of intellectual property rights due to the actions of Contractor in the performance of the Services provided under this Agreement enforceable in the United States of America including without limitation rights in trade secrets, copyrights or U.S. Patents.

C. The Contractor’s obligations under this section to indemnify against third party Claims includes Claims concerning breach of confidentiality due to the negligence or willful misconduct of Contractor with respect to any Records that come into the possession of Contractor and any intellectual property rights, other proprietary rights of any person or entity, copyrighted or un-copyrighted compositions, secret processes, patented or unpatented inventions or articles furnished or used in the performance of this Agreement.

D. The Contractor shall not be responsible for indemnifying or holding the COMMISSION harmless from any liability arising due to the negligence or willful misconduct of the COMMISSION or any other person or entity acting under the direct control or supervision of the COMMISSION.

- E. This section shall survive the Termination of the Agreement and shall not be limited or expanded by reason of any insurance coverage.

## **12. FORUM AND CHOICE OF LAW.**

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

## **13. FORCE MAJEURE.**

The COMMISSION and the Contractor shall not be excused from their obligation to perform in accordance with the Agreement except in the case of Force Majeure events and as otherwise provided for in the Agreement. In the case of any such Force Majeure exception, the nonperforming Party shall give immediate written notice to the other, explaining the cause and probable duration of any such nonperformance. Upon receipt of notice of failure or delay in performance caused by the Force Majeure, performance time shall be considered extended for at least a period of time equivalent to the time lost as a result of any such delay.

## **14. ADVERTISING.**

The Contractor shall not refer to sales to the State for advertising or promotional purposes, including, but not limited to, posting any material or data on the Internet, without the COMMISSION's prior written approval. Use of Contractor's name or logos, including a response to any public or media inquiries, are subject to Contractor's consent.

## **15. AMERICANS WITH DISABILITIES ACT.**

The Contractor shall be and remain in compliance with the Americans with Disabilities Act of 1990 ("Act"), to the extent applicable, during the Term of the Agreement. The COMMISSION may terminate the Agreement if the Contractor fails to comply with the Act.

## **16. DISCLOSURE OF CONTRACTOR PARTIES LITIGATION.**

The Contractor shall require that all Contractor Parties, as appropriate, disclose to the Contractor, to the best of their knowledge, any Claims involving the Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets,

properties, financial stability, business prospects or ability to perform fully under the Agreement, no later than ten (10) Days after becoming aware of any such Claims. Disclosure shall be in writing.

#### **17. ENTIRETY OF AGREEMENT.**

The Agreement is the entire agreement between the Parties with respect to its subject matter, and supersedes all prior agreements, proposals, offers, counteroffers and understandings of the Parties, whether written or oral. The Agreement has been entered into after full investigation, neither Party relying upon any statement or representation by the other unless such statement or representation is specifically embodied in the Agreement.

#### **18. EXHIBITS.**

All exhibits referred to in and attached to this Agreement are incorporated in this Agreement by such reference and shall be deemed to be a part of it as if they had been fully set forth in it.

#### **19. EXECUTIVE ORDERS.**

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

#### **20. NON DISCRIMINATION AND AFFIRMATIVE ACTION PROVISIONS**

A. For purposes of this Section, the following terms are defined as follows:

1. "Commission" means the Commission on Human Rights and Opportunities;
2. "Contract" and "contract" include any extension or modification of the Contract or contract;
3. "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor;

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

in Conn. Gen. Stat. Section 1-120, (3) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in Conn. Gen. Stat. Section 1-267, (4) the federal government, (5) a foreign government, or (6) an agency of a subdivision, agency, state or government described in the immediately preceding enumerated items (1), (2), (3), (4) or (5).

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

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

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

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

F. The Contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.

G. (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation; (2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (3) the Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes § 46a-56; and (4) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and

permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor which relate to the provisions of this Section and Connecticut General Statutes § 46a-56.

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

## **21. ETHICS LAW SUMMARY.**

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

## **22. CAMPAIGN CONTRIBUTION RESTRICTIONS.**

Pursuant to the requirements of Connecticut General Statutes §9-612(g)(2), as amended by P.A. 10-1, the authorized signatory to this Agreement expressly acknowledges receipt of the State Elections Enforcement Commission's ("SEEC") notice advising State contractors of State campaign contribution and solicitation prohibitions, and will inform its Contractor Parties of the contents of the notice.

## **23. WORKERS' COMPENSATION.**

Contractor agrees to carry sufficient workers' compensation and liability insurance with a company, or companies, licensed to do business in Connecticut, and furnish certificates if required.

## **24. WHISTLE BLOWING.**

This Agreement may be subject to the provisions of Section 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing COMMISSION of the Contractor takes or threatens to take any personnel action against any employee of the Contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or COMMISSION or the Auditors of Public Accounts or the

Attorney General under the provisions of subsection (a) of such statute, the Contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of this Agreement. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with subsection (f) of such statute, each large state contractor, as defined in the statute, shall post a notice of the provisions of the statute relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the Contractor.

## **25. NOTICE.**

All notices, demands, requests, consents, approvals or other communications required or permitted to be given or which are given with respect to this Agreement (for the purpose of this section collectively called "Notices") shall be deemed to have been effected at such time as the notice is placed in the U.S. mail, first class and postage prepaid, return receipt requested, or, placed with a recognized, overnight express delivery service that provides for a return receipt. All such Notices shall be in writing with a copy of the same faxed or emailed to the receiving Party's Project Manager, and shall be addressed as follows:

If to the COMMISSION:

[CONTRACTOR INFORMATION]

If to the Contractor:

[CONTRACTOR INFORMATION]

## **26. INSURANCE.**

Before commencing performance of Services, the Contractor shall maintain at its own cost and expense for the Term of the Agreement, the following insurance as described in this section. Contractor shall assume any and all deductibles in the described insurance policies. Any failure to comply with the claim reporting provisions of the policy shall not affect coverage provided to the State.

- A. Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. Coverage shall include Premises and Operations, Independent Contractors, Products and Completed Operations, Contractual Liability and Broad Form Property Damage coverage. If a general aggregate is used, the general aggregate limit shall apply separately to the work covered by this Agreement or the general aggregate limit shall be twice the occurrence limit.
- B. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury. Coverage extends to owned, hired and non-owned automobiles. If the Contractor does



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

- C. Workers' Compensation and Employers Liability: Statutory coverage in compliance with the Compensation laws of the State of Connecticut. Coverage shall include Employer's Liability with minimum limits of \$100,000 each accident, \$500,000 Disease–Policy limit, \$100,000 each employee.
- D. Professional Liability: The Contractor shall secure and maintain, at no cost or expense to the State, a professional liability insurance policy in a form reasonably acceptable to the COMMISSION in the minimum amount of ten million dollars (\$10,000,000.00) with a deductible not to exceed three hundred seventy-five thousand dollars (\$375,000.00). The policy shall insure the Contractor against damages and costs resulting from negligent acts, errors or omissions in the work performed by the Contractor on and after the effective date of, and under the terms of, this Agreement. The Contractor may, at its election, obtain a policy containing a maximum of three hundred seventy-five thousand dollars (\$375,000.00) deductible clause, but if so, the Contractor shall be liable, as stated above herein, to the extent of the deductible amount.
- E. Contractor agrees to furnish to the COMMISSION a “Certificate of Insurance” in conjunction with all insurance required by this Agreement, fully executed by an insurance company or companies or insurance broker, for the insurance policies required herein, which policies or policy shall be in accordance with the terms of said Certificate of Insurance.

## **27. HEADINGS.**

The headings given to the sections in the Agreement are inserted only for convenience and are in no way to be construed as part of the Agreement or as a limitation of the scope of the particular section to which the heading refers.

## **28. NUMBER AND GENDER.**

Whenever the context so requires, the plural or singular shall include each other and the use of any gender shall include all genders.

## **29. FURTHER ASSURANCES.**

The Parties shall provide such information, execute and deliver instruments and documents and take such other actions, all as may be required by law or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the vesting of rights or assumption of obligations other than those provided for in the Agreement, in order to give full effect to the Agreement and to carry out the intent of the Agreement.

### **30. AUDIT AND INSPECTION OF PLANTS, PLACES OF BUSINESS AND RECORDS.**

- A. The State and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State's Attorney and their respective agents (the "Inspecting Parties"), may, during normal business hours and subject to Contractor's standard security protocols, inspect and examine all of the parts of the Contractor's and Contractor Parties' plants and places of business which are used in the performance of this Agreement. In no event shall any audit permitted under this Agreement be conducted by a Contractor competitor.
- B. In conducting any such examination, the Inspecting Parties (a) will do so only upon reasonable notice and at the applicable Inspecting Party's expense; (b) will have access only to such books and records as may relate to the Services provided hereunder and the particular costs, operations, processes or information in question; (c) will not seek or obtain the confidential information of third parties; (d) will not have access to Contractor's overall enterprise costs, overhead, sales, profits or other overall financial data; and (e) subject to Section 35 hereof, will treat Contractor's records and other information so examined as confidential information of Contractor hereunder.
- C. The Contractor shall maintain, and shall require each of its Approved Subcontractors to maintain, accurate and complete Contractor Records in accordance with generally accepted accounting principles. The Contractor shall make, and require its Approved Subcontractors to make, those records required to support invoiced amounts and verify compliance with the terms of this Agreement ("Contractor Records"), available during normal business hours for audit and inspection by the State and its agents.
- D. The State shall make all requests for any audit or inspection in writing and shall provide the Contractor with at least forty-eight (48) hours' notice prior to the requested audit and inspection date. If the State suspects fraud or other abuse, or in the event of an emergency, the State is not obligated to provide any prior notice.
- E. All audits and inspections shall be at the State's expense.
- F. The Contractor shall keep and preserve or cause to be kept and preserved all of its and Contractor Records until three (3) years after the latter of (i) final payment under this Agreement, or (ii) the expiration or earlier termination of this Agreement, as the same may be modified for any reason. The State may request an audit or inspection in accordance with the terms of this Agreement at any time during this period. If any Claim or audit is started before the expiration of this period, the Contractor shall retain or cause to be retained all Contractor Records until all Claims or audit findings have been resolved. Contractor Records shall be and remain Contractor Proprietary Information.
- G. The Contractor shall exercise commercially reasonable efforts to cooperate fully with the State and its agents in connection with an audit or inspection. Following any audit or inspection, the State may conduct and the Contractor shall exercise commercially reasonable efforts to cooperate with an exit conference.

- H. The Contractor shall incorporate this entire Section verbatim into any contract or other agreement that it enters into expressly for purposes of providing Services under this Agreement, with any Contractor Party.

### **31. CONTINUED PERFORMANCE.**

If reasonably practical, both Parties shall continue to perform their obligations under the Agreement while any dispute concerning the Agreement is being resolved.

### **32. SEVERABILITY.**

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

### **33. PROPRIETARY INFORMATION.**

- A. In connection with the Services provided under this Agreement, the COMMISSION and the Contractor each may be given access to information that relates to the other Party's past, present and future research, development, business activities, products, services, and technical knowledge (hereinafter "**Proprietary Information**"). Notwithstanding the foregoing, the term "Proprietary Information" will not include any information that identifies or directly relates to natural persons ("**Personal Data**"), and the terms of this Section and other provisions of this Agreement generally applicable to Proprietary Information will not be deemed to apply to Personal Data unless specifically stated otherwise.
- B. Each Party's Proprietary Information will remain the confidential information of that Party except as otherwise expressly provided in this Agreement. The Parties agree that they shall each protect the Proprietary Information of the other Party in the same manner as it protects its own Proprietary Information of like kind but with not less than reasonable care. Proprietary Information shall include, but is not limited to, all information clearly marked as "Proprietary" or in such other manner which gives notice of its proprietary or confidential nature, or is identified as such at the time it is disclosed (either orally or in writing), or contains information that a reasonable person in like circumstance would understand to be confidential.
- C. Each Party may disclose relevant aspects of the other Party's Proprietary Information to its employees, Affiliates, Approved Subcontractors and agents to the extent such disclosure is reasonably necessary for the performance of its obligations, or the enforcement of its rights, under this Agreement; provided, however, that such Party will

be responsible for its employees, Affiliates, Approved Subcontractors or agents' compliance with these confidentiality provisions.

D. Neither Party will (i) make or use any copies of the Proprietary Information of the other except as contemplated by this Agreement; or (ii) acquire any right in or assert any lien against the Proprietary Information of the other; or (iii) sell, assign, lease or otherwise commercially exploit the Proprietary Information of the other Party. Neither Party may withhold the Proprietary Information of the other Party or refuse for any reason (including due to the other Party's actual or alleged breach of this Agreement) to promptly return to the other Party its Proprietary Information (including copies thereof) if requested to do so. Upon expiration or termination of this Agreement and completion of a Party's obligations under this Agreement, each Party will, at the request of the other Party, (and except as otherwise provided in this Agreement) return or destroy, as the other Party may direct, all documentation in any medium that contains or refers to the other Party's Proprietary Information, and retain no copies. Subject to the foregoing confidentiality obligations, either Party may retain copies of the Proprietary Information of the other Party to the extent required for (i) in the case of Contractor, compliance with applicable professional standards or quality assurance purposes and (ii) in the case of the COMMISSION, as required to give effect to any licensing rights of Contractor's Intellectual Property as set forth herein.

E. Proprietary Information shall not include information which:

- (i) is or becomes a part of the public domain through no act or omission of the receiving Party;
- (ii) was in the receiving Party's lawful possession prior to the disclosure and had not been obtained by the receiving Party either directly or indirectly from the disclosing Party;
- (iii) is (to the receiving Party's knowledge) lawfully disclosed by a third party without restriction on disclosure;
- (iv) is independently developed by the receiving Party;
- (v) is disclosed by operation of law, or is required to be disclosed by law, rule or regulation, subpoena, summons, or order of a court of competent jurisdiction, or by a regulatory oversight agency, pursuant to the following: if the receiving Party receives a subpoena or other validly issued administrative or judicial process requesting Proprietary Information of the disclosing Party, it will promptly notify the disclosing Party of such receipt and tender to the disclosing Party the defense of such subpoena or process. If requested by the disclosing party, the receiving Party will reasonably cooperate (at the expense of the disclosing Party) in opposing such subpoena or process. Unless the subpoena or process is timely limited, quashed or extended, the receiving Party will then be entitled to comply with such request to the extent permitted by law; or,

(vi) is Personal Data, which is separately defined and addressed in Section 36 below and other provisions of this Agreement generally applicable to Proprietary Information shall not be deemed to apply to include Personal Data.

- F. Nothing contained in this Section will be construed as obligating a Party to disclose its Proprietary Information to the other Party, or as granting to or conferring on a Party, expressly or impliedly, any rights or license to the Proprietary Information of the other Party.

### **34. FREEDOM OF INFORMATION.**

The COMMISSION will afford due regard to the Contractor's request for the protection of proprietary or confidential information which the COMMISSION receives. However, all materials associated with the Agreement are subject to the terms of the Connecticut Freedom of Information Act ("FOIA") and all corresponding rules, regulations and interpretations. If a FOIA request is made for materials or information that is Proprietary Information the COMMISSION will provide the Contractor with an opportunity to provide a written rationale in accordance with FOIA as to why the requested information should not be furnished pursuant to FOIA. In making such a request, the Contractor may not merely state generally that the materials are proprietary or confidential in nature and not, therefore, subject to release to third parties. Those particular sentences, paragraphs, pages or sections that the vendor believes are exempt from disclosure under the FOIA must be specifically identified as such. Convincing explanation and rationale sufficient to justify each exemption consistent with the FOIA must accompany the request. The rationale and explanation must be stated in terms of the prospective harm to the competitive position of the Contractor that would result if the identified material were to be released and the reasons why the materials are legally exempt from release pursuant to the FOIA. COMMISSION agrees to furnish only that portion of the Proprietary Information that COMMISSION is legally required to furnish. To the extent that any other provision or part of the Agreement, conflicts or is in any way inconsistent with this section, this section controls and shall apply and the conflicting provision or part shall not be given effect. If the Contractor indicates that certain documentation is submitted in confidence, by specifically and clearly marking said documentation as "**CONFIDENTIAL,**" the COMMISSION will endeavor to keep said information confidential to the extent permitted by law. The COMMISSION, however, has no obligation to initiate, prosecute or defend any legal proceeding or to seek a protective order or other similar relief to prevent disclosure of any information that is sought pursuant to a FOIA request. The Contractor shall have the burden of establishing the availability of any FOIA exemption in any proceeding where it is an issue. In no event shall the COMMISSION or the State have any liability for the disclosure of any documents or information in its possession which the COMMISSION reasonably believes are required to be disclosed pursuant to the FOIA or other requirements of law.

### **35. PERSONAL DATA.**

- A. Each Party will exercise commercially reasonable efforts not to disclose any Personal Data to the other Party and to restrict the other Party's access to its Personal Data, but if a Party is given access to the other Party's Personal Data, the receiving Party will protect such Personal Data using a reasonable standard of care. If Contractor requires access to Personal Data in connection with this Agreement or any amendments thereto, the COMMISSION shall expressly identify the type of files and data which shall comprise Personal Data and which shall be accessed and/or processed by Contractor under this Agreement, and the means and circumstances by which it will be accessed or processed. The COMMISSION shall use commercially reasonable efforts to restrict Contractor's access to Personal Data to that described in this Agreement. In addition to the restrictions on use of Personal Data expressly provided for herein, the State and COMMISSION alone will determine the purposes for which and the manner in which all Personal Data processed by Contractor will be processed under any applicable data privacy laws and regulations in connection with this Agreement.
- B. Contractor is a data processor on behalf of the State under this Agreement. In that capacity, Contractor will:
- (i) process State Personal Data only on written instructions of the State and to the extent reasonably necessary for the performance of this Agreement;
  - (ii) not disclose State Personal Data to any person except as required or permitted by this Agreement or with the State's prior written consent; and
  - (iii) implement commercially reasonable technical and organizational measures, including any additional measures specified by the State in advance and in writing, to protect State Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, and against all other unlawful forms of processing. The State will be responsible for the sufficiency of such policies and safeguards. However, to the extent such additional technical and organizational measures have not been established by the State, Contractor will maintain safeguards no less rigorous than those maintained by Contractor for its own similar personal data.
- C. Contractor may retain archival copies of State Personal Data, upon approval by the COMMISSION, to the extent reasonably necessary to verify Contractor's compliance with this Agreement. Contractor will identify such data to the COMMISSION at the time such archival copies are established.
- D. Contractor may, as a result of this Agreement and its dealings with the COMMISSION, come to possess Personal Data in relation to the COMMISSION and the COMMISSION's employees, directors, officers and other representatives. Contractor may receive such data from such persons, the COMMISSION, or from other sources (for example, published or publicly available directories); and some limited data may be recorded indirectly by internal security and communication systems or by other means

(for example, visitor logs maintained by security officials at Contractor's offices). Subject to compliance with the applicable data protection and data privacy legislation, Contractor may use and disclose such data for purposes connected with this Agreement.

### **36. INTERPRETATION.**

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

### **37. CONFIDENTIAL INFORMATION; PROTECTION; BREACH.**

- 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, Confidential Information shall also include any information that the COMMISSION classifies as “confidential” or “restricted.” Confidential Information shall not include information that may be lawfully obtained from publicly available sources or from federal, state, or local government records which are lawfully made available to the general public.
- B. **“Confidential Information Breach”** shall mean an instance where an unauthorized person or entity accesses Confidential Information in any manner, including but not limited to the following occurrences: (1) any Confidential Information that is not encrypted or protected is misplaced, lost, stolen or in any way compromised; (2) one or more third parties have had access to or taken control or possession of any Confidential Information that is not encrypted or protected without prior written authorization from the State; (3) the unauthorized acquisition of encrypted or protected Confidential Information together with the confidential process or key that is capable of compromising the integrity of the Confidential Information; or (4) if there is a substantial risk of identity theft or fraud to the client, the Contractor, the COMMISSION or State.
- C. Contractor and Contractor Parties, at their own expense, have a duty to and shall protect from a Confidential Information Breach any and all Confidential Information which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with current industry standards.

- D. Each Contractor or Contractor Party shall implement and maintain a comprehensive data security program for the protection of Confidential Information. The safeguards contained in such program shall be consistent with and comply with the safeguards for protection of Confidential Information, and information of a similar character, as set forth in all applicable federal and state law and written policy of the COMMISSION or State concerning the confidentiality of Confidential Information. Such data-security program shall include, but not be limited to, the following:
- (i) A security policy for employees related to the storage, access and transportation of data containing Confidential Information;
  - (ii) Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept;
  - (iii) A process for reviewing policies and security measures at least annually;
  - (iv) Creating secure access controls to Confidential Information, including but not limited to passwords; and
  - (v) Encrypting of Confidential 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 Confidential Information which Contractor or Contractor Parties possess or control has been subject to a Confidential Information Breach.
- F. If a Confidential Information Breach has occurred, the Contractor shall, within three (3) business days after the notification, present a credit monitoring and protection plan to the Connecticut Commissioner of Administrative Services, the COMMISSION and the Connecticut Office of the Attorney General, for review and approval.
- (i) Such credit monitoring or protection plan shall be made available by the Contractor at its own cost and expense to all individuals affected by the Confidential Information Breach.
  - (ii) 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.



(iii) Such credit monitoring or protection plans shall be approved by the State in accordance with this Section and shall cover a length of time commensurate with the circumstances of the Confidential Information Breach.

G. The Contractors' costs and expenses for the credit monitoring and protection plan shall not be recoverable from the COMMISSION, any State of Connecticut entity or any affected individuals.

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

### **38. SOVEREIGN IMMUNITY.**

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

### **39. NON-SOLICITATION.**

Contractor and the COMMISSION agree that neither Party shall directly or indirectly solicit for employment any employee of the other Party. This clause shall remain in effect during the term of this Agreement and for a period of one year after the Term of this Agreement, unless prior written consent of the other Party is first obtained. Notwithstanding the foregoing, this Section will not apply to employees who independently respond to indirect solicitations (i.e., general newspaper advertisements and internet postings).

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IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives with full knowledge of and agreement with its terms and conditions.

[CONTRACTOR]  
EMPLOYEE

CONNECTICUT STATE

RETIREMENT COMMISSION

By: \_\_\_\_\_

Name:  
Title:  
Date:

By: \_\_\_\_\_

Name:  
Title:  
Date: