

PERSONAL SERVICE AGREEMENT

CO-802A REV. 2/08

STATE OF CONNECTICUT
OFFICE OF THE STATE COMPTROLLER

1. PREPARE IN QUADRUPPLICATE
2. THE STATE BUSINESS UNIT AND THE CONTRACTOR AS LISTED BELOW HEREBY ENTER INTO AN AGREEMENT SUBJECT TO THE TERMS AND CONDITIONS STATED HEREIN AND/OR ATTACHED HERETO AND SUBJECT TO THE PROVISIONS OF SECTION 4-98 OF THE CONNECTICUT GENERAL STATUTES AS APPLICABLE.
3. ACCEPTANCE OF THIS CONTRACT IMPLIES CONFORMANCE WITH TERMS AND CONDITIONS SET FORTH BY THE OFFICE OF POLICY AND MANAGEMENT PERSONAL SERVICE AGREEMENT STANDARDS AND PROCEDURES.

(1) ORIGINAL AMENDMENT (2) IDENTIFICATION NO. P.S. 12DDS0506BT

CONTRACTOR
(3) CONTRACTOR NAME: SUMMIT TECHNOLOGIES, INC. 860-570-0661
CONTRACTOR ADDRESS: 101 South Street, West Hartford, CT 06110
(4) ARE YOU PRESENTLY A STATE EMPLOYEE? YES NO
CONTRACTOR FEIN/SSN - SUFFIX: 06-1477298

STATE AGENCY
(5) AGENCY NAME AND ADDRESS: Department of Developmental Services, 460 Capitol Avenue, Hartford, CT 06106

CONTRACT PERIOD
(6) DATE (FROM) 10/1/2012 THROUGH (TO) 6/30/2015
(7) INDICATE MASTER AGREEMENT CONTRACT AWARD NO. NEITHER

CANCELLATION CLAUSE
THIS AGREEMENT SHALL REMAIN IN FULL FORCE AND EFFECT FOR THE ENTIRE TERM OF THE CONTRACT PERIOD STATED ABOVE UNLESS CANCELED BY THE STATE BUSINESS UNIT, BY GIVING THE CONTRACTOR WRITTEN NOTICE OF SUCH INTENTION (REQUIRED DAYS NOTICE SPECIFIED AT RIGHT)
(8) REQUIRED NO. OF DAYS WRITTEN NOTICE: 30

COMPLETE DESCRIPTION OF SERVICE
(9) CONTRACTOR AGREES TO: (Include special provisions - Attach additional blank sheets if necessary.)
Collect and remit to the Department, fees for parents whose children are enrolled in the Birth to Three System and collect commercial health insurance reimbursement for Birth to Three services on behalf of the Department's network of Birth to Three programs. Contractor will provide these services in accordance with the requirements As described on pages 2-6 of this contract. The contract shall comply with the Department of Developmental Services DDS Terms and Conditions which are hereto and made a part of pages 8-16. Descriptions of Services continued on page 1A.
ME 10/25/2012

COST AND SCHEDULE OF PAYMENTS
(10) PAYMENT TO BE MADE UNDER THE FOLLOWING SCHEDULE UPON RECEIPT OF PROPERLY EXECUTED AND APPROVED INVOICES.
For parent fee collections and for billing of commercial health insurance plans, the Contractor will be paid as Described on page 7 of the contract.
Contract not to exceed \$1,400,00

(11) OBLIGATED AMOUNT	1,400,000
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(12) AMOUNT	(13) FUND	(14) DEPARTMENT	(15) SID	(16) PROGRAM	(17) ACCOUNT	(18) PROJECT/ GRANT	(19) CHARTFIELD 1	(20) CHARTFIELD 2	(21) BUDGET REFERENCE
250,000	11000	DDS50150	12192	53030	51580	Non-project			
1,150,000	11000	DDS50150	12192	53032	51580	Non-project			

An individual entering into a Personal Service Agreement with the State of Connecticut is contracting under a "work-for-hire" arrangement. As such, the individual is an independent contractor, and does not satisfy the characteristics of an employee under the common law rules for determining the employer/employee relationship of Internal Revenue Code Section 3121 (d) (2). Individuals performing services as independent contractors are not employees of the State of Connecticut and are responsible themselves for payment of all State and local income taxes, federal income taxes and Federal Insurance Contribution Act (FICA) taxes.

ACCEPTANCES AND APPROVALS (22) STATUTORY AUTHORITY C.G.S. 4-8 and 17a-210

(23) CONTRACTOR (OWNER OR AUTHORIZED SIGNATURE)
Paul Patel *[Signature]* TITLE: Contractor DATE: 9/20/2012

(24) AGENCY (AUTHORIZED OFFICIAL)
Mary Fuller *[Signature]* TITLE: Chief Fiscal & Admin. Services DATE: 9/25/12

(25) OFFICE OF POLICY & MANAGEMENT/DEPARTMENT OF ADMINISTRATIVE SERVICES
TITLE: DATE:

(26) ATTORNEY GENERAL (APPROVED AS TO FORM)
[Signature] TITLE: ASST. ATTY. GENERAL DATE: 11/5/12

DISTRIBUTION: ORIGINAL CONTRACTOR PHOTOCOPY-OPM/DAS PHOTOCOPY-ATTORNEY GENERAL PHOTOCOPY-AGENCY

COMPLETE DESCRIPTION OF SERVICES

Collection and Remittance of Birth to Three Parent Fees

1. The Contractor will maintain a family billing and receivables process for the Department's Birth to Three System.
2. The contractor will operate such billing and receivables process in full compliance with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. sub section 1232g; 34 C.F.R. part 99; 34 C.F.R. sub section 303.460.
3. At the close of each month's billing cycle, the Contractor will, using the Billing Extract and Service Data Extract process through the Department's Birth to Three Data System application to create the data files necessary to transfer data to the Contractor's computer billing system. At the direction of the Department, the Contractor may be required to perform multiple data extracts to close the month. In order to accomplish this:
 - a. the contractor's billing system will need to be able to track multiple members of a family receiving Birth to Three services and to be able to generate one bill listing the multiple children using the rate specified in the billing exports;
 - b. families will be billed the same monthly amount regardless of frequency of services delivered. However, no bill will be sent if no services were delivered that month. In addition to direct services, the term "services" as used here includes cancellations by the family with less than 24 hours notice; and
 - c. each family will be billed at the rate specified in the Billing Export File.
4. The contractor will maintain an appropriate billing invoice that contains, at a minimum, the following information. Final invoice and return envelope design is subject to the Departments approval.
 - Birth to Three System as the billing entity
 - Date of invoice
 - Month of service being billed
 - Detailed service date(s) and service type(s)
 - Aging of unpaid balance
 - Amount of current bill
 - Contractor as the payment receiver
 - Name of child
 - Contractor's phone number for billing questions
 - Program's phone number for service questions
 - Birth to Three System's Fiscal Office or Family Liaison phone number for all other questions
 - Date payment is due
5. During the period of this contract, the Contractor may initiate secure electronic billing (at the request of each family). Such bills will contain the same information as the bills sent via U.S. Postal Service and will ensure the security of the information. The design of the electronic invoice is subject to final approval by the Department.

6. The contractor will process and mail bills to families within two (2) business days of extracting the data each month.
7. The Contractor will, within four (4) business days of extracting all the data each month, submit to the Department a Billing Summary Report, in an electronic format, detailing by account (family), program, and statewide current month and year to date billing activity. Final design is subject to the Department's approval. Weekly, the Contractor will verify the delivery of the downloaded files to the Department's system.
8. Monthly, the Contractor will process payments received and update account balances on a family basis. Payments will be placed against the oldest balance first, with any remaining payment balance placed against the subsequent oldest balance. The Contractor will transmit to the Department a daily electronic file detailing account payments from the prior weekday.
9. The Contractor at the direction of the Department, will bill families for the Birth to Three insurance reimbursements received by the families as a result of claims submitted by the family's Birth to Three program. The amount to be billed will equal the amount of insurance monies received by the family. Upon receipt of the money from the family, the Contractor will either forward or reissue the check to the Birth to Three program involved.
10. The Contractor will accept credit card, cash, and checks, and electronic fund transfers as methods of payment. The contractor may initiate secure on-line bill paying during the period of this contract for those families that prefer that form of payment.
11. The Contractor will be available to answer telephone inquiries from families.
12. The Contractor will reimburse parents for the Contractor's or Department's errors in billing or posting of fees. Such reimbursements will be with the approval of the Department and may either involve sending payment to the family or crediting the family's account, whichever the family prefers.
13. The Contractor will prepare a year to date payment statement upon a family's request, displaying the Department's FEIN as the biller.
14. Monthly, the Contractor will, on the same day the Billing Summary Report is submitted, submit to the Department a Receivables Ageing Report detailing account balances (current, 30, 60, 90 days and over) in an electronic format that details activity the account number, program, and statewide.
15. A check for all proceeds received between the 16th of the previous month and the 15th of the current month will be sent to the Department on the last business day of the current month. A \$70 per day penalty will be imposed against the invoice for any month in which the remittance is not postmarked by the last business day of the month.

16. On the 16th of each month, or the next business day, the Contractor will make available to the Department a list of case numbers for those families that have accounts with a balance that equal or exceed three months of billing.
17. The Contractor will send a monthly statement to the Department on the first workday of each month, along with the check for the remittances. The statement will detail the total that was collected minus the merchant fees which will equal the amount of the check remitted.
18. The Contractor will send an invoice to the Department for services rendered along with detail on the postage to be reimbursed.
19. The Contractor will, during the effective period of this contract, maintain a Commercial Crime Bond in the amount of \$250,000 or more. The Contractor will send a copy of the renewed certificate of liability to the Department in January of each year of this contract. Any mid-calendar year changes will also be submitted.

Billing of Commercial Health Insurance

1. The Contractor will market to each agency operating a Birth to Three program under contract with the Department, the Contractor's ability to file commercial health insurance claims and follow-up on claim denials on behalf of the agency.
2. The Contractor will have a signed, written agreement with each agency operating a Birth to Three program that decides to enlist the services of the Contractor. The agreement will include decisions on how prior authorizations are to be obtained, how information such as IFSPs, initial evaluations, or home visit notes are to be transmitted to the insurance plans. The agreement will include a process for transmitting Explanation of Benefits information to the Contractor for all claims that are paid by the commercial health insurers
3. The Contractor will determine with which health insurance plans each Birth to Three program is "in-network" and any additional billing rules or requirements associated with that status. The Contractor will assist Birth to Three programs to become "in-network" with plans when appropriate.
4. The Contractor will, on behalf of each agency signing a written agreement, file claims on behalf of each agency with commercial health insurance companies for the Birth to Three services provided.
5. In filing those claims, the Contractor will, in the first instance, use the agreed-upon procedure codes and rates issued by the Department and, in circumstances where those codes are not applicable, will use traditional codes paired with the appropriate Birth to Three rates.
6. In filing those claims, the Contractor will bill each enrolled child's primary health insurer and, if those claims are denied, will bill the child's secondary health insurer unless the secondary insurer is Medicaid.

7. For autism-specific programs, the Contractor will track the payments by the commercial insurance plans to determine when to change from billing for Birth to Three services to billing for autism services, based on required payment of up to \$6400 per year for Birth to Three services. When filing claims for autism services, the Contractor will use the procedure codes and rates determined by each health insurance plan.
8. Working with the Department's Information Technology staff, the Contractor will identify the tools and data access needed to complete insurance claims.
9. The Contractor will have an electronic data system capable of accepting the data exports from the Birth to Three data system.
10. For all other data or information required to file claims, the Contractor will determine the most efficient way for the Birth to Three programs to transmit the data or other information when that data is not available from the Birth to Three data system.
11. The Contractor will use dynamic reporting tools to analyze and track all claims and reimbursements by child, program, and month. The Contractor will submit such reports to the Department quarterly.
12. The contractor will track all denials by program by insurer to discover any trends in denials that can be improved either through training of Birth to Three program staff or through negotiation with insurance plans. The Contractor will prepare a denial trends analysis report and submit it to the Department at least annually.
13. The Contractor will aggressively pursue all claim denials and will re-submit claims for processing whenever possible.
14. The Contractor will provide on-site training for Birth to Three programs in any aspect of service documentation or provider accreditation that is likely to increase the number of claims filed successfully.
15. The Contractor will provide customer support for families regarding their insurance obligations.
16. For the purposes of billing commercial health insurance, the Contractor is considered a Business Associate under the requirements of the Health Insurance Portability and Accountability Act of 1996 as specified in part AB of the "Contract Terms and Conditions" section of this contract.

Services related to both Parent Fee Collection and Insurance Billing

1. The Contractor will track, by child, collection of parent fees and reimbursement from commercial health insurers for children that have exited the Birth to Three System. The Contractor will send the Department a monthly report indicating any cases of children that have exited the Birth to Three System in which the combination of the two has exceeded the total of \$696 times the number of months the child was enrolled. The Department will compare the revenue by child with the state's actual

expenditures by child and will notify the Contractor monthly whether a refund is due to any family. In such cases, the Contractor will send a refund to each family for the amount over and above what the state paid for each child's services.

2. The Contractor may request authorization from the Department to directly access and modify the information in particular data system fields necessary for the accurate billing of parent fees or the billing of commercial health insurance. The Department will consider such requests and may grant such authorization in writing.
3. Prior approval from the Department is required for all written or electronic information produced to inform families of either the billing process or the insurance billing process or both.
4. The Contractor will perform all duties associated with this contract in full conformance with all legal requirements of the State of Connecticut and the Federal Government

COST AND SCHEDULE OF PAYMENTS

For the billing and collection of parent fees

The Department will pay the Contractor \$7,000 per month plus actual postage costs and applicable bank fees. The payment will be reduced by \$70 per day for every day after the first business day of the month that the U.S. Postal Service postmark on the remittance for the previous month is delayed.

For the billing of commercial health insurance

The Department will pay the Contractor 6% of the insurance receipts collected each month. Any time that insurance receipts have to be returned to an insurer, 6% of the amount returned will be deducted from the Contractor's next payment.

The payment of the 6% will be based on the previous month's insurance collections as reported on invoices received by the last business day of each month by the Department from Birth to Three programs who have signed agreements with the Contractor. Payment will be sent to the Contractor by the 10th calendar day of the following month.

A monthly reconciliation report will be sent to the Contractor by the Department detailing the collections reported by each program by the 10th calendar day of each month.

DDS TERMS AND CONDITIONS

P.P. 10/25/2012 MF 10/31/12

A. Campaign Contribution and Solicitation Limitations. This Contract [] IS or [] IS NOT a state contract as defined by the Connecticut State Elections Enforcement Commission in its Notice to Executive Branch State Contractors and Prospective State Contractors of Campaign Contribution and Solicitation Limitations, (revised 1/11). **If this Contract IS a state contract as defined then the Agency has provided a copy of the above-reference Notice in accordance with Conn. Gen. Stat. § 9-612(g)(2). See Attachment A which is made part of this contract.**

MF 10/31/12
P.P.
10/25/2012

B. Health Insurance Portability and Accountability Act of 1996 as amended ("HIPAA"). The Contractor [] IS or [] IS NOT a Business Associate under the Health Insurance and Portability and Accountability Act of 1996 as amended.

If the Contractor IS a Business Associate under (HIPAA) then in addition to the terms and conditions of this contract, then the Contractor must comply with all HIPAA-required terms and conditions. See Attachment B which is made part of this contract.

C. Changes in Service. When changes in the services are required or requested by the State, Contractor shall promptly estimate their monetary effect and so notify the State. No change shall be implemented by Contractor unless it is approved by the State in writing; and, unless otherwise agreed to in writing, the provisions of this Contract shall apply to all changes in the services. If the State determines that any change materially affects the cost or time of performance of this Contract as a whole, Contractor and the State will mutually agree in writing to an equitable adjustment.

D. Representations and Warranties. Contractor shall:

- (1) Perform fully under the Contract;
- (2) pay for and/or secure all permits, licenses and fees and give all required or appropriate notices with respect to the provision of Services as described in this Contract; and
- (3) Adhere to all contractual sections ensuring the confidentiality of all records that the Contractor has access to and are exempt from disclosure under the State's Freedom of Information Act or other applicable law.

E. Compliance with Law and Policy, Facility Standards and Licensing. Contractor shall comply with all:

- (1) Pertinent local, state and federal laws and regulations as well as Agency policies and procedures applicable to the Contractor's programs as specified in this Contract. The Agency shall notify the Contractor of any applicable new or revised laws, regulations, policies or procedures which the Agency has responsibility to promulgate or enforce; and
- (2) applicable local, state and federal licensing, zoning, building, health, fire and safety regulations or ordinances, as well as standards and criteria of pertinent state and federal authorities. Unless otherwise provided by law, the Contractor is not relieved of compliance while formally contesting the authority to require such standards, regulations, statutes, ordinance or criteria.

F. Choice of Law/Choice of Forum, Settlement of Disputes, Claims Against the State.

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

waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

- (2) Any dispute concerning the interpretation or application of this Contract shall be decided by the Agency Head or his/her designee whose decision shall be final, subject to any rights the Contractor may have pursuant to state law. In appealing a dispute to the Agency Head pursuant to this section, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final resolution of a dispute, the Contractor and the Agency shall proceed diligently with the performance of the Contract.
- (3) The Contractor agrees that the sole and exclusive means for the presentation of any claim against the State arising from this Contract shall be in accordance with Title 4, Chapter 53 of the Connecticut General Statutes (Claims Against the State) and the Contractor further agrees not to initiate legal proceedings, except as authorized by that Chapter, in any state or federal court in addition to or in lieu of said Chapter 53 proceedings.

G. Labor and Personnel.

- (1) At all times, Contractor shall utilize approved, qualified personnel and any State approved subcontractors necessary to perform the services under this Contract. Contractor shall advise the State promptly, in writing, of any labor dispute or anticipated labor dispute or other labor related occurrence known to Contractor involving Contractor's employees or subcontractors which may reasonably be expected to affect Contractor's performance of services under this Contract. The State may then, at its option, ask Contractor to arrange for a temporary employee(s) or subcontractor(s) satisfactory to the State to provide the services otherwise performable by Contractor hereunder. The Contractor will be responsible to the State for any economic detriment caused the State by such subcontract arrangement.
- (2) Contractor shall, if requested to do so by the State, reassign from the State's account any employee or authorized representatives whom the State, in its sole discretion, determines is incompetent, dishonest, or uncooperative. In requesting the reassignment of an employee under this paragraph, the State shall give ten (10) days notice to Contractor of the State's desire for such reassignment. Contractor will then have five (5) days to investigate the situation and attempt, if it so desires, to satisfy the State that the employee should not be reassigned; however, the State's decision in its sole discretion after such five (5) day period shall be final. Should the State still desire reassignment, then five days thereafter, or ten (10) days from the date of the notice of reassignment, the employee shall be reassigned from the State's account.

H. Conflicts, Errors, Omissions, and Discrepancies.

- (1) In the event of any conflict between the provisions of this Contract and the provisions of Form CO-802A (page 1 of this Contract), the specific provisions of this Contract contained on pages 2 et seq. shall control.
- (2) In case of conflicts, discrepancies, errors, or omissions among the various parts of this Contract, any such matter shall be submitted immediately by Contractor to the State for clarification. The State shall issue such clarification within a reasonable period of time. Any services affected by such conflicts, discrepancies, errors, or omissions which are performed by Contractor prior to clarification by the State shall be at Contractor's risk.

I. Indemnity.

- (1) The Contractor shall indemnify, defend and hold harmless the state of Connecticut and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all:
 - (a) claims arising directly or indirectly, in connection with the Contract, including the acts of commission or omission (collectively the "Acts") of the Contractor or Contractor Parties, which include Contractor's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Contractor is in privity of oral or written

contract (e.g. subcontractor) and the Contractor intends for such other person or entity to perform under the Contract in any capacity. For the purpose of this contract, vendors of support services, not otherwise known as human service providers or educators, shall not be considered subcontractors, e.g. lawn care, unless such activity is considered part of a training, vocational or educational program; and

- (b) Liabilities, damages, losses, costs and expenses, including but not limited to attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or the Contract. The Contractor shall use counsel reasonably acceptable to the State in carrying out its indemnification and hold-harmless obligations under this Contract. The Contractor's obligations under this section to indemnify, defend and hold harmless against claims includes claims concerning confidentiality of any part of or all of the bid or any records, and intellectual property rights, other propriety rights of any person or entity, copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the performance of the Contract.
- (2) The Contractor shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of the Contractor or any Contractor Parties. The State shall give the Contractor reasonable notice of any such claims.
- (3) The Contractor's duties under this section shall remain fully in effect and binding in accordance with the terms and conditions of the Contract, without being lessened or compromised in any way, even where the Contractor is alleged or is found to have merely contributed in part to the Acts giving rise to the claims and/or where the State is alleged or is found to have contributed to the Acts giving rise to the claims.
- (4) The Contractor shall carry and maintain at all times during the term of the Contract, and during the time that any sections survive the term of the Contract, sufficient general liability insurance to satisfy its obligations under this Contract. The Contractor shall name the State as an additional insured on the policy and shall provide a copy of the policy to the Agency prior to the effective date of the Contract. The Contractor shall not begin performance until the delivery of the policy to the Agency.
- (5) The rights provided in this section for the benefit of the State shall encompass the recovery of attorneys' and other professionals' fees expended in pursuing a claim against a third party.
- (6) This section shall survive the termination, cancellation or expiration of the Contract, and shall not be limited by reason of any insurance coverage.

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

K. Quality Surveillance and Examination of Records.

- (1) All services performed by Contractor shall be subject to the inspection and approval of the State at all times, and Contractor shall furnish all information concerning the services.
- (2) The State or its representatives shall have the right at reasonable hours to examine any books, records, and other documents of Contractor or its subcontractors pertaining to work performed under this Contract and shall allow such representatives free access to any and all such books and records. The State will give the Contractor at least twenty-four (24) hours notice of such intended examination. At the State's request, the Contractor shall provide the State with hard copies of or magnetic disk or tape containing any data or information in the possession or control of the Contractor which pertains to the State's business under this Contract. The Contractor shall incorporate this paragraph verbatim into any Contract it enters into with any subcontractor providing services under this Contract.
- (3) The Contractor shall retain and maintain accurate records and documents relating to performance of services under this Contract for a minimum of three (3) years after the final payment by the State and shall make them available for inspection and audit by the State.

- (4) In the event that this Contract constitutes a grant contract, and the Contractor is a public or private agency other than another state agency, the Contractor shall provide for an audit acceptable to the State, in accordance with the provisions of Conn. Gen. Stat. § 7-396a.

L. Insurance. Before commencing performance, the Agency may require the Contractor to obtain and maintain specified insurance coverage. In the absence of specific Agency requirements, the Contractor shall obtain and maintain the following insurance coverage at its own cost and expense for the duration of the Contract:

- (1) 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 services to be performed under this Contract or the general aggregate limit shall be twice the occurrence limit;
- (2) Automobile Liability. \$1,000,000 combined single limit per accident for bodily injury. Coverage extends to owned, hired and non-owned automobiles. If the vendor/contractor does not own an automobile, but one is used in the execution of this Contract, then only hired and non-owned coverage is required. If a vehicle is not used in the execution of this Contract then automobile coverage is not required.
- (3) Professional Liability. \$1,000,000 limit of liability, if applicable; and/or
- (4) 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.

M. Confidentiality. All data provided to Contractor by the State or developed internally by Contractor with regard to the State will be treated as proprietary to the State and confidential unless the State agrees in writing to the contrary. Contractor agrees to forever hold in confidence all files, records, documents, or other information as designated, whether prepared by the State or others, which may come into Contractor's possession during the term of this Contract, except where disclosure of such information by Contractor is required by other governmental authority to ensure compliance with laws, rules, or regulations, and such disclosure will be limited to that actually so required. Where such disclosure is required, Contractor will provide advance notice to the State of the need for the disclosure and will not disclose absent consent from the State.

N. Protection of Confidential Information.

a. Contractor and Contractor Parties, at their own expense, have a duty to and shall protect from a Confidential Information Breach any and all Confidential Information which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with current industry standards.

b. Each Contractor or Contractor Party shall develop, implement and maintain a comprehensive data - security program for the protection of Confidential Information. The safeguards contained in such program shall be consistent with and comply with the safeguards for protection of Confidential Information, and information of a similar character, as set forth in all applicable federal and state law and written policy of the Department or State concerning the confidentiality of Confidential Information. Such data-security program shall include, but not be limited to, the following:

- 1) A security policy for employees related to the storage, access and transportation of data containing Confidential Information;
- 2) Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept;
- 3) A process for reviewing policies and security measures at least annually;
- 4) Creating secure access controls to Confidential Information, including but not limited to passwords; and
- 5) Encrypting of Confidential Information that is stored on laptops, portable devices or being transmitted electronically.

c. The Contractor and Contractor Parties shall notify the Department and the Connecticut Office of the Attorney General as soon as practical, but no later than twenty-four (24) hours, after they become aware of or suspect that any Confidential Information which Contractor or Contractor Parties have come to possess or control has been subject to a Confidential Information Breach. If a Confidential Information Breach has occurred, the Contractor shall, within three (3) business days after the notification, present a credit monitoring and protection plan to the Commissioner of Administrative Services, the Department and the Connecticut Office of the Attorney General, for review and approval. Such credit monitoring or protection plan shall be made available by the Contractor at its own cost and expense to all individuals affected by the Confidential Information Breach. Such credit monitoring or protection plan shall include, but is not limited to reimbursement for the cost of placing and lifting one (1) security freeze per credit file pursuant to Connecticut General Statutes § 36a-701a. Such credit monitoring or protection plans shall be approved by the State in accordance with this Section and shall cover a length of time commensurate with the circumstances of the Confidential Information Breach. The Contractors' costs and expenses for the credit monitoring and protection plan shall not be recoverable from the Department, any State of Connecticut entity or any affected individuals.

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

e. Nothing in this Section shall supersede in any manner Contractor's or Contractor Party's obligations pursuant to HIPAA or the provisions of this Contract concerning the obligations of the Contractor as a Business Associate of the Department.

The above section uses the terms "Confidential Information" and "Confidential Information Breach." Please use the following two definitions for those terms and include them, alphabetized, in the definition section of the contract:

"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 Department classifies as "confidential" or "restricted." Confidential Information shall not include information that may be lawfully obtained from publicly available sources or from federal, state, or local government records which are lawfully made available to the general public.

"Confidential Information Breach" shall mean, generally, an instance where an unauthorized person or entity accesses Confidential Information in any manner, including but not limited to the following occurrences: (1) any Confidential Information that is not encrypted or protected is misplaced, lost, stolen or in any way compromised; (2) one or more third parties have had access to or taken control or possession of any Confidential Information that is not encrypted or protected without prior written authorization from the State; (3) the unauthorized acquisition of encrypted or protected Confidential Information together with the confidential process or key that is capable of compromising the integrity of the Confidential Information; or (4) if there is a substantial risk of identity theft or fraud to the client, the Contractor, the Department or State

O. Americans with Disabilities Act. This clause applies to those Contractors which are or will become responsible for compliance with the terms of the Americans with Disabilities Act of 1990 during the term of the Contract. Contractor represents that it is familiar with the terms of this Act and that it is in compliance with the law. Failure of the Contractor to satisfy this standard either now or during the term of the contract as it may be

amended will render the contract voidable at the option of the State upon notice to the Contractor. Contractor warrants that it will hold the State harmless from any liability which may be imposed upon the State as a result of any failure of the Contractor to be in compliance with this Act.

P. Non-Discrimination.

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

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

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

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

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

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

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

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

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

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

Q. Executive Orders. This Contract is subject to Executive Order No. 3 of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices; Executive Order No. 17 of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings; Executive Order No. 16 of Governor John G. Rowland, promulgated August 4, 1999, concerning violence in the workplace. This Contract may also be subject to Executive Order 7C of Governor M. Jodi Rell, promulgated July 13, 2006, concerning contracting reforms and Executive Order 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. All of these Executive orders are incorporated into and made a part of the Contract as if they had been fully set forth in it. At the Contractor's request, the Agency shall provide a copy of these Orders to the Contractor.

R. Sovereign Immunity. Notwithstanding any provisions to the contrary contained in this Contract, it is agreed and understood that the State of Connecticut shall not be construed to have waived any rights or defenses of sovereign immunity which it may have with respect to all matters arising out of this Agreement.

S. Non-Waiver. None of the conditions of this Contract shall be considered waived by the State or the Contractor unless given in writing. No such waiver shall be a waiver of any past or future default, breach, or modification of any of the conditions of this Contract unless expressly stipulated in such waiver.

T. Promotion. Unless specifically authorized in writing by the Secretary of the Office of Policy and Management, on a case by case basis, Contractor shall have no right to use, and shall not use, the name of the State of Connecticut, its officials, agencies, or employees or the seal of the State of Connecticut or its agencies:

- (1) In any advertising, publicity, promotion; or
- (2) To express or to imply any endorsement of Contractor's products or services; or
- (3) to use the name of the State of Connecticut, its officials, agencies, or employees or the seal of the State of Connecticut or its agencies in any other manner (whether or not similar to uses prohibited by

subparagraphs (1) and (2) above), except only to manufacture and deliver in accordance with this Agreement such items as are hereby contracted for by the State. In no event may the Contractor use the State Seal in any way without the express written consent of the Secretary of State.

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

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

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

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

Y. Non Waiver. In no event shall the making by the State of any payment to the Contractor constitute or be construed as a waiver by the State of any breach of covenant, or any default which may then exist, on the part of the Contractor and the making of any such payment by the State while any such breach or default exists shall in no way impair or prejudice any right or remedy available to the State in respect to such breach or default.

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

AA. Survival. The rights and obligations of the parties which by their nature survive termination or completion of the Agreement, including but not limited to those set forth herein in sections relating to HIPAA, audit, Indemnity, Nondisclosure, Promotion, and Confidentiality of this Agreement, shall remain in full force and effect.

AB. Entire Agreement and Amendment. This Contract is the entire agreement between the parties and supersedes and rescinds all prior agreements relating to the subject matter hereof. This Contract may be amended only in writing signed by both parties and approved by the Office of the Attorney General, if required.

AC. Campaign Contribution Restriction. For all State contracts, defined in Conn. Gen. Stat. 9-512(g)(1) as having a value in a calendar year of \$50,000 or more, or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Agreement expressly acknowledges receipt of the State Elections Enforcement Commission's notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice, as set forth in "Notice to Executive Branch State Contractors and Prospective State Contractors of Campaign Contribution and Solicitation Limitations," P.P. 10/25/2012 MF 10/31/12

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- (a) The Contactor is a Business Associate under the requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Contractor must comply with all terms and conditions of this Section of the Contract. If the Contractor is not a Business Associate under HIPAA, this Section of the Contract does not apply to the Contractor for this Contract.
- (b) The Contractor is required to safeguard the use, publication and disclosure of information on all applicants for, and all clients who receive, services under the Contract in accordance with all applicable federal and state law regarding confidentiality, which includes but is not limited to HIPAA, more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E; and
- (c) The Connecticut Department of Developmental Services is a "covered entity" as that term is defined in 45 C.F.R. § 160.103; and
- (d) The Contractor, on behalf of the Agency, performs functions that involve the use or disclosure of "individually identifiable health information," as that term is defined in 45 C.F.R. § 160.103; and
- (e) The Contractor is a "business associate" of the Agency, as that term is defined in 45 C.F.R. § 160.103; and
- (f) The Contractor and the Agency agree to the following in order to secure compliance with the HIPAA, the requirements of Subtitle D of the Health Information Technology for Economic and Clinical Health Act (hereinafter the HITECH Act), (Pub. L. 111-5, §§ 13400 to 13423), and more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E.
- (g) Definitions
 - (1) "Breach shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. § 17921(1))
 - (2) "Business Associate" shall mean the Contractor.
 - (3) "Covered Entity" shall mean the Connecticut Department of Developmental Services.
 - (4) "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 C.F.R. § 164.501.
 - (5) "Electronic Health Record" shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. § 17921(5))
 - (6) "Individual" shall have the same meaning as the term "individual" in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative as defined in 45 C.F.R. § 164.502(g).
 - (7) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and parts 164, subparts A and E.
 - (8) "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, limited to information created or received by the Business Associate from or on behalf of the Covered Entity.
 - (9) "Required by Law" shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.103.
 - (10) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
 - (11) "More stringent" shall have the same meaning as the term "more stringent" in 45 C.F.R. § 160.202.

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- (12) "This Section of the Contract" refers to the HIPAA Provisions stated herein, in their entirety.
 - (13) "Security Incident" shall have the same meaning as the term "security incident" in 45 C.F.R. § 164.304.
 - (14) "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. part 160 and parts 164, subpart A and C.
 - (15) "Unsecured protected health information" shall have the same meaning as the term as defined in section 13402(h)(1)(A) of HITECH Act (42 U.S.C. § 17932(h)(1)(A)).
- (h) Obligations and Activities of Business Associates.
- (1) Business Associate agrees not to use or disclose PHI other than as permitted or required by this Section of the Contract or as Required by Law.
 - (2) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for in this Section of the Contract.
 - (3) Business Associate agrees to use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic protected health information that it creates, receives, maintains, or transmits on behalf of the Covered Entity.
 - (4) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by Business Associate in violation of this Section of the Contract.
 - (5) Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Section of the Contract or any security incident of which it becomes aware.
 - (6) Business Associate agrees to insure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate, on behalf of the Covered Entity, agrees to the same restrictions and conditions that apply through this Section of the Contract to Business Associate with respect to such information.
 - (7) Business Associate agrees to provide access, at the request of the Covered Entity, and in the time and manner agreed to by the parties, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524.
 - (8) Business Associate agrees to make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of the Covered Entity, and in the time and manner agreed to by the parties.
 - (9) Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by, Business Associate on behalf of Covered Entity, available to Covered Entity or to the Secretary in a time and manner agreed to by the parties or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
 - (10) Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of

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- disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.
- (11) Business Associate agrees to provide to Covered Entity, in a time and manner agreed to by the parties, information collected in accordance with clause (h)(10) of this Section of the Contract, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder. Business Associate agrees at the Covered Entity’s direction to provide an accounting of disclosures of PHI directly to an individual in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.
 - (12) Business Associate agrees to comply with any state or federal law that is more stringent than the Privacy Rule.
 - (13) Business Associate agrees to comply with the requirements of the HITECH Act relating to privacy and security that are applicable to the Covered Entity and with the requirements of 45 C.F.R. §§ 164.504(e), 164.308, 164.310, 164.312, and 164.316.
 - (14) In the event that an individual requests that the Business Associate
 - (A) restrict disclosures of PHI;
 - (B) provide an accounting of disclosures of the individual’s PHI; or
 - (C) provide a copy of the individual’s PHI in an electronic health record, the Business Associate agrees to notify the covered entity, in writing, within two business days of the request.
 - (15) Business Associate agrees that it shall not, directly or indirectly, receive any remuneration in exchange for PHI of an individual without
 - (A) the written approval of the covered entity, unless receipt of remuneration in exchange for PHI is expressly authorized by this Contract and
 - (B) the valid authorization of the individual, except for the purposes provided under section 13405(d)(2) of the HITECH Act, (42 U.S.C. § 17935(d)(2)) and in any accompanying regulations.
 - (16) Obligations in the Event of a Breach.
 - (A) The Business Associate agrees that, following the discovery of a breach of unsecured protected health information, it shall notify the Covered Entity of such breach in accordance with the requirements of section 13402 of HITECH (42 U.S.C. § 17932(b) and this Section of the Contract.
 - (B) Such notification shall be provided by the Business Associate to the Covered Entity without unreasonable delay, and in no case later than 30 days after the breach is discovered by the Business Associate, except as otherwise instructed in writing by a law enforcement official pursuant to section 13402(g) of HITECH (42 U.S.C. § 17932(g)). A breach is considered discovered as of the first day on which it is, or reasonably should have been, known to the Business Associate. The notification shall include the identification and last known address, phone number and email address of each individual (or the next of kin of the individual if the individual is deceased)

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whose unsecured protected health information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during such breach.

- (C) The Business Associate agrees to include in the notification to the Covered Entity at least the following information:
1. A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known.
 2. A description of the types of unsecured protected health information that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code).
 3. The steps the Business Associate recommends that individuals take to protect themselves from potential harm resulting from the breach.
 4. A detailed description of what the Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches.
 5. Whether a law enforcement official has advised either verbally or in writing the Business Associate that he or she has determined that notification or notice to individuals or the posting required under section 13402 of the HITECH Act would impede a criminal investigation or cause damage to national security and; if so, include contact information for said official.
- (D) Business Associate agrees to provide appropriate staffing and have established procedures to ensure that individuals informed by the Covered Entity of a breach by the Business Associate have the opportunity to ask questions and contact the Business Associate for additional information regarding the breach. Such procedures shall include a toll-free telephone number, an e-mail address, a posting on its Web site and a postal address. Business Associate agrees to include in the notification of a breach by the Business Associate to the Covered Entity, a written description of the procedures that have been established to meet these requirements. Costs of such contact procedures will be borne by the Contractor.
- (E) Business Associate agrees that, in the event of a breach, it has the burden to demonstrate that it has complied with all notifications requirements set forth above, including evidence demonstrating the necessity of a delay in notification to the Covered Entity.

(i) Permitted Uses and Disclosure by Business Associate.

- (1) General Use and Disclosure Provisions. Except as otherwise limited in this Section of the Contract, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity

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as specified in this Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

- (2) Specific Use and Disclosure Provisions
 - (A) Except as otherwise limited in this Section of the Contract, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
 - (B) Except as otherwise limited in this Section of the Contract, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
 - (C) Except as otherwise limited in this Section of the Contract, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).
- (j) Obligations of Covered Entity.
 - (1) Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices of Covered Entity, in accordance with 45 C.F.R. § 164.520, or to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
 - (2) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
 - (3) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- (k) Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity, except that Business Associate may use and disclose PHI for data aggregation, and management and administrative activities of Business Associate, as permitted under this Section of the Contract.
- (l) Term and Termination.
 - (1) Term. The Term of this Section of the Contract shall be effective as of the date the Contract is effective and shall terminate when the information collected in accordance with clause (h)(10) of this Section of the Contract is provided to the Covered Entity and all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
 - (2) Termination for Cause Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:

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- (A) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate the Contract if Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity; or
 - (B) Immediately terminate the Contract if Business Associate has breached a material term of this Section of the Contract and cure is not possible; or
 - (C) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
- (3) Effect of Termination.
- (A) Except as provided in (1)(2) of this Section of the Contract, upon termination of this Contract, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Business Associate shall also provide the information collected in accordance with clause (h)(10) of this Section of the Contract to the Covered Entity within ten business days of the notice of termination. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
 - (B) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon documentation by Business Associate that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Section of the Contract to such PHI and limit further uses and disclosures of PHI to those purposes that make return or destruction infeasible, for as long as Business Associate maintains such PHI. Infeasibility of the return or destruction of PHI includes, but is not limited to, requirements under state or federal law that the Business Associate maintains or preserves the PHI or copies thereof.
- (m) Miscellaneous Provisions.
- (1) Regulatory References. A reference in this Section of the Contract to a section in the Privacy Rule means the section as in effect or as amended.
 - (2) Amendment. The Parties agree to take such action as is necessary to amend this Section of the Contract from time to time as is necessary for Covered Entity to comply with requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
 - (3) Survival. The respective rights and obligations of Business Associate shall survive the termination of this Contract.
 - (4) Effect on Contract. Except as specifically required to implement the purposes of this Section of the Contract, all other terms of the Contract shall remain in force and effect.
 - (5) Construction. This Section of the Contract shall be construed as broadly as necessary to implement and comply with the Privacy Standard. Any ambiguity in this Section of the Contract shall be resolved in favor of a meaning that complies, and is consistent with, the Privacy Standard.

**Connecticut Department of Developmental Services, Attachment B
Health Insurance Portability and Accountability Act of 1996 as amended (“HIPAA”).**

- (6) Disclaimer. Covered Entity makes no warranty or representation that compliance with this Section of the Contract will be adequate or satisfactory for Business Associate’s own purposes. Covered Entity shall not be liable to Business Associate for any claim, civil or criminal penalty, loss or damage related to or arising from the unauthorized use or disclosure of PHI by Business Associate or any of its officers, directors, employees, contractors or agents, or any third party to whom Business Associate has disclosed PHI contrary to the provisions of this Contract or applicable law. Business Associate is solely responsible for all decisions made, and actions taken, by Business Associate regarding the safeguarding, use and disclosure of PHI within its possession, custody or control.
- (7) Indemnification. The Business Associate shall indemnify and hold the Covered Entity harmless from and against any and all claims, liabilities, judgments, fines, assessments, penalties, awards and any statutory damages that may be imposed or assessed pursuant to HIPAA, as amended or the HITECH Act, including, without limitation, attorney’s fees, expert witness fees, costs of investigation, litigation or dispute resolution, and costs awarded thereunder, relating to or arising out of any violation by the Business Associate and its agents, including subcontractors, of any obligation of Business Associate and its agents, including subcontractors, under this section of the contract, under HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.

Revised 7.14.2009