

University of Connecticut



**Purchasing Agreement
for
IT Infrastructure Hardware and Associated Services
Contract No.: UC-16-SF071116-C**

This Agreement (hereinafter "Agreement") is made and entered into by and between:

**University of Connecticut
Purchasing Department
3 Discovery Drive, Unit 6076
Storrs, CT 06269-6076
hereinafter "University"**

and

**NWN Corporation
6 Executive Drive Suite 118
Farmington, CT 06032**

hereinafter "Contractor"

**Stacey Fournier
University Contract Administrator**

**Jennifer Golden
Contractor Contact**

The following is provided for informational purposes only:

This form of agreement is developed to facilitate vendors' provision of Supply Services (comprising the Category I Services), general professional services (comprising the Category II Services), and repair and maintenance services (comprising the Category III Services), each as further described in this Agreement. However, some vendors may only have responded to the RFP with an offer to provide Category I Services. For such vendors, only the following provisions of Sections 1.5 through 1.10 shall apply and only Appendix A-1 shall apply:

- 1.5.1
- 1.5.5
- 1.7.1
- 1.7.3
- 1.8
- 1.9
- 1.10.1
- 1.10.2
- 1.10.5

Section 1

DEFINITIONS:

- A. "Acceptance" of a Product or Professional Service is the earlier of: (i) written notice of the University to the Contractor stating that the University has accepted such Product and Professional Service; or (ii) the expiration of a Testing Period without the University issuing of a Compliance Notice.
- B. "Category I Services" shall have the same meaning as Supply Services.
- C. "Category II Services" are all professional services described in the RFP other than a Category III Service, and includes the Prepackaged Category II Services listed on Appendix A-3, as such list may be modified pursuant to Sections 1.10.1 and 1.10.2.
- D. "Category III Services" is repair and maintenance services, including the Prepackaged Category III Services listed on Appendix A-5, as such list may be modified pursuant to Sections 1.10.1 and 1.10.2.
- E. "Completion Notice" is a notice from the Contractor to the University that the Contractor believes it has completed a Professional Service.
- F. "Compliance Notice" is defined in Section 1.13.1(b).
- G. "Contract Year" is each one year period, calculated from the Effective Date, during the Term.
- H. "Customized Category II Service" is a Category II Service other than a Prepackaged Category II Service.
- I. "Customized Category III Service" is a Category III Service other than a Prepackaged Category III Service.
- J. "Customized Professional Service" or "Customized Service" is a Customized Category II Service and/or a Customized Category III Service.
- K. "Discounted List Price" is, as to each Product supplied under the Supply Services and each Prepackaged Service, the applicable List Price, less any applicable Discounts.
- L. "Discounts" is, collectively, the Product Discounts and the Prepackaged Service Discounts.
- M. "Effective Date" is the date this Agreement is executed by the parties and, if required, approved by the Office of the Attorney General of the State of Connecticut.
- N. "Estimated Delivery Expense" is the Contractor's estimate of the actual costs it will incur in the delivery of a good to the University under this Agreement, if such an estimate is included in the SOW covering such good. In the event such an estimate is not included in such SOW, the Estimated Delivery Expense shall be zero dollars (\$0).
- O. "Extension Term" is defined in Section 1.1.2.
- P. "Fixed Diagnosis Fee" is any fee so designated on Appendix A-4.
- Q. "Hourly Compensation" is, as to each Professional Service, the Hourly Rate for such Professional Service multiplied by the number of hours reasonably necessary, and evidenced to have been expended by Contractor, in providing such Service (other than hours spent on diagnosis that is covered by a Fixed Diagnosis Fee).
- R. "Hourly Rate" are the lesser of any Listed Hourly Rate applicable to an individual and any hourly rate for such individual as may be stated in an SOW for such individual.
- S. "Initial Term" is defined in Section 1.1.1.
- T. "Invoice Date" is the date of Acceptance.
- U. "Listed Hourly Rates" is (i) in the case of the Contractor's hourly rates, the un-discounted rates specified on Appendix -2 (for Category II Services) and Appendix A-4 (for Category III Services), less the applicable Discount specified on the applicable Appendix and (ii) in the case of a Resold Manufacturer's hourly rates, such Resold Manufacturer's published hourly rates. Listed Hourly Rates may be increased only pursuant to Section 1.10.3. Standard work hour rates shall be the applicable Listed Hourly Rates, except to the extent the University consents, in writing and in advance, to (i) an individual working in excess of eight hours per day (excluding one hour for lunch), in which case "overtime" rates shall be applicable or (ii) an individual working outside of 8AM-5PM local time on weekdays, in which case the "non-standard" rates provided in the applicable Appendix shall be applicable.
- V. "List Price" is the list price set forth in then-current catalogue of the applicable Provider.

- W. **"Material Cost"** is the actual cost of any material consumed or installed on UConn property in the performance of a Professional Service by (i) the Contractor, where the Contractor is the Provider or (ii) a Resold Manufacturer, in the case of where a Resold Manufacturer is the Provider.
- X. **"Material Markup"** is any markup on Material Cost specified on Appendix A-4 or Appendix A-5, as applicable, and any other such markup as may be stated in an SOW; provided, however, that in the event a mark-up specified on an Appendix is lower than a correlating markup in the SOW, the markup in the Appendix shall govern.
- Y. **"Prepackaged Category II Services"** is those services listed on Appendix A-3, as such list may be modified pursuant to Sections 1.10.1 and 1.10.2. In the event a category of services is listed on Appendix A-3, **"Prepackaged Category II Service"** shall mean any service within such category that the Contractor makes available to other customers for purchase.
- Z. **"Prepackaged Category III Services"** is those services listed on Appendix A-5, as such list may be modified pursuant to Sections 1.10.1 and 1.10.2. In the event a category of services is listed on Appendix A-5, **"Prepackaged Category III Service"** shall mean any service within such category that the Contractor makes available to other customers for purchase.
- AA. **"Prepackaged Professional Service"** or **"Prepackaged Service"** is a Prepackaged Category II Service and/or a Prepackaged Category III Service.
- BB. **"Prepackaged Service Discounts"** is, as to each Prepackaged Service, all discounts listed on Appendix 3 (for Prepackaged Category II Services) or Appendix 5 (for Prepackaged Category III Services). To the extent any such Appendices state that the level of discount for a Prepackaged Service differs based on volume, such volume shall be the Provider Volume and the applicable Prepackaged Service Discount shall be the greater of (i) the discount correlating to the Provider Volume for the then ongoing Contract Year and (ii) the discount correlating to the Provider Volume for the preceding Contract Year.
- CC. **"Product"** is each good and other items listed on Appendix A-1 as such list may be modified pursuant to Sections 1.10.1 and 1.10.2. In the event a category of goods or items are listed on Appendix A-1, **"Products"** shall mean any good or other item within such category that the Contractor makes available to other customers for purchase.
- DD. **"Product Discounts"** is, as to each Product, the discount listed on Appendix 1 for such Product. To the extent such Appendix states that the level of discount for a Product differs based on volume, such volume shall be the Provider Volume and the applicable Product Discount shall be the greater of (i) the discount correlating to the Provider Volume for the then ongoing Contract Year and (ii) the discount correlating to the Provided Volume for the preceding Contract Year.
- EE. **"Professional Service"** is a Category II Service and/or a Category III Service.
- FF. **"Provider"** is, for each Service, the entity designated as the **"Manufacturer/Brand"** for such Service on Appendix 3 or Appendix 5, as applicable.
- GG. **"Provider Volume"** is, as to each Provider, the total amount of compensation due under this Agreement for Services provided by such Provider. Provider Volume includes any compensation due for Services provided to third parties pursuant to Appendix A-7.
- HH. **"Resold Manufacturer"** or **"Manufacturer"** is any Provider other than the Contractor.
- II. **"RFP"** is that University of Connecticut Request for Proposals issued July 11, 2016, and any addenda thereto issued by the University.
- JJ. **"SOW"** is a statement of work that specifies one or more Services to be provided to the University by the Contractor. An SOW is effective in the manner described in Section 1.7.
- KK. **"Services"** is any Supply Services (comprising the Category I Services) and/or Professional Services.
- LL. **"Supply Service"** is the provision of Products to the University when ordered by the University pursuant to a SOW.
- MM. **"Term"** is the Initial Term and any Extension Terms exercised by the University pursuant to Section 1.1.2.
- NN. **"Testing Period"** is, unless otherwise specified in an SOW, (i) for a Product included in a Supply Service, five (5) business days following proper delivery of such Product and (ii) for a Professional Service, ten (10) business days following the Contractor's issuance of a Completion Notice to the University.
- OO. **"Time & Material"** is, as to each Customized Professional Service, the total of: (i) any applicable Fixed Diagnosis Fee, (ii) the Hourly Compensation for such Service, (iii) the Material Cost for such Service, and (iv) the dollar

value of any applicable Material Markup; provided, however, that except to the extent otherwise explicitly provided in an SOW, no Material Costs shall be included for a Category II Service.

- 1.1. **TERM.** The Agreement shall govern the provision of Services during the Term.
- 1.1.1. **Initial Term.** The "Initial Term" is the period from the Effective Date through the date that is three (3) years thereafter.
- 1.1.2. **Extension Term.** The University may extend this Agreement for two (2) periods of three (3) years each (or a part thereof) (each, an "Extension Term") by written notice from the University to the Contractor.
- 1.2. **AMENDMENT.** Except as otherwise provided in this Section 1.2 and in Sections 1.1.2, 1.7.5, 1.10.1, 1.10.2, all modifications to this Agreement may only be made by written amendment executed by both parties and, if required, approved by the Office of the Attorney General prior to the end date of this Agreement.
- 1.3. **SUMMARY OF SERVICES.** The Contractor shall provide the Services during the Term for the University's main campus at Storrs; its regional campuses at West Hartford, Waterbury, Stamford and Avery Point; its professional schools in Hartford including its Law School, Business School, and School of Social Work; its Health Center in Farmington; and any other University location identified by the University in an SOW.
- 1.4. **MAXIMUM AMOUNT PAYABLE.** The maximum amount payable to the Contractor pursuant to this Purchasing Agreement is EIGHT HUNDRED THOUSAND AND 00/100 (\$800,000.00). The University shall be obligated to pay the Maximum Amount Payable only to the extent due to the Contractor under Section 1.5.
- 1.5. **COMPENSATION.**
 - 1.5.1. **Category I Services/Supply Services.** The Contractor's compensation for each Product provided under the Supply Services shall be the Discounted List Price for such Product, unless a lower amount of compensation is agreed to in an SOW.
 - 1.5.2. **Category II Services.**
 - (a) **Prepackaged Category II Services.** The Contractor's compensation for each Prepackaged Category II Service shall be (i) the Discounted List Price for such Prepackaged Category II Service, unless a lower amount of compensation is agreed to in an SOW and (ii) to the extent explicitly provided in an SOW and not included in the List Price, the actual cost of any material needed to be consumed or installed on UConn property as part of a Prepackaged Category II Service plus the Material Markup thereon.
 - (b) **Customized Category II Services.** The Contractor's compensation for each Customized Professional Service shall be whichever of the following (or a combination of the following) the University may, at its discretion, elect, which election shall be memorialized in an SOW: (i) Hourly Compensation; (ii) Time & Material; (iii) a flat fee agreed to by the parties; or (iv) the Discounted List Price for the Prepackaged Category II Service that most closely resembles the Customized Category II Service, provided that such Discounted List Price may be (1) increased to the extent the Contractor provides reasonable evidence that it (or the Resold Manufacturer, where a Resold Manufacturer is the Provider) will incur additional costs as a result of responsibilities included in the Customized Category II Service that exceed the responsibilities under the Prepackaged Category II Service or (b) decreased to the extent the Contractor (or the Resold Manufacturer, where a Resold Manufacturer is the Provider) reasonably will incur fewer costs as a result of responsibilities included in the Prepackaged Category II Service that exceed the responsibilities under the Customized Category II Service.
 - 1.5.3. **Category III Services.**
 - (a) **Prepackaged Category III Services.** The Contractor's compensation for each Prepackaged Category III Service shall be (i) the Discounted List Price for such Prepackaged Category III Service, unless a lower amount of compensation is agreed to in an SOW and (ii) unless otherwise provided in the SOW, the actual cost of any material needed to be consumed or installed on UConn property as part of a Prepackaged Category III Service, to the extent such costs are not included in the List Price, plus the Material Markup on such costs.

- (b) Customized Category III Services. The Contractor's compensation for Customized Category III Services shall be determined in the same manner as Customized Category III Services.
- 1.5.4. **Travel Expenses.** The University shall (in addition to compensation otherwise due under this Section 1.5) reimburse the Contractor for travel expenses only to the extent explicitly provided in an SOW; provided, however, that any such costs will be reimbursed only to the extent reimbursable under, and otherwise incurred in accordance with, the then-governing University policy. The current version of such policy is published on University Travel Services website located at <http://www.travel.uconn.edu>. The Contractor shall provide the University with such evidence of actual costs incurred as the University may reasonably request.
- 1.5.5. **Delivery Expenses.** The University shall (in addition to compensation otherwise due under this Section 1.5) pay the Contractor the actual costs incurred by the Contractor, or invoiced to the Contractor for, the proper delivery of a good included in an SOW, provided, however, that such payment shall not exceed the Estimated Delivery Expense by greater than ten percent (10%). The Contractor shall provide the University with such evidence of actual costs incurred and/or invoiced as the University may reasonably request.
- 1.6. **INVOICE & PAYMENT.**
- 1.6.1. **Form of Invoice.** All invoices shall include an itemization of all charges, applicable purchase order number, and description of Services performed, and shall otherwise be consistent with such reasonable standards of which the University informs the Contractor. Invoices shall be sent via email to apinvoices@uconn.edu or to such other location as the University may specify in writing. The University shall not be obligated to make payments on invoices that are not consistent with this Section 1.6.1.
- 1.6.2. **Payment Terms:** The net amount due on an undisputed invoice shall be payable within forty-five (45) days, or fifteen (15) days with a two percent (2%) discount, after the Invoice Date. The University may dispute any invoiced amount by providing written notice to the Contractor. The University is not obligated to pay any invoiced amount that is the subject of a good faith dispute until such dispute is resolved, provided that the University pays any undisputed invoiced amount. Once an invoice dispute is resolved, the invoice shall be paid by the University as soon as practicable.
- 1.7. **STATEMENTS OF WORK.**
- 1.7.1. **Effect, Generally.** The terms of this Agreement shall be incorporated into and become a part of any SOW that is effective as provided in this Section 1.7.
- 1.7.2. **Effect, Executed SOW.** An SOW shall be effective upon mutual execution by the University and the Contractor, subject to Section 1.7.3.
- 1.7.3. **Effect, UConn Purchase Order.** In the event the University issues a UConn purchase order to the Contractor for a Service without prior execution of an SOW for such Service, such Purchase Order and all attachments thereto and documents incorporated therein by reference shall be deemed the SOW for such Service and shall become effective upon issuance by the University to the Contractor.
- 1.7.4. **Contents.** In the case of an SOW for a Customized Service, the SOW shall contain, without limitation: (i) the scope of such Customized Service and any deliverables that will be provided; (ii) a schedule for the performance of such Customized Service; (iii) the compensation due for such Customized Service (determined in a manner consistent with Sections 1.5.2(b) or 1.5.3(b), as applicable; (iv) any testing criteria that will be used by UConn during the Testing Period, (v) warranties beyond those otherwise required under this Agreement; (vi) insurance requirements beyond those required under Section 2.3; and (vii) any security measures required for the Service beyond those otherwise required under this Agreement.
- 1.7.5. **Conflict and Inconsistency.** In the event of a conflict or inconsistency between this Agreement and the SOW, the terms of this Agreement shall govern. The foregoing shall not apply to those provisions of this Agreement that this Agreement explicitly allows to be superseded by an SOW.
- 1.8 **MANUFACTURERS.** An SOW may state that some or all the Services included in that SOW be provided with the goods and/or personnel of a Resold Manufacturer. In such event:
- (a) The Contractor shall provide such Services only through the specified Resold Manufacturer;

- (b) The Contractor shall be responsible to the University for the acts and omissions of such Resold Manufacturer and such Resold Manufacturer's subcontractors and consultants to the same extent the Contractor is responsible to the University under this Agreement for its own acts and omissions, except that the Contractor shall not be so responsible to the extent such Resold Manufacturer enters into an enforceable agreement with the University under which such Resold Manufacturer assumes such responsibility;
- (c) Without limiting this Section 1.8, the Contractor shall ensure that the Resold Manufacturer agrees to comply with the Confidentiality Specifications attached as Exhibit A to the same extent the Contractor is required to so comply, and the Contractor shall provide the University with such evidence of the Resold Manufacturer's agreement and compliance therewith as the University may request.

1.9 RESPONSIBILITY OF THE CONTRACTOR.

- 1.9.1 Contractor Indemnification.** The Contractor shall indemnify and hold harmless the University, the Board of Trustees of the University of Connecticut, and the State of Connecticut, including any agency or official of the State of Connecticut, from, and against all costs, claims, damages, or expenses, including reasonable attorney's fees, arising from the negligent, reckless, willful, wanton or intentional acts or omissions of its employees and agents in connection with the performance of this Agreement.
 - 1.9.2 Contractor Responsibility for Subcontractors.** The Contractor shall be responsible to the University for the acts and omissions of any individual or entity providing the Services, except to the extent otherwise provided in Section 1.8.
 - 1.9.3 Contractor Limitation on Liability.** In no event shall the Contractor's liability to the University for any indirect, consequential, special, incidental, punitive or exemplary damages arising out of or otherwise related to this Agreement, exceed, cumulatively, the greatest of (a) the maximum amount payable designated in Section 1.4, as may be amended; (b) the extent of the Contractor's insurance coverage for such damages; and (c) the extent of coverage for such damages that would be provided under the insurance coverage required of the Contractor under this Agreement. The preceding sentence shall not limit the Contractor's liability under the Confidentiality Specifications attached as Exhibit B.
- 1.10 CHANGES.**
- 1.10.1 Removing Services.** Upon sixty (60) days' prior written notice to the University, the Contractor may remove Supply Services and/or Prepackaged Services from the Services available to the University if and when the Contractor no longer makes such services available to other of the Contractor's customers. Such removal shall not effect Services for which an SOW has been issued as of the effective date of the removal.
 - 1.10.2 Adding Services.** The Contractor and the University may agree to add Supply Services and/or Prepackaged Services to the Services available to the University. Such addition may be effected by written agreement between the parties, which agreement may be in electronic form.
 - 1.10.3 Changes to Hourly Rates and Fixed Diagnosis Fee.** No earlier than thirty (30) days following the commencement of an Extension Term, the Contractor may request in writing an increase to the Hourly Rates and/or Fixed Diagnosis Fees. No such increase shall be granted during the Initial Term and no such increase shall be granted greater than once each Extension Term. Any such increase shall not exceed any increase to the U.S. Department of Labor Consumer Price Index (CPI), appropriate for the commodity, that occurred during the 365 day period that preceded the date of the Contractor's request. Any such increase shall be effective thirty (30) days following the Contractor's request, provided that such increases shall not apply to Services for which an SOW has then been issued.
 - 1.10.4 Changes to an SOW.** The parties may modify an SOW, which modification shall be effected in the same manner as the SOW pursuant to Section 1.7.2 or 1.7.3, as applicable.
 - 1.10.5 Memorializing Certain Changes.** At the University's request, the Contractor shall execute an Amendment to this Agreement to more formally memorialize changes effected pursuant to Sections 1.10.1 through 1.10.3.
- 1.11 TERMINATION OF SOW.**

- 1.11.1 For Cause.** The University may terminate an SOW in whole or in part for cause, in which case such termination shall be effected in the same manner termination of this Agreement may be effected pursuant to Section 2.11.
- 1.11.2 For Convenience.** The University may terminate an SOW in whole or in part whenever the University determines, in its sole and absolute discretion, that such termination is in the best interest of the University and/or the State of Connecticut.
- 1.11.3 Compensation.** In the case of termination of an SOW for Supply Services, termination shall be at no cost to the University unless otherwise provided in an SOW. In the case of termination of an SOW for Professional Services pursuant to Section 1.11.1 (for cause), the University shall pay the Contractor for those Professional Services for which Acceptance has occurred as of the date of termination. In the case of termination of an SOW for Professional Services pursuant to Section 1.11.2 (for convenience), the University shall pay the Contractor for those Professional Services for which Acceptance has occurred as of the date of termination and for any costs incurred by the Contractor or Manufacturer to provide those Professional Services for which Acceptance has not yet then occurred.

1.12 DETAILED SCOPE.

- 1.12.1 Provision of Services.** The Contractor agrees to provide the University with any Supply Services, Prepackaged Category II Services, and Prepackaged Category III Services requested by the University (which request shall be memorialized in an SOW) and any Customized Services agreed to in an SOW.
- 1.12.2 Delivery.** This Section 1.12.2 shall apply to any Products or other goods that are to be provided to UConn under an SOW.
- (a) **Date of Delivery.** The Contractor shall deliver goods included in an SOW on the date, by any time, and to the location, specified in such SOW.
 - (b) **Condition.** All goods shall be new, in factory packaging, with any additional packaging required to ensure delivery free of damage.
 - (c) **Risk of Loss and Delivery Costs.** All goods shall be shipped Delivered Duty Paid (DDP) under Incoterms (International Commercial Terms); provided, however, that the University shall pay the Contractor for delivery costs to the extent provided in Section 1.5.5.
 - (d) **Manuals and Documentation.**
 - (i) No good shall be deemed to be delivered hereunder unless and until the Contractor shall have delivered, or have caused to be delivered, to University at least one (1) copy of all user manuals for such good (including related systems software) and any other documentation specified in an SOW, at no additional charge. In the event any such manual or documentation is revised, modified, supplemented, or replaced by the Contractor or a Manufacturer within one (1) year of delivery, the Contractor shall promptly furnish, or cause to be furnished, to University not less than one (1) copy thereof at no additional cost or charge to University.
 - (ii) The University shall have the right to duplicate, at its expense, such copies of the foregoing manuals and other documentation (regardless of whether the same by copyrighted or otherwise restricted as proprietary information) as the University shall deem necessary for its data processing operations; provided, however, that: (A) each duplicate copy shall contain any copyright notice designated by the Contractor; and (B) University shall not sell or otherwise transfer any such duplicate copies to any firm or person except in connection with the sale, lease, or other transfer by the University of the related equipment referenced herein, pursuant to the terms and conditions of this Agreement.
- 1.12.3 Personnel.** All individuals providing Professional Services under this Agreement shall be appropriately qualified. The Contractor shall provide the University with such information as the University may reasonably request to confirm an individual's qualifications. Without limiting the foregoing, the Contractor shall replace any individual that has violated a security or workplace policy of the University and shall use commercially reasonable efforts to replace any other personnel requested by the University. On no less than two weeks' prior written notice to the University, the Contractor may replace personnel at its discretion. This Section does not limit the Contractor's responsibilities under Section 2.16 of this Agreement.

- 1.12.4 Authorized Reseller Status.** The Contractor shall, throughout the Term of this Agreement, maintain its status as an Authorized Reseller for each Resold Manufacturer. The Contractor shall provide, on a monthly basis and at no cost to the University, a list of manufacturers for which it is an Authorized Reseller. In the event that a manufacturer chooses to void the Contractor's resale authorization during the Term of this Agreement, the Contractor will notify University within ten (10) business days of the voiding of such authorization.
- 1.12.5 Order Management.** The Contractor shall monitor the status of all orders, delivery schedules, etc. and notify University of any delay in delivery of Service(s) under any Category within twenty-four (24) hours of the receipt of an SOW. A report will be provided, at no additional cost to University, for any items backordered for a period longer than five (5) business days.
- 1.12.6 Contractor Representative.** At no additional cost to the University, the Contractor shall assign qualified inside and on-site sales representatives to assist end users with the selection of, and quotations for, appropriate equipment, supplies, and services based on the needs communicated by University. Response to any request must take place within twenty-four (24) hours of request. Failure to maintain satisfactory service levels shall be deemed by the University to be justification to terminate the contract for non-performance.
- 1.12.7 University Responsibilities.** The University shall supply the Contractor with such data as is reasonably necessary to complete the Service(s). The University will grant access to its resources, including documents, information and personnel, that the Contractor requests provided such access is considered reasonable by University. The University shall not be responsible for providing access to any personnel to support Professional Services except to the extent otherwise specified in the applicable SOW.

1.13 Acceptance and Warranties.

1.13.1 Acceptance.

- (a) During the Testing Period, the University may test a Product or Professional Service to determine whether such Product or Professional Service: (a) conforms to the requirements of this Agreement and of the applicable SOW; (b) conforms to the manufacturer/developer specifications and descriptions thereof; and (c) is free from defects, except for those inherent in the quality of the work the SOW requires or permits.
- (b) If the University reasonably determines that a Product or Professional Service fails to meet the foregoing requirements or that additional Services required under the SOW must be performed prior to the University determining acceptability, the University may issue a notice so stating to the Contractor (a "Compliance Notice").
- (c) Until such time as a cure for any such failure is Accepted by the University or such additional Services are Accepted by the University, the University may withhold payment for the Professional Service or Product in question. In the case of a Product that the University reasonably determines fails to meet applicable requirements, the University may, in place of issuing a Compliance Notice, return such Product at no cost to University.

1.13.2 Ownership of Goods. The Contractor agrees and warrants that, at the time of delivery of a Product or other good required under an SOW, the Provider shall then be the legal and rightful owner of such Product or other good and that such Product or other good is free and clear of any and all encumbrances of any kind.

1.13.3 Ownership of Software and Intellectual Property.

- (a) The Contractor agrees and warrants that, at the time of the provision of any software or work product required under an SOW, the Provider shall then have the legal right to convey to the University such interests as are required to be conveyed hereunder (including under the SOW).
- (b) Ownership of all intellectual property included in Supply Services and Prepackaged Services shall be governed by the SOW.
- (c) The following shall apply except to the extent otherwise provided in an applicable SOW. Any work product arising from a Customized Service shall be the exclusive property of the University. The Contractor hereby agrees, represents and warrants that all work product produced in connection with or resulting from a Customized Service is "work made for hire." All ownership of any copyright and all other rights in and to all original material, or part thereof, prepared for the University and arising out of a Customized Service provided pursuant to this Agreement (including pursuant to an

SOW) will vest immediately in, and belong exclusively to the University, no rights therein being reserved to the Contractor. To the extent that any or all of such work product might be deemed not to constitute "work made for hire," the Contractor hereby assigns, sells, transfers and sets over to the University the entire copyright, right, title and interest in and to such work and all other rights which the Contractor has or may acquire with respect thereto, including the right to sue for damages and other relief for any past, present, or future acts of infringement of said copyright, and the right to publish, adapt, translate, revise, and reproduce the work. The Contractor will secure appropriate written contracts with each of its Providers and with other individuals or entities performing all or part of a Customized Service, which will conform to the requirements of this section.

- 1.13.4 Intellectual Property.** The Contractor agrees and warrants that provision of goods and services hereunder will not result in patent, trademark, or copyright infringement. The Contractor will indemnify and hold the University harmless from and against any such infringement claim.
- 1.13.5 Services.** The Contractor agrees and warrants that all services provided under this Agreement (including under any SOW) will be performed with care, skill, diligence, prudence, and good judgment, consistent with applicable standards currently recognized by the applicable profession or industry. The Contractor shall be responsible for the quality, technical accuracy and completeness of all reports, information, specifications, deliverables, services and any other items provided to the University under this Agreement (including under any SOW).
- 1.13.6 Financial Solvency.** The Contractor represents, warrants and covenants that: (a) it is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to perform this Agreement; (b) all deliverables and/or services shall be delivered or performed free of any security interests, claims, liens or any other encumbrances whatsoever; and (c) there are no rights outstanding which would diminish, encumber or impair the enjoyment or exercise of the rights granted to University under this Agreement.
- 1.13.7 Conformance to Specifications and Requirements.** The Contractor represents and warrants that all goods, services and deliverables provided hereunder shall conform in all material respects to the published documentation, specifications, and requirements provided by the original manufacturer or publisher, and as agreed to by the parties. The Contractor shall, at no expense to University, correct any defective good, services or deliverables that fail to fulfill any representations, warranties and/or covenants expressed in this section, which failure may arise within a reasonable time, not to exceed one year (1) from delivery to University.
- 1.13.8 Third Party Warranties.** The Contractor agrees to pass through to the University all applicable third party warranties for all goods and services provided under this Agreement (including under any SOW).
- 1.13.9 Contractor Warranty.** The Contractor further warrants that any goods, software, or services provided to the University under this Agreement (including under any SOW) will: (a) conform to the requirements of this Agreement and of the applicable SOW; (b) conform to the manufacturer/developer specifications and descriptions thereof; (c) will be free from defects, except for those inherent in the quality of the work the SOW requires or permits; and (d) will function as intended for one year from Acceptance; or for such longer period as may be specified in an SOW. The foregoing warranties exclude remedy for damage or defect caused by abuse by the University, alterations to the work not executed by the Provider, improper or insufficient maintenance, improper operation, and/or normal wear and tear and normal usage. The Contractor shall, at no cost to the University, repair or, in the event the University reasonably determined repair to be impractical, replace, any good or service that fails to meet the foregoing warrantee.
- 1.13.10 Other Warranties.** The Contractor shall provide such other warranties as may be required under an SOW.
- 1.13.11 Third Party Rebates.** The Contractor agrees and warrants that it shall pass through to the University, without withholding, all applicable original manufacturer or software publisher rebates.
- 1.14 Relationship of the Parties.** The Contractor is an independent contractor. Nothing in this Agreement will be construed to make the Contractor and the University partners, joint venturers, principals, agents, or employees of the other. No officer, director, employee, agent, affiliate, or contractor employed by the Contractor to perform work on the University's behalf under this Agreement will be deemed to be an

employee, agent, or contractor of the University. Neither party will have any right, power, or authority, express or implied, to bind or make representations on behalf of the other.

1.15 Examination of Records and Audit. The Contractor shall prepare and maintain all records related to performance of this Agreement, which shall be open to inspection and subject to audit by the University or its authorized representatives for evaluation and verification of any invoices, payments, or claims submitted by the Contractor or any of its payees, required by governmental authorities, or desirable for any other valid business purpose. The University or its authorized representatives shall give the Contractor reasonable advance notice of intent to audit. The Contractor shall make available all relevant records so as to enable the University to audit all reimbursable items excluding the make-up of any agreed upon lump sum amounts, fixed rates, or unit prices. The Contractor shall preserve the records and the University or its authorized representatives shall have access to the records for a period of five (5) years after the satisfaction of the Contractor's obligations under this Agreement, or for such longer period as may be required by law. If an audit inspection or examination conducted in accordance with this section discloses overpricing or overcharges (of any nature) by the Contractor or any of its subcontractors, to the University, any adjustments and/or payments to the University shall be made by the Contractor within a reasonable amount of time not to exceed ninety (90) days from presentation of the University's findings to the Contractor.

1.16 Confidentiality.

- 1.16.1 Generally.** "Confidential Information" means any and all non-public technical or business information, including third party information, furnished or disclosed by one party to the other party that: (i) the disclosing party has marked "confidential" or "proprietary"; or (ii) the disclosing party indicates is confidential or proprietary at the time of an oral disclosure and confirms is confidential or proprietary in a writing within twenty (20) days after such oral disclosure. Each party will maintain Confidential Information it receives from the other in confidence using commercially reasonable standards and no less care than it uses with its own information, and will use and disclose such information only as contemplated by this Agreement or as authorized by the disclosing party. Each party will require its personnel to do likewise. Confidential Information does not include information that is: (a) generally available to the public other than by a breach of this Agreement; (b) rightfully received from a third party lawfully in possession of the information and not subject to a confidentiality or nonuse obligation; (c) independently developed by the receiving party or its personnel, provided the persons developing the information have not had access to the Confidential Information of the disclosing party; or (d) already known to the receiving party prior to its receipt from the disclosing party.
- 1.16.2 Permitted Disclosures.** A receiving party is permitted to disclose Confidential Information if the disclosure is: (i) approved in writing by the disclosing party; (ii) necessary for the receiving party to enforce its rights under this Agreement in connection with a legal proceeding; or (iii) required by law, including Chapter 14 of the Connecticut General Statutes (Freedom of Information Act), by legal process, or by the order of a court or similar judicial or administrative body, provided that the receiving party notifies the disclosing party of such required disclosure promptly and in writing, and cooperates with the disclosing party, at the disclosing party's reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure. In addition, the Contractor shall not be required to keep confidential any ideas, concepts, know-how, or techniques developed during the course of any SOW or Purchase Order by the Contractor's personnel or jointly by the Contractor and the University.
- 1.16.3 Return of Confidential Information.** Upon termination of this Agreement or the disclosing party's request, the receiving party will promptly return or destroy any Confidential Information of the other party.
- 1.16.4 Additional Confidential Information of University.** In addition to the responsibilities in this Section 1.16, if during the course of performing services under an SOW the Contractor has access to the specific Confidential Information defined in the Confidentiality Specifications document attached hereto as Exhibit A, the Contractor agrees to adhere to and comply with, and to cause any other Provider to adhere and comply with, the requirements contained therein. At the University's request, the Contractor shall provide the University with a copy of the Confidentiality Specifications signed by the Contractor and any other Provider.

- 1.17 Severability.** If any provision of this Agreement is found invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall continue in full force and effect. The parties shall negotiate in good faith to substitute a valid, legal, and enforceable provision that reflects the intent of such invalid or unenforceable provision.
- 1.18 Survival of Certain Provisions.** The Contractor's indemnity obligations for claims related to infringement, breach of confidentiality, and violation of law, in addition to the terms, provisions, representations, and warranties contained in this Agreement that by their sense and context are intended to survive the performance thereof by either party or both parties hereunder, shall so survive the completion of performance, expiration or termination of this Agreement.
- 1.19 Notice.** All notices, demands or requests provided for or permitted to be given pursuant to this Agreement must be in writing. All notices, demands and requests shall be deemed to have been properly served if given by personal delivery, or if transmitted by facsimile with confirmed receipt, or if delivered to Federal Express or other reputable express carrier for next business day delivery, charges billed to or prepaid by shipper; or if deposited in the United States mail, registered or certified with return receipt requested, proper postage prepaid, to the address of the applicable recipient stated in the opening of this Agreement. Any party may change its address for notice by giving written notice to the other party in accordance with this Section.

Section 2 - State of Connecticut Required Terms and Conditions

As an Agency of the State of Connecticut (a sovereign entity) the University is governed by the following terms and conditions, which may not be modified, amended or deleted unless approved by the Office of the Attorney General.

- 2.1. Statutory Authority.** Connecticut General Statute §§ 10a-104, 10a-108, 4a-52a, and 10a-151b provide the University with authority to enter into contracts in the pursuit of its mission.
- 2.2. Claims.** The Contractor agrees that the sole and exclusive means for the presentation of any claim against the State of Connecticut or the University of Connecticut arising from this Agreement shall be in accordance with Chapter 53 of the Connecticut General Statutes (Claims Against the State) and the Contractor further agrees not to initiate any legal proceedings in any state or federal court in addition to, or in lieu of, said Chapter 53 proceedings.
- 2.3. Insurance.** The Contractor shall secure and pay the premium or premiums of the following policies of insurance with respect to which minimum limits are fixed in the schedule set forth below. Each such policy shall be maintained in at least the limit fixed with respect thereto, and shall cover all of the Contractor's operations hereunder, and shall be effective throughout the term of this Agreement and any extension thereof. It is not the intent of this schedule to limit the types of insurance required herein. The insurance coverage listed in the following, is in accordance with the State of Connecticut Insurance and Risk Management Board requirements.
- | | | |
|-----|---------------------------------|-------------|
| (a) | Commercial General Liability | |
| 1. | Each Occurrence | \$1,000,000 |
| 2. | Products/Completed Operations | \$1,000,000 |
| 3. | Personal and Advertising Injury | \$1,000,000 |
| 4. | General Aggregate | \$2,000,000 |
| 5. | Fire Legal Liability | \$ 100,000 |
- The insurance shall provide for a retroactive date of placement prior to or coinciding with the effective date of this Agreement.
- (b) Business Automobile Liability: Minimum Limits for Owned, Scheduled, Non Owned, or Hired Automobiles with a combined single limit of not less than \$1,000,000 per occurrence.
- (c) Workers' Compensation and Employer's Liability: As required under state law.

- (d) Such other insurance as may be agreed to under an SOW.

All policies of insurance provided for in this Section shall be issued by insurance companies with general policyholder's rating of not less than A- and a financial rating of not less than Class VIII as rated in the most current available A.M. Best Insurance Reports and be licensed to do business in the State of Connecticut. All such policies shall be issued in the name of Contractor, and shall name, as Additional Insured, The State of Connecticut, University of Connecticut, its officers, officials, employees, agents, boards and commissions with respect to liability arising out of the operations of the Contractor under this Agreement. Certificates thereof shall be delivered to the University prior to the commencement of this Agreement and thereafter certificates thereof shall be delivered to the University within ten (10) days prior to the expiration of the term of each such policy, all at no cost to the University. All certificates delivered to the University shall contain a provision that the company writing said policy will give to University at least twenty (20) days' notice in writing in advance of any material change, cancellation, termination or lapse of the Effective Date of any reduction in the amounts of insurance below the requirements of the Contract. Policies shall waive the right of recovery against the University and shall be primary.

- 2.4. **Indemnification.** The Contractor shall indemnify and hold harmless the University, the Board of Trustees of the University of Connecticut, and the State of Connecticut, including any agency or official of the State of Connecticut, from, and against all costs, claims, damages, or expenses, including reasonable attorney's fees, arising from the negligent, reckless, willful, wanton or intentional acts or omissions of its employees and agents in connection with the performance of this Agreement.
- 2.5. **Sovereign Immunity.** The parties acknowledge and agree that nothing in this Agreement shall be construed as a waiver by the State of Connecticut or the University of any rights or defenses of sovereign immunity, which it may have had, now has, or will have with respect to all matters arising out of this Agreement. To the extent that this provision conflicts with any other provision hereunder, this provision shall govern.
- 2.6. **Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Connecticut without regard to its principles of conflicts of laws.
- 2.7. **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 Contractor 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 Contractors 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.

- 2.8 Vendor Code of Conduct.** In furtherance of its longstanding commitment to fundamental human rights, to the dignity of all people, and to the environment, the University has developed the Code of Conduct for University of Connecticut Vendors (the "Vendor Code of Conduct"). The Contractor hereby acknowledges receipt of the Vendor Code of Conduct. A copy of the Vendor Code of Conduct is available at <http://csr.uconn.edu/>. The Vendor Code of Conduct is hereby incorporated herein by reference to the extent the Contractor is required to comply with the same pursuant to this section. The Contractor agrees to comply with the "Principal Expectations" described in the Vendor Code of Conduct. The Contractor further agrees to comply with the "Preferential Standards" described in the Vendor Code of Conduct, to the extent a commitment to so comply, or a representation of compliance, was provided by Contractor to the University in writing. Any such commitment or representation is hereby incorporated herein by reference. The Contractor agrees to provide the University with such evidence of the Contractor's compliance with this section as the University reasonably requests and to, at the request of the University, provide a comprehensive, annual summary report of the Contractor's corporate social and environmental practices.

- 2.9. **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 this Agreement as if they had been fully set forth in it. At the Contractor's request, the Client Agency shall provide a copy of these orders to the Contractor. This 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.
- 2.10. **Campaign Contribution Restrictions.** For all State contracts as defined in Public Act 10-1 having a value in a calendar year of \$50,000 or more or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Agreement expressly acknowledges receipt of the State Elections Enforcement Commission's notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice attached hereto as Exhibit B.
- 2.11. **Termination for Cause.** The University may terminate this Agreement for cause by providing a written Notice to Cure to the Contractor citing the instances of noncompliance with the contract. The Contractor will have ten (10) days to reply to the Notice to Cure and indicate why the Agreement should not be terminated and recommend remedies to be taken.
- (a) If the Contractor and the University reach an agreed upon solution, the Contractor will then have thirty (30) days after such agreement is reached to cure the noncompliance cited in the Notice to Cure.
 - (b) If a mutually agreed upon solution cannot be reached within ten (10) days after receipt of Notice to Cure by Contractor, the University reserves the right to terminate the agreement at that time by written notice of such termination.
 - (c) If the mutually agreed upon solution is not implemented within thirty (30) days from the date of agreement, the University reserves the right to terminate this Agreement at that time by written notice of such termination.
 - (d) The University will be obligated only for those goods or Services rendered and accepted prior to the date of Notice of Termination.
 - (e) Remedies for Default: If the solution mutually agreed upon pursuant to subsection (a) of this Section is not implemented within the thirty (30) days provided in said subsection, the University may procure the subject goods or services from another source and charge any cost difference to the Contractor.
- 2.12. **Termination for Convenience.**
- (a) The University may terminate this Agreement in whole or in part whenever, for any reason, the University shall determine that such termination is in the best interest of the University and/or the State of Connecticut.
 - (b) If this Agreement is terminated by the University pursuant to this section, the University will provide the Contractor thirty (30) days' written notice of such intention. In the event of such termination, the Contract Administrator and/or designee will notify the Contractor by certified mail, return receipt requested. Termination will be effective as of the close of business on the date specified in the notice.
- 2.13. **Force Majeure.** If the performance of obligations under this Agreement are rendered impossible or hazardous or is otherwise prevented or impaired due to illness, accident, Act(s) of God, riots, strikes, labor difficulties, epidemics, earthquakes, and/or any other cause or event, similar or dissimilar, beyond the

control of the Contractor, then each party's obligations to the other under this Agreement shall be excused and neither party shall have any liability to the other under or in connection with this Agreement.

- 2.14 **Assignment.** No right or duty, in whole or in part, of the Contractor under this Agreement may be assigned or delegated without the prior written consent of the University.
- 2.15. **Entire Agreement and Amendment.** This Agreement is the entire agreement between the Contractor and the University and supersedes and rescinds all prior agreements relating to the subject matter hereof. This Agreement may be amended only in writing signed by both the Contractor and the University and if applicable, approved by the Office of the Attorney General. The Contractor indicates it has read and freely signed this Agreement, which shall take effect as a sealed instrument. The Contractor further certifies that the terms of this agreement are legally binding and its duly authorized representative has signed this agreement after having carefully read and understood the same. This Agreement or Amendment (as the case may be) may be executed in counterparts, and each counterpart shall have the same force and effect as an original and shall constitute an effective, binding agreement on the part of each of the undersigned. Execution of a facsimile or PDF copy shall have the same force and effect as execution of an original.
- 2.16 **Background Checks.**
- (a) The Contractor warrants that it will not assign any employee, independent contractor or agent to perform services under this Agreement unless that employee, independent contractor or agent has satisfactorily completed a background check and is deemed suitable by vendor for performing such services on a college campus attended and inhabited by students. The background check must minimally include criminal arrest information for the past seven years, a check of the national and state sex offender registries and a social security number verification. All fees associated with the background checks shall be the responsibility of the Contractor. The Contractor shall immediately remove any employee, independent contractor or agents performing services under this Agreement on campus if it becomes known to the Contractor that such person may be a danger to the health or safety of the campus community, or at the request of the University based on a concern of community or individual safety.
 - (b) Without limiting the obligations of the Contractor under Section 2.4 of this Contract, the Contractor shall defend, indemnify and hold harmless the state of Connecticut, the University of Connecticut and all of their employees, agents and/or assigns for any claims, suits or proceedings resulting from a breach of the foregoing warranty and/or that are caused in whole or in part by the actions or omissions of the Contractor, its employees, or other persons that the Contractor causes to be on the campus.
- 2.17 **University Policies.** The Contractor shall, at no additional cost to the University, comply with all policies and procedures of the University. In the event the University establishes new policies or procedures following execution of this Agreement, or makes modifications to policies or procedures in existence at the time of execution of this Agreement, the Contractor shall comply with such new or modified policies or procedures upon written notice.
- 2.18 **Use of University Marks.** Except as expressly authorized in this Agreement, the Contractor is not permitted to use any University mark without prior written approval of the University's Office of Trademark Licensing. "University mark" is herein defined as all registered marks to the University's name (past or present), abbreviations, symbols, emblems, logos, mascot, slogans, official insignia, uniforms, landmarks, or songs. The Contractor agrees to comply with the University's trademark licensing program concerning any use or proposed use by the Contractor of any of University marks on goods, in relation to services, and/or in connection with advertisements or promotion of the Contractor or its business. Prior to any use of a University mark by the Contractor (or its affiliates or successors or assigns), the Contractor will submit the proposed use of the University mark, together with a sample or specimen of the intended use, to the University's Office of Trademark Licensing for approval. Such permission to use the mark as may be granted pursuant to the terms of this Agreement shall terminate at the expiration of the Agreement.

2.19 Whistleblowing. This Agreement may be subject to the provisions of §4-61dd of the Connecticut General Statutes. In accordance with such statute, if an officer, employee or appointing authority of the Contractor takes or threatens to take any personnel action against any employee of the Contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of such statute, then in accordance with subsection (e) 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.


2.20 Additional Required Contractor Signature Authority, Affidavits and Certifications.

- (a) The individual signing this Agreement on behalf of the Contractor certifies that s/he has full authority to execute the same on behalf of the Contractor and that this Agreement has been duly authorized, executed and delivered by the Contractor and is binding upon the Contractor in accordance with its terms.
- (b) The University, as an agency of the State of Connecticut, requires that notarized Gift and Campaign Contribution Certificates (Office of Policy and Management "OPM" Form 1) and Consulting Agreement Affidavits (OPM Form 5) accompany all State contracts/agreements with a value of \$50,000 or more in a calendar or fiscal year. [Form 1 is also used with a multi-year contract to update the initial certification on an annual basis.] The State also requires an Affirmation of Receipt of State Ethics Laws Summary (OPM Form 6) which must accompany large State construction or procurement contracts with a value of \$500,000 or more. Pursuant to Conn. Gen. Stat. § 4-252(c)(1), these documents must be executed by the official who is authorized to execute the contract/agreement on behalf of the Contractor. Ethics Affidavits and Certifications can be found at: <http://www.ct.gov/opm/cwp/view.asp?a=2982&q=386038>
- (c) An executed Nondiscrimination Certification must also be provided by the Contractor at the time of contract execution for all contracts/agreements with corporations and other entities, regardless of type, term, cost or value. The Certification requires the signer to disclose his/her title and certify that the Contractor has in place a properly-adopted policy, which supports the nondiscrimination requirements of Connecticut law. This Certification is required for all original contracts/agreements as well as amendments. The Nondiscrimination Certification form can be found at: http://www.ct.gov/opm/lib/opm/finance/psa/oag_nondiscrim_certification_080207_fillable_form.doc

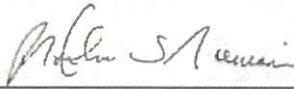
[signature page follows]

IN WITNESS WHEREOF, this Agreement has been duly executed by the following parties:

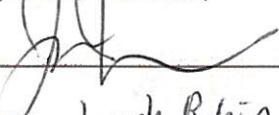
UNIVERSITY OF CONNECTICUT:

By: 
Print Name: Scott Jordan
Title: Exec. VP Admin / CFO
Date: 3/17/2017

CONTRACTOR: NWN CORPORATION

By: 
Print Name: Mathew S. Niemann
Title: VP of Strategic Contracts
Date: March 11, 2017

AGO Approval (As to Form)

By: 
Print Name: Joseph Rubin
Date: 4/24/17
Title: ASSOC. ATTY. GENERAL

Exhibits and Appendices

The following exhibits and/or appendices are attached hereto and incorporated into this Agreement if checked below:

- ☒ Exhibit A: Confidentiality Specifications
- ☒ Exhibit B: SEEC Form 11
- ☒ Appendix A-1: Category I- IT Hardware and Associated Software
- ☒ Appendix A-2: Category II- Professional Services- Self-Performed Services
- ☒ Appendix A-3: Category II- Professional Services- Resold Services
- ☐ Appendix A-4: Category III- Repair & Maintenance- Self-Performed
- ☐ Appendix A-5: Category III- Repair & Maintenance- Resold Services
- ☒ Appendix A-6: Financial Incentives If Appendix A-6 is included in this Agreement, the Contractor shall provide to the University the incentives, discounts, and other benefits described therein
- ☒ Appendix A-7: CCPG Addendum

Exhibit A

Confidentiality Specifications

These specifications serve to document agreed upon requirements regarding the duty to safeguard Data and Intellectual Property that is or may become available to Contractor in the course of providing services to and/or on behalf of the University

Contractor shall comply with the following requirements unless otherwise directed by law or judicial and/or administrative order or prohibited from complying by law or judicial and/or administrative order

1. **STUDENT DATA.** In the course of performing work for or on behalf of the University, Contractor may have access to data associated with prospective and/or enrolled students. Such information may be subject to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. 1232g, *et seq.* and the regulations promulgated thereunder at 34 C.F.R. Part 99. Regardless of format or medium (e.g., electronic, paper, audio, video), such information is considered confidential and protected by FERPA. Such information shall not be disclosed or shared with any third party by Contractor, except as permitted by the terms of this Agreement to subcontractors whose services are necessary for Contractor to carry out its services and only then to subcontractors who have agreed to maintain the confidentiality of the data to the same extent required of Contractor under the terms of this Agreement.

Contractor shall implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all University data received from, or on behalf of the University. These measures shall be extended by contract between Contractor to all subcontractors used by Contractor who may encounter University data.

In the event any person(s) seek to access protected and confidential data or information, whether in accordance with FERPA or other federal or relevant state law or regulations, that Contractor will promptly inform the University of such request in writing. Contractor shall only retrieve such data or information upon receipt of, and in accordance with, written directions by the University. Contractor shall not provide direct access to such data or information or respond to individual requests. All requests and all data or information retrieved by Contractor in response to such requests shall be provided to the University. It shall be the University's sole responsibility to respond to requests for data or information received by Contractor regarding University data or information. Should Contractor receive a court order or lawfully issued subpoena seeking the release of such data or information, Contractor shall provide immediate notification to the University of its receipt of such court order or lawfully issued subpoena and shall promptly provide the University with a copy of such court order or lawfully issued subpoena prior to releasing the requested data or information.

2. **PERSONALLY IDENTIFIABLE DATA NOT OTHERWISE COVERED BY FERPA.**

a) **CONFIDENTIAL DATA.** The data available to Contractor in the course of providing technical support to or on behalf of the University shall be considered Confidential Information, unless the University indicates otherwise in writing. Such Confidential Information may contain data associated with students, faculty, staff, customers, clients, members of the public, or other individuals affiliated with the University. Information related to such individuals may be protected by federal and/or state laws and regulations, and/or established industry standards. In particular, the contents of such data or information stored and maintained by Contractor may be protected by the Health Insurance Portability and Accountability Act ("HIPAA"), Gramm-Leach Bliley Act ("GLBA"), Electronic Communications Privacy Act (ECPA), federal Red Flags Rule regulations, Federal Trade Commission regulations, Internal Revenue Service regulations and/or other state or federal laws as amended from time to time, and/or by the Payment Card Industry Data Security Standards (PCI DSS), as amended or updated from time to time.

b) Data or information to which Contractor may become privy in conducting its work for or on behalf of the University shall not be disclosed or shared with any third party by Contractor, except as permitted by the terms of this Agreement or to subcontractors whose services are necessary for Contractor to carry out its services and only then to subcontractors who have agreed to maintain the confidentiality of the data to the same extent required of Contractor under this Agreement.

c) In the event any person(s) seek to access protected and confidential data or information, such access shall be through the University, and Contractor shall only retrieve such data or information as identified by the University or as otherwise required by federal and/or state law. Contractor shall not provide direct access to such data or information or respond to individual requests.

d) Should Contractor receive a court order or lawfully issued subpoena seeking the release of such data or information, Contractor shall promptly inform the University of its receipt of such court order or lawfully issued subpoena prior to releasing the requested data or information.

3. **BREACH OF CONFIDENTIALITY.**

The parties agree that any breach of the confidentiality obligations set forth in this Agreement may result in cancellation of this Agreement and/or the ability of Contractor to perform work for or on behalf of the University.

For purposes of this Agreement, "Unauthorized Access," means unauthorized access to or acquisition of electronic files, media, databases or computerized data containing personal information when access to the personal information has not been secured by encryption or by any other method or technology that renders the personal information unreadable or unusable.

In the event that a security breach occurs, Contractor agrees to the following:

- (1) Contractor shall immediately notify University in the event Contractor has knowledge that Unauthorized Access to Confidential Information has been, or may have been, obtained, and Contractor shall immediately take such measures as are reasonably necessary, or requested by University, to identify the cause, impact and contain such Unauthorized Access (the "Mitigation Measures").
- (2) To the extent the Unauthorized Access was not related to the negligent act or omission of Contractor and its subcontractors and employees and to Contractor's failure to comply with the terms of this Agreement, Contractor shall, by amendment to this Agreement, be compensated for the Mitigation Measures as an additional service.

- (3) To the extent the Unauthorized Access resulted from the negligent acts or omissions, gross negligence and/or willful misconduct of Contractor or its subcontractors or employees, or from Contractor's failure to comply with the terms of this Agreement, Contractor shall (a) be responsible for the costs of the Mitigation Measures, (b) shall take such actions, and be responsible for the costs thereof, as are necessary to mitigate any damage caused, or that may be caused, by such Unauthorized Access, including, but not limited to, providing identity theft protection for a period of not less than two (2) years to those affected or potentially affected by the Unauthorized Access, and (c) shall indemnify and hold harmless the State of Connecticut, including any agency or official of the State of Connecticut, from and against all costs, claims, damages, or expenses, including reasonable attorney's fees, arising from such Unauthorized Access.
4. **NOTIFICATION.** For the purpose of notification to the University of an actual or potential security breach, the following individuals, or their successors, should be contacted, by phone or fax, and also in writing
- Chief Information System and Security Officer, University Information Technology Services, University of Connecticut. Math Sciences Building, 196 Auditorium Road, Unit 3138, Storrs, CT 06269-3138, Phone (860) 486-3743, Fax (860) 486-5744
 - Assistant Director of Compliance/Privacy, Office of Audit, Compliance & Ethics, University of Connecticut, 9 Walters Avenue, Unit 5084, Storrs, Connecticut 06269-5084, Phone (860) 486-5256, Fax (860) 486-4527
5. **RETURN/DESTRUCTION OF DATA.** Upon expiration or termination of the Agreement, Contractor shall return and/or destroy all data or information received from the University in a manner as may be determined between the parties in accordance with agreed upon standards and procedures. Contractor shall not retain copies of any data or information received from the University once the University has directed Contractor as to how such information shall be returned to the University and/or destroyed. Furthermore, Contractor shall ensure that it disposes of any and all data or information received from the University in the agreed upon manner that the confidentiality of the contents of such records has been maintained. If Contractor destroys the information, Contractor shall provide the University with written confirmation of the method and date of destruction of the data.
6. **PROTECTION OF CONFIDENTIAL INFORMATION.** Contractor agrees that it shall not disclose, provide or otherwise make available proprietary or Confidential Information disclosed to Contractor by the University to any person other than authorized employees, and those employees or agents of Contractor whose use of or access to the Confidential Information is necessary in connection with the work being performed by Contractor for or on behalf of the University. Contractor further agrees that it shall not use Confidential Information for any purpose other than in the performance of the work being conducted for or on behalf of the University. Contractor shall use all commercially reasonable precautions to protect the confidentiality of the Confidential Information, and shall ensure that all employees, agents or contractors of Contractor having access to the Confidential Information understand the commercially reasonable precautions in place, and agree to abide by such precautions.
7. **IDENTITY THEFT PREVENTION.** In an effort to combat identity theft, the University maintains a comprehensive *Identity Theft Prevention Program* with a goal of protecting the personal information of students, employees, affiliates and customers. In the course of performing its duties under this Agreement and through its work for or on behalf of the University, Contractor may collect, access and/or receive personal information pertaining to University students, employees, affiliates and customers that can be linked to identifiable individuals (hereinafter "Personal Information"). Such Personal Information is Confidential Information of the University. It is the University's expectation that Contractor will assist the University in its identity theft prevention efforts under the *University's Identity Theft Prevention Program*. Contractor shall collect, access, receive and/or use such Personal Information solely for the purposes of conducting its work for or on behalf of the University and otherwise in compliance with any and all applicable federal and/or state laws. Additionally, Contractor shall safeguard such information in compliance with all applicable federal and state laws, including but not limited to the Fair Credit Transactions Act of 2003 and any regulations promulgated thereunder (e.g., Red Flags Rule regulations), including implementing appropriate policies or procedures for detecting and identifying possible identity theft and similar fraudulent or potentially fraudulent activities, and notify the University of any such suspicious activities. For the purpose of notification to the University, upon identification of a potential or actual issue of identity theft, Contractor shall immediately contact
- Assistant Director of Compliance/Privacy, Office of Audit, Compliance & Ethics, University of Connecticut, 9 Walters Avenue, Unit 5084, Storrs, Connecticut 06269-5084, Phone (860) 486-5256, Fax (860) 486-4527

EXHIBIT B - SEEC FORM 11

CONNECTICUT STATE ELECTIONS ENFORCEMENT COMMISSION Rev. 1/11

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

This notice is provided under the authority of Connecticut General Statutes §9-612(g)(2), as amended by P.A. 10-1, and is for the purpose of informing state contractors and prospective state contractors of the following law (italicized words are defined on the reverse side of this page)

CAMPAIGN CONTRIBUTION AND SOLICITATION LIMITATIONS

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

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

On and after January 1, 2011, no state contractor, prospective state contractor, principal of a state contractor or principal of a prospective state contractor, with regard to a state contract or state contract solicitation with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder of a valid prequalification certificate, shall knowingly solicit contributions from the state contractor's or prospective state contractor's employees or from a subcontractor or principals of the subcontractor on behalf of (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee.

DUTY TO INFORM

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

PENALTIES FOR VIOLATIONS

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

Civil penalties—Up to \$2,000 or twice the amount of the prohibited contribution, whichever is greater, against a principal or a contractor. Any state contractor or prospective state contractor which fails to make reasonable efforts to comply with the provisions requiring notice to its principals of these prohibitions and the possible consequences of their violations may also be subject to civil penalties of up to \$2,000 or twice the amount of the prohibited contributions made by their principals.

Criminal penalties—Any knowing and willful violation of the prohibition is a Class D felony, which may subject the violator to imprisonment of not more than 5 years, or not more than \$5,000 in fines, or both.

CONTRACT CONSEQUENCES

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

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

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

Additional information may be found on the website of the State Elections Enforcement Commission, www.ct.gov/seec. Click on the link to "Lobbyist/Contractor Limitations."

DEFINITIONS

"State contractor" means a person, business entity or nonprofit organization that enters into a state contract. Such person, business entity or nonprofit organization shall be deemed to be a state contractor until December thirty-first of the year in which such contract terminates. "State contractor" does not include a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

"Prospective state contractor" means a person, business entity or nonprofit organization that (i) submits a response to a state contract solicitation by the state, a state agency or a quasi-public agency, or a proposal in response to a request for proposals by the state, a state agency or a quasi-public agency, until the contract has been entered into, or (ii) holds a valid prequalification certificate issued by the Commissioner of Administrative Services under section 4a-100. "Prospective state contractor" does not include a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

"Principal of a state contractor or prospective state contractor" means (i) any individual who is a member of the board of directors of, or has an ownership interest of five per cent or more in, a state contractor or prospective state contractor, which is a business entity, except for an individual who is a member of the board of directors of a nonprofit organization, (ii) an individual who is employed by a state contractor or prospective state contractor, which is a business entity, as president, treasurer or executive vice president, (iii) an individual who is the chief executive officer of a state contractor or prospective state contractor, which is not a business entity, or if a state contractor or prospective state contractor has no such officer, then the officer who duly possesses comparable powers and duties, (iv) an officer or an employee of any state contractor or prospective state contractor who has *managerial or discretionary responsibilities with respect to a state contract*, (v) the spouse or a *dependent child* who is eighteen years of age or older of an individual described in this subparagraph, or (vi) a political committee established or controlled by an individual described in this subparagraph or the business entity or nonprofit organization that is the state contractor or prospective state contractor.

"State contract" means an agreement or contract with the state or any state agency or any quasi-public agency, let through a procurement process or otherwise, having a value of fifty thousand dollars or more, or a combination or series of such agreements or contracts having a value of one hundred thousand dollars or more in a calendar year, for (i) the rendition of services, (ii) the furnishing of any goods, material, supplies, equipment or any items of any kind, (iii) the construction, alteration or repair of any public building or public work, (iv) the acquisition, sale or lease of any land or building, (v) a licensing arrangement, or (vi) a grant, loan or loan guarantee. "State contract" does not include any agreement or contract with the state, any state agency or any quasi-public agency that is exclusively federally funded, an education loan, a loan to an individual for other than commercial purposes or any agreement or contract between the state or any state agency and the United States Department of the Navy or the United States Department of Defense.

"State contract solicitation" means a request by a state agency or quasi-public agency, in whatever form issued, including, but not limited to, an invitation to bid, request for proposals, request for information or request for quotes, inviting bids, quotes or other types of submittals, through a competitive procurement process or another process authorized by law waiving competitive procurement.

"Managerial or discretionary responsibilities with respect to a state contract" means having direct, extensive and substantive responsibilities with respect to the negotiation of the state contract and not peripheral, clerical or ministerial responsibilities.

"Dependent child" means a child residing in an individual's household who may legally be claimed as a dependent on the federal income tax of such individual.

"Solicit" means (A) requesting that a contribution be made, (B) participating in any fund-raising activities for a candidate committee, exploratory committee, political committee or party committee, including, but not limited to, forwarding tickets to potential contributors, receiving contributions for transmission to any such committee or bundling contributions, (C) serving as chairperson, treasurer or deputy treasurer of any such committee, or (D) establishing a political committee for the sole purpose of soliciting or receiving contributions for any committee. Solicit does not include (i) making a contribution that is otherwise permitted by Chapter 155 of the Connecticut General Statutes, (ii) informing any person of a position taken by a candidate for public office or a public official, (iii) notifying the person of any activities of, or contact information for, any candidate for public office, or (iv) serving as a member in any party committee or as an officer of such committee that is not otherwise prohibited in this section.

"Subcontractor" means any person, business entity or nonprofit organization that contracts to perform part or all of the obligations of a state contractor's state contract. Such person, business entity or nonprofit organization shall be deemed to be a subcontractor until December thirty first of the year in which the subcontract terminates. "Subcontractor" does not include (i) a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or (ii) an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

"Principal of a subcontractor" means (i) any individual who is a member of the board of directors of, or has an ownership interest of five per cent or more in, a subcontractor, which is a business entity, except for an individual who is a member of the board of directors of a nonprofit organization, (ii) an individual who is employed by a subcontractor, which is a business entity, as president, treasurer or executive vice president, (iii) an individual who is the chief executive officer of a subcontractor, which is not a business entity, or if a subcontractor has no such officer, then the officer who duly possesses comparable powers and duties, (iv) an officer or an employee of any subcontractor who has managerial or discretionary responsibilities with respect to a subcontract with a state contractor, (v) the spouse or a dependent child who is eighteen years of age or older of an individual described in this subparagraph, or (vi) a political committee established or controlled by an individual described in this subparagraph or the business entity or nonprofit organization that is the subcontractor.

Appendix A1 - Category I - IT Hardware and Associated Software							
Manufacturer/Brands	Product Type	Annual Spend Volumes for Pricing Tiers			Discount Off List %		
		Tier 1 Range	Tier 2 Range	Tier 3 Range	Tier 1 Discount	Tier 2 Discount	Tier 3 Discount
		\$0 - X	\$X - Y	\$Y - Z	%	%	%
American Power Conversion (Schneider Electric)	UPS and Battery	\$0 - \$50,000	\$50,000.01 - \$100,000	\$100,000+	7%	10%	20%
Aruba (HP)	Wireless	\$0 - \$50,000	\$50,000.01 - \$100,000	\$100,000+	15%	20%	30%
Avocent (Emerson)	UPS and Battery	\$0 - \$50,000	\$50,000.01 - \$100,000	\$100,000+	7%	10%	20%
Brocade	Storage Switching	\$0 - \$50,000	\$50,000.01 - \$100,000	\$100,000+	10%	15%	20%
Cisco	Security Hardware	\$0-\$100,000	\$100,000.01-\$250,000	\$250,000+	41%	42%	43%
Cisco	Collaboration	\$0-\$100,000	\$100,000.01-\$250,000	\$250,000+	42%	43%	44%
Cisco	Compute and Storage	\$0-\$100,000	\$100,000.01-\$250,000	\$250,000+	58%	59%	60%
Cisco	Routing and Switching	\$0-\$100,000	\$100,000.01-\$250,000	\$250,000+	42%	43%	44%
Cisco	Wireless	\$0-\$100,000	\$100,000.01-\$250,000	\$250,000+	42%	43%	44%
Cisco	SMARTNet	\$0-\$100,000	\$100,000.01-\$250,000	\$250,000+	30%	31%	32%
Citrix	Virtualization Software	\$0 - \$50,000	\$50,000.01 - \$100,000	\$100,000+	7%	10%	20%
EMC	Compute and Storage	\$0-\$100,000	\$100,000.01-\$250,000	\$250,000+	15%	20%	30%
Emerson	UPS and Battery	\$0 - \$50,000	\$50,000.01 - \$100,000	\$100,000+	7%	10%	20%
F5	Load Balancing	\$0 - \$50,000	\$50,000.01 - \$100,000	\$100,000+	15%	20%	30%
Fluke Networks	Monitoring	\$0-\$10,000	\$10,000.01-\$25,000	\$25,000+	3%	5%	7%
Fortinet	Security Hardware and Software	\$0-\$100,000	\$100,000.01-\$250,000	\$250,000+	40%	41%	42%
Gigamon	Network Spanning Product	\$0 - \$50,000	\$50,000.01 - \$100,000	\$100,000+	7%	10%	20%
Hewlett Packard	Entire Product Line	\$0-\$100,000	\$100,000.01-\$250,000	\$250,000+	30%	31%	32%
Infoblox	Automation	\$0-\$100,000	\$100,000.01-\$250,000	\$250,000+	30%	31%	32%
Intel	Security Hardware and Software	\$0-\$100,000	\$100,000.01-\$250,000	\$250,000+	30%	31%	32%
LanCope (Cisco)	Tools	\$0-\$100,000	\$100,000.01-\$250,000	\$250,000+	42%	43%	44%
Lenovo	Entire Product Line	\$0 - \$50,000	\$50,000.01 - \$100,000	\$100,000+	7%	10%	20%
NetApp	Entire Product Line	\$0-\$100,000	\$100,000.01-\$250,000	\$250,000+	40%	41%	42%
Netoptics (IXIA)	Network Spanning Product	\$0 - \$50,000	\$50,000.01 - \$100,000	\$100,000+	7%	10%	20%
Palo Alto Networks	Entire Product Line	\$0-\$100,000	\$100,000.01-\$250,000	\$250,000+	30%	31%	32%
Sophos	Security Hardware and Software	\$0 - \$50,000	\$50,000.01 - \$100,000	\$100,000+	7%	10%	20%
Sourcefire (Cisco)	Security Hardware and Software	\$0-\$100,000	\$100,000.01-\$250,000	\$250,000+	42%	43%	44%
Varonis	Entire Product Line	\$0-\$10,000	\$10,000.01-\$25,000	\$25,000+	3%	5%	7%
VCE	VXRail through EMC	\$0-\$100,000	\$100,000.01-\$250,000	\$250,000+	15%	20%	30%
VM Ware	Virtualization Software	\$0-\$50,000	\$50,000.01-\$100,000	\$100,000+	3%	5%	7%
Stanley- Aeroscout	RFID Software and Hardware	\$0-\$25,000	\$2500.01- \$50,000	\$50,000+	7%	10%	20%
Symantec	Managed Security Services	\$0-\$100,000	\$100,000.01-\$250,000	\$250,000+	7%	10%	20%
CommVault	Backup Software and Hardware	\$0-\$100,000	\$100,000.01-\$250,000	\$250,000+	20%	30%	35%
Riverbed	WAN Optimization	\$0-\$100,000	\$100,000.01-\$250,000	\$250,000+	30%	31%	32%

Appendix A2 - Category II (Professional Services) Self-Performed Service									
Labor Rates by Role									
Role/Position/Activity	Average/ Typical Years	Average/Typical Skills & Competencies	Certifications/Professional Designations	List Rate (hourly)	Discount % Off Rate	Net Hourly Rate	Non-Standard Hours Rate	Overtime Rate (Over 8 Hours)	Daily Rate (8 hours)
Consultant	10+	<ul style="list-style-type: none">• Business Analyst type experience candidate with the ability to collect and develop business and technical requirements. • 10+ years of experience with IT project management or technical experience. • 10+ years of experience with IT design for a Customer, including requirement definition and execution• 10+ years of experience developing project plans including a project plan that includes the charter, scope, project management approach, management plans, statement of work, cost estimates, schedule.• 12+ years of experience leading cross-functional teams and staff of all levels.• Knowledge of project management best practices.• Advanced level experience (reorganizing large or complex projects into master and subprojects, optimizing resource assignments across projects, tracking schedules for completeness and budget on complex, connecting project managers, teams and data across the organization) with management tool, such as MS Project or Excel.	<ul style="list-style-type: none">• Bachelor's Degree or equivalent work experience. • PMP Certification desired. • Technical Certifications desired including CCIE written and lab	\$275/hr	10%	\$248	371.25/hr	\$371.25/hr	\$1,980
Sr. Solutions Engineer	7+	<ul style="list-style-type: none">• 5+ years of experience in a technical leadership role on medium size projects in the areas of integration or support services. • 5+ Years Minimum hands on experience designing, deploying, and supporting complex communications systems. • Defined area of Specialization supported by certification or equivalent experience (i.e. Route Switch, VoIP, Wireless, Server, Storage, Virtualization, Backup and Recovery, VDI) • Thorough knowledge of IP Communications, Industry and Solutions, Virtualization and Data Center Industry and Solutions with strong industry relationships. • Involvement in Industry Councils, User Groups, as appropriate. • Experience with structured project management methodologies.• Experience working with solution design, job costing and quality planning. • Experience developing/writing technical sales documents. • Experience working in a project/team environment.	<ul style="list-style-type: none">• CCIE written or equivalent experience (CCNP or CCDP required), EMC, VMware, Citrix, NetApp, or HP written Certification (i.e. EMC Proven Professional, VSTP). • Bachelor's degree in Computer Science, Information Systems or related experience .	\$225/hr	10%	\$202.5/hr	\$303.75/hr	\$303.75/hr	\$1,620
Solutions Engineer	5+	<ul style="list-style-type: none">• At least 2 to 5 years of experience that is directly related to the duties and responsibilities specified. • Ability to relay technical information to both technical and non-technical personnel. • Strong written/verbal communication skills, critical thinking and problem solving or troubleshooting skills. • Must possess excellent time management skills. • Ability to travel to client premises on a daily basis .• Ability to work evenings and weekends as required during client cutovers. • This position requires a high level of independence and strong client service skills. Organizational ability is important to keep track of all tasks, because the job requires a great deal of multi-tasking. We also require accurate and timely tracking of client work, service calls, and related documentation including timesheets.	<ul style="list-style-type: none">• Acquire technical certifications per training plan.• Attend technical classes and web training. Be working on CCNA or equivalent	\$190/hr	10%	\$171/hr	\$256.50/hr	\$256.50/hr	\$1,368
Sr. Service Technician	3+	<ul style="list-style-type: none">• At least (3) years of experience that is directly related to the duties and responsibilities specified. • Good written/verbal communication skills, critical thinking and problem solving or troubleshooting skills. • Must possess excellent time management skills. • Ability to travel to client premises on a daily basis. • Ability to work evenings and weekends as required during client cutovers. • This position requires strong client service skills. • Organizational ability is important to keep track of all tasks, because the job requires a great deal of multi-tasking. • Must be a team player, yet work well independently. • Excellent verbal and written communication skills.	<ul style="list-style-type: none">• Acquire technical certifications per training plan.• Attend technical classes and web training.	\$110/hr	10%	\$98/hr	\$147/hr	\$147/hr	\$784
Service Technician	2+	<ul style="list-style-type: none">• Good written/verbal communication skills, critical thinking and problem solving or troubleshooting skills. • Must possess excellent time management skills. • Ability to travel to client premises on a daily basis. • Ability to work evenings and weekends as required during client cutovers. • This position requires strong client service skills. • Organizational ability is important to keep track of all tasks, because the job requires a great deal of multi-tasking. • Must be a team player, yet work well independently. • Excellent verbal and written communication skills.	<ul style="list-style-type: none">• Acquire technical certifications per training plan.• Attend technical classes and web training.	\$84/hr	10%	\$75/hr	\$112.50/hr	\$112.50/hr	\$600
Strategic Project Manager	10+	<ul style="list-style-type: none">• Business Analyst type experience candidate with the ability to collect and develop business and technical requirements. • 10+ years of experience with IT project management experience. • 10+ years of experience developing project plans including a project plan that includes the charter, scope, project management approach, management plans, statement of work, cost estimates, schedule. • 12+ years of experience working with cross-functional teams and staff of all levels.• Advanced level experience (reorganizing large or complex projects into master and subprojects, optimizing resource assignments across projects, tracking schedules for completeness and budget on complex, connecting project managers, teams and data across the organization) with management tool, such as MS Project or Excel. • Highly flexible, self-directed and with ability to adapt in a rapidly changing environment. • Ability to function effectively in a fast paced environment and manage multiple projects simultaneously. • Ability to exercise exceptional judgment where practices and policies are not clearly defined. • Demonstrated ability to manage multiple competing priorities. • Excellent problem solving and negotiation skills. • Able to provide their own transportation and travel between offices. • Exceptional client facing communications and presentation skills.	<ul style="list-style-type: none">• Bachelor's Degree or equivalent work experience.• PMP Certification. • Knowledge of project management best practices (PMBOK traditionally).	\$225/hr	10%	\$202.5/hr	\$303.75/hr	\$303.75/hr	\$1,620
Sr. Project Manager	8+	<ul style="list-style-type: none">• Business Analyst type experience candidate with the ability to collect and develop business and technical requirements. • 8+ years of experience with IT project management experience. • 8+ years of experience developing project plans including a project plan that includes the charter, scope, project mgmt approach, mgmt plans, statement of work, cost estimates, schedule. • 8+ years of experience working with cross-functional teams and staff of all levels. • Knowledge of project management best practices (PMBOK traditionally). • Advanced level experience (reorganizing large or complex projects into master and subprojects, optimizing resource assignments across projects, tracking schedules for completeness and budget on complex, connecting project managers, teams and data across the organization) with management tool, such as MS Project or Excel. • Demonstrated ability to manage multiple competing priorities. • Excellent problem solving and negotiation skills. • Able to provide their own transportation and travel between offices. • Exceptional client facing communications and presentation skills.	<ul style="list-style-type: none">• Bachelor's Degree or equivalent work experience.• PMP Certification. • Knowledge of project management best practices (PMBOK traditionally).	\$218/hr	10%	\$198/hr	\$297/hr	\$297/hr	\$1,584
Project Manager	5+	<ul style="list-style-type: none">• 5+ years of experience with IT project management experience. • 5+ years of experience developing project plans including a project plan that includes the charter, scope, project management approach, management plans, statement of work, cost estimates, schedule. • 5+ years of experience working with cross-functional teams and staff of all levels. • Advanced level experience (reorganizing large or complex projects into master and subprojects, optimizing resource assignments across projects, tracking schedules for completeness and budget on complex, connecting project managers, teams and data across the organization) with management tool, such as MS Project or Excel.	<ul style="list-style-type: none">• Bachelor's Degree or equivalent work experience. • Knowledge of project management best practices (PMBOK traditionally).	\$190/hr	10%	\$171/hr	\$256.50/hr	\$256.50/hr	\$1,368
Coordinator	3+	<ul style="list-style-type: none">• 3+ years of progressive Information Technology experience. • Strong interpersonal, verbal and written communication skills. • Proficient with the Microsoft Office suite, including MS Project. • Demonstrated ability to manage multiple competing priorities. • Excellent problem solving and negotiation skills. • Highly organized and results oriented.• Experience working both independently and in a team-oriented, collaborative environment.	<ul style="list-style-type: none">• Bachelor's Degree or equivalent work experience. • PMP or CAPM certification preferred but not required.• Familiarity with business management software such as Net Suite and OpenAir.	\$150/hr	10%	\$135/hr	\$202.50/hr	\$202.50/hr	\$1,080

Appendix A3 - Category II - Professional Services - Resold Services							
Manufacturer/Brands	Product Type	Annual Spend Volumes for Pricing Tiers			Discount Off List %		
		Tier 1 Range	Tier 2 Range	Tier 3 Range	Tier 1 Discount	Tier 2 Discount	Tier 3 Discount
		\$0 - X	\$X - Y	\$Y - Z	%	%	%
Cisco	Cisco Advanced Services	\$0-\$50,000	\$50,000.01 - \$100,000	\$100,000+	10%	15%	20%
NetApp	NetApp Professional Services	\$0 - \$50,000	\$50,000.01 - \$100,000	\$100,000+	15%	20%	25%
Riverbed	Riverbed Professional Services	\$0-\$25,000	\$25,000.01 - \$50,000	\$50,000.01+	5%	10%	12%
F5	F5 Professional Services	\$0-\$25,000	\$25,000.01 - \$50,000	\$50,000.01+	5%	10%	12%
Fortinet	Fortinet Professional Services	\$0 - \$50,000	\$50,000.01 - \$100,000	\$100,000+	5%	10%	12%
HPE	HPE Professional Services	\$0 - \$50,000	\$50,000.01 - \$100,000	\$100,000+	15%	20%	25%

Appendix A6 - Financial Incentives

Financial Incentive	Amount (% or \$)	Volume Requirements	Metric (e.g. dollar-one, growth)	Distribution (e.g. one-time, quarterly, annually)	Extended to consortia?
Rebate	0.25%	\$500,000+*	Once each entity** hits \$500,000 in revenue, NWN will take .25% of each further order revenue and put into NWN Block which can be used to purchase hardware, software, maintenance or professional services.	Once metric is achieved, NWN will put .25% of each order into NWN Block*** which can be used at any time thereafter. Each end user will need to hit the volume and this is not cumulative.	Yes

*Based on PO value and will only have to reach this threshold once over the entire life of the contract (does not reset annually).

**UConn,UConn Health or individual CCPG member.

***NWN Block is considered an account credit. Discount can be shown on quote and issued at time of invoice.

NWN to provide monthly reports to show total PO value.

Appendix A-7

The Contractor agrees to provide Services (as defined hereinafter) to any member of the Connecticut College Purchasing Group ("CCPG") under the same terms and conditions, including price, as are contained in this Agreement, during the term of this Agreement. Any such provision of Services shall be provided pursuant to a separate agreement made by and between the Contractor and the applicable CCPG member, and the Contractor agrees that the University shall not be responsible for the obligations, acts, or omissions of such CCPG member. The Contractor expressly acknowledges and agrees that: (i) the University has made no representation to the Contractor that CCPG members will make purchases of Services from the Contractor and (ii) that no such representation has formed any part of the consideration received by the Contractor hereunder.