



**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE UNIVERSITY OF CONNECTICUT  
AND  
McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP**

**LABOR RELATIONS**

This Agreement, effective on the 15<sup>th</sup> day of August 2015, through the 14<sup>th</sup> day of August 2018, by and between the UNIVERSITY OF CONNECTICUT (hereinafter referred to as "UNIVERSITY"), duly authorized pursuant to *Conn. Gen. Stat.* § 10a-151b(b), with an office at 343 Mansfield Road, Storrs, CT 06269-1177, and McElroy, Deutsch, Mulvaney & Carpenter, LLP (hereafter referred to as the "FIRM" or "Contractor"), with a principal place of business at 1300 Mount Kemble Avenue, Morristown, New Jersey 07962-2075.

**WITNESSETH:**

WHEREAS, pursuant to *Conn. Gen. Stat.* § 10a-151b(b), the UNIVERSITY may procure such legal services as it may require; and

WHEREAS, the UNIVERSITY requires the professional services of legal counsel to assist in representing its interests with respect to the matters described below; and

WHEREAS, the UNIVERSITY has determined that outside counsel with particular expertise is warranted; and

In consideration of these promises and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

**SECTION 1: SCOPE OF SERVICES**

1.1. The services to be provided (the "Services") will be those requested by the UNIVERSITY. The specific services to be provided for a particular project or matter may be further defined in correspondence between the Office of the General Counsel and the FIRM. The general subject matter of the services which the UNIVERSITY expects to request from the FIRM may include one or more of the following:

(a) Labor relations legal services in connection with the negotiation of a collective bargaining agreement between the University and the UConn-Storrs Chapter of the American Association of University Professors ("AAUP"), as the representative of the University's faculty at the Storrs and Regional campuses;

(b) The Firm will assist in all phases of negotiation preparation, including orienting and training the bargaining team, gathering and analyzing pertinent comparative information and preparing ground rules, proposals and counterproposals;

(c) The Firm will serve as the lead or primary negotiator and spokesperson for the University's bargaining team;

(d) The Firm will provide technical expertise, representation and/or testimony in any ongoing labor relations actions arising out of the negotiations process. This includes, but is not limited to, interest arbitration, prohibited labor practice proceedings and grievance hearings;

(e) The Firm will coordinate with UConn negotiators for other labor agreements covering faculty and staff at UConn and UConn Health under the direction and oversight of the Labor Relations Directors for both units during the bargaining process;

(f) The Firm will provide other services as required by UConn regarding the negotiation and administration of the AAUP-Storrs Chapter collective bargaining agreement; and

(g) Labor relations services unrelated to the matters identified in Sections 1.1(a) through (f), including but not limited to advice on labor relations legislation, collective bargaining negotiations with other bargaining units and other labor relations matters.

1.2 In performing the services, the FIRM will perform the following activities as part of, or in support of the services:

(a) Research, investigate, review and analyze all information necessary to carry out all Services;

(b) Negotiate, prepare and revise all agreements and other documents necessary for the performance of the services;

(c) Be available upon the reasonable request of the UNIVERSITY to consult with the officers and employees of the UNIVERSITY, and with any other group or person designated by the UNIVERSITY;

(d) Assist the UNIVERSITY in dispute resolution. With the approval of the UNIVERSITY, negotiate and engage in mediation, arbitration and litigation with any parties necessary to carry out the Services;

(e) Make all court appearances and filings and represent the UNIVERSITY in all actions, pending or threatened, suits, claims, investigations, legal, administrative, mediation or arbitration proceedings, whether at law or in equity in any forum (collectively, "Actions") as directed by the UNIVERSITY;

(f) Hire and consult with expert witnesses, consultants, mediators and investigators as may be reasonably and necessarily required and as approved by UNIVERSITY subject to the following requirements and limitations:

(1) Terms of subcontracts over five thousand dollars (\$5,000.00) must be

approved in writing and in advance by the UNIVERSITY. In requesting approval, FIRM must provide the basis for its recommendation that the subcontractor be retained and justification for the recommended subcontractor's proposed rates and reimbursements.

(2) Subcontracts or agreements must include terms which are substantially similar to the billing terms in the Compensation and Reimbursement Section of this Agreement.

(3) FIRM's bills for subcontracted work must include full detailed itemizations of all fees and expenses for the subcontracted work, with appropriate supporting documentation.

(g) Provide all necessary paralegal and clerical support; and

(h) Prepare and keep current a synopsis of relevant research, processes and procedures developed during the course of FIRM's performance under this Agreement in a format that is easily accessible to the UNIVERSITY as directed by the Office of the General Counsel.

## **SECTION 2: AGREEMENT ADMINISTRATION**

2.1 The person in charge of administering this Agreement on behalf of the UNIVERSITY shall be the General Counsel, or his successor in function, whose address and telephone number are as follows:

NAME: RICHARD F. ORR  
TITLE: VICE PRESIDENT AND GENERAL COUNSEL  
AGENCY: UNIVERSITY OF CONNECTICUT  
ADDRESS: 343 Mansfield Road, U-1177  
Storrs, CT 06269-1177  
TELEPHONE: (860) 486-5796  
E-MAIL: [richard.orr@uconn.edu](mailto:richard.orr@uconn.edu)

2.2 The person in charge of administering this Agreement on behalf of the FIRM shall be John J. Peirano, whose title, address, office telephone, cell phone, fax number and e-mail are as follows:

NAME: JOHN J. PEIRANO  
TITLE: SENIOR PARTNER  
FIRM: McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP  
ADDRESS: 1300 Mount Kemble Avenue, P.O. Box 2075  
Morristown, NJ 07962-2075  
OFFICE PHONE: (973) 425-8711  
CELL PHONE: (973) 214-0136  
FAX NUMBER: (973) 425-0161  
E-MAIL: [jpeirano@mdmc-law.com](mailto:jpeirano@mdmc-law.com)

### **SECTION 3: COMPENSATION AND REIMBURSEMENT**

3.1 The UNIVERSITY agrees to compensate the FIRM for Services in accordance with the following rate schedule but not to exceed \$250,000 for the initial term of this Agreement.

<b><u>Position</u></b>	<b><u>Hourly Rate</u></b>
Senior Partner	\$310.00
Partner	\$300.00
Of Counsel	\$275.00
Senior Associate	\$250.00
Junior Associate	\$225.00
Paralegal	\$145.00

The above hourly rates shall be charged only for actual time spent rendering such Services; the FIRM shall not "round off" time. The time spent rendering Services shall be billed to the tenth part of an hour. The UNIVERSITY shall not be charged for any other time expended by the FIRM during travel, overnight stays, or the like associated with the performance of the Services. The FIRM shall be reimbursed for reasonable travel and lodging expenses incurred in connection with the performance of the Services.

3.2 Compensation will be paid only after the submission of itemized documentation, in a form acceptable to the General Counsel. Billings are to be submitted on a monthly basis to General Counsel, University of Connecticut, 343 Mansfield Road, Unit 1177, Storrs, CT 06269-1177. The billings must contain, at a minimum, a detailed description of the work performed, the date of performance, the actual time spent performing the work, and the name and position of the person(s) rendering the Service. Provided, however, if the UNIVERSITY and the FIRM have agreed to a fixed fee or other billing arrangement not based on hourly rates, the UNIVERSITY may waive the requirement for hourly detail. When requested, the monthly bill must also be accompanied by a summary memorandum describing how the Service rendered furthered resolution of the matter and the current status of the matter. The General Counsel may, prior to authorizing payment under this Section, require the FIRM to submit such additional accounting and information as the General Counsel deems necessary or appropriate. The FIRM shall not be compensated for any time spent preparing any billing documentation, including but not limited to such documentation and accompanying memoranda required by subsections 3.2, 3.3, 3.5, 3.6, 3.10, and 9.3. Notwithstanding the foregoing, the FIRM is entitled to reasonable compensation for meetings with the General Counsel or other UNIVERSITY officials to determine an appropriate budget.

3.3 Prior to performing certain Services, the UNIVERSITY may request the FIRM to submit to the General Counsel for approval, a projected plan and budget containing, but not limited to, a brief statement of the case or matter, a description of the nature and scope of the various phases of the Services expected to be performed, an estimate of the cost of the work broken down into the various phases of the Services, and an estimate of the time required to successfully complete the Services. Prior to effecting, undertaking or initiating a material change in the Service, the FIRM shall submit to the General Counsel for approval, a revised projected plan and budget that reflects the changes to the existing projected plan and budget. If the revised projected plan and budget contains a projected cost exceeding the amount contained in the budget, the FIRM shall consult with the General Counsel, for the purpose of: (1) revising the scope of services; (2) revising the maximum compensation amount; (3) some combination

thereof; or, (4) other action permitted under this Agreement or any agreed-upon amendment. The General Counsel, in his or her sole discretion, may require revisions, supplements and modifications of the projected plan and budget from time to time. The FIRM will not be compensated for the preparation, amendment, or modification of said projected plan and budget. Where the Services specified in the original projected plan and budget are not performed or fully completed to the satisfaction of the General Counsel within six months of the projected completion date set forth in the original projected plan and budget, the compensation rates set forth in subsection 3.1 of this Agreement for the remaining Services shall all be reduced prospectively by ten percent of the original rate for each additional six months it takes the FIRM to complete the work to the satisfaction of the General Counsel, unless failure to complete the work within the specified time period was beyond the control of the FIRM as determined by the General Counsel. The General Counsel, in his or her sole discretion, shall determine when the work has been satisfactorily completed.

3.4 The UNIVERSITY agrees to reimburse the FIRM for actual, necessary and reasonable out-of-pocket disbursements and expenses, including filing fees, court costs, long distance telephone calls, and transcript or deposition costs. The UNIVERSITY shall not reimburse the FIRM for any overhead related expenses, including, but not limited to, duplicating, secretarial, computerized research, facsimile, clerical staff, library staff, proofreading staff or meals. The UNIVERSITY shall not reimburse the FIRM transportation costs or expenses unless they are approved in advance and in writing by the General Counsel. Normally in state mileage will not be reimbursed. The FIRM shall be reimbursed for reasonable lodging and meals associated with overnight travel and for reasonable transportation including mileage from Morristown, NJ to Storrs, CT but specifically excluding first class air fare.

3.5 The FIRM shall not be compensated for time spent on background or elementary legal research or any legal training without the prior written consent of the General Counsel. Charges for any other legal research must be accompanied by a detailed description setting forth the purpose of the research and summarizing its nature. Prior to undertaking research that utilizes WESTLAW or LEXIS or any other similar legal research database or service, the prior written approval of the General Counsel is required if FIRM intends to seek reimbursement of any attendant costs from the UNIVERSITY. Any written material produced as a result of such research must be submitted to the General Counsel or his or her designee. The General Counsel shall have the final decision in all disputes between the parties to this Agreement under this subsection.

3.6 The FIRM shall not be compensated for time spent in consultation with any attorney or other employee of the UNIVERSITY concerning the administration of this Agreement and/or issues relating to billing. Compensation for time spent by attorneys of the FIRM communicating with other attorneys within the FIRM shall be limited to those instances when collaboration between attorneys is expected to be of benefit to the State. These charges must be accompanied by a detailed description setting forth the purpose of the communication and summarizing its details. The General Counsel shall make the final determination, in his or her sole discretion, as to the adequacy of such description.

3.7 Notwithstanding the provisions of Section 3.6, absent the prior written consent of the General Counsel, the FIRM shall not be compensated for the attendance or participation of more than one attorney representing the UNIVERSITY in connection with any Action. Where more than one attorney has attended or participated in any Action without the prior written

consent of the General Counsel, the FIRM shall be compensated for the time of the most senior attorney in attendance.

3.8 The FIRM shall not be compensated for the performance of paralegal or clerical type duties performed by an attorney. Paralegal duties or clerical duties include, by way of example, routine proofreading of pleadings and other correspondence, preparation of trial or closing binders or notebooks, photocopying and coordinating the schedules of others.

3.9 The General Counsel shall approve for payment all undisputed costs, as soon as the said documentation can properly be processed. All costs and expenses shall be billed and paid at actual cost without markup.

3.10 The FIRM shall maintain accurate records and accounts of all expenditures under this Agreement as well as satisfactory evidence of payment to assure proper accounting. Such records and accounts shall be kept in the manner specified in subsection 8.4, and made available and furnished upon request to the General Counsel until three (3) years after the termination of this Agreement.

3.11 The UNIVERSITY shall have the right, without the need of prior notice to the FIRM, to substitute an Associate or Assistant Attorney General or a University attorney for the FIRM on any facet or aspect of the Services when the General Counsel, in his or her sole discretion, finds that such a substitution would best serve the interests of the UNIVERSITY.

3.12 Compensation and reimbursement provided under this Section 3 constitutes full and complete payment for all costs and expenses incurred or assumed by the FIRM in performing this Agreement. No other costs, expenses or overhead items shall be reimbursed by the UNIVERSITY.

#### **SECTION 4: TERMINATION OF AGREEMENT BY THE UNIVERSITY**

4.1 The UNIVERSITY, on written notice, may immediately suspend, postpone, abandon, or terminate this Agreement at any time and for any reason, including convenience, and such action shall in no event be deemed to be a breach of contract.

4.2 Upon receipt of written notification from the General Counsel of termination, the FIRM shall immediately cease to perform the Services, subject to the approval of the Court in litigation matters. The FIRM shall assemble all material that has been prepared, developed, furnished, or obtained under the terms of this Agreement, in electronic, magnetic, paper or any other form, that may be in his possession or custody, and shall transmit the same to the General Counsel as soon as possible and, for ongoing matters, no later than the fifteenth day following the receipt of the above written notice of termination, and the sixtieth day for all other matters, together with a description of the cost of the Services performed to said date of termination.

#### **SECTION 5: TERMINATION OF AGREEMENT BY THE FIRM**

5.1 The FIRM, on thirty (30) days prior written notice to the General Counsel, may terminate this Agreement, subject to the approval of the Court in litigation matters.

5.2 If the FIRM terminates this Agreement for any reason other than a breach by the UNIVERSITY, the FIRM shall be liable to the UNIVERSITY for the fees and expenses incurred by the UNIVERSITY in engaging replacement counsel on any pending matter for which FIRM is actively engaged in performing Services and bringing such firm up to speed. For purposes of this paragraph, FIRM will be considered “actively engaged” in all matters of pending litigation, arbitration and/or mediation.

5.3 On the effective date of termination, the FIRM shall immediately cease to perform the Services. The FIRM shall assemble all material that has been prepared, developed, furnished, or obtained under the terms of this Agreement, in electronic, magnetic, paper or any other form, that may be in its possession or custody, and shall deliver the same to the General Counsel on or before the fifteenth day following the transmittal of the written notice of termination for ongoing matters, and the sixtieth day for all other matters, together with a description of the cost of the Services performed to said date of termination.

## **SECTION 6: SETOFF**

In addition to all other remedies that the UNIVERSITY may have, the UNIVERSITY, in its sole discretion, may setoff (1) any costs or expenses that the UNIVERSITY incurs resulting from the FIRM’s unexcused non-performance under the Agreement and under any other agreement or arrangement that the FIRM has with the UNIVERSITY and (2) any other amounts that are due or may become due from the UNIVERSITY to the FIRM, against amounts otherwise due or that may become due to the FIRM under the Agreement, or under any other agreement or arrangement that the FIRM has with the UNIVERSITY. The UNIVERSITY’s right of setoff shall not be deemed to be the UNIVERSITY’s exclusive remedy for the FIRM breach of the Agreement, all of which shall survive any setoffs by the UNIVERSITY.

## **SECTION 7: TIME OF PERFORMANCE**

7.1 The FIRM shall perform the Services at such times and in such sequence as may be reasonably directed by the General Counsel.

7.2 This Agreement will run from its effective date for an initial term of three (3) years with an option to extend, by mutual consent, for up to one (1) additional two (2) year period for a total of five (5) years. Said extension will be effectuated by written amendments to this Agreement, executed by both parties and approved by the Office of the Attorney General.

## **SECTION 8: REPRESENTATIONS AND WARRANTIES**

The FIRM represents and warrants to the UNIVERSITY that:

8.1 The FIRM has duly authorized the execution and delivery of this Agreement and the performance of the contemplated Services;

8.2 The FIRM will comply with all applicable State, federal and local laws in satisfying its obligations to the UNIVERSITY under and pursuant to this Agreement;

8.3 The execution, delivery and performance of this Agreement by the FIRM will not violate, be in conflict with, result in a breach of or constitute (with or without due notice and/or

lapse of time) a default under any of the following, as applicable: (i) any provision of law; (ii) any order of any court or any Department; or (iii) any indenture, agreement, document or other instrument to which it is a party or by which it may be bound;

8.4 The FIRM shall not copy or divulge to any third party any information or any data in any form obtained or produced in connection with the performance of its duties and responsibilities pursuant to this Agreement other than in connection with the performance of those duties and responsibilities. The FIRM shall insure that all confidential or privileged records are kept in secured areas and shall take reasonable precautions to protect the records in its custody from the dangers of fire, theft, flood, natural disasters and other physical threats, as well as unauthorized access.

8.5 The FIRM shall not represent any other client if such representation would result in a conflict of interest that would violate or potentially violate Rules 1.7-1.9 of the Rules of Professional Conduct, as they may be amended from time to time. The FIRM will perform a detailed conflict of interest check prior to performing any Services and, on or before the effective date of this Agreement, shall have reported the results to the General Counsel. When there is a disagreement between the parties to this Agreement as to whether or not the FIRM has or may in the foreseeable future have a conflict of interest as described above, the General Counsel's determination shall be final and dispositive of the issue. Where the General Counsel determines that the FIRM's representation of any client constitutes a conflict of interest, as described above, the FIRM shall, within five days of the receipt of notice by the General Counsel to the FIRM, withdraw from the representation of the other client, unless such a withdrawal is barred by law or order of a court of competent jurisdiction or all relevant parties waive such conflict.

8.6 Unless the General Counsel designates otherwise in writing, all information or data, in any form, and all papers, recordings, documents and instruments generated or collected by the FIRM, or any subcontractor, in the scope of his work under this Agreement shall be deemed to be the exclusive property of the UNIVERSITY and no one else shall have any right, including but not limited to, intellectual property rights, including copyright and trademark rights, in those items.

8.7 The FIRM may not enter into or retain any business relationships or enterprise in which an employee of the UNIVERSITY holds an interest, other than a nominal interest in a publicly held corporation, without the prior written consent of the General Counsel.

8.8 The FIRM acknowledges that the UNIVERSITY has relied upon all of FIRM's representations in its Proposal in response to the UNIVERSITY'S Solicitation for Outside Legal Counsel concerning this matter.

## **SECTION 9: STATUS REPORTS AND RECORDS**

9.1 Upon written or oral request by the General Counsel, the FIRM will promptly report on the status of the Services performed, including, but not limited to, problems, strategy, analysis and the like.

9.2 The above-described reports shall be provided in writing or orally, as directed by the person requiring a work status report.



9.3 The FIRM, upon the request of the General Counsel, shall give to the General Counsel, for the UNIVERSITY's permanent records, all original documentation, or, in the sole discretion of the General Counsel, copies thereof, filed in, or arising out of, the FIRM's performance of the Services. FIRM shall otherwise maintain all original documentation, or copies thereof in the manner specified in subsection 8.4, for a period of three (3) years after the termination of this Agreement.

**SECTION 10: INSURANCE**

10.1 The FIRM shall secure and maintain, at no cost or expense to the UNIVERSITY, a professional liability insurance policy in a form acceptable to the UNIVERSITY, in the minimum amount of Five Million Dollars. This policy shall insure the FIRM against Actions, damages, and costs resulting from negligent acts, errors, and omissions in the work performed by the FIRM on and after the effective date of, and under the terms of, this Agreement. The FIRM shall be liable, as stated above herein, to the extent of the deductible amount.

10.2 No later than the effective date of this Agreement, the FIRM shall furnish to the UNIVERSITY on a form or forms acceptable to the General Counsel, a Certificate of Insurance, and amendment(s) thereto, fully executed by an insurance company or companies satisfactory to the UNIVERSITY, for the insurance policy or policies required in subsection 10.1, which policy or policies shall be in accordance with the terms of said Certificate of Insurance.

**SECTION 11: INDEMNIFICATION**

11.1. The FIRM shall indemnify, defend and hold harmless the UNIVERSITY, and its successors and assigns, from and against all actions (pending or threatened and whether at law or in equity) in any forum, liabilities, damages, losses, costs and expenses, including but not limited to reasonable attorneys' fees and other professionals' fees, resulting from (1) misconduct or negligent or wrongful acts (whether of commission or omission) of the FIRM or any of its members, directors, officers, shareholders, representatives, agents, servants, employees or other persons or entities under the supervision or control of the FIRM while rendering professional services to the UNIVERSITY under this Agreement, or (ii) any breach or non-performance by the FIRM of any representation, warranty, duty or obligation of the FIRM under this Agreement ((i) and (ii), each and collectively, the "Acts"). The FIRM shall use counsel acceptable to the UNIVERSITY in carrying out its obligations under this Section. The FIRM's obligations under this section to indemnify, defend and hold harmless against claims includes claims concerning confidentiality of any part of or all of the proposal or any records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions or articles furnished or used in the performance of this Agreement.

11.2 The FIRM shall not use, raise or plead the defense of sovereign or governmental immunity in the adjustment or settlement of any claim against the FIRM arising out of the work performed under this Agreement, or as a defense in any claim, unless specifically authorized to do so in writing by the General Counsel.

## **SECTION 12: CHANGES TO THIS AGREEMENT**

12.1 The terms of this Agreement may be amended only by mutual consent of the parties, effectuated by an Amendment in writing and executed by the parties to this Agreement and approved by the Office of the Attorney General. For purposes of this Section 12, an exchange of emails is not sufficient.

12.2 Any and all amendments, changes, extensions, revisions or discharges of this Agreement, in whole or in part, on one or more occasions, shall not be invalid or unenforceable due to lack of or insufficiency of consideration.

## **SECTION 13: REQUIRED PERSONNEL/OFFICE**

13.1 On or before the effective date of this Agreement, the FIRM shall have secured, and shall maintain during the term of this Agreement, all at its sole cost and expense: (i) such appropriately skilled and competent personnel and supporting staff in adequate numbers; and, (ii) such equipment as reasonably necessary or appropriate to fully perform the Services to the satisfaction of the UNIVERSITY.

13.2 The personnel shall not be employees of or have any contractual relationship with the UNIVERSITY.

13.3 All the Services shall be performed by the FIRM or under its supervision, and all personnel engaged in the Services shall be fully qualified and shall be authorized or permitted under State or local law to perform the applicable Services.

## **SECTION 14: NONDISCRIMINATION AND AFFIRMATIVE ACTION PROVISIONS**

(a) For purposes of this Section, the following terms are defined as follows: (i) "Commission" means the Commission on Human Rights and Opportunities; (ii) "Contract" and "contract" include any extension or modification of the Contract or contract; (iii) "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor; (iv) "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose; (v) "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations; (vi) "good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements; (vii) "marital status" means being single, married as recognized by the State of Connecticut, widowed, separated or divorced; (viii) "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders; (ix) "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock,

if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes § 32-9n; and (x) "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

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

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

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

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

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

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

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

(h) The Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with

Connecticut General Statutes § 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

## **SECTION 15: APPLICABLE EXECUTIVE ORDERS OF THE GOVERNOR**

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

## **SECTION 16: SEEC CAMPAIGN CONTRIBUTION RESTRICTIONS**

For all State contracts as defined in Public Act 07-1 having a value in a calendar year of \$50,000 or more or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Agreement expressly acknowledges receipt of the State Elections Enforcement Commission's Notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the Notice below:

CONNECTICUT STATE ELECTIONS ENFORCEMENT COMMISSION  
Rev. 1/11

SEEC FORM 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](http://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.

## **SECTION 17:            CONFIDENTIALITY**

All of the reports, information, data, and other papers and materials in whatever form prepared or assembled by the FIRM under this Agreement are confidential and may be privileged. The FIRM shall not make them available to any individual or organization without the prior written approval of the General Counsel.

## **SECTION 18:            MISCELLANEOUS**

18.1 This Agreement, its terms and conditions and Claims arising therefrom shall be governed by Connecticut law, without regard to choice of law provisions.

18.2 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.

18.3 The parties each bind themselves, their partners, successors, assigns, and legal representatives with respect to all covenants of this Agreement.

18.4 This Agreement incorporates all the understandings of the parties and supersedes any and all agreements reached by the parties prior to the execution of this Agreement, whether oral or written, and no alteration, modification or interpretation of this Agreement shall be binding unless in writing and duly executed by the parties.

18.5 If any provision of this Agreement, or application to any party or circumstances, is held invalid by any court of competent jurisdiction, the balance of the provisions of this Agreement, or their application to any party or circumstances, shall not be affected, but only if the balance of the provisions of this Agreement would then continue to conform to the requirements of applicable laws.

18.6 The waiver of a term or condition by the General Counsel shall not: (i) entitle the FIRM to any future waivers of the same or different terms or conditions; (ii) impose any duties, obligations or responsibilities on the UNIVERSITY, not already in the Agreement, as amended, modified or superseded; or (iii) subject the UNIVERSITY to any Claims.

18.7 References in the masculine gender shall also be construed to apply to the feminine and neuter genders, as the content requires.

18.8 Nothing in this Agreement shall be construed as a waiver or limitation of sovereign immunity by the State or the UNIVERSITY.

18.9 Any notice required or permitted to be given under this Agreement shall be deemed to be given when hand delivered or one (1) business day after pickup by Federal Express, UPS or similar overnight express service, in either case addressed to the parties below:

If to FIRM:

NAME: JOHN J. PEIRANO  
TITLE: SENIOR PARTNER  
FIRM: McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP  
ADDRESS: 1300 Mount Kemble Avenue, P.O. Box 2075  
Morristown, NJ 07962-2075  
OFFICE PHONE: (973) 425-8711  
E-MAIL: [jpeirano@mdmc-law.com](mailto:jpeirano@mdmc-law.com)

If to the UNIVERSITY, the General Counsel, as set forth in subsection 2.1, or in each case to such other address as either party may from time to time designate by giving notice in writing to the other party. Telephone and facsimile numbers are for informational purposes only. Effective notice will be deemed given only as provided above.



18.10 Where this agreement provides that a decision, determination or act shall be at the direction of, to the satisfaction of, or by the General Counsel, or contains similar language, such decision, determination, act or discretion, as with all other acts and conduct of both parties in connection with this Agreement, shall be exercised reasonably and in good faith.

18.11 The captions in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement or the scope of content of any of its provisions.

18.12 Time is of the essence in this Agreement.

18.13 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 FIRM or the UNIVERSITY, 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.

18.14 This Agreement may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument.

18.15 When this Agreement provides for written approval by the General Counsel, unless otherwise specified, an exchange of emails will satisfy this requirement. Actions required to be taken by the General Counsel may be taken by a designee of the General Counsel.

**IN WITNESS WHEREOF**, the parties have executed two (2) counterparts of this Agreement as of the dates written below.


**FIRM: McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP**

Aug. 28, 2015  
DATE

By:   
JOHN J. PEIRANO  
SENIOR PARTNER

**AGENCY: UNIVERSITY OF CONNECTICUT**

Sept. 1, 2015  
DATE

By:   
RICHARD F. ORR  
VICE PRESIDENT & GENERAL COUNSEL

DATE

9/2/15

By:


  
SCOTT JORDAN  
EXECUTIVE VICE PRESIDENT AND  
CHIEF FINANCIAL OFFICER

ATTORNEY GENERAL:

APPROVED AS TO FORM

DATE

9/11/15

  
Asst. ASSOCIATE ATTORNEY GENERAL  
Robert W. Clark