

REQUEST FOR INFORMATION FOR

WORKFORCE MANAGEMENT SOLUTION

ISSUING OFFICE

**PENNSYLVANIA LIQUOR CONTROL BOARD
PURCHASING AND CONTRACT ADMINISTRATION
ROOM 312, NORTHWEST OFFICE BUILDING
HARRISBURG, PENNSYLVANIA 17124**

RFI NUMBER: 20200910

DATE OF ISSUANCE

September 25, 2020

**REQUEST FOR INFORMATION FOR
WORKFORCE MANAGEMENT SOLUTION**

TABLE OF CONTENTS

Part I — GENERAL INFORMATION	3
Part II — WORK STATEMENT	5
Part III —REQUEST FOR INFORMATION FORMAT	6

APPENDICES

APPENDIX A: QUESTIONS FOR RESPONDENTS TO ADDRESS

APPENDIX B: TRADE SECRET/CONFIDENTIAL PROPRIETARY INFORMATION

APPENDIX C: SOFTWARE/SERVICES LICENSE REQUIREMENTS AGREEMENT

PART I GENERAL INFORMATION

PURPOSE

The Pennsylvania Liquor Control Board (“PLCB”) is the Commonwealth’s primary retailer of wine and spirits and the agency responsible for regulatory control of beverage alcohol in Pennsylvania. The PLCB employs individuals in approximately 600 retail locations across Pennsylvania.

The PLCB, in pursuit of responsibly selling wine and spirits, is seeking to take a more dynamic and granular approach to staffing, scheduling, and recording time for its \$2.5B dollar retail enterprise comprised of approximately 600 stores, e-commerce and licensee fulfillment centers. This is a shift from the current approach of staffing stores based on yearly estimates of store sales, to an approach that will establish a balanced labor model based on more contemporary data, which will drive efficiencies and improve customer experience.

The PLCB seeks a third-party vendor to provide a turnkey solution that will allow the PLCB to determine staffing needs at the store level, create individual employee schedules based on those staffing needs, track time and attendance, administer absences and leave requests, and measure productivity. The purpose of this Request for Information (“RFI”) is to gather information, including potential costs, for a complete time and attendance/scheduling system that has already been successfully implemented in a retail environment with complex pay rules. The PLCB is seeking a scalable solution with a fully functional, web or cloud-based application, as well as equipment offering configurable methods of recording and tracking time and attendance for over 600 store locations throughout Pennsylvania.

This best-in-class labor model has four elements: 1. Forecast demand; 2. Plan capacity; 3. Schedule and control resources; 4. Handle day-of operations demands. The PLCB wishes to forecast labor based on drivers of demand, using activity-specific metrics to arrive at a true labor need. These drivers should be rigorously measured and periodically refreshed. Demand incorporates hourly and seasonal needs. Next, the labor demand will be translated into a labor budget. Capacity is then planned annually or quarterly with balanced flexibility of labor mix to respond to peaks (e.g., more part-time and seasonal labor). Next, a centralized analytics engine should estimate labor demand based on workload expectation and sales plan for upcoming periods. Schedules should be auto-generated based on labor demand and staff availability pre-populated into the system. Finally, the solution should be able to handle day-of demands such as absentee gaps or unexpected deliveries or mechanical breakdowns, as well as documenting start and quit times, late arrivals, and early departures. The PLCB wishes to fully automate time collection and its movement into the Commonwealth’s SAP for payroll.

This RFI is issued solely for information and planning purposes and does not constitute a procurement solicitation. Responses to this notice are not offers and cannot be accepted to form a binding contract. Information provided in this RFI is not intended to convey any predisposition to a particular solution, method or service delivery methodology, nor does it intend to limit response creativity.

TIMELINE

Responses are due via email to Tammy McQuaid, RFI Issuing Officer, at tamcquaid@pa.gov by **12 noon on Friday, October 30, 2020.**

RESPONDING INFORMATION

If you wish to respond, please submit a complete response using the format in Part III of this RFI. Although the PLCB may ultimately issue a competitive bid solicitation on the basis of the information gathered from this RFI, there is no guarantee that this will occur.

Responses should be prepared simply and economically, providing straight-forward and concise descriptions.

PROPRIETARY INFORMATION

To the extent permissible by law, responses will be held in confidence and will not be revealed or discussed with other responders. All material submitted in response to this RFI becomes property of the PLCB and may be returned only at the PLCB's discretion. Responses submitted may be reviewed and evaluated by any persons at the discretion of the PLCB, to the extent permissible by applicable laws and Commonwealth policies. The PLCB has the right to use any or all ideas presented in responses in any future formulation of a competitive bid solicitation.

SUBMISSION COSTS

The PLCB is not liable for any cost or expenses incurred by responders in the preparation and submission of responses related this RFI.

ELECTRONIC VERSION

This RFI is being made available by electronic means. If a responder electronically accepts the RFI, the responder acknowledges and accepts full responsibility to ensure that no changes are made to the RFI. In the event of a conflict between a version of the RFI in a responder's possession and the Issuing Office's version of the RFI, the Issuing Office's version shall govern.

PART II WORK STATEMENT

GOALS

The PLCB is seeking a scheduling and time and attendance software system with time entry capability. The software system shall be web or cloud based and designed to enable supervisors to create store schedules and allow employees to track/submit hours worked electronically, eliminating current paper processes.

The PLCB seeks a solution including the following specific deliverables and services:

1. Eliminate current paper processes for scheduling staff and tracking time and attendance.
2. Allow for complex, rule-based, scheduling that considers various collective bargaining agreements.
3. Forecast demand: Labor forecasted based on rigorously measured and periodically refreshed drivers of demand, using activity-specific metrics to arrive at true labor need.
4. Plan capacity: Translate labor demand into a labor budget and capacity planned regularly with balanced flexibility of labor mix to respond to peaks (e.g., more part-time and seasonal labor).
5. Schedule and control resources: A centralized analytics engine estimates labor demand based on workload expectation and sales plan for upcoming periods and creates schedules in a standardized fashion with the aid of technology and a user-friendly scheduling interface.
6. Day-of operations: Provide methods to call in or redeploy staff in the event of unexpected absences, delays/downtime or additional demands.
7. Provide data analytics services related to time and attendance and a dashboard displaying key performance indicators.

**PART III
REQUEST FOR INFORMATION FORMAT**

A. COVER LETTER

A cover letter must be provided with your RFI response. The cover letter should include:

1. An introduction of your company.
2. The name, title, mailing address, telephone number, and email address of the person to be contacted.
3. A description of specific experience and qualifications in providing a scheduling and time and attendance software system with time entry capability.

B. CONCEPTUAL SOLUTIONS AND STRATEGIES

Please address the topics and questions in Appendix A.

C. TRADE SECRET/CONFIDENTIAL PROPRIETARY INFORMATION

If applicable, complete Appendix B Trade Secret/Confidential Proprietary Information Notice.

**APPENDIX A:
QUESTIONS FOR RESPONDENTS TO ADDRESS**

1. What technical specifications and information do you need in order to determine compatibility with and understand integration into the Commonwealth's payroll processing software?
2. Advise your willingness to sign Appendix C: Software/Services License Requirements Agreement to onboard with CDW as a reseller for your proposed solution?
3. Would you perform a demonstration of your proposed solution if requested by the PLCB?

APPENDIX B

TRADE SECRET/CONFIDENTIAL PROPRIETARY INFORMATION NOTICE

Instructions:

The Commonwealth may not assert on behalf of a third party an exception to the public release of materials that contain trade secrets or confidential proprietary information unless the materials are accompanied, at the time they are submitted, by this form or a document containing similar information.

It is the responsibility of the party submitting this form to ensure that all statements and assertions made below are legally defensible and accurate. The Commonwealth will not provide a submitting party any advice with regard to trade secret law.

Name of submitting party:

Contact information for submitting party:

Please provide a brief overview of the materials that you are submitting (e.g. bid proposal, grant application, technical schematics):

Please provide a brief explanation of why the materials are being submitted to the Commonwealth (e.g., in response to PLCB Request for Information #12345):

Please provide a list detailing which portions of the material being submitted you believe constitute a trade secret or confidential proprietary information, and please provide an explanation of why you think those materials constitute a trade secret or confidential proprietary information. Also, please mark the submitted material in such a way to allow a reviewer to easily distinguish between the parts referenced below. You may attach additional pages if needed.

Note: The following information will not be considered a trade secret or confidential proprietary information:

- Any information submitted as part of a vendor’s cost proposal
- Information submitted as part of a vendor’s technical response that does not pertain to specific business practices or product specification
- Information submitted as part of a vendor’s technical or disadvantaged business response that is otherwise publicly available or otherwise easily obtained
- Information detailing the name, quantity, and price paid for any product or service being purchased by the Commonwealth

Page Number	Description	Explanation

Acknowledgment

The undersigned party hereby agrees that it has read and completed this form and has marked the material being submitted in accordance with the instructions above. The undersigned party acknowledges that the Commonwealth is not liable for the use or disclosure of trade secret data or confidential proprietary information that has not been clearly marked as such, and which was not accompanied by a specific explanation included with this form.

The undersigned agrees to defend any action seeking release of the materials it believes to be trade secret or confidential, and indemnify and hold harmless the Commonwealth, its agents and employees, from any judgments awarded against the Commonwealth in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives so long as the Commonwealth has possession of the submitted material and will apply to all costs unless and until the undersigned provides a written statement or similar notice to the Commonwealth stating that it no longer wishes to exempt the submitted material from public disclosure.

The undersigned acknowledges that the Commonwealth is required to keep all records for at least as long as specified in its published records retention schedule.

The undersigned acknowledges that the Commonwealth reserves the right to reject the undersigned's claim of trade secret/confidential proprietary information if the Commonwealth determines that the undersigned has not met the burden of establishing that the information constitutes a trade secret or is confidential. The undersigned also acknowledges that if only a certain part of the submitted material is found to constitute a trade secret or is confidential, the remainder of the submitted material will become public; only the protected information will be removed and remain nonpublic.

If being submitted electronically, the undersigned agrees that the mark below is a valid electronic signature.

Signature

Title

Date

APPENDIX C
SOFTWARE/SERVICES LICENSE REQUIREMENTS AGREEMENT

PA Supplier ID Number: _____

SOFTWARE/SERVICES LICENSE REQUIREMENTS AGREEMENT

BETWEEN

THE COMMONWEALTH OF PENNSYLVANIA,

ACTING BY AND THROUGH THE [INSERT NAME OF AGENCY]

AND

[INSERT FULL NAME OF LICENSOR]

This Software/Services License Requirements Agreement (“Agreement”) by and between **[insert full name of Licensor]** (“Licensor”) and the **Commonwealth of Pennsylvania**, acting by and through the **[insert name of Agency]** (“Commonwealth”) is effective the date the Agreement has been fully executed by the Licensor and by the Commonwealth and all approvals required by Commonwealth contracting procedures have been obtained.

- 1. Order of Precedence.** The terms and conditions of this Agreement supplement, and to the extent a conflict exists, supersede and take precedence over the terms and conditions of the attached **[insert exhibits that are to be made part of this Agreement]**. The parties agree that the terms of this Agreement supersede and take precedence over the terms included in any quote, purchase order, terms of any shrink-wrap agreement included with the Licensed Products, terms of any click through agreement included with the Licensed Products or any other terms purported to apply to the Licensed Products. The products specified in Attachment 1, along with support and services for said products, shall be referred to as “Licensed Products.”

- 2. Enterprise Language:**
 - (a) The parties agree that more than one agency of the Commonwealth (“Commonwealth Agency”) may license products subject to this Agreement, provided that the procurement of any Licensed Products by any Commonwealth Agency must be made pursuant to one

or more executed purchase orders or purchase documents submitted by each Commonwealth Agency seeking to use the Licensed Products.

- (b) The parties agree that, if the licensee is a “Commonwealth Agency” as defined by Section 103 of the [Commonwealth Procurement Code, 62 Pa. C. S. § 103](#), the terms and conditions of this Agreement apply to the procurement of any Licensed Products made by the Commonwealth, and that the terms and conditions of this Agreement become part of the purchase order or other procurement document without further need for execution.

3. List of Licensed Products.

- (a) Attached hereto and made a part of this Agreement by reference is Attachment 1, which lists the Licensed Products that may be licensed under this Agreement. With the consent of the Commonwealth, the list of Licensed Products on Attachment 1 may be updated by the Licensor providing the Commonwealth with a revised Attachment 1 that adds the new product to the list. The Commonwealth, in its sole discretion, may consent either via written communication directly to the Licensor or, if applicable, providing the Commonwealth’s reseller with a copy of Licensor’s notification to update Attachment 1.
- (b) No amendment will be required to add a new Licensed Product to the list. If, however, the Licensor desires to add a new Licensed Product to the list that requires additional licensing terms or other requirements, either an amendment to this Agreement or a new agreement will be required.

4. Choice of Law/Venue. This Agreement shall be interpreted in accordance with and governed by the laws of the Commonwealth of Pennsylvania, without giving effect to its conflicts of law provisions. The courts of the Commonwealth of Pennsylvania and the federal courts of the Middle District of Pennsylvania shall have exclusive jurisdiction over disputes under this Contract and the resolution thereof.

5. Indemnification/Immunity. The Commonwealth does not have the authority to and shall not indemnify any entity. The Commonwealth agrees to pay for any loss, liability or expense, which arises out of or relates to the Commonwealth’s acts or omissions with respect to its obligations hereunder, where a final determination of liability on the part of the Commonwealth is established by a court of law or where settlement has been agreed to by the Commonwealth. This provision shall not be construed to limit the Commonwealth’s rights, claims or defenses that arise as a matter of law or pursuant to any other provision of this Agreement. No provision in this Agreement shall be construed to limit the sovereign immunity of the Commonwealth.

6. Patent, Copyright, Trademark and Trade Secret Protection.

- (a) The Licensor shall, at its expense, defend, indemnify and hold the Commonwealth harmless from any suit or proceeding which may be brought by a third party against the Commonwealth, its departments, officers or employees for the alleged infringement of any United States patents, copyrights, trademarks or trade dress, or for a misappropriation of a United States trade secret arising out of performance of this Agreement (“Claim”), including all Licensed Products provided by the Licensor. For the purposes of this Agreement, “indemnify and hold harmless” shall mean the Licensor’s specific, exclusive, and limited obligation to (a) pay any judgments, fines and penalties finally awarded by a court of competent jurisdiction, governmental/administrative body or any settlements reached pursuant to a Claim and (b) reimburse the Commonwealth for its reasonable administrative costs or expenses, including without limitation reasonable attorney’s fees, it necessarily incurs in handling the Claim. The Commonwealth agrees to give the Licensor prompt notice of any such claim of which it learns. Pursuant to the [Commonwealth Attorneys Act](#), Act of October 15, 1980, P.L. 950, No. 164, as amended, 71 P. S. §§ 732-101—732-506, the Office of Attorney General (“OAG”) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG, however, in its sole discretion, and under the terms the OAG deems appropriate, may delegate its right of defense of a Claim. If the OAG delegates the defense to the Licensor, the Commonwealth will cooperate with all reasonable requests of Licensor made in the defense of and/or settlement of a Claim. The Licensor shall not, without the Commonwealth’s consent, enter into any settlement agreement which (a) states or implies that the Commonwealth has engaged in any wrongful or improper activity other than the innocent use of the material which is the subject of the Claim, (b) requires the Commonwealth to perform or cease to perform any act or relinquish any right, other than to cease use of the material which is the subject of the Claim, or (c) requires the Commonwealth to make a payment which the Licensor is not obligated by this Agreement to pay on behalf of the Commonwealth. In all events, the Commonwealth shall have the right to participate in the defense of any such suit or proceeding through counsel of its own choosing. It is expressly agreed by the Licensor that, in the event it requests that the Commonwealth provide support to the Licensor in defending any such Claim, the Licensor shall reimburse the Commonwealth for all necessary expenses (including attorneys’ fees, if such are made necessary by the Licensor’s request) incurred by the Commonwealth for such support. If the OAG does not delegate to the Licensor the authority to control the defense and settlement of a Claim, the Licensor’s obligation under this section ceases. The Licensor, at its own expense, shall provide whatever cooperation the OAG requests in the defense of the suit.
- (b) The Licensor agrees to exercise reasonable due diligence to prevent claims of infringement on the rights of third parties. The Licensor certifies that, in all respects applicable to this Agreement, it has exercised and will continue to exercise due diligence to ensure that all Licensed Products provided under this Agreement do not infringe on the patents, copyrights, trademarks, trade dress, trade secrets or other proprietary interests of any kind which may be held by third parties.
- (c) If the defense of a Claim and the authority to control any potential settlements thereof is delegated to the Licensor, the Licensor shall pay all damages and costs finally awarded

therein against the Commonwealth or agreed to by the Licensor in any settlement. If information and assistance are furnished by the Commonwealth at the Licensor's written request, it shall be at the Licensor's expense, but the responsibility for such expense shall be only that within the Licensor's written authorization.

- (d) If, in the Licensor's opinion, any Licensed Product furnished hereunder is likely to or do become subject to a claim of infringement of a United States patent, copyright, trade dress or trademark, or for a misappropriation of trade secret, then without diminishing the Licensor's obligation to satisfy any final award, the Licensor may, at its option and expense:
 - (i) substitute functional equivalents for the alleged infringing Licensed Product, or
 - (ii) obtain the rights for the Commonwealth to continue the use of such Licensed Product.

- (e) If any of the Licensed Products provided by the Licensor are in such suit or proceeding held to constitute infringement and the use thereof is enjoined, the Licensor shall, at its own expense and at its option, either:
 - (i) procure the right to continue use of such infringing Licensed Products;
 - (ii) replace them with non-infringing items; or
 - (iii) modify them so that they are no longer infringing.

- (f) If the use of any Licensed Product is enjoined and the Licensor is unable to do any of the preceding set forth in subsection (e) above, the Licensor, upon return of the Licensed Product, agrees to refund to the Commonwealth:
 - (i) the license fee paid for the infringing Licensed Product, less the amount for the period of usage of the Licensed Product; and
 - (ii) the pro-rated portion of any maintenance fees representing the time remaining in any period of services for which payment was made.

- (g) The obligations of the Licensor under this section survive the termination of this Agreement.

- (h) Notwithstanding the above, the Licensor shall have no obligation under this section for:
 - (i) modification of any Licensed Products provided by the Commonwealth or a third party acting under the direction of the Commonwealth;
 - (ii) any material provided by the Commonwealth to the Licensor and incorporated into, or used to prepare any Licensed Products
 - (iii) use of any Licensed Product after Licensor recommends discontinuation because of possible or actual infringement and has provided one of the remedies under subsection (e) or subsection (f) above;
 - (iv) use of any Licensed Product in other than the specified operating environment;
 - (v) the combination, operation, or use of the Licensed Products with other products, services, or deliverables not provided by the Licensor as a system or the combination, operation, or use of the Licensed Products, service, or deliverable, with any products, data, or apparatus that the Licensor did not provide;
 - (vi) infringement of a non-Licensed Product alone;
 - (vii) the Commonwealth's use of any Licensed Product beyond the scope contemplated by the Agreement; or
 - (viii) the Commonwealth's failure to use corrections or enhancements made available to the Commonwealth by the Licensor at no charge.
- (i) The obligation to indemnify the Commonwealth, under the terms of this section, shall be the Licensor's sole and exclusive obligation for the infringement or misappropriation of intellectual property.

7. Virus, Malicious, Mischievous or Destructive Programming.

- (a) The Licensor warrants that the Licensed Products as delivered by the Licensor does not contain any viruses, worms, Trojan Horses, or other malicious or destructive code to allow unauthorized intrusion upon, disabling of, or erasure of the Licensed Products (each a "Virus"). However, the Licensed Products may contain a key limiting use to the scope and quantity of the license(s) granted, and license keys issued by Licensor for temporary use are time-sensitive.

- (b) The Licensor shall be liable for any damages incurred by the Commonwealth including, but not limited to, the expenditure of Commonwealth funds to eliminate or remove a computer virus or malicious, mischievous or destructive programming that results from the Licensor's failure to take proactive measures to keep virus or malicious, mischievous or destructive programming from originating from the Licensor or any of its employees, subcontractors or consultants through appropriate firewalls and maintenance of anti-virus software and security updates (such as operating systems security patches, etc.).
- (c) In the event of destruction or modification of any Licensed Products, the Licensor shall eliminate the virus, malicious, mischievous or destructive programming, restore the Commonwealth's software, and be liable to the Commonwealth for any resulting damages.

8. Limitation of Liability.

- (a) The Licensor's liability to the Commonwealth under this Agreement shall be limited the total dollar amount of purchase orders issued for Licensed Products and services covered by this Agreement during the during the twelve (12)-month period prior to the event giving rise to the damage claim. This limitation does not apply to damages:
 - (i) for bodily injury;
 - (ii) for death;
 - (iii) for intentional injury;
 - (iv) to real property or tangible personal property for which the Licensor is legally liable;
 - (v) Under **Section 6**, Patent, Copyright, Trade Secret and Trademark Protection;
 - (vi) for damages related to a breach of the security of a system maintained or managed by the Licensor, including the costs for notification, mitigation and credit monitoring services required due to such breach; or
 - (vii) under **Section 7**, Virus, Malicious, Mischievous or Destructive Programming.
- (b) In no event will the Licensor be liable for consequential, indirect, or incidental damages unless otherwise specified in the Agreement.

9. Payment.

The Commonwealth will make purchase and make payment through a reseller contract or another procurement document, which shall control with regard to payment amounts and provisions.

10. Termination.

- (a) The Licensor may not terminate for non-payment of an order issued through a reseller contract or another procurement document that controls payment.
- (b) The Commonwealth may terminate this Agreement without cause by giving the Licensor **30 calendar days'** prior written notice ("Notice of Termination") whenever the Commonwealth shall determine that such termination is in the best interest of the Commonwealth ("Termination for Convenience").

11. Background Checks.

- (a) Upon prior written request by the Commonwealth, the Licensor must, at its expense, arrange for a background check for each of its employees, as well as for the employees of its subcontractors, who will have access to the Commonwealth's IT facilities, either through on site or remote access. Background checks are to be conducted via the Request for Criminal Record Check form and procedure found at <http://www.psp.pa.gov/Pages/Request-a-Criminal-History-Record.aspx>. The background check must be conducted prior to initial access by an IT employee and annually thereafter.
- (b) Before the Commonwealth will permit an employee access to the Commonwealth's facilities, the Licensor must provide written confirmation to the office designated by the applicable Commonwealth Agency that the background check has been conducted. If, at any time, it is discovered that an employee has a criminal record that includes a felony or misdemeanor involving terrorist threats, violence, use of a lethal weapon, or breach of trust/fiduciary responsibility; or which raises concerns about building, system, or personal security, or is otherwise job-related, the Licensor shall not assign that employee to any Commonwealth facilities, shall remove any access privileges already given to the employee, and shall not permit that employee remote access to Commonwealth facilities or systems, unless the Commonwealth Agency consents, in writing, prior to the access being provided. The Commonwealth Agency may withhold its consent at its sole discretion. Failure of the Licensor to comply with the terms of this subsection may result in the default of the Licensor under its Agreement with the Commonwealth.

- (c) The Commonwealth specifically reserves the right to conduct background checks over and above that described herein.
- (d) Access to certain Capitol Complex buildings and other state office buildings is controlled by means of card readers and secured visitors' entrances. Commonwealth contracted personnel who have regular and routine business in Commonwealth worksites may be issued a photo identification or access badge subject to the requirements of the applicable Commonwealth Agency and the Department of General Services set forth in Enclosure 3 of [Commonwealth Management Directive 625.10 Amended, Card Reader and Emergency Response Access to Certain Capitol Complex Buildings and Other State Office Buildings](#). The requirements, policy and procedures include a processing fee payable by the Licensor for contracted personnel photo identification or access badges.

12. Confidentiality.

- (a) Definition. "Confidential Information:"
 - (i) For the Commonwealth: All data and other information of or in the possession of the Commonwealth or any Commonwealth Agency or any private individual, organization or public agency, in each case to the extent such information and documentation is not permitted to be disclosed to third parties under local, Commonwealth or federal laws and regulations or pursuant to any policy adopted by the Commonwealth or pursuant to the terms of any third-party agreement to which Commonwealth is a party.
 - (ii) For the Licensor: All information identified in writing by the Licensor as confidential or proprietary to Licensor or its subcontractors.
- (b) Confidential Information. All Confidential Information of or relating to a party shall be held in confidence by the other party to the same extent and in at least the same manner as such party protects its own confidential or proprietary information. Neither party shall disclose, publish, release, transfer or otherwise make available any Confidential Information of the other party in any form to, or for the use or benefit of, any person or entity without the other party's consent. Subject to the other provisions of this Agreement, each party shall, however, be permitted to disclose relevant aspects of the other party's Confidential Information to its officers, agents, subcontractors and personnel and to the officers, agents, subcontractors and personnel of its corporate affiliates or subsidiaries to the extent that such disclosure is reasonably necessary for the performance of its duties and obligations under this Agreement; provided, however, that such party shall take all reasonable measures to ensure that Confidential Information of the other party is not disclosed or duplicated in contravention of the provisions of this Agreement by such officers, agents, subcontractors and personnel and that such party shall be responsible for any unauthorized disclosure of the Confidential Information of

the other party by such officers, agents, subcontractors or personnel; and further provided, that if the disclosure is by the Commonwealth to another contractor or subcontractor, such disclosure is subject to a suitable non-disclosure agreement imposing equally or more stringent requirements for data privacy and security. Except to the extent provided otherwise by any applicable law, the obligations of this subsection (b) shall not apply with respect to information which:

- (i) is developed by the other party without violating the disclosing party's proprietary rights,
 - (ii) is or becomes publicly known (other than through unauthorized disclosure),
 - (iii) is disclosed by the owner of such information to a Third Party free of any obligation of confidentiality,
 - (iv) is already known by such party without an obligation of confidentiality other than pursuant to this Agreement or any confidentiality contract entered into before the Effective Date of the Agreement between the Commonwealth and the Licensor, or
 - (v) is rightfully received by the disclosing party free of any obligation of confidentiality.
- (c) Obligations. Each party shall:
- (i) Notify the other party promptly of any known unauthorized possession, use or knowledge of the other party's Confidential Information by any person or entity.
 - (ii) Promptly furnish to the other party full details known by such party relating to the unauthorized possession, use or knowledge thereof and shall use reasonable efforts to assist the other party in investigating or preventing the recurrence of any unauthorized possession, use or knowledge of the other party's Confidential Information.
 - (iii) Use reasonable efforts to cooperate with the other party in any litigation and investigation against third parties deemed necessary by the other party to protect its proprietary rights.

- (iv) Promptly use all reasonable efforts to prevent a recurrence of any such unauthorized possession, use or knowledge of the other party's Confidential Information.

- (d) Cost of compliance; required disclosure. Each party shall bear the cost it incurs as a result of compliance with this section. The obligations in this section shall not restrict any disclosure by either party pursuant to any applicable law or pursuant to the order of any court or other legal process or government agency of competent jurisdiction (provided that the disclosing party shall give prompt notice to the non-disclosing party of such disclosure or order in a timeframe to allow the non-disclosing party to resist the disclosure or order).

- (e) Submitting Confidential Information to the Commonwealth. The Licensor shall use the following process when submitting information to the Commonwealth it believes to be confidential and/or proprietary information or trade secrets:
 - (i) Prepare an un-redacted version of the appropriate document;

 - (ii) Prepare a redacted version of the document that redacts the information that is asserted to be confidential or proprietary information or a trade secret;

 - (iii) Prepare a signed written statement that states:
 - (1) the attached document contains confidential or proprietary information or trade secrets;

 - (2) the Licensor is submitting the document in both redacted and un-redacted format in accordance with Section 707(b) of the *Right-to-Know Law*, 65 P.S. § 67.707(b); and

 - (3) the Licensor is requesting that the document be considered exempt under Section 708(b)(11) of the *Right-to-Know Law*, 65 P.S. § 67.708(b)(11) from public records requests; and

 - (iv) Submit the **two (2)** documents with the signed written statement to the Commonwealth.

- (f) Confidential Information at termination. Upon expiration or termination of this Agreement, or a purchase order or other procurement document for Licensed Products governed by the terms of this Agreement, and at any other time at the written request of a party, the other party must promptly return to such party all of such party's Confidential

Information and Data (and all copies of this information) that is in the other party's possession or control, in whatever form. With regard to the Commonwealth's Confidential Information and/or Data, the Licensor shall comply with the requirements of subsection (e).

- (g) Not confidential. Additionally, neither the Agreement nor any pricing information related to the Agreement, nor purchase orders issued pursuant to the Agreement, will be deemed confidential.

13. Sensitive Information

- (a) The Licensor shall not publish or otherwise disclose, except to the Commonwealth or the Licensor's subcontractors, any information or data obtained hereunder from private individuals, organizations, or public agencies, in a way that allows the information or data furnished by or about any particular person or establishment to be identified.
- (b) The parties shall not use or disclose any information about a recipient receiving services from, or otherwise enrolled in, a Commonwealth program affected by or benefiting from services under this Agreement for any purpose not connected with the parties' Agreement responsibilities.
- (c) The Licensor will comply with all obligations applicable to it under all applicable data protection legislation in relation to all personal data that is processed by it in the course of performing its obligations under this Agreement including by:
 - (i) Maintaining a valid and up to date registrations and certifications; and
 - (ii) Complying with all data protection legislation applicable to cross border data flows of personal data and required security measures for personal data.

14. Publicity/Advertisement. The Licensor must obtain written Commonwealth approval prior to mentioning the Commonwealth or a Commonwealth Agency in an advertisement, endorsement, or any other type of publicity. This includes the use of any trademark or logo.

15. Portability. The parties agree that a Commonwealth Agency may move a Licensed Product from machine to machine, whether physical or virtual, and to other locations, where those machines and locations are internal to the Commonwealth or to a Commonwealth contractor, as long as such relocation and the use being made of the Licensed Product comports with the license grant and restrictions.

Notwithstanding the foregoing, a Commonwealth Agency may move the machine or appliance provided by the Licensor upon which the Licensed Product is installed.

16. Taxes-Federal, State and Local.

- (a) The Commonwealth is exempt from all excise taxes imposed by the Internal Revenue Service and has accordingly registered with the Internal Revenue Service to make tax-free purchases under registration No. 23-23740001-K. With the exception of purchases of the following items, no exemption certificates are required and none will be issued: undyed diesel fuel, tires, trucks, gas-guzzler emergency vehicles, and sports fishing equipment. The Commonwealth is also exempt from Pennsylvania sales tax, local sales tax, public transportation assistance taxes, and fees and vehicle rental tax. The Department of Revenue regulations provide that exemption certificates are not required for sales made to governmental entities and none will be issued. Nothing in this section is meant to exempt a construction contractor from the payment of any of these taxes or fees which are required to be paid with respect to the purchase, use, rental or lease of tangible personal property or taxable services used or transferred in connection with the performance of a construction contract.**
- (b) The only interest the Commonwealth is authorized to pay is in accordance with Act of December 13, 1982, P.L. 1155, No. 266, as amended, [72 P. S. § 1507](#), (relating to Interest Penalties on Commonwealth Accounts) and accompanying regulations [4 Pa. Code §§ 2.31—2.40](#) (relating to Interest Penalties for Late Payments).**

17. Commonwealth Audit Responsibilities.

- (a) The Commonwealth will maintain, and promptly provide to the Licensor upon its request, accurate records regarding use of the Licensed Product by or for the Commonwealth. If the Commonwealth becomes aware of any unauthorized use of all or any part of the Licensed Product, the Commonwealth will notify the Licensor promptly, providing reasonable details. The limit of the Commonwealth's responsibility for use of the Licensed Products by more individuals than are permitted by the licensing terms applicable to the Licensed Products shall be to purchase additional licenses and Maintenance and Support (if applicable) for such Licensed Products through a reseller contract or procurement document.**

- (b) **The Commonwealth will perform a self-audit upon the request of the Licensor, which request may not occur more often than annually, and report any change in user count (hereinafter “True up number”). The Commonwealth shall notify the Licensor of the True up number no later than 45 calendar days after the request that the Commonwealth perform a self-audit. If the user count has increased, the Commonwealth will make an additional purchase of the Licensed Products through a reseller contract or another procurement document, which is equivalent to the additional users. This section sets out the sole license audit right under this Agreement.**
18. **Right-to-Know Law.** The Pennsylvania [Right-to-Know Law](#), Act of February 14, 2008, P.L. 6, No. 3, 65 P.S. §§ 67.101—3104 (“RTKL”), applies to this Agreement.
19. **Third-Party Software.** If a Licensed Product utilizes or includes third party software and other copyrighted material and is subject, therefore, to additional licensing terms, acknowledgements or disclaimers compliance with this Agreement constitutes compliance with those third-party terms. The parties agree that the Commonwealth, by acknowledging third-party software, does not agree to any terms and conditions of the third-party software agreements that are inconsistent with or supplemental to this Agreement.
20. **Attorneys’ Fees.** The Commonwealth will not pay attorneys’ fees incurred by or paid by the Licensor.
21. **Controversies.**
- (a) Pursuant to Section 1712.1 of the [Commonwealth Procurement Code, 62 Pa. C.S. § 1712.1](#), in the event of a claim arising from the Agreement or a purchase order, the Licensor, within **six (6) months** after the claim accrues, must file a written claim with the contracting officer for a determination. The claim shall state all grounds upon which the Licensor asserts a controversy exists. If the Licensor fails to file a claim or files an untimely claim, the Licensor is deemed to have waived its right to assert a claim in any forum. At the time the claim is filed, or within **60 days** thereafter, either party may request mediation through the Commonwealth Office of General Counsel Dispute Resolution Program, <http://www.ogc.pa.gov/Services%20to%20Agencies/Mediation%20Procedures/Pages/default.aspx>.
- (b) If the Licensor or the contracting officer requests mediation and the other party agrees, the contracting officer shall promptly make arrangements for mediation. Mediation shall be scheduled so as to not delay the issuance of the final determination beyond the

required **120 days** after receipt of the claim if mediation is unsuccessful. If mediation is not agreed to or if resolution is not reached through mediation, the contracting officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within **120 days** of the receipt of the claim, unless extended by consent of the contracting officer and the Licensor. The contracting officer shall send a written determination to the Licensor. If the contracting officer fails to issue a final determination within the **120 days** (unless extended by consent of the parties), the claim shall be deemed denied. The contracting officer's determination shall be the final order of the purchasing agency.

- (c) Within **15 days** of the mailing date of the determination denying a claim or within **135 days** of filing a claim if, no extension is agreed to by the parties, whichever occurs first, the Licensor may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Licensor shall proceed diligently with the performance of the Agreement or purchase order in a manner consistent with the determination of the contracting officer and the Commonwealth shall compensate the Licensor pursuant to the terms of the Agreement, purchase order or other procurement document.

- 22. Signatures.** The fully executed Agreement may not contain ink signatures by the Commonwealth. In that event, the Licensor understands and agrees that the receipt of an electronically-printed Agreement with the printed name of the Commonwealth purchasing agent constitutes a valid, binding contract with the Commonwealth. The printed name of the purchasing agent represents the signature of that individual who is authorized to bind the Commonwealth to the obligations contained in the Agreement. The printed name also indicates that all approvals required by Commonwealth contracting procedures have been obtained.
- 23. Travel.** The Licensor shall not be allowed or paid travel or per diem expenses except as specifically set forth in the Agreement or Statement of Work. If not otherwise specified in the Agreement or Statement of Work, travel and related expenses shall be reimbursed in accordance with [Management Directive 230.10 Amended](#), [Commonwealth Travel Policy](#), and [Manual 230.1, Commonwealth Travel Procedures Manual](#).
- 24. Entire Agreement.** This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof, and supersedes and integrates all prior discussions, agreements and understandings pertaining thereto. No modification of this Agreement will be effective unless in writing and signed by both Parties. Other terms and conditions or additional terms and conditions included or referenced in the Licensor's quotations, invoices, business forms, or other documentation shall not become part of the parties' agreement and shall be disregarded by the parties, unenforceable by the Licensor and not binding on the Commonwealth. No modification of this Agreement will be effective unless in writing and signed by both Parties.
- 25. Notice.** Any written notice to any party under this Agreement shall be deemed sufficient if delivered personally, or by facsimile, telecopy, electronic or digital transmission (provided such

delivery is confirmed), or by a recognized overnight courier service (e.g., DHL, Federal Express, etc.), with confirmed receipt, or by certified or registered United States mail, postage prepaid, return receipt requested, sent to the address such party may designate by notice given pursuant to this section.

26. **Survival.** The termination or expiration of this Agreement will not affect any provisions of this Agreement which by their nature survive termination or expiration, including the provisions that deal with the following subject matters: definitions, confidentiality, term and termination, effect of termination, intellectual property, license compliance, limitation of liability, indemnification and privacy.
27. **Waiver.** Failure to enforce any provision will not constitute a waiver.
28. **Severability.** If any provision is found unenforceable, it and any related provisions will be interpreted to best accomplish the unenforceable provision's essential purpose.
29. **Nonexclusive Remedy.** Except as expressly set forth in this Agreement, the exercise by either party of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.
30. **Integration.** This Agreement, including all exhibits and referenced documents, and any Purchase Orders referencing this Agreement, constitutes the entire agreement between the parties. No agent, representative, employee or officer of the Commonwealth or of Licensor has authority to make any statement, agreement, or representation, oral or written, in connection with this Agreement, which in any way can be deemed to modify, add to, or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of this Agreement. No modifications, alterations, changes, or waiver to this Agreement or any of its terms shall be valid or binding unless accomplished by a written amendment executed by the parties.

IN WITNESS WHEREOF, the Parties to this Agreement have executed it, through their respective duly authorized representatives.

Witness:

Licensor:

Signature Date

Signature Date

Printed Name

Printed Name

Title

Title

If a corporation, the Chairman, President, Vice-President, Senior Vice-President, Executive Vice-President, Assistant Vice-President, Chief Executive Officer or Chief Operating Officer must sign; if a sole proprietor, then the owner must sign; if a general or limited partnership, a general partner must sign; if a limited liability company, then a member must sign, unless it is a managed by a manager, then the manager must sign; otherwise a resolution indicating authority to bind the corporation must be attached to this Agreement.

COMMONWEALTH OF PENNSYLVANIA

See Section 22

Agency Head or Designee

APPROVED AS TO FORM AND LEGALITY:

See Section 22

Office of Chief Counsel

See Section 22

Office of General Counsel

See Section 22

Office of Attorney General

APPROVED:

See Section 22

Office of the Budget, Office of Comptroller Operations

ATTACHMENT 1

LIST OF LICENSED PRODUCTS

With the consent of the Commonwealth, additional Licensed Products may be added to this attachment by the Licensor providing Commonwealth with a new copy of this Attachment 1.

Licensed Product:

The Licensed Product includes (list all titles covered by this