



FULLY EXECUTED - CHANGE 1
Contract Number: 4400020029
Original Contract Effective Date: 09/14/2018
Contract Change Date: 02/07/2024
Valid From: 10/01/2018 To: 12/30/2024

All using Agencies of the Commonwealth, Participating Political
Subdivision, Authorities, Private Colleges and Universities

Your SAP Vendor Number with us: 530313

Purchasing Agent

Name: Hosler Valarie
Phone: 717-703-2945
Fax: 717-346-3820

Supplier Name/Address:
VICOM INFINITY INC
400 BROADHOLLOW RD STE 1
FARMINGDALE NY 11735-4824 US

Please Deliver To:

To be determined at
the time of the Purchase Order
unless specified below.

Supplier Phone Number: 631-379-4791
Supplier Fax Number: 413-622-1230

Contract Name:
Mainframe Servers

Payment Terms
NET 30

Solicitation No.: _____ Issuance Date: _____
Supplier Bid or Proposal No. (if applicable): _____ Solicitation Submission Date: _____

This contract is comprised of: The above referenced Solicitation, the Supplier's Bid or Proposal, and any documents attached to this Contract or incorporated by reference.

Item	Material/Service Desc	Qty	UOM	Price	Per Unit	Total
1	Mainframe Servers	0.000		0.00	1	0.00
2	Mainframe Services	0.000		0.00	1	0.00
3	Mainframe Maintenance/Extended Warranty	0.000		0.00	1	0.00
4	Mainframe Consumption Service	0.000		0.00	1	0.00

General Requirements for all Items:

Information:

Supplier's Signature _____
Printed Name _____

Title _____
Date _____



FULLY EXECUTED - CHANGE 1
Contract Number: 4400020029
Original Contract Effective Date: 09/14/2018
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Valid From: 10/01/2018 To: 12/30/2024

Supplier Name:
VICOM INFINITY INC

Header Text

This contract is to be used for the procurement of mainframe server and storage devices. This contract includes equipment, related/professional services, maintenance/extended warranty services, and consumption based pricing services. This contract was awarded as part of RFP 6100044346.

Contract Point of Contact Char Riley at 717-346-4868, chariley@pa.gov.

11.21.23 - Commodity Specialist changed to Valarie Hosler at vhosler@pa.gov. vsh

No further information for this Contract

Information:



FULLY EXECUTED

Contract Number: 4400020029

Original Contract Effective Date: 09/14/2018

Valid From: 10/01/2018 To: 12/30/2024

All using Agencies of the Commonwealth, Participating Political Subdivision, Authorities, Private Colleges and Universities

Purchasing Agent

Name: Riley Char

Phone: 717-346-4868

Fax: 717-783-6241

Your SAP Vendor Number with us: 530313

Supplier Name/Address:

VICOM INFINITY INC
400 BROADHOLLOW RD STE 1
FARMINGDALE NY 11735-4824 US

Supplier Phone Number: 631-379-4791

Supplier Fax Number: 413-622-1230

Please Deliver To:

To be determined at the time of the Purchase Order unless specified below.

Contract Name:

Mainframe Servers

Payment Terms

NET 30

Solicitation No.:

Issuance Date:

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General Requirements for all Items:

Information:

Supplier's Signature _____

Title _____

Printed Name _____

Date _____



FULLY EXECUTED
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Valid From: 10/01/2018 To: 12/30/2024

Supplier Name:
VICOM INFINITY INC

Header Text

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Contract Point of Contact Char Riley at 717-346-4868, chariley@pa.gov.

No further information for this Contract

Information:

July 17, 2023

VICOM INFINITY INC
400 Broadway Road, Suite 1
Farmingdale, NY 11375
John Daly
john.daly@convergetp.com

SUBJECT: Extension of contract 4400020029
Title: Mainframe and Midrange Server and Storage Devices
Term of Extension: December 31, 2023, through December 30, 2024
Extension Security Required? YES NO

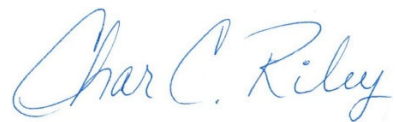
Dear Mr. Daly.

The Department of General Services, Bureau of Procurement (Bureau) is looking to extend the existing contract for one (1) year with two (2) six (6) month additional extensions via Sole Source mechanism and under the current terms and conditions.

Thank you for your immediate response and consideration. Please complete and return this letter to me either via email at chariley@pa.gov prior to the close of business, Monday, July 24, 2023.

If you have any questions, please contact Char C. Riley at e-mail to chariley@pa.gov. Thank you.

Sincerely,



IT Commodity Specialist
Department of General Services | Bureau of Procurement
555 Walnut Street, 6th Floor Forum Place Harrisburg, PA 17101

RFP # 6100044346, Mainframe and Midrange Server and Storage Devices

July 17, 2023

Page 2 of 2

I agree to the extension of the above referenced Contract for the above stated Term of Renewal. All terms and conditions remain the same as in the current contract.

Yes No

Signature  Title President

Date 7/24/2023

(Person signing this renewal agreement must have the power to bind their company by their signature.)



Contract Number: 4400020029
NOT AN OFFICIAL CONTRACT

All using Agencies of the Commonwealth, Participating Political
Subdivision, Authorities, Private Colleges and Universities

Purchasing Agent

Your SAP Vendor Number with us: 530313

Supplier Name/Address:
VICOM INFINITY INC
400 BROADHOLLOW RD STE 1
FARMINGDALE NY 11735-4824 US

Please Deliver To:

To be determined at
the time of the Purchase Order
unless specified below.

Supplier Phone Number: 631-379-4791

Supplier Fax Number: 413-622-1230

Contract Name:
Mainframe Servers

Payment Terms
NET 30

Solicitation No.: Issuance Date:

Supplier Bid or Proposal No. (if applicable): Solicitation Submission Date:

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3	Mainframe Maintenance/Extended Warranty	0.000		0.00	1	0.00
4	Mainframe Consumption Service	0.000		0.00	1	0.00

General Requirements for all Items:

Information:

Supplier's Signature _____

Title _____

Printed Name _____

Date _____



Contract Number: 4400020029
NOT AN OFFICIAL CONTRACT

Supplier Name:
VICOM INFINITY INC

Header Text

This contract is to be used for the procurement of mainframe server and storage devices. This contract includes equipment, related/professional services, maintenance/extended warranty services, and consumption based pricing services. This contract was awarded as part of RFP 6100044346.

Contract Point of Contact Char Riley at 717-346-4868, chariley@pa.gov.

No further information for this Contract

Information:

Certificate Of Completion

Envelope Id: 062BAEF112C44FE6B90FAB9469FDD723	Status: Completed
Subject: Complete with DocuSign: Vicom Infinity_ Pennsylvania_Extension Letter 4400020029 Vicom.pdf	
Source Envelope:	
Document Pages: 4	Signatures: 1
Certificate Pages: 4	Initials: 0
AutoNav: Enabled	Envelope Originator: Tammie Gorman Tammie.Gorman@convergetp.com
Envelopeld Stamping: Enabled	IP Address: 174.87.229.219
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	

Record Tracking

Status: Original 7/24/2023 9:35:04 AM	Holder: Tammie Gorman Tammie.Gorman@convergetp.com	Location: DocuSign
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Signer Events

Thomas Amodio
Tom.Amodio@convergetp.com
President
Vicom Infinity
Security Level: Email, Account Authentication (None)

Signature

DocuSigned by:
Thomas Amodio
D2ADD6F2E5164A1...
Signature Adoption: Pre-selected Style
Using IP Address: 104.246.112.199

Timestamp

Sent: 7/24/2023 9:39:02 AM
Viewed: 7/24/2023 10:55:26 AM
Signed: 7/24/2023 11:00:44 AM

Electronic Record and Signature Disclosure:
Accepted: 7/24/2023 10:55:26 AM
ID: ca7f22fe-60ea-410c-a9e7-a17177e630c8

In Person Signer Events

Signature

Timestamp

Editor Delivery Events

Status

Timestamp

Agent Delivery Events

Status

Timestamp

Intermediary Delivery Events

Status

Timestamp

Certified Delivery Events

Status

Timestamp

Carbon Copy Events

Status

Timestamp

Linda McGuinness
Linda.McGuinness@convergetp.com
Security Level: Email, Account Authentication (None)

COPIED

Sent: 7/24/2023 11:00:44 AM
Viewed: 7/24/2023 11:30:15 AM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Witness Events

Signature

Timestamp

Notary Events

Signature

Timestamp

Envelope Summary Events

Status

Timestamps

Envelope Sent	Hashed/Encrypted	7/24/2023 9:39:02 AM
Certified Delivered	Security Checked	7/24/2023 10:55:26 AM
Signing Complete	Security Checked	7/24/2023 11:00:44 AM
Completed	Security Checked	7/24/2023 11:00:44 AM

Payment Events

Status

Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, Converge Acquisitions LLC (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact Converge Acquisitions LLC:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: mkapoor@convergetp.com

To advise Converge Acquisitions LLC of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at mkapoor@convergetp.com and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from Converge Acquisitions LLC

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to mkapoor@convergetp.com and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with Converge Acquisitions LLC

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to mkapoor@convergetp.com and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to ‘I agree to use electronic records and signatures’ before clicking ‘CONTINUE’ within the DocuSign system.

By selecting the check-box next to ‘I agree to use electronic records and signatures’, you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify Converge Acquisitions LLC as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Converge Acquisitions LLC during the course of your relationship with Converge Acquisitions LLC.



FULLY EXECUTED

Contract Number: 4400020029

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Valid From: 10/01/2018 To: 12/30/2023

All using Agencies of the Commonwealth, Participating Political
Subdivision, Authorities, Private Colleges and Universities

Purchasing Agent

Name: Riley Char

Phone: 717-346-4868

Fax: 717-783-6241

Your SAP Vendor Number with us: 530313

Supplier Name/Address:

VICOM INFINITY INC
400 BROADHOLLOW RD STE 1
FARMINGDALE NY 11735-4824 US

Please Deliver To:

To be determined at
the time of the Purchase Order
unless specified below.

Supplier Phone Number: 631-379-4791

Supplier Fax Number: 413-622-1230

Contract Name:

Mainframe Servers

Payment Terms

NET 30

Solicitation No.:

Issuance Date:

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Solicitation Submission Date:

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General Requirements for all Items:

Information:

Supplier's Signature _____

Title _____

Printed Name _____

Date _____



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Valid From: 10/01/2018 To: 12/30/2023

Supplier Name:
VICOM INFINITY INC

Header Text

This contract is to be used for the procurement of mainframe server and storage devices. This contract includes equipment, related/professional services, maintenance/extended warranty services, and consumption based pricing services. This contract was awarded as part of RFP 6100044346.

Contract Point of Contact Char Riley at 717-346-4868, chariley@pa.gov.

No further information for this Contract

Information:



FULLY EXECUTED

Contract Number: 4400020029

Original Contract Effective Date: 09/14/2018

Valid From: 10/01/2018 To: 09/30/2020

All using Agencies of the Commonwealth, Participating Political Subdivision, Authorities, Private Colleges and Universities

Purchasing Agent

Name: Schwartz Thomas

Phone: 717-346-3828

Fax: 717-783-6241

Your SAP Vendor Number with us: 530313

Supplier Name/Address:

VICOM INFINITY INC
400 BROADHOLLOW RD STE 1
FARMINGDALE NY 11735-4824 US

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Commodity Specialist: Thomas Schwartz - 717-346-3828 - thschwartz@pa.gov

No further information for this Contract

Information:

**CONTRACT
FOR
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF GENERAL SERVICES
FOR MAINFRAME AND MIDRANGE SERVER AND STORAGE DEVICES**

THIS CONTRACT for the provision of **Mainframe and Midrange Server and Storage Devices** ("Contract") is entered into by and between the **Commonwealth of Pennsylvania**, acting through the Department of General Services ("DGS"), and **Vicom Infinity Inc.** ("Contractor").

WHEREAS, DGS issued a Request for Proposals for the provision of **Mainframe and Midrange Server and Storage Devices** for Commonwealth executive agencies, RFP No. **6100044346** ("RFP"), consisting of two lots: **Lot 1**, Mainframe; and **Lot 2**, Midrange Server; and,

WHEREAS, Contractor submitted a proposal in response to **Lot 1** – Mainframe; and,

WHEREAS, DGS determined that it was in the best interest to award to all responsive and responsible offerors in accordance with 62 Pa. C.S. § 517(e)(3), and Contractor's proposal, as revised by its Administrative Clarification and Technical Clarification, was deemed responsive and responsible after taking into consideration all of the evaluation factors set forth in the RFP and selected Contractor for contract negotiations; and

WHEREAS, DGS and Contractor have negotiated this Contract as their final and entire agreement in regard to providing **Mainframe and Midrange Server and Storage Devices** to the Commonwealth.

NOW THEREFORE, intending to be legally bound hereby, DGS and Contractor agree as follows:

1. Contractor shall, in accordance with the terms and conditions of this Contract, provide **Mainframe and Midrange Server and Storage Devices** as more fully defined in the RFP, to Commonwealth executive agencies.
2. Commonwealth executive agencies shall procure their requirements for **Mainframe and Midrange Server and Storage Devices** in accordance with the terms and conditions of this Contract, which are attached hereto as **Exhibit A** and made a part hereof.
3. Contractor agrees to provide the **Mainframe and Midrange Server and Storage Devices** listed in its Cost Submittal, which is attached hereto as **Exhibit B** and made a part hereof, at the discount percentage off list price for those items in **Exhibit B**.

4. Contractor agrees to meet and maintain the commitments to small diverse businesses made in its Small Diverse Business and Small Business Submittal, which is attached hereto as **Exhibit C** and made a part hereof. Any proposed change to a small diverse business commitment must be submitted to the DGS Bureau of Diversity Inclusion and Small Business Opportunities (“BDISBO”), which will make a recommendation as to a course of action to the Contracting Officer. Contractor shall complete the Prime Contractor’s Quarterly Utilization Report and submit it to the Contracting Officer and BDISBO within ten (10) workdays at the end of each calendar quarter that the Contract is in effect.
5. The biannual price list requirements of Section VII.A(6) of Technical Submittal—Lot 1-Mainframe and Technical Submittal—Lot 2 Midrange Server are hereby deleted.
6. Contractor agrees that quotations submitted in accordance with this Contract will contain, at a minimum, the following information: Contractor Information; Customer Information; Contract Number; Date of Quotation; Equipment/Services/Maintenance/Support/Extended Warranty Information; MSRP; Contract Discount %; Contract Extended Price; Total of all Equipment and Services; and Validity Date for all Maintenance/Support & Extended Services.
7. This Contract is comprised of the following documents, which are listed in order of precedence in the event of a conflict between these documents:
 - (a) The Contract document contained herein.
 - (b) The Contract Terms and Conditions contained in the RFP, which are attached hereto as **Exhibit A** and made part of this Contract.
 - (c) The Contractor’s Revised Cost Submittal, dated June 5, 2018, which was revised in response to the Administrative Clarification Letter dated June 1, 2018, and is attached hereto as **Exhibit B** and made a part hereof.
 - (d) The Contractor’s Small Diverse Business Submittal, which is attached hereto as **Exhibit C** and made a part hereof.
 - (e) The RFP, including all of the referenced Appendices and as revised by all Addenda issued thereto, which is attached hereto as **Exhibit D** and made a part hereof.
 - (f) The Contractor’s Technical Submittal, as revised by the Technical Clarification Letter dated June 8, 2018, and the Contractor’s response, dated June 8, 2018, which is attached hereto as **Exhibit E** and made a part hereof.

IN WITNESS WHEREOF, the parties hereto have signed this Contract as of the dates written below. Execution by the Commonwealth will be as described in the Contract Terms and Conditions, Section 4, Signatures.

Witness:

By: 
(Assistant) Secretary

Linda McGuinness
Operations Manager 8/8/18
Printed Name/Date

CONTRACTOR: Vicom Infinity, Inc.

By: 
(Vice) President

Victor V. Verola
Vice President 8/8/18
Printed Name/Date

SAP Vendor Number 0000530313

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
DEPARTMENT OF GENERAL SERVICES**

By: To be obtained electronically
Deputy Secretary for Procurement Date

APPROVED AS TO FORM AND LEGALITY:

To be obtained electronically
Office of Chief Counsel Date

To be obtained electronically
Office of General Counsel Date

To be obtained electronically
Office of Attorney General Date

APPROVED:

To be obtained electronically
Office of the Budget Date
Office of Comptroller Operations

**STANDARD CONTRACT
TERMS AND CONDITIONS FOR IT SUPPLIES AND RELATED SERVICES**

1. Term of Contract

The Initial Term of the Contract shall be **two (2)** year(s).

The term of the Contract shall commence on the Effective Date (as defined below) and shall end on the Expiration Date identified in the Contract, subject to the other provisions of the Contract.

The Effective Date shall be: (a) the Effective Date printed on the Contract after the Contract has been fully executed by the Contractor and the Commonwealth (signed and approved as required by Commonwealth contracting procedures); or (b) the "Valid from" date printed on the Contract, whichever is later.

2. Renewal of Contract Term

The Contract may be renewed for a maximum of **three (3)** additional **one (1)** year term(s), so long as Commonwealth provides written notice to Contractor of its intention to extend the Contract by letter prior to the expiration of the term of the agreement, or any extension thereof. The Commonwealth may exercise the renewal as individual year or multiple year term(s). Any renewal will be under the same terms, covenants and conditions. No further document is required to be executed to renew the term of the contract.

3. Extension of Contract Term

The Commonwealth reserves the right, upon notice to the Contractor, to extend the term of the Contract for up to three (3) months upon the same terms and conditions.

4. Signatures

- (a) The Contract shall not be a legally binding contract until the fully-executed Contract has been sent to the Contractor. No Commonwealth employee has the authority to verbally direct the commencement of any work or delivery of any supply under this Contract prior to the Effective Date. The Contractor hereby waives any claim or cause of action for any service or work performed prior to the Effective Date.

The Contract may be signed in counterparts. The Contractor shall sign the Contract and return it to the Commonwealth. After the Contract is signed by the Contractor and returned to the Commonwealth, it will be processed for Commonwealth signatures and approvals. When the Contract has been signed and approved by the Commonwealth as required by Commonwealth contracting procedures, the Commonwealth shall create a Contract output form which shall: 1) clearly indicate "Fully executed" at the top of the form; 2) include a printed Effective Date and 3)

include the printed name of the Purchasing Agent indicating that the document has been electronically signed and approved by the Commonwealth. Until the Contractor receives the Contract output form with this information on the Contract output form, there is no legally binding contract between the parties. The Contract and/or Purchase Order may be electronically signed by the Commonwealth. The electronically-printed name of the Purchasing Agent on the Contract and/or Purchase Order represents the signature of that individual who has the authority, on behalf of the Commonwealth, to bind the Commonwealth to the terms of the Contract. If the Contract output form does not have "Fully Executed" at the top of the first page and does not have the name of the Purchasing Agent printed in the appropriate box, the Contract has not been fully executed.

The fully-executed Contract may be sent to the Contractor electronically or through facsimile equipment. The electronic transmission of the Contract shall require acknowledgement of receipt of the transmission by the Contractor. Receipt of the electronic or facsimile transmission of the Contract shall constitute receipt of the fully-executed Contract.

The Commonwealth and the Contractor specifically agree as follows:

- (i) No handwritten signature shall be required in order for the Contract to be legally enforceable.
- (ii) The parties agree that no writing shall be required in order to make the Contract legally binding, notwithstanding contrary requirements in any law. The parties hereby agree not to contest the validity or enforceability of a genuine Contract or acknowledgement issued electronically under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements be in writing and signed by the party bound thereby. Any genuine Contract or acknowledgement issued electronically, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of a genuine Contract or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the Contract or acknowledgement were not in writing or signed by the parties. A Contract or acknowledgment shall be deemed to be genuine for all purposes if it is transmitted to the location designated for such documents.
- (iii) Each party will immediately take steps to verify any document that appears to be obviously garbled in transmission or improperly formatted to include re-transmission of any such document if necessary.

5. Definitions

As used in this Contract, these words shall have the following meanings:

- (a) Agency: The department, board, commission or other agency of the Commonwealth of Pennsylvania listed as the Purchasing Agency. If a COSTARS entity or external procurement activity has issued an order against this Contract, that entity shall also be identified as “Agency.”
- (b) Contracting Officer: The person authorized to administer this Contract for the Commonwealth and to make written determinations with respect to the Contract.
- (c) Days: Calendar days, unless specifically indicated otherwise.
- (d) Developed Works or Developed Materials: All documents, sketches, drawings, designs, works, papers, files, reports, computer programs, computer documentation, data, records, software, samples or any other tangible material without limitation authored or prepared by Contractor as the work product covered in the scope of work for the Project.
- (e) Documentation: All materials required to support and convey information about the Services or Supplies required by this Contract. It includes, but is not necessarily restricted to, written reports and analyses; diagrams, maps, logical and physical designs; system designs; computer programs; flow charts; disks and/or other machine-readable storage media.
- (f) Expiration Date: The last valid date of this Contract, as indicated in the Contract documents to which these Terms are attached.
- (g) Services: All Contractor activity necessary to satisfy the Contract.
- (h) Supplies: All tangible and intangible property including, but not limited to materials and equipment, provided by the Contractor to satisfy the Contract.
- (i) Terms. These Standard Contract Terms and Conditions for IT Supplies and Related Services.

6. Purchase Orders

Commonwealth agencies may issue Purchase Orders against the Contract. These orders constitute the Contractor’s authority to make delivery. All Purchase Orders received by the Contractor up to and including the expiration date of the Contract are acceptable and must be performed in accordance with the Contract. Each Purchase Order will be deemed to incorporate the terms and conditions set forth in the Contract.

Purchase Orders may be electronically signed by the Agency. The electronically-printed name of the purchaser represents the signature of that individual who has the authority, on behalf of the Commonwealth, to authorize the Contractor to proceed.

Purchase Orders may be issued electronically or through facsimile equipment. The electronic transmission of a purchase order shall require acknowledgement of receipt of the transmission by the Contractor. Receipt of the electronic or facsimile transmission of the Purchase Order shall constitute receipt of an order. Orders received by the Contractor after 4:00 p.m. will be considered received the following business day.

The Commonwealth and the Contractor specifically agree as follows:

- (i) No handwritten signature shall be required in order for the Contract or Purchase Order to be legally enforceable.
- (ii) The parties agree that no writing shall be required in order to make the Purchase Order legally binding. The parties hereby agree not to contest the validity or enforceability of a Purchase Order or acknowledgement issued electronically under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements be in writing and signed by the party bound thereby. Any Purchase Order or acknowledgement issued electronically, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of Purchase Orders or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the Purchase Order or acknowledgement were not in writing or signed by the parties. A Purchase Order or acknowledgment shall be deemed to be genuine for all purposes if it is transmitted to the location designated for such documents.
- (iii) Each party will immediately take steps to verify any document that appears to be obviously garbled in transmission or improperly formatted to include re-transmission of any such document if necessary.

Purchase Orders under ten thousand dollars (\$10,000) in total amount may also be made in person or by telephone using a Commonwealth Purchasing Card. When an order is placed by telephone, the Commonwealth agency shall provide the agency name, employee name, credit card number, and expiration date of the card. Contractors agree to accept payment through the use of the Commonwealth Purchasing Card.

7. Independent Prime Contractor

In performing its obligations under the Contract, the Contractor will act as an independent contractor and not as an employee or agent of the Commonwealth. The Contractor will be responsible for all Services in this Contract whether or not the Contractor provides them directly. Further, the Contractor is the sole point of contact with regard to all contractual matters, including payment of any and all charges resulting from the Contract.

8. Subcontracts

The Contractor may subcontract any portion of the Services described in this Contract to third parties selected by Contractor and approved in writing by the Commonwealth, whose approval shall not be unreasonably withheld. Notwithstanding the above, if Contractor has disclosed the identity of Subcontractor(s) together with the scope of work to be subcontracted in its bid/proposal, award of the Contract is deemed approval of all named Subcontractors and a separate approval is not required. The existence of any subcontract shall not change the obligations of Contractor to the Commonwealth under this Contract. Upon request of the Commonwealth, the Contractor must provide the Commonwealth with an unredacted copy of the subcontract agreement between the Contractor and the subcontractor in accordance with the provisions of the CONFIDENTIALITY provision of this Contract. The Commonwealth reserves the right, for good cause, to require that the Contractor remove a subcontractor from the project. The Commonwealth will not be responsible for any costs incurred by the Contractor in replacing the subcontractor if good cause exists.

9. Delivery

- (a) Supply Delivery: All items shall be delivered F.O.B. Destination. The Contractor agrees to bear the risk of loss, injury, or destruction of the item(s) ordered prior to receipt of the items by the Commonwealth. Such loss, injury, or destruction shall not release the Contractor from any contractual obligations. Except as otherwise provided in this Contract, all item(s) must be delivered within the time period specified. Time is of the essence and, in addition to any other remedies, the Contract is subject to termination for failure to deliver as specified. Unless otherwise stated in this Contract, delivery must be made within **thirty (30) days** after the Effective Date.
- (b) Services Delivery: The Contractor shall proceed with all due diligence in the performance of the Services with qualified personnel, in accordance with the completion criteria set forth in the Contract.

10. Estimated Quantities

It shall be understood and agreed that any quantities listed in the Contract are estimated only and may be increased or decreased in accordance with the actual requirements of the Commonwealth and that the Commonwealth in accepting any bid/proposal or portion thereof, contracts only and agrees to purchase only the materials and services in such quantities as represent the actual requirements of the Commonwealth. The Commonwealth reserves the right to purchase materials

and services covered under the Contract through a separate competitive procurement procedure, whenever Commonwealth deems it to be in its best interest.

11. Prior Notice

The Contractor is required to notify the Commonwealth Delivery Location when shipment is to be made in order that a Commonwealth representative may be present to receive the Contract Item(s) when they are delivered.

12. Warranties

- (a) The Contractor warrants that all Supplies furnished and all Services performed by the Contractor, its agents and subcontractors shall be free and clear of any defects in workmanship or materials and conform in all material respects to the functional specifications for the Supplies furnished and Services performed and/or the requirements of the Contract. Unless otherwise stated in the Contract, all Supplies are warranted for a period of one **(1) year** following delivery by the Contractor and acceptance by the Commonwealth. The Contractor shall repair, replace or otherwise correct any problem with the delivered Supplies. When an item is replaced, it shall be replaced with an item of equivalent or superior quality without any additional cost to the Commonwealth.
- (b) The Contractor hereby represents and warrants to the Commonwealth that the Contractor will not cause or take any action that may directly or indirectly cause a disruption of the Commonwealth's operations.
- (c) Contractor warrants that it has the necessary legal rights, including licenses to third party products, tools or materials, to perform the Services and deliver the Supplies and Developed Materials under this Contract.
- (d) THE FOREGOING EXPRESS WARRANTIES ARE THE CONTRACTOR'S SOLE AND EXCLUSIVE WARRANTIES AND NO OTHER WARRANTIES, EXPRESS OR IMPLIED, SHALL APPLY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- (e) All warranties shall survive final acceptance.

13. Patent, Copyright, Trademark and Trade Secret Protection

- (a) The Contractor shall 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 or foreign patents, copyrights, or trademarks, or for a misappropriation of trade secrets arising out of performance of this Contract, including all work, services, materials, reports, studies, and computer programs provided by the Contractor, and in any such suit or

proceeding will satisfy any final award for such infringement, including costs. The Commonwealth agrees to give Contractor 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 may, however, in its sole discretion and under the terms it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Contractor, the Commonwealth will cooperate with all reasonable requests of Contractor made in the defense of such suits. No settlement which prevents the Commonwealth from continuing to use the Developed Works as provided herein shall be made without the Commonwealth's prior written consent. 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 Contractor that, in the event it requests that the Commonwealth to provide support to the Contractor in defending any such claim, the Contractor shall reimburse the Commonwealth for all expenses (including attorneys' fees, if such are made necessary by the Contractor's request) incurred by the Commonwealth for such support. If OAG does not delegate the defense of the matter, the Contractor's obligation to indemnify ceases. The Contractor will, at its expense, provide whatever cooperation OAG requests in the defense of the suit.

- (b) The Contractor agrees to exercise reasonable due diligence to prevent claims of infringement on the rights of third parties. The Contractor certifies that, in all respects applicable to this Contract, it has exercised and will continue to exercise due diligence to ensure that all Supplies furnished and Services performed under this Contract do not infringe on the patents, copyrights, trademarks, trade secrets or other proprietary interests of any kind which may be held by third parties. The Contractor also agrees to certify that Supplies furnished and Services performed for the Commonwealth under this Contract shall be free and clear from all claims of any nature.
- (c) If the defense of the suit is delegated to the Contractor, the Contractor shall pay all damages and costs awarded therein against the Commonwealth. If information and assistance are furnished by the Commonwealth at the Contractor's written request, it shall be at the Contractor's expense, but the responsibility for such expense shall be only that within the Contractor's written authorization.
- (d) If, in the Contractor's opinion, the products, materials, reports, studies, or computer programs furnished hereunder are likely to or do become subject to a claim of infringement of a United States patent, copyright, or trademark, or for a misappropriation of trade secret, then without diminishing the Contractor's obligation to satisfy any final award, the Contractor may, at its option and expense, substitute functional equivalents for the alleged infringing products, materials, reports, studies, or computer programs or, at the Contractor's option and expense,

obtain the rights for the Commonwealth to continue the use of such products, materials, reports, studies, or computer programs.

- (e) If any of the products, materials, reports, studies, or computer programs provided by the Contractor are in such suit or proceeding held to constitute infringement and the use or publication thereof is enjoined, the Contractor shall, at its own expense and at its option, either procure the right to publish or continue use of such infringing products, materials, reports, studies, or computer programs, replace them with non-infringing items, or modify them so that they are no longer infringing.
- (f) If the Contractor is unable to do any of the preceding, the Contractor agrees to pay the Commonwealth:
 - (i) any amounts paid by the Commonwealth less a reasonable amount based on the acceptance and use of the deliverable;
 - (ii) any license fee less an amount for the period of usage of any software; and
 - (iii) the prorated portion of any service fees representing the time remaining in any period of service for which payment was made.
- (a) The obligations of the Contractor under this section continue without time limit and survive the termination of this contract.
- (b) Notwithstanding the above, the Contractor shall have no obligation for:
 - (i) modification of any product, service, or deliverable provided by the Commonwealth;
 - (ii) any material provided by the Commonwealth to the Contractor and incorporated into, or used to prepare, a product, service, or deliverable;
 - (iii) use of the product, service, or deliverable in other than its specified operating environment;
 - (iv) the combination, operation, or use of the product, service, or deliverable with other products, services, or deliverables not provided by the Contractor as a system or the combination, operation, or use of the product, service, or deliverable, with any products, data, or apparatus that the Contractor did not provide;
 - (v) infringement of a non-Contractor product alone;
 - (vi) the Commonwealth's distribution, marketing or use beyond the scope contemplated by the Contract; or

- (vii) the Commonwealth's failure to use corrections or enhancements made available to the Commonwealth by the Contractor at no charge.
- (c) The obligation to indemnify the Commonwealth, under the terms of this section, shall be the Contractor's sole and exclusive obligation for the infringement or misappropriation of intellectual property.

14. Intellectual Property and Right to Use

The Contractor hereby grants to the Commonwealth a non-exclusive right to access and to use the hardware and software comprising all or part of the Supplies and Services. The Commonwealth's use of the software is subject to the following:

- (a) Product License. The Contractor grants the Commonwealth a non-exclusive license to use the software required to operate the Supplies.
- (b) Contractor Intellectual Property. The Commonwealth acknowledges that, in the course of providing and performing the Supplies and Services, the Contractor may use software and related processes, instructions, methods, and techniques that have been previously developed by Contractor and that same shall remain the sole and exclusive property of the Contractor. The Contractor retains ownership of all Contractor Intellectual Property that the Contractor delivers to the Commonwealth pursuant to the Supplies provided and Services performed.
- (c) Commonwealth Intellectual Property and Data. The Commonwealth owns all Data and all Commonwealth Intellectual Property provided to the Contractor pursuant to this Contract or collected or generated by the Contractor on behalf of the Commonwealth pursuant to this Contract. The Commonwealth grants the Contractor a non-exclusive, royalty-free, world-wide license to use, copy, display, distribute, transmit and prepare derivative works of the Commonwealth's Intellectual Property and Data only to fulfill the purposes of this Contract and any applicable PO. The Commonwealth's license to the Contractor is limited by the terms of this Contract.
- (d) Third Party Intellectual Property. If a Supply or Service under this Contract is commercially available software or requires commercially available software for use, the Contractor shall inform the third-party licensor of the software that it will be required to enter into a software license agreement with the Commonwealth that includes terms and conditions acceptable to the Commonwealth, to the extent necessary for the Commonwealth to use the Third Party Intellectual Property in accordance with the terms of the Contract.
- (e) Click Through Terms. In order to access or use hardware or software, the Commonwealth will click through electronic terms and conditions where they appear, provided that the provision of the Services or Supplies are subject to the terms and conditions of this Contract, and such electronic terms and conditions shall

have no force or effect as to Services or Supplies and shall not be legally binding on the Commonwealth.

- (f) No Transfer of Right, Title or Interest. Except as expressly set forth in this Contract, nothing in this Contract shall be construed as granting to or conferring upon Contractor, any right, title, or interest in any physical or intellectual property that is now owned or subsequently owned by the Commonwealth or any third party. Except as expressly set forth in this Contract, nothing in this Contract shall be construed as granting to or conferring upon the Commonwealth, any right, title, or interest in any physical or intellectual property that is now owned or subsequently owned by the Contractor.

15. Commonwealth Data

The Commonwealth owns all Data provided to the Contractor pursuant to this Contract or collected or generated by the Contractor on behalf of the Commonwealth pursuant to this Contract. Commonwealth grants Contractor a non-exclusive, royalty-free, world-wide license to use, copy, display, distribute, transmit and prepare derivative works using the Commonwealth's Data only to fulfill the purposes of this Contract and any applicable PO. The Commonwealth's license to Contractor is limited by the terms of this Contract. Unless the solicitation specifies otherwise:

- (i) All Data must be stored within the United States.
- (ii) All Data must travel networks which are approved in writing by the Commonwealth.
- (iii) Data may not be stored in a state which asserts jurisdiction over disputes regarding data stored within that state.
- (iv) The Contractor shall be responsible for maintaining the privacy, security, and integrity of Data in its or its subcontractors' possession.
- (v) All Data shall be accessible to the Commonwealth upon request, and in a form acceptable to the Commonwealth.
- (vi) All Data shall be surrendered to the Commonwealth upon request.
- (vii) Any Data shall be destroyed by the Contractor at the Commonwealth's request.
- (viii) Any Data shall be held for litigation or public records purposes by the Contractor at the Commonwealth's request, and in accordance with the security, privacy, and accessibility requirements of this Contract.
- (ix) Contractor shall comply with all applicable data protection, data security, data privacy and data breach notification laws, including but not limited to

the *Commonwealth Breach of Personal Information Notification Act*, Act of December 22, 2005, P.L. 474, No. 94, as amended, 73 P.S. §§ 2301—2329.

- (x) Contractor shall be solely responsible for any costs, losses, fines or damages incurred by the Commonwealth due to Data being accessed, used, released, disclosed and/or acquired in an unauthorized manner.

16. Information Technology Policies

The Contractor shall comply with the IT standards and policies issued by the Governor's Office of Administration, Office for Information Technology (OA/OIT) (located at: <http://www.oa.pa.gov/Policies/Pages/itp.aspx>), including the accessibility standards set out in IT Policy ACC001, *Accessibility Policy*. The Contractor shall ensure that Services and Supplies procured under this Contract comply with the applicable standards. In the event such standards change during the Contractor's performance, and the Commonwealth requests that the Contractor comply with the changed standard, then any incremental costs incurred by the Contractor to comply with such changes shall be paid for pursuant to a change order to the Contract.

17. Acceptance

- (a) Supplies: No Supplies received by the Commonwealth shall be deemed accepted until the Commonwealth has had a reasonable opportunity to inspect the Supplies. Any Supplies that are discovered to be defective or fail to conform to the specifications may be rejected upon initial inspection or at any later time if the defects contained in the Supplies or the noncompliance with the specifications were not reasonably ascertainable upon the initial inspection. It shall thereupon become the duty of the Contractor to remove rejected item(s) from the premises without expense to the Commonwealth within **fifteen (15) days** after notification. Rejected Supplies left longer than **fifteen (15) days** will be regarded as abandoned, and the Commonwealth shall have the right to dispose of them as its own property and shall retain that portion of the proceeds of any sale which represents the Commonwealth's costs and expenses in regard to the storage and sale of the Supplies. Upon notice of rejection, the Contractor shall immediately replace all such rejected Supplies with others conforming to the specifications and which are not defective. If the Contractor fails, neglects or refuses to do so, the Commonwealth shall then have the right to procure a corresponding quantity of such Supplies, and deduct from any monies due or that may thereafter become due to the Contractor, the difference between the price stated in the Contract and the cost thereof to the Commonwealth.
- (b) Services: Acceptance of Services, including Developed Works, will occur in accordance with an Approval Plan (Plan) submitted by the Contractor and approved by the Commonwealth. Upon approval of the Plan by the Commonwealth, the Plan becomes part of this Contract. For contracts where the development of software, the configuration of software or the modification of software is the deliverable, the

Plan must include an Acceptance Test Plan. The Acceptance Test Plan will provide for a Final Acceptance Test, and may provide for Interim Milestone Acceptance Tests. Each Acceptance Test will be designed to demonstrate that the Developed Works conform to the functional specification for the Developed Works, if any, and/or the requirements of this Contract. Contractor shall notify the Commonwealth when the deliverable is completed and ready for acceptance testing. The Commonwealth will not unreasonably delay commencement of acceptance testing.

18. Product Conformance

The Commonwealth reserves the right to require any and all Contractors to:

- (i) Provide certified data from laboratory testing performed by the Contractor, or performed by an independent laboratory, as specified by the Commonwealth.
- (ii) Supply published manufacturer product Documentation.
- (iii) Permit a Commonwealth representative to witness testing at the Contractor's location or at an independent laboratory.
- (iv) Complete a survey/questionnaire relating to the bid requirements and specifications.
- (v) Provide customer references.
- (vi) Provide a product demonstration at a location near Harrisburg or the using agency location.

19. Rejected Material Not Considered Abandoned

The Commonwealth shall have the right to not regard any rejected material as abandoned and to demand that the Contractor remove the rejected material from the premises within **thirty (30) days** of notification. The Contractor shall be responsible for removal of the rejected material as well as proper clean-up. If the Contractor fails or refuses to remove the rejected material as demanded by the Commonwealth, the Commonwealth may seek payment from, or set-off from any payments due to the Contractor under this or any other Contract with the Commonwealth, the costs of removal and clean-up. This is in addition to all other rights to recover costs incurred by the Commonwealth.

20. Compliance with Law

The Contractor shall comply with all applicable federal and state laws and regulations and local ordinances in the performance of the Contract.

21. Environmental Provisions

In the performance of the Contract, the Contractor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations, including, but not limited to, the [Clean Streams Law](#), Act of June 22, 1937, (P.L. 1987, No. 394), as amended [35 P.S. § 691.601](#) et seq.; the [Pennsylvania Solid Waste Management Act](#), Act of July 7, 1980 (P.L. 380, No. 97), as amended, [35 P.S. § 6018.101 et seq.](#); and the [Dam Safety and Encroachment Act](#), Act of November 26, 1978 (P.L. 1375, No. 325), as amended, [32 P.S. § 693.1](#).

22. Post-Consumer Recycled Content

Except as specifically waived by the Department of General Services in writing, any products which are provided to the Commonwealth as a part of the performance of the Contract must meet the minimum percentage levels for total recycled content as specified Environmental Protection Agency in its Comprehensive Procurement Guidelines, which can be found at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

23. Recycled Content Enforcement

The Contractor may be required, after delivery of the Contract item(s), to provide the Commonwealth with documentary evidence that the item(s) was in fact produced with the required minimum percentage of post-consumer and recovered material content.

24. Compensation

- (a) Compensation for Supplies: The Contractor shall be required to furnish the awarded Supplies at the price(s) quoted in the Purchase Order. All Supplies shall be delivered within the time period(s) specified in the Purchase Order. The Contractor shall be compensated only for Supplies that are delivered and accepted by the Commonwealth.
- (b) Compensation for Services: The Contractor shall be required to perform the specified Services at the price(s) quoted in the Contract or Purchase Order. All Services shall be performed within the time period(s) specified in the Contract or Purchase Order. The Contractor shall be compensated only for Services performed to the satisfaction of the Commonwealth. The Contractor shall not be allowed or paid travel or per diem expenses except as specifically set forth in the Contract. If not otherwise specified in the Contract, 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](#).

25. Billing Requirements

Unless the Contractor has been authorized by the Commonwealth for Evaluated Receipt Settlement or Vendor Self-Invoicing, the Contractor shall include in all of its invoices the following minimum information:

- (i) Vendor name and “Remit to” address, including SAP Vendor number;
- (ii) Bank routing information, if ACH;
- (iii) SAP Purchase Order number;
- (iv) Delivery Address, including name of Commonwealth agency;
- (v) Description of the Supplies/Services delivered in accordance with SAP Purchase Order (include purchase order line number if possible);
- (vi) Quantity provided;
- (vii) Unit price;
- (viii) Price extension;
- (ix) Total price; and
- (x) Delivery date of Supplies or Services.

If an invoice does not contain the minimum information set forth in this section, or, if applicable, comply with the provisions located at <http://www.budget.pa.gov/Programs/Pages/E-Invoicing.aspx>, relating to the Commonwealth E-Invoicing Program, the Commonwealth may return the invoice as improper. If the Commonwealth returns an invoice as improper, the time for processing a payment will be suspended until the Commonwealth receives a correct invoice. The Contractor may not receive payment until the Commonwealth has received a correct invoice.

Contractors are required to establish separate billing accounts with each using agency and invoice them directly. Each invoice shall be itemized with adequate detail and match the line item on the Purchase Order. In no instance shall any payment be made for Services to the Contractor that are not in accordance with the prices on the Purchase Order, the Contract, updated price lists or any discounts negotiated by the purchasing agency.

26. Payment

- (a) The Commonwealth shall put forth reasonable efforts to make payment by the required payment date. The required payment date is:
 - (i) the date on which payment is due under the terms of the Contract;

- (ii) **thirty (30) days** after a proper invoice actually is received at the “Bill To” address if a date on which payment is due is not specified in the Contract (a “proper” invoice is not received until the Commonwealth accepts the service as satisfactorily performed); or
 - (iii) the payment date specified on the invoice if later than the dates established by (i) and (ii) above.
- (b) Payment may be delayed if the payment amount on an invoice is not based upon the price(s) as stated in the Contract. If any payment is not made within **fifteen (15) days** after the required payment date, the Commonwealth may pay interest as determined by the Secretary of Budget 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](#). See, *Procurement Handbook, Part I, Chapter 18, A 8*. Payment should not be construed by the Contractor as acceptance of the service performed by the Contractor. The Commonwealth reserves the right to conduct further testing and inspection after payment, but within a reasonable time after performance, and to reject the service if such post payment testing or inspection discloses a defect or a failure to meet specifications. The Contractor agrees that the Commonwealth may set off the amount of any state tax liability or other obligation of the Contractor or its subsidiaries to the Commonwealth against any payments due the Contractor under any contract with the Commonwealth.
- (c) The Commonwealth shall have the option of using the Commonwealth purchasing card to make purchases under the Contract or Purchase Order. The Commonwealth’s purchasing card is similar to a credit card in that there will be a small fee which the Contractor will be required to pay and the Contractor will receive payment directly from the card issuer rather than the Commonwealth. Any and all fees related to this type of payment are the responsibility of the Contractor. In no case will the Commonwealth allow increases in prices to offset credit card fees paid by the Contractor or any other charges incurred by the Contractor, unless specifically stated in the terms of the Contract or Purchase Order.

27. ACH Payments

The Commonwealth will make contract payments through Automated Clearing House (ACH).

- (i) Within **10 days** of award of the contract or purchase order, the Contractor must submit or must have already submitted their ACH information within their user profile in the Commonwealth’s procurement system (SRM).
- (ii) The Contractor must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the Commonwealth

of Pennsylvania's ACH remittance advice to enable the Contractor to properly apply the state agency's payment to the invoice submitted.

- (iii) It is the responsibility of the Contractor to ensure that the ACH information contained in SRM is accurate and complete. Failure to maintain accurate and complete information may result in delays in payments.

28. Taxes

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. 237400001-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 state 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.

29. Assignment of Antitrust Claims

The Contractor and the Commonwealth recognize that in actual economic practice, overcharges by the Contractor's suppliers resulting from violations of state or federal antitrust laws are in fact borne by the Commonwealth. As part of the consideration for the award of the Contract, and intending to be legally bound, the Contractor assigns to the Commonwealth all right, title and interest in and to any claims the Contractor now has, or may acquire, under state or federal antitrust laws relating to the Supplies and Services which are the subject of this Contract.

30. Hold Harmless Provision

- (a) The Contractor shall hold the Commonwealth harmless from and indemnify the Commonwealth against any and all third party claims, demands and actions based upon or arising out of any activities performed by the Contractor and its employees and agents under this Contract, provided the Commonwealth gives Contractor 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 may, however, in its sole discretion and under such terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Contractor, the Commonwealth will cooperate with all reasonable requests of Contractor made in the defense of such suits.

- (b) Notwithstanding the above, neither party shall enter into any settlement without the other party's written consent, which shall not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow the Contractor to control the defense and any related settlement negotiations.

31. Sovereign Immunity

No provision of this Contract shall be construed to waive or limit the sovereign immunity of the Commonwealth of Pennsylvania or its governmental sub-units.

32. Limitation of Liability

- (a) General. The Contractor's liability to the Commonwealth under this Contract shall be limited to the greater of \$250,000 or the value of this Contract (including any amendments). This limitation will apply, except as otherwise stated in this section, regardless of the form of action, whether in contract or in tort, including negligence. This limitation does not, however, apply to any damages:
 - (i) for bodily injury;
 - (ii) for death;
 - (iii) for intentional injury;
 - (iv) for damage to real property or tangible personal property for which the Contractor is legally liable;
 - (v) under Section 13, Patent, Copyright, Trademark and Trade Secret Protection;
 - (vi) related to a breach of the security of a system maintained or managed by the Licensor; or
 - (vii) under Section 64, Virus, Malicious, Mischievous or Destructive Programming.
- (b) The Contractor will not be liable for consequential or incidental damages, except for damages as set forth in subsection (a), or as otherwise specified in the Contract.

33. Audit Provisions

The Commonwealth shall have the right, at reasonable times and at a site designated by the Commonwealth, to audit the books, documents and records of the Contractor to the extent that the books, documents and records relate to costs or pricing data for the Contract. The Contractor agrees to maintain records which will support the prices charged and costs incurred for the Contract. The Contractor shall preserve books, documents, and records that relate to costs or

pricing data for the Contract for a period of **three (3) years** from date of final payment. The Contractor shall give full and free access to all records to the Commonwealth and/or their authorized representatives.

34. Single Audit Act of 1984

In compliance with the *Single Audit Act of 1984*, 31 U.S.C. § 7501, *et seq.*, the Contractor agrees to the following:

- (i) This Contract is subject to audit by federal and state agencies or their authorized representative in accordance with the auditing standards promulgated by the Comptroller General of the **United** States and specified in Government Auditing Standards, 1994 Revisions (Yellow Book).
- (ii) The audit requirement of this Contract will be satisfied if a single audit is performed under the provisions of the Single Audit Act of 1984, 31 U.S.C. Section 7501, *et seq.*, and all rules and regulations promulgated pursuant to the Act.
- (iii) The Commonwealth reserves the right for federal and state agencies or their authorized representatives to perform additional audits of a financial/compliance, economy/efficiency, or program results nature, if deemed necessary.
- (iv) The Contractor further agrees to comply with requirements that may be issued by the state agency upon receipt of additional guidance received from the federal government regarding the Single Audit Act of 1984.

35. Default

- (a) The Commonwealth may, subject to the Force Majeure provisions of this Contract, and in addition to its other rights under the Contract, declare the Contractor in default by written notice thereof to the Contractor, and terminate (as provided in the Termination Provisions of this Contract) the whole or any part of this Contract or any Purchase Order for any of the following reasons:
 - (i) Failure to begin delivering Supplies or performing Services within the time specified in the Contract or Purchase Order or as otherwise specified;
 - (ii) Failure to deliver Supplies or perform Services with sufficient labor, equipment, or material to insure the completion of the specified work in accordance with the Contract or Purchase Order terms;
 - (iii) Unsatisfactory performance of the work;

- (iv) Failure to deliver the Supply(ies) or perform Services within the time specified in the Contract or Purchase Order or as otherwise specified;
 - (v) Improper delivery;
 - (vi) Failure to provide a Supply(ies) or perform Services that conform with the specifications referenced in the Contract or Purchase Order;
 - (vii) Delivery of a defective Supply;
 - (viii) Failure or refusal to remove material, or remove and replace any work rejected as defective or unsatisfactory;
 - (ix) Discontinuance of furnishing Supplies or performing Services without approval;
 - (x) Failure to resume furnishing Supplies or performing Services that were discontinued, within a reasonable time after notice to do so;
 - (xi) Insolvency or bankruptcy;
 - (xii) Assignment made for the benefit of creditors;
 - (xiii) Failure or refusal within **10 days** after written notice by the Contracting Officer, to make payment or show cause why payment should not be made, of any amounts due for Supplies furnished or Services performed, for equipment rentals, or for utility services rendered;
 - (xiv) Failure to protect, repair or make good any damage or injury to property;
 - (xv) Breach of any provision of the Contract;
 - (xvi) Failure to comply with representations made in the Contractor's bid/proposal; or
 - (xvii) Failure to comply with applicable industry standards, customs and practice.
- (b) In the event that the Commonwealth terminates this Contract or any Purchase Order in whole or in part as provided in subsection (a) above, the Commonwealth may procure, upon such terms and in such manner as it determines, Supplies and/or Services similar or identical to those so terminated, and the Contractor shall be liable to the Commonwealth for any reasonable excess costs for such similar or identical items included within the terminated part of the Contract or Purchase Order.

- (c) If the Contract or a Purchase Order is terminated as provided in subsection (a) above, the Commonwealth, in addition to any other rights provided in this section, may require the Contractor to transfer title and deliver immediately to the Commonwealth in the manner and to the extent directed by the Contracting Officer, such partially completed items, including, where applicable, reports, working papers and other Documentation, as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract or Purchase Order as has been terminated. Except as provided below, payment for completed work accepted by the Commonwealth shall be at the Contract price. Except as provided below, payment for partially completed items including, where applicable, reports and working papers, delivered to and accepted by the Commonwealth shall be in an amount agreed upon by the Contractor and Contracting Officer. The Commonwealth may withhold from amounts otherwise due the Contractor for such completed or partially completed works, such sum as the Contracting Officer determines to be necessary to protect the Commonwealth against loss.
- (d) The rights and remedies of the Commonwealth provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- (e) The Commonwealth's failure to exercise any rights or remedies provided in this section shall not be construed to be a waiver by the Commonwealth of its rights and remedies in regard to the event of default or any succeeding event of default.
- (f) Following exhaustion of the Contractor's administrative remedies as set forth in the Contract Controversies Provision of the Contract, the Contractor's exclusive remedy shall be to seek damages in the Commonwealth Board of Claims.

36. Force Majeure

Neither party will incur any liability to the other if its performance of any obligation under this Contract is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but are not limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes.

The Contractor shall notify the Commonwealth orally within **five (5) days** and in writing within **ten (10) days** of the date on which the Contractor becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under the contract is prevented or delayed and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay. The Contractor shall have the burden of proving that such cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting Documentation as the Commonwealth may reasonably request. After receipt of such

notification, the Commonwealth may elect to cancel the Contract, cancel the Purchase Order, or to extend the time for performance as reasonably necessary to compensate for the Contractor's delay.

In the event of a declared emergency by competent governmental authorities, the Commonwealth by notice to the Contractor, may suspend all or a portion of the Contract or Purchase Order.

37. Termination Provisions

The Commonwealth has the right to terminate this Contract or any Purchase Order issued thereunder for any of the reasons set forth in this section. Termination shall be effective upon written notice to the Contractor.

- (a) Termination for convenience: The Commonwealth may terminate the Contract, or a Purchase Order issued against the Contract, in whole or in part, without cause by giving Contractor **30 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). Any such termination shall be accomplished by delivery to the Contractor of a Notice of Termination specifying the extent to which performance under this Contract is terminated either in whole or in part and the date on which such termination becomes effective.

In the event of termination hereunder, Contractor shall receive payment for the following:

- (i) all Supplies furnished and Services performed consistent with the terms of the Contract prior to the effective date of termination;
- (ii) all actual and reasonable costs incurred by Contractor as a result of the termination of the Contract; and

In no event shall the Contractor be paid for any loss of anticipated profit (by the Contractor or any subcontractor), loss of use of money, or administrative or overhead costs. Failure to agree on any termination costs shall be a dispute handled in accordance with the CONTRACT CONTROVERSIES provision of this Contract.

The Contractor shall cease providing Supplies and Services as of the date set forth in the Notice of Termination, and shall be paid only for such Supplies and Services as have already been satisfactorily furnished or rendered up to and including the termination date set forth in said notice, or as may be otherwise provided for in said Notice of Termination, and for such Supplies furnished or Services performed during the **30-day** notice period, if requested by the Commonwealth.

- (b) Non-appropriation: The Commonwealth's obligation to make payments during any Commonwealth fiscal year succeeding the current fiscal year shall be subject to

availability and appropriation of funds. When funds (state and/or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the Commonwealth shall have the right to terminate the Contract or a Purchase Order in whole or in part. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Supplies or Services delivered under the Contract. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid from any appropriations available for that purpose.

- (c) Termination for cause: The Commonwealth may, in addition to its other rights under this Contract, terminate this Contract in whole or in part by providing written notice of default to the Contractor if the Contractor materially fails to perform its obligations under the Contract and does not cure such failure within **30 days** or, if a cure within such period is not practical, commence a good faith effort to cure such failure to perform within the specified period or such longer period as the Commonwealth may specify in the written notice specifying such failure, and diligently and continuously proceed to complete the cure. The Contracting Officer shall provide any notice of default or written cure notice for Contract terminations.

In the event the Commonwealth terminates this Contract in whole or in part as provided in this subsection (c), the Commonwealth may procure services similar to those so terminated, and the Contractor shall be liable to the Commonwealth for the difference between the Contract price for the terminated portion of the Supplies or Services and the actual and reasonable cost (but in no event greater than the fair market value) of producing substitute equivalent Supplies or Services for the terminated Supplies or Services, provided that the Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this section.

The Commonwealth shall also have the right, upon written notice to the Contractor, to terminate the Contract or a Purchase Order for other cause as specified in the Contract or by law. If it is later determined that the Commonwealth erred in terminating the Contract or a Purchase Order for cause, then, at the Commonwealth's discretion, the Contract or Purchase Order shall be deemed to have been terminated for convenience under subsection (a) above.

38. Contract 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 Contract, the Contractor must, within **six (6) months** after the cause of action accrues, file a written claim with the contracting officer for a determination. The claim shall state all grounds upon which the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum. At the time the claim is filed, or within **sixty (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 Contractor 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 Contractor. The contracting officer shall send his/her written determination to the Contractor. 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 **fifteen (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 Contractor may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Contractor shall proceed diligently with the performance of the Contract in a manner consistent with the determination of the contracting officer and the Commonwealth shall compensate the Contractor pursuant to the terms of the Contract.

39. Assignability and Subcontracting

- (a) Subject to the terms and conditions of this section, this Contract shall be binding upon the parties and their respective successors and assigns.
- (b) The Contractor shall not subcontract with any person or entity to perform all or any part of the furnishing of Supplies or performance of Services under this Contract without the prior written consent of the Contracting Officer, whose consent may be withheld at their sole and absolute discretion.
- (c) The Contractor may not assign, in whole or in part, this Contract or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the Contracting Officer, whose consent may be withheld at their sole and absolute discretion.
- (d) Notwithstanding the foregoing, the Contractor may, without the consent of the Contracting Officer, assign its rights to payment to be received under the Contract, provided that the Contractor provides written notice of such assignment to the

Contracting Officer together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of this Contract.

- (e) For the purposes of this Contract, the term “assign” shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in the Contractor provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.
- (f) Any assignment consented to by the Contracting Officer shall be evidenced by a written assignment agreement executed by the Contractor and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the Contract and to assume the duties, obligations, and responsibilities being assigned.
- (g) A change of name by the Contractor, following which the Contractor’s federal identification number remains unchanged, shall not be considered to be an assignment hereunder. The Contractor shall give the Contracting Officer written notice of any such change of name.

40. Other Contractors

The Commonwealth may undertake or award other contracts for additional or related Supplies furnished or Services performed, and the Contractor shall fully cooperate with other contractors and Commonwealth employees and coordinate its Supplies or Services with such additional work as may be required. The Contractor shall not commit or permit any act that will interfere with the performance of Supplies furnished or Services performed by any other contractor or by Commonwealth employees. This section shall be included in the Contracts of all contractors with which this Contractor will be required to cooperate. The Commonwealth shall equitably enforce this section as to all contractors to prevent the imposition of unreasonable burdens on any contractor.

41. Nondiscrimination/Sexual Harassment Clause

The Contractor agrees:

- (a) In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the *Pennsylvania Human Relations Act* (PHRA) and applicable federal laws, against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- (b) Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual

orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract.

- (c) The Contractor and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contracted services are performed shall satisfy this requirement for employees with an established work site.
- (d) The Contractor and each subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
- (e) The Contractor and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws, regulations and policies relating to nondiscrimination and sexual harassment. The Contractor and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report (“EEO-1”) with the U.S. Equal Employment Opportunity Commission (“EEOC”) and shall file an annual EEO-1 report with the EEOC as required for employers’ subject to *Title VII of the Civil Rights Act of 1964*, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Contractor and each subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.
- (f) The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
- (g) The Contractor’s and each subcontractor’s obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor and each subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.

- (h) The Commonwealth may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

42. Contractor Integrity Provisions

It is essential that those who seek to contract with the Commonwealth of Pennsylvania (“Commonwealth”) observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Commonwealth contracting and procurement process.

- (a) **DEFINITIONS.** For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this section:
 - (i) “Affiliate” means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
 - (ii) “Consent” means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract.
 - (iii) “Contractor” means the individual or entity, that has entered into this contract with the Commonwealth.
 - (iv) “Contractor Related Parties” means any affiliates of the Contractor and the Contractor’s executive officers, Pennsylvania officers and directors, or owners of 5 percent or more interest in the Contractor.
 - (v) “Financial Interest” means either:
 - (1) Ownership of more than a five percent interest in any business; or
 - (2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
 - (vi) “Gratuity” means tendering, giving or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The

exceptions set forth in the *Governor's Code of Conduct, Executive Order 1980-18*, the 4 Pa. Code § 7.153(b), shall apply.

(vii) “Non-bid Basis” means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.

(b) In furtherance of this policy, Contractor agrees to the following:

(i) Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with the Commonwealth.

(ii) Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.

(iii) Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.

(iv) Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.

(v) Contractor certifies to the best of its knowledge and belief that within the last **five (5) years** Contractor or Contractor Related Parties have not:

- (1) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
- (2) been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
- (3) had any business license or professional license suspended or revoked;
- (4) had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
- (5) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

If Contractor cannot so certify to the above, then it must submit along with its bid, proposal or contract a written explanation of why such certification cannot be made and the Commonwealth will determine whether a contract may be entered into with the Contractor. The Contractor's obligation pursuant to this certification is ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to immediately notify the Commonwealth in writing if at any time during the term of the contract if becomes aware of any event which would cause the Contractor's certification or explanation to change. Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the contract.

- (vi) Contractor shall comply with the requirements of the [Lobbying Disclosure Act](#) (65 Pa. C.S. § 13A01, *et seq.*) regardless of the method of award. If this contract was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the Section 1641 of the [Pennsylvania Election Code](#) (25 P.S. §3260a).
- (vii) When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or the Office of the State Inspector General in writing.
- (viii) Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission

of the bid or proposal, during any contract negotiations or during the term of the contract, to include any extensions thereof. Contractor shall immediately notify the Commonwealth in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

- (ix) Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract. Contractor shall incorporate this subsection in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third party beneficiaries shall be created thereby.
- (x) For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

43. Contractor Responsibility Provisions

For the purpose of these provisions, the term Contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee or lessor, who has furnished or performed or seeks to furnish or perform, goods, supplies, services, leased space, construction or other activity, under a contract, grant, lease, purchase order or reimbursement agreement with the Commonwealth of Pennsylvania (Commonwealth). The term Contractor includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.

- (a) The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid/Contract, a written explanation of why such certification cannot be made.
- (b) The Contractor also certifies, in writing, that as of the date of its execution of this Bid/Contract it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.
- (c) The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the Contractor, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within **15 days** of the date of suspension or debarment.
- (d) The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.
- (e) The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

- (f) The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at <http://www.dgs.pa.gov> or contacting the:

Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg, PA 17125
Telephone No: (717) 783-6472
FAX No: (717) 787-9138

44. Americans With Disabilities Act

- (a) Pursuant to federal regulations promulgated under the authority of *The Americans With Disabilities Act*, 28 C.F.R. § 35.101 et seq., the Contractor understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Contract or from activities provided for under this Contract on the basis of the disability. As a condition of accepting this contract, the Contractor agrees to comply with the “General Prohibitions Against Discrimination,” 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of *The Americans With Disabilities Act* which are applicable to all benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.
- (b) The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Contractor’s failure to comply with the provisions of subsection (a) above.

45. Covenant Against Contingent Fees

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Commonwealth shall have the right to terminate the Contract without liability or in its discretion to deduct from the Contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

46. Applicable Law

This Contract shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. The Contractor consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or

defense that such forum is not convenient or proper. The Contractor agrees that any such court shall have in personam jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.

47. Integration

This Contract, including all referenced documents, and any Purchase Order constitutes the entire agreement between the parties. No agent, representative, employee or officer of either the Commonwealth or the Contractor has authority to make, or has made, any statement, agreement or representation, oral or written, in connection with the Contract, 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 the Contract. No modifications, alterations, changes, or waiver to the Contract or any of its terms shall be valid or binding unless accomplished by a written amendment signed by both parties.

48. Order of Precedence

In the event there is a conflict among the documents comprising this Contract, the Commonwealth and the Contractor agree on the following order of precedence: the Contract; the solicitation; and the Contractor's response to the solicitation.

49. Controlling Terms and Conditions

The terms and conditions of this Contract shall be the exclusive terms of agreement between the Contractor and the Commonwealth. Other terms and conditions or additional terms and conditions included or referenced in the Contractor'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 Contractor and not binding on the Commonwealth.

50. Changes

The Commonwealth reserves the right to make changes at any time during the term of the Contract or any renewals or extensions thereof: 1) to increase or decrease the quantities resulting from variations between any estimated quantities in the Contract and actual quantities; 2) to make changes to the Services within the scope of the Contract; 3) to notify the Contractor that the Commonwealth is exercising any Contract renewal or extension option; or 4) to modify the time of performance that does not alter the scope of the Contract to extend the completion date beyond the Expiration Date of the Contract or any renewals or extensions thereof. Any such change shall be made by the Contracting Officer by notifying the Contractor in writing. The change shall be effective as of the date of the change, unless the notification of change specifies a later effective date. Such increases, decreases, changes, or modifications will not invalidate the Contract, nor, if performance security is being furnished in conjunction with the Contract, release the security obligation. The Contractor agrees to provide the Service in accordance with the change order. Any dispute by the Contractor in regard to the performance required by any notification of change shall be handled through the Contract Controversies section.

51. Background Checks

- (a) The Contractor must, at its expense, arrange for a background check for each of its employees, as well as the employees of any of its subcontractors, who will have access to Commonwealth facilities, either through on-site access or through remote access. Background checks are to be conducted via the Pennsylvania State Police 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 and on an annual basis thereafter.
- (b) Before the Commonwealth will permit access to the Contractor, the Contractor must provide written confirmation that the background checks have been conducted. If, at any time, it is discovered that a Contractor employee has a criminal record that includes a felony or misdemeanor involving terroristic behavior, 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 Contractor 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 unless the Commonwealth consents to the access, in writing, prior to the access. The Commonwealth may withhold its consent in its sole discretion. Failure of the Contractor to comply with the terms of this section on more than one occasion or Contractor's failure to appropriately address any single failure to the satisfaction of the Commonwealth may result in the Contractor being deemed in default of its Contract.
- (c) The Commonwealth specifically reserves the right of the Commonwealth 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 contracting agency and DGS set forth in Enclosure 3 of [Commonwealth Management Directive 625.10 Amended](#) (June 4, 2014) *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 Contractor for contracted personnel photo identification or access badges.

52. Confidentiality

- (a) The Contractor agrees to protect the confidentiality of the Commonwealth's confidential information. The Commonwealth agrees to protect the confidentiality

of Contractor's confidential information. In order for information to be deemed confidential, the party claiming confidentiality must designate the information as "confidential" in such a way as to give notice to the other party (notice may be communicated by describing the information, and the specifications around its use or disclosure, in the applicable document). Neither party may assert that information owned by the other party is such party's confidential information. The parties agree that such confidential information shall not be copied, in whole or in part, or used or disclosed except when essential for authorized activities under this Contract and, in the case of disclosure, where the recipient of the confidential information has agreed to be bound by confidentiality requirements no less restrictive than those set forth herein. Each copy of such confidential information shall be marked by the party making the copy with any notices appearing in the original. Upon expiration or termination of this Contract, the receiving party will return to the disclosing party all copies of the confidential information in the receiving party's possession, other than one copy, (where permitted by law or regulation) which may be maintained for archival purposes only, and which will remain subject to this Contract's security, privacy, data retention/destruction and confidentiality provisions (all of which shall survive the expiration or termination of this Contract). Both parties agree that a material breach of these requirements may, after failure to cure within the period specified in this Contract, and at the discretion of the non-breaching party, result in termination for default pursuant to the DEFAULT provision of this Contract, in addition to other remedies available to the non-breaching party.

- (b) Insofar as information is not otherwise protected by law or regulation, the obligations stated in this section do not apply to information:
 - (i) already known to the recipient at the time of disclosure other than through the contractual relationship and not otherwise subject to any obligation of non-disclosure or confidentiality;
 - (ii) independently generated by the recipient and not derived from the information supplied by the disclosing party;
 - (iii) known or available to the public, except where such knowledge or availability is the result of unauthorized disclosure by the recipient of the proprietary information;
 - (iv) disclosed to the recipient without a similar restriction by a third party who has the right to make such disclosure; or
 - (v) required to be disclosed by the recipient by law, regulation, court order, or other legal process.

There shall be no restriction with respect to the use or disclosure of any ideas, concepts, know-how or data processing techniques developed alone or jointly with

the Commonwealth in connection with Services provided to the Commonwealth under this Contract.

- (c) The Contractor 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 and submit un-redacted version of the appropriate document, and
 - (ii) Prepare and submit a redacted version of the document that redacts the information that is asserted to be confidential or proprietary information or a trade secret. The Contractor shall use a redaction program that ensures the information is permanently and irreversibly redacted, or
 - (iii) Prepare and submit a signed written statement that identifies confidential or proprietary information or trade secrets and that states:
 - (i) the attached material contains confidential or proprietary information or trade secrets;
 - (ii) the Contractor is submitting the material in both redacted and un-redacted format, if possible, in accordance with 65 P.S. § 67.707(b); and
 - (iii) the Contractor is requesting that the material be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests.
 - (iv) Submit the two (2) documents along with the signed written statement to the Commonwealth.

53. Sensitive Information

- (a) The Contractor shall not publish or otherwise disclose, except to the Commonwealth or the Contractor's subcontractors and except matters of public record (which is to be determined entirely in the discretion of the Commonwealth), any information or data obtained hereunder from private individuals, organizations, or public agencies.
- (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 Contract for any purpose not connected with the parties' Contract responsibilities except with consent pursuant to applicable law and regulations. All documents associated with direct disclosures of this kind must be announced to and open for inspection by the Commonwealth.

- (c) Rights and obligations of the parties under this section survive the expiration or termination of this Contract.

54. Small Diverse Business Commitment

Contractor shall meet and maintain the commitments to small diverse businesses in the Small Diverse Business (“SDB”) portion of its Bid/Proposal. Any proposed change to a SDB commitment must be submitted to the DGS Bureau of Diversity, Inclusion and Small Business Opportunities (“BDISBO”), which will make a recommendation as to a course of action to the Commonwealth Contracting Officer. Contractor shall complete the Prime Contractor’s Quarterly Utilization Report and submit it to the Commonwealth Contracting Officer and BDISBO within **ten (10) workdays** at the end of each calendar quarter that the Contract is in effect.

55. Installment Purchase Additional Terms and Conditions

To the extent that the Contractor offers the Commonwealth or any purchasing agency (“Purchaser”) the option to pay for any items covered by the Contract in installments over time, these Installment Purchase Terms and Conditions shall, in addition to the other terms and conditions of the Contract, govern the installment purchase, except to the extent the Contractor assigns an Installment Purchase to an Initial Assignee, in which case the Initial Assignee shall be bound to the obligations of the Contractor only as specified in these Installment Purchase Terms and Conditions. If a Purchaser desires to purchase items on an installment basis, the Purchaser shall indicate its Installment Purchase election on the PO issued to the Contractor (“Installment Purchase PO”). By issuing an Installment Purchase PO, the Purchaser explicitly agrees to these Installment Purchase Terms and Conditions. Any items covered by an Installment Purchase shall be called “Installment Items” in these Installment Purchase Terms and Conditions. To the extent that there is a conflict between the other terms and conditions of the Contract and these Installment Purchase Terms and Conditions, these Installment Purchase Terms and Conditions shall prevail to the extent that the Purchaser has elected an Installment Purchase option.

- (a) Term of Installment Purchase

The Contractor may provide any Installment Items under the Contract for any term up to **60 months**. The Purchaser shall identify the term selected on the Installment Purchase PO. The Installment Purchase term shall commence on the date the Purchaser accepts the Installment Items by executing the Acceptance Certificate, and the term shall continue for the length specified on the Installment Purchase PO. The form of the Acceptance Certificate is attached as **Appendix I** to the RFP.

If the Contractor delivers the Contract items in more than one delivery, unless otherwise specified in the Specifications for this procurement, the Purchaser will provide separate acceptance certificates for each delivery of the items, and the Purchaser will make separate payments for the Contract items corresponding to the amount of Contract items delivered and accepted **30 days** prior to the payment due date.

(b) Payments

- (i) Full Term Intention. The Purchaser shall pay the applicable monthly payment for the Installment Items. The Purchaser shall continue payment for the full Installment Purchase term, unless the Purchaser terminates the Installment Purchase, either for Contractor default as set forth in the Default provision of the Contract or for non-appropriation of funds as specified in this section.
- (ii) Non-Appropriation. The Purchaser's obligation is payable only and solely from funds allotted for the purpose of the Installment Purchase. If sufficient funds are not appropriated for continuation of performance under any Installment Purchase for any fiscal year subsequent to the one in which the Purchaser issued the Installment Purchase PO, the Purchaser may return the Installment items to the Contractor/Initial Assignee (as applicable), and thereafter the Contractor/Initial Assignee will release the Purchaser of all further obligations under the Installment Purchase, provided:
 - (1) The Purchaser delivers unencumbered title to the Installment items to the contractor or Initial Assignee (if applicable);
 - (2) The Purchaser returns the Installment items to the Contractor/Initial Assignee in good condition, reasonable wear and tear excepted; and
 - (3) The Purchaser gives **30 days'** written notice of the failure of appropriations to the Contractor/Initial Assignee, along with a certification that the Installment Items are not being replaced by similar items from another vendor. In the event the Purchaser returns the Installment Items for failure of appropriations, the Purchaser shall pay all amounts then due under the Installment Purchase through the end of the fiscal year for which sufficient funds were appropriated for the Installment Purchase.

(c) Title and Security Interest

- (i) The title to the Installment Items shall pass to the Purchaser at the time and place of delivery to the Purchaser of each unit of equipment. The Contractor or its Initial Assignee shall have a purchase money security interest in the Installment Items until payment of all installments as set forth in the payment schedule are made, or if the Purchaser prepays its installments, upon payment of the agreed amount between the Contractor and the Purchaser as set forth in Subsection (i), Financing and Prepayment, of this Section.

- (1) Upon payment of the final installment or other concluding payment option, neither the Contractor nor its assignee shall have any further interest in the Installment Items.
- (2) The Installment Items shall remain personal property and shall not become a fixture or affixed to real property without consent of the Contractor/assignee.
- (3) At the request of the Contractor or Initial Assignee, the Purchaser will join the Contractor/assignee in executing one or more UCC-1 financing statements.
- (4) The Purchaser will keep the Installment Items free and clear of all encumbrances except the Contractor's/assignee's security interest.

(d) Use and Location of, and Alteration to Installment Items

The Purchaser shall keep the Installment Items within the confines of the Commonwealth of Pennsylvania and shall inform the Contractor/Initial Assignee upon request of the location of the Installment Items. The Purchaser, at its own cost and expense, shall maintain the Installment Items in good operating condition and will not use or deal with the Installment Items in any manner which is inconsistent with the terms of the Contract or any applicable laws and regulations. The Purchaser agrees not to misuse, abuse, or waste the Installment Items and the Purchaser will not allow the Installment Items to deteriorate, except for ordinary wear and tear resulting from their intended use. No alterations, changes, or modifications to the Installment Items shall be made without the approval of the Contractor/Initial Assignee.

(e) Assumption of Risks

(i) The Purchaser shall, after acceptance of the Installment Items, assume and bear the risk of damage to, or loss or theft of, the Installment Items (including all component parts) from any cause other than action or inaction of the Contractor/assignee. The loss or damage of the Installment Items shall not impair any obligation of the Purchaser under these Installment Purchase Terms and Conditions, which shall continue in full force and effect. In the event that all or part of the Installment Items shall, as a result of the above-mentioned causes, become, in the Purchaser's reasonable determination, lost, stolen, destroyed, rendered unusable, or irreparably damaged, then the Purchaser shall notify the Contractor/assignee in writing. At its option, the Purchaser shall elect either:

- (1) to replace the equipment with like equipment, or

- (2) to pay pro rata to the Contractor/assignee all payments then currently due according to the payment schedule, plus the pro rata principal portion of any remaining installments. The “pro rata principal portion of remaining installment payments” is that percentage of the principal portion of remaining installment payments as of the date of payment that the cost of the units of the equipment lost, stolen, destroyed, or rendered irreparably unusable or damaged bears to the total cost of the equipment determined by the amounts set forth in the field purchase order.
 - (ii) The Purchaser assumes all risks and liabilities for injury to or death of any person, or damage to any property, arising out of the Purchaser’s possession, use, operation, condition, or storage of any Installment Items, as more fully set forth in Paragraph (i) of Subsection (g) of this Section.
 - (iii) The Purchaser agrees to insure the Installment Items as provided under Paragraph (ii) of Subsection (g) of this Section.
- (f) Warranties
- (i) The Purchaser shall have the benefit of any and all manufacturer or supplier warranties for the Installment Items.
 - (ii) The Contractor/Initial Assignee and any subsequent assignee warrants that neither the Contractor/Initial Assignee or subsequent assignee, nor anyone acting or claiming through these parties by assignment or otherwise, will interfere with the Purchaser’s quiet enjoyment of the Installment Items so long as no event of default as defined in Subsection (j) of this Section shall have occurred and be continuing.
- (g) Liability
- (i) The Purchaser assumes all risks and liabilities for injury to or death of any person or damage to any property, arising out of the Purchaser’s possession, use, operation, condition, or storage of any Installment Item, whether such injury or death be of agents or employees of the Purchaser or of third parties, and whether such property damage be to the Purchaser’s property or the property of others; provided, however, that the damage or injury results from the action or inaction of the Purchaser, its agents or employees, and provided that judgment has been obtained against the Purchaser, its agents or employees. This provision shall not be construed to limit the governmental immunity of any Purchaser.
 - (ii) The Purchaser shall, during the Installment Purchase term, either self-insure or purchase insurance to cover the risks it has assumed under Paragraph (i)

of this Subsection, including but not limited to risks of public liability and property damage.

(h) Assignment

- (i) The Purchaser shall not assign any Installment Purchase PO or other interest in the Installment items without the prior written consent of the Contractor or its assignee. The Contractor may assign, and/or grant security interests in whole or in part in, the Installment Purchase to an Initial Assignee, who in turn may further assign and/or grant a security interest in an Installment Purchase to a subsequent assignee without the Purchaser's consent. Any other Contractor assignment shall require the Purchaser's prior written consent. Upon written notice to the Purchaser, the Contractor may assign payments under any Installment Purchase to a third party.
- (ii) The Contractor may assign, without DGS or Purchaser consent, any Installment Purchase PO to a third party ("Initial Assignee") who will fund the purchase of the Installment Items. The Initial Assignee may take title to, and assume the right to receive all payments for, the Installment Items. The Contractor shall notify the Purchaser of any Installment Purchase PO assignment in its acknowledgment of the Installment Purchase PO to the Purchaser, providing the Purchaser with a copy of the assignment agreement between the Contractor and the Initial Assignee.
- (iii) Notwithstanding any provisions to the contrary in the Contract, in the event of an assignment to an Initial Assignee, the Initial Assignee shall be bound only to the Contractor's obligations specified in these Installment Purchase Terms and Conditions. An Initial Assignee shall not be responsible for any of the Contractor's additional representations, warranties, covenants, or obligations under the Contract Documents. By issuing an Installment Purchase PO, the Purchaser waives any claims it may have under the Installment Purchase against the Initial Assignee for any loss, damage, or expense caused by, defect in, or use or maintenance of any Installment Item. The Purchaser acknowledges that the Initial Assignee is not the supplier of the Installment Items and is not responsible for their selection or installation. After the ordering Purchaser executes, and the Initial Assignee receives, an acceptance certificate in the form attached to these Installment Purchase Terms and Conditions, if any portion of the Installment Items is unsatisfactory for any reason, the ordering Purchaser shall, nevertheless, continue to make payments under the applicable Installment Purchase terms and shall make any claim against the Contractor or the manufacturer, not against the Initial Assignee or any subsequent assignee of the Initial Assignee.
- (iv) After a Purchaser executes and the Initial Assignee receives an acceptance certificate:

- (1) The Purchaser shall, regardless of whether any portion of the Installment Items is unsatisfactory for any reason, nevertheless, continue to make payments under the applicable Installment Purchase and shall make any claim relating to the Installment Items against the Contractor or the manufacturer, not against the Initial Assignee or any subsequent assignee; and
- (2) The rights of the Initial Assignee and any subsequent assignee to receive payments are absolute and unconditional and shall not be affected by any defense or right of set-off.

(v) Warranty Disclaimer

IN THE EVENT THE CONTRACTOR ASSIGNS AN INSTALLMENT PURCHASE TO AN INITIAL ASSIGNEE, SUCH INITIAL ASSIGNEE AND ANY SUBSEQUENT ASSIGNEE MAKE NO WARRANTY (OTHER THAN A WARRANTY OF QUIET ENJOYMENT OF THE INSTALLMENT ITEMS), EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. AS TO THE INITIAL ASSIGNEE AND ANY SUBSEQUENT ASSIGNEE, THE PURCHASER TAKES THE EQUIPMENT AND ANY FINANCED ITEM "AS IS." IN NO EVENT SHALL THE INITIAL ASSIGNEE OR ANY SUBSEQUENT ASSIGNEE HAVE ANY LIABILITY FOR, NOR SHALL THE PURCHASER HAVE ANY REMEDY AGAINST, THE INITIAL ASSIGNEE OR ANY SUBSEQUENT ASSIGNEE FOR CONSEQUENTIAL DAMAGES, LOSS OF SAVINGS, OR LOSS OF USE.

(i) Financing and Prepayment

- (i) If the Contractor is not the supplier of the Installment Items, the Contractor will pay the charges for the Installment Items directly to the supplier. In the event the Contractor assigns the Installment Purchase to an Initial Assignee, the Initial Assignee will pay the charges directly to the Contractor or the supplier, as applicable. If the Contractor has assigned payments under the Installment Purchase to an Initial Assignee, the Purchaser's obligation to make payments for the Installment Items for which the Purchaser has executed and delivered acceptance certificates shall not be affected by any discontinuance, return, or destruction of any license or licensed program materials, or by any Purchaser dissatisfaction with any Installment Item.
- (ii) The Purchaser may at any time elect to prepay its remaining Installment Purchase payments. The Purchaser shall provide notice of the intended prepayment date, which shall be at least one month after the date of the

notice. Depending on market conditions at the time, the Contractor/Initial Assignee may reduce the balance of the remaining payments to reflect the requested prepayment and shall advise the Purchaser of the balance to be paid.

- (iii) If the Purchaser purchases Contract items related to an Installment Item prior to the expiration of the Installment Purchase terms, or if the Installment Purchase is terminated for any reason except non-appropriation as described in Subsection (b) of these Installment Purchase Terms and Conditions, and if the Installment Item has been delivered and the Purchaser has executed and delivered to the Contractor an acceptance certificate, the Purchaser shall prepay such Installment Item.

(j) Remedies for Default

- (i) If the Purchaser does not make a required payment within **30 days** after its due date and such nonpayment continues for **15 days** after receipt of written notice from the Contractor/Initial Assignee that the Purchaser is delinquent in payment, if the Purchaser breaches any other provision under these Terms and Conditions and such breach continues for **15 days** after receipt of written notice of the breach from the Contractor/Initial Assignee, or if the Purchaser files any petition or proceeding (or has a petition or proceeding filed against it) under any bankruptcy, insolvency, or similar law, the Contractor/Initial Assignee may pursue and enforce the following remedies, individually or collectively:

- (1) Terminate the applicable Installment Purchase.

- (2) Take possession of any or all Contract items in the Purchaser's possession, without any court order or other process of law. For such purpose, upon written notice of its intention to do so, the Contractor or its assignee may enter upon the premises where the Contract items may be and remove and repossess the Contract items, from the premises without being liable to the Purchaser in any action or legal proceedings. The Contractor/assignee may, at its option, sell the repossessed Contract items at public or private sale for cash or credit. The Purchaser shall be liable for the Contractor's/assignee's expenses of retaking possession, including without limitation the removal of the Contract items and placing the Contract items in good operating condition (if not in good operating condition at the time of removal) in accordance with the manufacturer's specifications. Repossessed Contract items shall include only those items that were purchased under the Installment Purchase.

- (3) Recover from the Purchaser all payments then due, plus the net present value of the amount of the remaining payments. The present value of such remaining payments shall be calculated using a discount rate equal to the average of the weekly two- and three-year Treasury Constant Maturities published by the Federal Reserve Board for the last calendar week of the month preceding the contractor's/assignee's termination of the applicable Installment Purchase. The Treasury Constant Maturities are published in Statistical Release H.15 and may be accessed via the [Federal Reserve Board's Internet website](#).

- (ii) In the event of Contractor default under the Default provision of the Contract, the Purchaser may pursue one or more of the following remedies:
 - (1) If the payments under the Installment Purchase have been assigned to an Initial Assignee, the Purchaser shall continue to make payments for those Contract Items which have been delivered and for which the Purchaser has provided acceptance certificates to the Contractor/Initial Assignee.
 - (2) The Purchaser may cancel, without liability for payment, its order for any Contract items which have not been delivered and for which it has not issued acceptance certificates. In this instance, the amount of the Contract payments will be recalculated to take into consideration and pay for the actual number of Contract items which were delivered and accepted. If no Installment items have been delivered and accepted, the Purchaser may terminate the Installment Purchase without liability for any payment.
 - (3) If payments have not been assigned, the Purchaser may set off or counterclaim any and all damages incurred by the Purchaser as a result of the contractor's default against its obligation to make payments.

- (k) Compliance with Internal Revenue Code
 - (i) Tax Exempt Financing. If it intends to provide tax exempt financing, the Contractor/Initial Assignee must file, in timely fashion, any reports the Internal Revenue Service may require with respect to the order under the Internal Revenue Code (IRC). The Purchaser shall cooperate with the Contractor/Initial Assignee in the preparation and execution of these documents. The Purchaser shall also keep a copy of each notification of assignment with the Purchaser's counterpart of the order and shall not, during the Installment Purchase term, permit the Installment Items to be directly or indirectly used for a private business use within the meaning of Section 141 of the IRC.

(ii) **Governmental Status.** Eligible Purchasers include State entities or political subdivisions of a State for the purpose of Section 103(a) of the IRC as well as tax exempt non-profit corporations and entities under 501(c)(4) of the IRC. Any misrepresentation of a Purchaser's status under the IRC shall constitute an event of default by the Purchaser. If the Internal Revenue Service rules that the Purchaser does not so qualify under either Section 103(a) or 501(c)(4) of the IRC, or if the Purchaser fails to cooperate with the Contractor/Initial Assignee in the preparation and execution of any reports required under Section 124 or 149 of the IRC (including 8038G and 8038GC forms), the Purchaser will, upon demand, pay the Contractor/Initial Assignee a sum the Contractor/Initial Assignee determines sufficient to return the Contractor/Initial Assignee to the economic status it would otherwise have received.

(l) **Governing Law**

All Purchases made under these Installment Purchase Terms and Conditions shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, except that the parties agree that Article 2A of the Uniform Commercial Code shall not apply or govern transactions under these Installment Purchase Terms and Conditions.

(m) **Notices**

Service of all notices under these Installment Purchase Terms and Conditions shall be sufficient if delivered to the Purchaser at the address set forth in the applicable Installment Purchase PO, or to the Contractor/Initial Assignee at the address set forth in its acknowledgment of the Installment Purchase PO, including any attached document.

Notices by mail shall be effective when deposited in the U.S. mail, properly addressed, with sufficient paid postage. Notices delivered by hand or by overnight courier shall be effective when actually received.

56. Leasing Additional Terms and Conditions

To the extent that the Contractor offers the Commonwealth or any purchasing agency ("Lessee") the option to lease any items covered by the Contract, these Leasing Terms and Conditions shall, in addition to the other terms and conditions of the Contract, govern the Lease, except to the extent the Contractor assigns a Lease to an Initial Assignee, in which case the Initial Assignee shall be bound to the obligations of the Contractor only as specified in these Leasing Terms and Conditions. If a Lessee desires to lease contract items, the Lessee shall indicate its leasing election on the PO issued to the Contractor ("Lease PO"). By issuing a Lease PO, the Lessee explicitly agrees to these Leasing Terms and Conditions. Any items covered by a Lease shall be called "Leased Property" in these Leasing Terms and Conditions. To the extent that there is a conflict between

the other terms and conditions of the Contract and these Leasing Terms and Conditions, these Leasing Terms and Conditions shall prevail to the extent that the Lessee has elected a leasing option.

(a) Term of Lease

The Contractor may provide any Leased Property under the Contract for any term up to **60 months**, including a Fair Market Value Option for Lease/Purchases. The Lessee shall identify the term selected, as well as its election of either a Lease or Lease/Purchase option, on the Lease PO. The Lease term shall commence on the date the Lessee accepts the Leased Property by executing the Acceptance Certificate, and the term shall continue for the length specified on the Lease PO. The form of the Acceptance Certificate is attached as **Appendix I** to the RFP.

If the Contractor delivers the Leased Property in more than one delivery, unless otherwise specified in the Specifications for this procurement, the Lessee will provide separate acceptance certificates for each delivery of the items, and the Lessee will make periodic payments for the Leased Property corresponding to the amount of the Leased Property delivered and accepted **30 days** prior to the payment due date.

(b) Payments

- (i) Full Term Intention. The Lessee shall pay the applicable monthly or annual rent payment for the Leased Property for the full Lease term, unless the Lessee terminates the Lease, either for Contractor default as set forth in the Default provision of the Contract or for non-appropriation of funds as specified in this section.
- (ii) Non-Appropriation. The Lessee's obligation is payable only and solely from funds allotted for the purpose of the Lease. If sufficient funds are not appropriated for continuation of performance under any Lease for any fiscal year subsequent to the one in which the Lessee issued the Lease PO, the Lessee may return the Leased Property to the Contractor/Initial Assignee (as applicable), and thereafter the Contractor/Initial Assignee shall release the Lessee of all further obligations under the Lease, provided:
 - (1) The Lessee delivers unencumbered title to the Leased Property to the Contractor or Initial Assignee (if applicable);
 - (2) The Lessee returns the Leased Property to the Contractor/Initial Assignee in good condition, reasonable wear and tear excepted; and
 - (3) The Lessee gives **30 days'** written notice of the failure of appropriations to the Contractor/Initial Assignee, along with a certification that the Leased Property is not being replaced by

similar items from another vendor. In the event the Lessee returns the Leased Property for failure of appropriations, the Lessee shall pay all amounts then due under the Lease through the end of the fiscal year for which sufficient funds were appropriated for the Lease.

(c) Title

(i) Title to the Leased Property shall not pass to the Lessee but shall remain in the Contractor or Initial Assignee, whichever applies; except in the case of a Lease/Purchase, the title shall pass to the Lessee upon payment of the final installment or other concluding payment option.

(1) Upon payment of the final installment or other concluding payment option, neither the Contractor nor its assignee shall have any further interest in the Leased Property.

(2) The Leased Property shall remain personal property and shall not become a fixture or affixed to real property without consent of the Contractor/assignee.

(3) At the request of the Contractor or Initial Assignee, the Lessee will join the Contractor/assignee in executing one or more UCC-1 financing statements.

(4) The Lessee will keep the Leased Property free and clear of all encumbrances except the Contractor's/assignee's security interest.

(d) Use and Location of, and Alteration to Leased Property

The Lessee shall keep the Leased Property within the confines of the Commonwealth of Pennsylvania and shall inform the Contractor/Initial Assignee upon request of the location of the Leased Property. The Lessee, at its own cost and expense, shall maintain the Leased Property in good operating condition and will not use or deal with the Leased Property in any manner which is inconsistent with the terms of the Contract or any applicable laws and regulations. The Lessee agrees not to misuse, abuse, or waste the Leased Property and the Lessee will not allow the Leased Property to deteriorate, except for ordinary wear and tear resulting from their intended use. No alterations, changes, or modifications to the Leased Property shall be made without the approval of the Contractor/Initial Assignee.

(e) Risk of Loss

The Contractor shall assume and bear the risk of loss or damage to, or theft of, the Leased Property and all component parts while the Leased Property or parts are in the Lessee's possession, unless the Lessee could have prevented such loss, damage,

or theft by exercising reasonable care or diligence in the use, protection, or care of the Leased Property or parts. No loss or damage to the Leased Property or parts shall impair any Contractor or Lessee obligation under the Lease, except as expressly provided in these Leasing Terms and Conditions. If the damage could not have been prevented by the Lessee's exercise of reasonable care or diligence, and the Contractor determines the Leased Property or parts can be economically repaired, the Contractor shall repair or cause to be repaired all damages to the Leased Property or their parts. In the event that the any of the Leased Property or their parts are stolen or destroyed, or if in the Contractor's opinion they are rendered irreparable, unusable, or damaged, the affected Leased Property shall be considered a total loss and the Lease shall terminate as to that Leased Property, and the Lessee's obligation to pay rent for the affected Leased Property shall be deemed to have ceased as of the date of the loss.

(f) Warranties

- (i) The Lessee shall have the benefit of any and all manufacturer or supplier warranties for the Leased Property during the Lease term.
- (ii) The Contractor/Initial Assignee and any subsequent assignee warrants that neither the Contractor/Initial Assignee or subsequent assignee, nor anyone acting or claiming through these parties by assignment or otherwise, will interfere with the Lessee's quiet enjoyment of the Leased Property so long as no event of default as defined in Subsection (j) of this Section shall have occurred and be continuing.

(g) Liability

- (i) The Lessee assumes all risks and liabilities for injury to or death of any person or damage to any property, arising out of the Lessee's possession, use, operation, condition, or storage of any Leased Property, whether such injury or death be of agents or employees of the Lessee or of third parties, and whether such property damage be to the Lessee's property or the property of others; provided, however, that the damage or injury results from the action or inaction of the Lessee, its agents or employees, and provided that judgment has been obtained against the Lessee, its agents or employees. This provision shall not be construed to limit the governmental immunity of any Lessee.
- (ii) The Lessee shall, during the Lease term, either self-insure or purchase insurance to cover the risks it has assumed under Paragraph (i) of this Subsection, including but not limited to risks of public liability and property damage.

(h) Assignment

- (i) The Lessee shall not assign any Lease PO or other interest in the Leased Property without the prior written consent of the Contractor or its assignee. The Contractor may assign, and/or grant security interests in whole or in part in, the Lease PO and Leased Property to an Initial Assignee, who in turn may further assign and/or grant a security interest in a Lease to a subsequent assignee without the Lessee's consent. Any other Contractor assignment shall require the Lessee's prior written consent. Upon written notice to the Lessee, the Contractor may assign payments under any Lease to a third party.
- (ii) The Contractor may assign, without Lessee consent, any Lease PO to a third party ("Initial Assignee") who will fund the purchase of the Leased Property. The Initial Assignee may take title to, and assume the right to receive all rental payments for, the Leased Property. The Contractor shall notify the Lessee of any Lease PO assignment in its acknowledgment of the Lease PO to the Lessee, providing the Lessee with a copy of the assignment agreement between the Contractor and the Initial Assignee.
- (iii) Notwithstanding any provisions to the contrary in the Contract, in the event of an assignment to an Initial Assignee, the Initial Assignee shall be bound only to the Contractor's obligations specified in these Leasing Terms and Conditions. An Initial Assignee shall not be responsible for any of the Contractor's additional representations, warranties, covenants, or obligations under the Contract Documents. By issuing a Lease PO, the Lessee waives any claims it may have under the Lease against the Initial Assignee for any loss, damage, or expense caused by, defect in, or use or maintenance of any Leased Property. The Lessee acknowledges that the Initial Assignee is not the supplier of the Leased Property and is not responsible for their selection or installation. After the ordering Lessee executes, and the Initial Assignee receives, an Acceptance Certificate, if any portion of the Leased Property is unsatisfactory for any reason, the ordering Lessee shall, nevertheless, continue to make payments under the applicable Lease terms and shall make any claim against the Contractor or the manufacturer, not against the Initial Assignee or any subsequent assignee of the Initial Assignee.
- (iv) After a Lessee executes and the Initial Assignee receives an Acceptance Certificate:
 - (1) The Lessee shall, regardless of whether any portion of the Leased Property is unsatisfactory for any reason, nevertheless, continue to make payments under the applicable Lease and shall make any claim relating to the Leased Property against the Contractor or the manufacturer, not against the Initial Assignee or any subsequent assignee; and

(2) The rights of the Initial Assignee and any subsequent assignee to receive rental payments are absolute and unconditional and shall not be affected by any defense or right of set-off.

(v) Warranty Disclaimer

IN THE EVENT THE CONTRACTOR ASSIGNS A LEASE TO AN INITIAL ASSIGNEE, SUCH INITIAL ASSIGNEE AND ANY SUBSEQUENT ASSIGNEE MAKE NO WARRANTY (OTHER THAN A WARRANTY OF QUIET ENJOYMENT OF THE LEASED PROPERTY), EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. AS TO THE INITIAL ASSIGNEE AND ANY SUBSEQUENT ASSIGNEE, THE LESSEE TAKES THE LEASED PROPERTY "AS IS." IN NO EVENT SHALL THE INITIAL ASSIGNEE OR ANY SUBSEQUENT ASSIGNEE HAVE ANY LIABILITY FOR, NOR SHALL THE LESSEE HAVE ANY REMEDY AGAINST, THE INITIAL ASSIGNEE OR ANY SUBSEQUENT ASSIGNEE FOR CONSEQUENTIAL DAMAGES, LOSS OF SAVINGS, OR LOSS OF USE.

(i) Financing and Prepayment

- (i) If the Contractor is not the supplier of the Leased Property, the Contractor will pay the charges for the Leased Property directly to the supplier. In the event the Contractor assigns the Lease to an Initial Assignee, the Initial Assignee will pay the charges directly to the Contractor or the supplier, as applicable. If the Contractor has assigned rental payments under the Lease to an Initial Assignee, the Lessee's obligation to make rental payments for the Leased Property for which the Lessee has executed and delivered acceptance certificates shall not be affected by any discontinuance, return, or destruction of any license or licensed program materials, or by any Lessee dissatisfaction with any Leased Property.
- (ii) The Lessee may at any time terminate the financing for any Leased Property by prepaying its remaining rental payments. The Lessee shall provide notice of the intended prepayment date, which shall be at least one month after the date of the notice. Depending on market conditions at the time, the Contractor/Initial Assignee may reduce the balance of the remaining rental payments to reflect the requested prepayment and shall advise the Lessee of the balance to be paid.
- (iii) If the Lessee purchases Contract items related to Leased Property prior to the expiration of the Lease term, or if the Lease is terminated for any reason except non-appropriation as described in Subsection (b) of this Section, and if the

Leased Property has been delivered and the Lessee has executed and delivered to the Contractor an acceptance certificate, the Lessee shall prepay such Leased Property.

(j) Remedies for Default

(i) If the Lessee does not make a required payment within **30 days** after its due date and such nonpayment continues for **15 days** after receipt of written notice from the Contractor/Initial Assignee that the Lessee is delinquent in payment, if the Lessee breaches any other provision under these Leasing Terms and Conditions and such breach continues for **15 days** after receipt of written notice of the breach from the Contractor/Initial Assignee, or if the Lessee files any petition or proceeding (or has a petition or proceeding filed against it) under any bankruptcy, insolvency, or similar law, the Contractor/Initial Assignee may pursue and enforce the following remedies, individually or collectively:

(1) Terminate the applicable Lease.

(2) Take possession of any or all Leased Property in the Lessee's possession, without any court order or other process of law. For such purpose, upon written notice of its intention to do so, the Contractor or its assignee may enter upon the premises where the Leased Property may be and remove and repossess the Leased Property, from the premises without being liable to the Lessee in any action or legal proceedings. The Contractor/assignee may, at its option, sell the repossessed Leased Property at public or private sale for cash or credit. The Lessee shall be liable for the Contractor's/assignee's expenses of retaking possession, including without limitation the removal of the Leased Property and placing the Leased Property in good operating condition (if not in good operating condition at the time of removal) in accordance with the manufacturer's specifications. Repossessed Leased Property shall include only those items that were leased or lease/purchased under the Lease.

(3) Recover from the Lessee all rental payments then due, plus the net present value of the amount of the remaining rental payments. The present value of such remaining rental payments shall be calculated using a discount rate equal to the average of the weekly two- and three-year Treasury Constant Maturities published by the Federal Reserve Board for the last calendar week of the month preceding the contractor's/assignee's termination of the applicable Lease. The Treasury Constant Maturities are published in Statistical Release H.15 and may be accessed via the [Federal Reserve Board's Internet website](#).

(ii) In the event of Contractor default under the Default provision of the Contract, the Lessee may pursue one or more of the following remedies:

(1) If the rental payments under the Lease have been assigned to an Initial Assignee, the Lessee shall continue to make payments for that Leased Property which has been delivered and for which the Lessee has provided acceptance certificates to the Contractor/Initial Assignee.

(2) The Lessee may cancel, without liability for payment, its order for any Leased Property which has not been delivered and for which it has not issued acceptance certificates. In this instance, the amount of the rental payments will be recalculated to take into consideration and pay for the actual amount of Leased Property which was delivered and accepted. If no Leased Property has been delivered and accepted, the Lessee may terminate the Lease without liability for any payment.

(3) If payments have not been assigned, the Lessee may set off or counterclaim any and all damages incurred by the Lessee as a result of the Contractor's default against its obligation to make rental payments.

(k) Purchase Option

If the Lessee is not in default, it shall have the right at the expiration of the Lease term to buy the Leased Property "as is with no additional warranty" by tendering the purchase option amount the parties have established. For any Lease with a Fair Market Value Option, the fair market value of the equipment shall be established by the Contractor/Initial Assignee and shall not exceed the then-current purchase price of the Leased Property as established in the Contract. Upon the Lessee's exercise of a purchase option and payment of the required amount to the Contractor/Initial Assignee, all right, title, and interest in the Leased Property shall pass to the Lessee.

(l) Extension

If the Lessee does not elect to purchase the Leased Property at the expiration of a Lease term, and the Lessee is not in default under the Lease, the Lessee may elect to extend the Lease by written notification to the Contractor/Initial Assignee. The Lessee will make any elective extension under the same Leasing Terms and Conditions, including any rent payable (not less than fair market rental value), and will continue until the earlier of termination by either party upon one month's prior written notice, or five years from the date of installation.

(m) Return of Leased Property

At the expiration or termination of a Lease for any Leased Property, or upon Contractor/Initial Assignee demand pursuant to Subsection (j) of this Section, the Lessee shall promptly return the Leased Property, freight prepaid, to any location in the continental United States specified by the Contractor/Initial Assignee. The Lessee shall pay the required rent for the Leased Property until they have been shipped to the Contractor.

- (i) Since DGS has, as a matter of policy, determined that all hard drives contain information that is confidential or sensitive, the Contractor shall, at its discretion, either remove and destroy any hard drive from the Leased Property or clean the hard drive to Office of Administration/U.S. Department of Defense standards, and the Contractor shall provide written certification to the Lessee that the hard drive has been destroyed or cleaned to Office of Administration/U.S. Department of Defense standards.
- (ii) Except in the event of a total loss of any or all Leased Property as described in Subsection (e) of this Section, and except for any costs associated with the removal, destruction, and cleaning of any hard drives, the Lessee shall pay any costs the Contractor/Initial Assignee incurs to restore the Leased Property to good operating condition in accordance with the Contract specifications. All parts the Contractor/Initial Assignee may remove and replace shall become the Contractor's/Initial Assignee's property.
- (iii) The Contractor's/Initial Assignee's costs associated with the cleaning of any hard drive to Office of Administration/U.S. Department of Defense standards and the removal and destruction of any hard drive(s) shall be included in the rental amount. The Lessee shall not be required to pay additional charges for the Contractor's/Initial Assignee's cleaning of a hard drive to Office of Administration/U.S. Department of Defense standards nor for the Contractor's/Initial Assignee's removal and destruction of any hard drive(s) upon the return of a Leased item.

(n) Compliance with Internal Revenue Code

- (i) Tax Exemption Financing. If it intends to provide tax exempt financing, the Contractor/Initial Assignee must file, in timely fashion, any reports the Internal Revenue Service may require with respect to the order under the Internal Revenue Code (IRC). The Lessee shall cooperate with the Contractor/Initial Assignee in the preparation and execution of these documents. The Lessee shall also keep a copy of each notification of assignment with the Lessee's counterpart of the order and shall not, during the Lease term, permit the Leased Property to be directly or indirectly used for a private business use within the meaning of Section 141 of the IRC.

(ii) Governmental Status. Eligible Lessees include State entities or political subdivisions of a State for the purpose of Section 103(a) of the IRC as well as tax exempt non-profit corporations and entities under 501(c)(4) of the IRC. Any misrepresentation of a Lessee's status under the IRC shall constitute an event of default by the Lessee. If the Internal Revenue Service rules that the Lessee does not so qualify under either Section 103(a) or 501(c)(4) of the IRC, or if the Lessee fails to cooperate with the Contractor/Initial Assignee in the preparation and execution of any reports required under Section 124 or 149 of the IRC (including 8038G and 8038GC forms), the Lessee will, upon demand, pay the Contractor/Initial Assignee a sum the Contractor/Initial Assignee determines sufficient to return the Contractor/Initial Assignee to the economic status it would otherwise have received.

(o) Governing Law

All Leases made under these Leasing Terms and Conditions shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, except that the parties agree that Article 2A of the Uniform Commercial Code shall not apply or govern transactions under these Leasing Terms and Conditions.

(p) Notices

Service of all notices under these Leasing Terms and Conditions shall be sufficient if delivered to the Lessee at the address set forth in the applicable Lease PO, or to the Contractor/Initial Assignee at the address set forth in its acknowledgment of the Lease PO, including any attached document. Notices by mail shall be effective when deposited in the U.S. mail, properly addressed, with sufficient paid postage.

Notices delivered by hand or by overnight courier shall be effective when actually received.

57. Insurance

(a) The Contractor shall procure and maintain at its expense and require its subcontractors to procure and maintain, as appropriate, the following types of insurance, issued by companies acceptable to the Commonwealth and authorized to conduct such business under the laws of the Commonwealth of Pennsylvania:

(b) Workers' Compensation Insurance for all of the Contractor's employees and those of any subcontractor engaged in performing Services in accordance with the *Worker's Compensation Act*, the Act of June 2, 1915, P.L. 736, No. 338, reenacted and amended June 21, 1939, P.L. 520, No. 281, as amended, 77 P.S. §§ 101—2708.

(i) Public liability and property damage insurance to protect the Commonwealth, the Contractor, and any and all Subcontractors from claims

for damages for personal injury (including bodily injury), sickness or disease, accidental death, and damage to property, including loss of use resulting from any property damage which may arise from its operations under this Contract, whether such operation be by the Contractor, by any Subcontractor, or by anyone directly or indirectly employed by either. The limits of such insurance shall be in an amount not less than \$500,000 per person and \$2,000,000 per occurrence, personal injury and property damage combined. Such policies shall be occurrence rather than claims-made policies and shall name the Commonwealth of Pennsylvania as an additional insured. The insurance shall not contain any endorsements or any other form designed to limit and restrict any action by the Commonwealth as an additional insured against the insurance coverages in regard to the work performed for the Commonwealth.

- (ii) Prior to commencing work under the Contract, the Contractor shall provide the Commonwealth with a copy of each current certificate of insurance. These certificates shall contain a provision that coverages afforded under the policies will not be canceled or changed in such a way to cause the coverage to fail to comply with the requirements of this subsection (b) until at least **fifteen (15) days'** prior written notice has been given to the Commonwealth.

- (c) The Contractor agrees to maintain such insurance for the life of the Contract.

58. Notice

Any written notice to any party under this Contract 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, and sent to following:

- (a) If to the Contractor: the Contractor's address as recorded in the Commonwealth's Supplier Registration system.
- (b) If to the Commonwealth: the address of the Issuing Office as set forth on the Contract.

59. Right-To-Know Law

- (a) The Pennsylvania *Right-to-Know Law*, 65 P.S. §§ 67.101—3104, ("RTKL") applies to this Contract. For the purpose of these provisions, the term "the Commonwealth" shall refer to the contracting Commonwealth agency.
- (b) If the Commonwealth needs the Contractor's assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal

contact information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.

- (c) Upon written notification from the Commonwealth that it requires the Contractor's assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), the Contractor shall:
 - (i) Provide the Commonwealth, within **ten (10) calendar days** after receipt of written notification, access to, and copies of, any document or information in the Contractor's possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
 - (ii) Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.
- (d) If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within **seven (7) calendar days** of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.
- (e) The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within **five (5) business days** of receipt of written notification of the Commonwealth's determination.
- (f) If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.
- (g) The Commonwealth will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.

- (h) The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Contractor agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.
- (i) The Contractor's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Contractor has Requested Information in its possession.

60. Enhanced Minimum Wage

- (a) Enhanced Minimum Wage. Contractor/Lessor agrees to pay no less than \$10.15 per hour to its employees for all hours worked directly performing the services called for in this Contract/Lease, and for an employee's hours performing ancillary services necessary for the performance of the contracted services or lease when such employee spends at least twenty per cent (20%) of their time performing ancillary services in a given work week.
- (b) Adjustment. Beginning January 1, 2017, and annually thereafter, Contractor/Lessor shall pay its employees described in subsection (a) above an amount that is no less than the amount previously in effect; increased from such amount by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (United States city average, all items, not seasonally adjusted), or its successor publication as determined by the United States Bureau of Labor Statistics; and rounded to the nearest multiple of \$0.05. The applicable adjusted amount shall be published in the Pennsylvania Bulletin by March 1 of each year to be effective the following July 1.
- (c) Exceptions. These Enhanced Minimum Wage Provisions shall not apply to employees:
 - (i) exempt from the minimum wage under the Minimum Wage Act of 1968;
 - (ii) covered by a collective bargaining agreement;
 - (iii) required to be paid a higher wage under another state or federal law governing the services, including the Prevailing Wage Act and Davis-Bacon Act; or

- (iv) required to be paid a higher wage under any state or local policy or ordinance.
- (d) Notice. Contractor/Lessor shall post these Enhanced Minimum Wage Provisions for the entire period of the contract conspicuously in easily-accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed.
- (e) Records. Contractor/Lessor must maintain and, upon request and within the time periods requested by the Commonwealth, furnish all employment and wage records necessary to document compliance with these Enhanced Minimum Wage Provisions.
- (f) Sanctions. Failure to comply with these Enhanced Minimum Wage Provisions may result in the imposition of sanctions, which may include, but shall not be limited to, termination of the contract or lease, nonpayment, debarment or referral to the Office of General Counsel for appropriate civil or criminal referral.
- (g) Subcontractors. Contractor/Lessor shall include the provisions of these Enhanced Minimum Wage Provisions in every subcontract so that these provisions will be binding upon each subcontractor.

61. Manufacturer's Price Reduction

If, prior to the delivery of the awarded Supplies by the Contractor, a price reduction is announced by the original equipment manufacturer, a comparative price reduction will be given to the Commonwealth by the Contractor.

62. Special Requirements

The Commonwealth reserves the right to purchase Supplies and Services within the scope of this Contract through other procurement methods whenever the Commonwealth deems it to be in its best interest.

63. Prevailing Minimum Wages

If applicable to this Contract, the Contract with the awarded vendor is subject to and shall comply with the provisions, duties, obligations, remedies and penalties of the *Pennsylvania Prevailing Wage Act*, [The Act of August 15, 1961](#), P.L. 987, No. 442, as amended, 43 P.S. §§ 165-1—165-17 and its regulations 34 Pa. Code §§ [9.101—9.112](#), which are incorporated herein by reference as if fully set forth herein. The Contractor shall pay no less than the wage rates including contributions for employee benefits as determined by the Secretary of Labor and Industry (hereinafter referred to in this paragraph as “Secretary”) for each craft or classification of all workers needed to perform this Contract during the term hereof for the county in which the work is to be performed. In compliance with said *Pennsylvania Prevailing Wage Act*, the Prevailing

Minimum Wage Predetermination, as approved by the Secretary, is attached hereto and made a part hereof.

- (a) The provisions of this paragraph shall apply to all work performed on the contract by the contractor and to all work performed on the contract by all subcontractors. The contractor shall insert in each of its subcontracts all of these required contract provisions and stipulations contained in this paragraph and such other stipulations as may be required.
- (b) No worker may be employed on the public work except in accordance with the classifications set forth in the decisions of the Secretary. In the event that additional or different classifications are necessary, the procedure set forth in section 8 of the Act (43 P.S. § 165-8) and section 9.107 of the Act's Regulations (relating to petition for review of rates and hearings) shall be followed.
- (c) Workers employed or working on the public work shall be paid unconditionally, regardless of whether any contractual relationship exists or the nature of a contractually relationship which may be alleged to exist between a contractor, subcontractor and workers, at least once a week without deduction or rebate, on any account, either directly or indirectly, except authorized deductions, the full amounts due at the time of payment, computed at the rates applicable to the time worked in the appropriate classification. Nothing in the contract, the Prevailing Wage Act or its Regulations prohibits the payment of more than the general prevailing minimum wage rates as determined by the Secretary to any worker or public work.
- (d) The contractor and each subcontractor shall post for the entire period of construction the wage determination decisions of the Secretary, including the effective date of changes thereof, in a prominent and easily accessible place or places at the site of the work and at the place or places used by them to pay workers their wages. The posted notice of wage rates shall contain the following information:
 - (i) The name of project.
 - (ii) The name of public body for which it is being constructed.
 - (iii) The crafts and classifications of workers listed in the Secretary's general prevailing minimum wage rate determination for the particular project.
 - (iv) The general prevailing minimum wage rates determined for each craft and classification and the effective date of changes.
 - (v) A statement advising workers that if they have been paid less than the general prevailing minimum wage rate for their job classification or that the contractor or subcontractor are not complying with the act or the regulations in any manner whatsoever, the worker may file a protest in writing with the

Secretary of Labor and Industry within **3 months** of the date of the occurrence, objecting to the payment to a contractor to the extent of the amount due or to become due to them as wages for work performed on the public work project. A worker paid less than the rate specified in the contract shall have a civil right of action for the difference between the wage paid and the wages stipulated in the contract, which right of action must be exercised within **6 months** from the occurrence of the event creating the right.

- (e) The contractor and subcontractors shall keep an accurate record showing the name, craft or classification, number of hours worked per day, and the actual hourly rate of wage paid including employee benefits, to each worker employed by the contractor or subcontractor in connection with the public work. The record shall include deductions from each worker. The record shall be preserved for **2 years** from the date of payment and shall be open at reasonable hours to the inspection of the public body awarding the contract and to the Secretary or the Secretary's authorized representatives.
- (f) Apprentices shall be limited to numbers in accordance with a bona fide apprenticeship program registered with and approved by the Pennsylvania Apprenticeship and Training Council and only apprentices whose training and employment are in full compliance with *The Apprenticeship and Training Act* (43 P.S. §§ 90.1—90.10), approved July 14, 1961 and the regulations issued thereto shall be employed on the public work project. A worker using the tools of a craft who does not qualify as an apprentice within the provisions of this subsection shall be paid the rate predetermined for journeymen in that particular craft or classification.
- (g) Wages shall be paid without deductions except authorized deductions. Employers not parties to a contract requiring contributions for employee benefits which the Secretary of Labor & Industry has determined to be included in the general prevailing minimum wage rate shall pay the monetary equivalent thereof directly to the workers.
- (h) Payment of compensation to workers for work performed on public work on a lump sum basis, or a piece work system, or a price certain for the completion of a certain amount of work, or the production of a certain result shall be deemed a violation of the Act, regardless of the average hourly earnings resulting therefrom.
- (i) Each contractor and each subcontractor shall file a statement each week and a final statement at the conclusion of the work on the contract with the contracting agency, under oath, and in form satisfactory to the Secretary, certifying that workers have been paid wages in strict conformity with the provisions of the contract. If wages remain unpaid, the contractor or subcontractor shall set forth the amount of wages due and owing to each worker respectively. A copy of the form entitled

“Contractor’s or Subcontractor’s Weekly Payroll Certification for Public Works Projects” is attached hereto.

- (j) Before final payment is made, a final wage certification must be submitted by all contractors and subcontractors.

64. Virus, Malicious, Mischievous or Destructive Programming

- (a) Notwithstanding any other provision in this Contract to the contrary, if the Contractor or any of its employees, subcontractors or consultants introduces a virus or malicious, mischievous or destructive programming into the Commonwealth’s software or computer networks and has failed to comply with the Commonwealth software security standards, and provided further that the Commonwealth can demonstrate that the virus or malicious, mischievous or destructive programming was introduced by the Contractor or any of its employees, subcontractors or consultants, the Contractor shall be liable for any damage to any data and/or software owned or licensed by the Commonwealth. The Contractor 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 result from the Contractor’s failure to take proactive measures to keep virus or malicious, mischievous or destructive programming from originating from the Contractor, its servants, agents or employees through appropriate firewalls and maintenance of anti-virus software and software security updates (such as operating systems security patches, etc.). In the event of destruction or modification of software, the Contractor shall eliminate the virus, malicious, mischievous or destructive programming, restore the Commonwealth’s software, and be liable to the Commonwealth for any resulting damages. The Contractor shall be responsible for reviewing Commonwealth software security standards in effect at the commencement of the Contract and complying with those standards. The Contractor’s liability shall cease if the Commonwealth has not fully complied with its own software security standards.
- (b) The Contractor shall perform a security scan on any software or computer program developed by the Contractor or its subcontractors in a country other than the United States of America that may come in contact with the Commonwealth’s software or computer networks. Contractor shall perform such security scan prior to introducing any such software or computer program into a Commonwealth development environment, test environment or production environment. The results of these security scans will be provided to the Commonwealth prior to installing into any Commonwealth development environment, test environment or production environment. The Commonwealth may perform, at its discretion, additional security scans on any software or computer program prior to installing in a Commonwealth environment as listed above.

- (c) The Commonwealth may, at any time, audit, by a means deemed appropriate by the Commonwealth, any computing devices being used by representatives of the Contractor to provide Services to the Commonwealth that will be connected to a Commonwealth network for the sole purpose of determining whether those devices have anti-virus software with current virus signature files and the current minimum operating system patches or workarounds have been installed. Devices found to be out of compliance will immediately be disconnected and will not be permitted to connect or reconnect to the Commonwealth network until the proper installations have been made. The Commonwealth shall not install any software or monitoring tools on the Contractor's equipment without the Contractor's written consent to do so.
- (d) The Contractor may use the anti-virus software used by the Commonwealth to protect Contractor's computing devices used in the course of providing Services to the Commonwealth.
- (e) Neither the Commonwealth nor the Issuing Agency will be responsible for any damages to the Contractor's computers, data, software, etc. caused as a result of the installation of the Commonwealth's anti-virus software or monitoring software on the Contractor's computers.

65. Service Levels

- (a) The Contractor shall comply with the procedures and requirements of the Service Level Agreements, if any, which are made part of this Contract.
- (b) Where there are expressly defined Service Levels, Contractor shall measure and report its performance against these standards on at least a monthly basis, except as many otherwise be agreed between the Parties in respect of Services performed less frequently than monthly. All Services without expressly defined Service Levels must be performed at least to the same degree of accuracy, completeness, efficiency, quality and timeliness as is provided by well-managed suppliers providing services similar to the Services, so long as such performance is commercially and operationally reasonable.
- (c) The Commonwealth's acceptance of any financial credit incurred by the Contractor in favor of the Commonwealth for a Service Level default ("Service Level Credit") shall not bar or impair Commonwealth's rights and remedies in respect of the failure or root cause as set forth elsewhere in this Contract, including without limitation claims for liquidated damages, injunctive relief and termination rights, provided however, Service Level Credits paid would be credited against any such claims for damages.

66. Hazardous Substances

- (a) The Contractor shall provide information to the Commonwealth about the identity and hazards of hazardous substances supplied or used by the Contractor in the performance of the Contract. The Contractor must comply with Act 159 of October 5, 1984, P.L. 734, No., 159, known as the *Worker and Community Right-to-Know Act*, as amended, 35 P.S. §§ 7301—7320 (the “Act”) and the regulations promulgated pursuant thereto at [34 Pa. Code §§ 301.1—323.6](#).
- (b) Labeling. The Contractor shall insure that each individual product (as well as the carton, container or package in which the product is shipped) of any of the following substances (as defined by the Act and the regulations) supplied by the Contractor is clearly labeled, tagged or marked with the information listed in paragraphs (i) through (iv):
- (i) Hazardous substances:
- (1) The chemical name or common name,
 - (2) A hazard warning, and
 - (3) The name, address and telephone number of the manufacturer.
- (ii) Hazardous mixtures:
- (1) The common name, but if none exists, then the trade name,
 - (2) The chemical or common name of special hazardous substances comprising .01% or more of the mixture,
 - (3) The chemical or common name of hazardous substances consisting 1.0% or more of the mixture,
 - (4) A hazard warning, and
 - (5) The name, address and telephone number of the manufacturer.
- (iii) Single chemicals:
- (1) The chemical name or the common name,
 - (2) A hazard warning, if appropriate, and
 - (3) The name, address and telephone number of the manufacturer.
- (iv) Chemical Mixtures:
- (1) The common name, but if none exists, then the trade name,

- (2) A hazard warning, if appropriate,
 - (3) The name, address, and telephone number of the manufacturer, and
 - (4) The chemical name or common name of either the top five (5) substances by volume or those substances consisting of 5.0% or more of the mixture.
- (v) A common name or trade name may be used only if the use of the name more easily or readily identifies the true nature of the hazardous substance, hazardous mixture, single chemical, or mixture involved.
- (vi) Container labels shall provide a warning as to the specific nature of the hazard arising from the substance in the container.
- (vii) The hazard warning shall be given in conformity with one of the nationally recognized and accepted systems of providing warnings, and hazard warnings shall be consistent with one or more of the recognized systems throughout the workplace. Examples are:
- (1) NFPA 704, Identification of the Fire Hazards of Materials.
 - (2) National Paint and Coatings Association: Hazardous Materials Identification System.
 - (3) American Society for Testing and Materials, Safety Alert Pictorial Chart.
 - (4) American National Standard Institute, Inc., for the Precautionary Labeling of Hazardous Industrial Chemicals.
- (viii) Labels must be legible and prominently affixed to and displayed on the product and the carton, container, or package so that employees can easily identify the substance or mixture present therein.
- (c) Material Safety Data Sheet. The Contractor shall provide Material Safety Data Sheets (MSDS) with the information required by the Act and the regulations for each hazardous substance or hazardous mixture. The Commonwealth must be provided an appropriate MSDS with the initial shipment and with the first shipment after an MSDS is updated or product changed. For any other chemical, the Contractor shall provide an appropriate MSDS, if the manufacturer, importer, or supplier produces or possesses the MSDS. The Contractor shall also notify the Commonwealth when a substance or mixture is subject to the provisions of the Act. Material Safety Data Sheets may be attached to the carton, container, or package mailed to the Commonwealth at the time of shipment.

67. Publicity/Advertisement

The Contractor must obtain 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.

68. Additional Federal Provisions

Additional contract provisions may be incorporated into this Contract pursuant to federal law, regulation or policy.

Cost Matrix - RFP #6100044346

OFFEROR NAME	CONTACT PERSON
Vicom Infinity Inc.	John Daly
OFFEROR ADDRESS	EMAIL ADDRESS
400 Broadhollow Road, Suite 1 Farmingdale, NY 11735	jdaly@vicominfinity.com
	PHONE NUMBER
	SAP VENDOR NUMBER (IF AVAILABLE)
	"0000530313"

Instructions: An Offeror must provide a minimum discount % off the OEM's current retail price list for Equipment and Services being proposed.
An Offeror may submit a proposal that includes a discount % for multiple OEMs.

Original Equipment Manufacturer	Discount Percentage Off List		Lot 1 - Evaluation	
	Lot 1 - Mainframe, Data Storage and Equipment Storage	Maintenance/Extended Warranty Services	Estimated List Price (For evaluation purpose, the total below is estimated at 85% Equipment & 15% Maintenance split)	Total for evaluation purposes
IBM z Systems	12.00%	30.00%		
{insert Manufacturer}				
{insert Manufacturer}				
{insert Manufacturer}				
{insert Manufacturer}				
{insert Manufacturer}				
{insert Manufacturer}				
{insert Manufacturer}				
	12.00%	30.00%	\$ 3,500,000.00	\$ 2,985,500.00

Instructions: An Offeror must provide a minimum discount % off the OEM's current retail price list for Equipment and Services being proposed.
An Offeror may submit a proposal that includes a discount % for multiple OEMs.

Original Equipment Manufacturer	Discount Percentage Off List		Lot 2 - Evaluation	
	Lot 2 - Midrange Server, Data Storage and Equipment Storage	Maintenance/Extended Warranty Services	Estimated List Price (For evaluation purpose, the total below is estimated at 85% Equipment & 15% Maintenance split)	Total for evaluation purposes
{insert Manufacturer}				
{insert Manufacturer}				
{insert Manufacturer}				
{insert Manufacturer}				
{insert Manufacturer}				
{insert Manufacturer}				
{insert Manufacturer}				
{insert Manufacturer}				
			\$ 1,500,000.00	

Instructions: (OPTIONAL) Please describe the consumption based pricing model you have available for mainframe and midrange server and storage devices.

Consumption Based Pricing Model	Consumption Based Pricing Model	
	Description	Discount %
Vicom Infinity - IBM zCloud	An off-premise Mainframe-as-a-Service in the Cloud offering.	10.00%
		--
		--
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Instructions: (OPTIONAL) Please describe the accessibility options you have available for mainframe and midrange server and storage devices.

Accessibility Services / Options	Accessibility Needs	
	Description	Discount %
None available	Per our Technical Submittal Lot 1 - Mainframe, VII.A.7., there are no specific Accessibility pricing options available within the IBM mainframe server equipment we proposed.	0.00%
		--
		--
		--
		--
		--
		--
		--
		--

All quantities and spend data are for evaluation purposes only and do not constitute a guarantee of orders to be received or work to be performed.

SMALL DIVERSE BUSINESS AND SMALL BUSINESS PARTICIPATION SUBMITTAL

A. General Information. The Issuing Office encourages participation by Small Diverse Businesses (SDB) and Small Businesses (SB) as prime contractors and encourages all prime contractors to make significant commitments to use SDBs and SBs as subcontractors and suppliers.

A SB must meet each of the following requirements:

- △ The business must be for-profit, United States business;
- △ The business must be independently owned;
- △ The business may not be dominant in its field of operation;
- △ The business may not employ more than 100 full-time or full-time equivalent employees;
- △ The business, by type, may not exceed the following three-year average gross sales:
 - Procurement Goods and Services: \$20 million
 - Construction: \$20 million
 - Building Design Services: \$7 million
 - Information Technology Goods and Services: \$25 million

For credit in the RFP scoring process, a SB must complete the Department of General Services (DGS)/Bureau of Diversity, Inclusion and Small Business Opportunities (BDISBO) self-certification process. Additional information on this process can be found here: [Small Business Self-Certification.](#)

A SDB is a DGS-verified minority-owned small business, woman-owned small business, veteran-owned small business, service-disabled veteran-owned small business, LGBT-owned small business, Disability-owned small business, or other small businesses as approved by DGS, that are owned and controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages.

For credit in the RFP scoring process, a SDB must complete the DGS verification process. Additional information on this process can be found here: [Small Diverse Business Verification.](#)

An Offeror that qualifies as a SDB or SB and submits a proposal as a prime contractor is not prohibited from being included as a subcontractor in separate proposals submitted by other Offerors. A SDB or SB may be included as a subcontractor with as many prime contractors as it chooses in separate proposals.

The Department's directory of self-certified SBs and DGS/BDISBO-verified SDBs can be accessed here: [Find Small and Small Diverse Businesses.](#)

B. SDB and SB Participation Evaluation. BDISBO has established the minimum evaluation weight for the SDB and SB Participation criterion for this RFP as 20% of the total points.

- 1) The SDB and SB point allocation is based entirely on the percentage of the contract cost committed to SDB and SB participation. If the proposer is a SDB, 100% of the contract cost is allocated to SDB participation. If the proposer is a SB, 100% of the contract cost is allocated to SB participation.
- 2) A total combined SDB/SB commitment less than one percent (1%) of the total contract cost is considered de minimis and will receive no SDB or SB points.
- 3) Based on a maximum total of 200 available points for the SDB/SB Participation Submittal, the scoring mechanism is as follows:

$$\text{SDB and SB Raw Score} = 200 (\text{SDB}\% + (1/3 * \text{SB } \%))$$

- 4) The SDB and SB Raw Score is capped at 200.

The Offeror with the highest raw score will receive 200 points. Each Offeror's raw score will be pro-rated against the Highest Offeror's raw score by applying the formula set forth here:

[RFP Scoring Formula.](#)

- 5) The Offeror's prior performance in meeting its contractual obligations, SDBs and SBs will be considered by BDISBO during the scoring process. To the extent the Offeror has failed to meet prior contractual commitments, BDISBO may recommend to the Issuing Office that the Offeror be determined non-responsible for the the limited purpose of eligibility to receive SDB and SB points.

Questions regarding the SDB and SB Programs, including questions about the self-certification and verification processes can be directed to:

Department of General Services
Bureau of Diversity, Inclusion and Small Business Opportunities (BDISBO)
Room 601, North Office Building
Harrisburg, PA 17125
Phone: (717) 783-3119
Fax: (717) 787-7052
[Email: RA-BDISBOVerification@pa.gov](mailto:RA-BDISBOVerification@pa.gov)
[Website: www.dgs.pa.gov](http://www.dgs.pa.gov)

C. SDB/SB Participation Submittal. All Offerors are required to submit the attached SDB/SB Participation Submittal Form in its entirety and related Letter(s) of Intent. **To receive points for SDB or SB participation commitments, the SDB or SB must be listed in the Department's directory of self-certified SBs and DGS/BDISBO-verified SDBs as of the proposal due date and time. BDISBO reserves the right to adjust overall SDB or SB commitments to correctly align with the SDB or SB status of a prime contractor or**

subcontractor as of the solicitation due date and time, and also to reflect the correct sum of individual subcontracting commitments listed within the Letters of Intent.

If there are multiple Letters of Intent, please combine them into one document and upload them with your response. The Letter(s) of Intent must be signed by both the Offeror and the SDB or SB for each of the identified SDB or SB subcontractors. Please use the attached Letter of Intent template and include all highlighted information.

Each SDB or SB commitment credited by BDISBO along with the overall percentage of SDB and SB commitments will become contractual obligations of the selected Offeror.

Offerors will not receive credit for any commitments for which information as above is not included in the SDB/SB Participation Submittal. Offerors will not receive credit for stating that they will find a SDB or SB after the contract is awarded.

Equal employment opportunity and contract compliance statements referring to company equal employment opportunity policies or past contract compliance practices do not constitute proof of SDB and/or SB Status or entitle an Offeror to receive credit for SDB or SB participation.

D. Contract Requirements.

All contracts containing SDB and SB Participation must contain the following contract provisions to be maintained through the initial contract term and any subsequent options or renewals:

1. Each SDB and SB commitment which was credited by BDISBO and the total percentage of such SDB and SB commitments made at the time of proposal submittal, BAFO, or contract negotiations, as applicable, become contractual obligations of the selected Offeror upon execution of its contract with the Commonwealth.
2. All SDB and SB subcontractors credited by BDISBO must perform at least 50% of the work subcontracted to them.
3. The individual percentage commitments made to SDBs and SBs cannot be altered without written approval from BDISBO.
4. SDB and SB commitments must be maintained in the event the contract is assigned to another prime contractor.
5. The selected Offeror and each SDB and SB for which a commitment was credited by BDISBO must submit a final, definitive subcontract agreement signed by the selected Offeror and the SDB and/or SB to BDISBO within 30 days of the final execution date of the Commonwealth contract. A Model Subcontract Agreement which may be used to satisfy this requirement is provided as an attachment – **Model Form of Small Diverse and Small Business Subcontract Agreement**. The subcontract must contain:
 - a) The specific work, supplies or services the SDB and/or SB will perform; location for work performed; how the work, supplies or services relate to the project; and the

specific timeframe during the initial term and any extensions, options and renewals of the prime contract when the work, supplies or services will be provided or performed.

- b)** The fixed percentage commitment and associated estimated dollar value that each SDB and/or SB will receive based on the final negotiated cost for the initial term of the prime contract.
 - c)** Payment terms indicating that the SDB and/or SB will be paid for work satisfactorily completed within 14 days of the selected Offeror's receipt of payment from the Commonwealth for such work.
 - d)** Commercially reasonable terms for the applicable business/industry that are no less favorable than the terms of the selected Offeror's contract with the Commonwealth and that do not place disproportionate risk on the SDB and/or SB relative to the nature and level of the SDB's and/or SB's participation in the project.
- 6.** If the selected Offeror and a SDB or SB credited by BDISBO cannot agree upon a definitive subcontract within 30 days of the final execution date of the Commonwealth contract, the selected Offeror must notify BDISBO.
- 7.** The Selected Offeror shall complete the Prime Contractor's Quarterly Utilization Report and submit it to the contracting officer of the Issuing Office and BDISBO within ten (10) business days at the end of each quarter of the contract term and any subsequent options or renewals. This information will be used to track and confirm the actual dollar amount paid to SDB and SB subcontractors and suppliers and will serve as a record of fulfillment of the the contractual commitment. If there was no activity during the quarter, the form must be completed by stating "No activity in this quarter." A late fee of \$100.00 per day may be assessed against the Selected Offeror if the Utilization Report is not submitted in accordance with the schedule above.
- 8.** The Selected Offeror shall notify the Contracting Officer of the Issuing Office and BDISBO when circumstances arise that may negatively impact the selected Offeror's ability to comply with SDB and/or SB commitments and to provide a corrective action plan. Disputes will be decided by the Issuing Office and DGS.
- 9.** If the Selected Offeror fails to satisfy its SDB and/or SB commitment(s), it may be subject to a range of sanctions BDISBO deems appropriate. Such sanctions include, but are not limited to, one or more of the following: a determination that the selected Offeror is not responsible under the Contractor Responsibility Program; withholding of payments; suspension or termination of the contract together with consequential damages; revocation of the selected Offeror's SDB and/or SB status; and/or suspension or debarment from future contracting opportunities with the Commonwealth.

**SMALL DIVERSE BUSINESS (SDB) AND SMALL BUSINESS (SB)
PARTICIPATION SUBMITTAL**

Project Description: *Mainframe and Midrange Server, Storage Devices and Related Services RFP*

RFP #: *6100044346*

Proposal Due Date: *5/24/2018*

Commonwealth Agency Name: *Commonwealth of Pennsylvania*

OFFEROR (Prime Contractor) INFORMATION

Offeror Company's Name: *Vicom Infinity Inc.*

Offeror Contact Name: *Ron Viola* **Email:** *rviola@vicomnet.com*

Title: *Services Solution Manager* **Phone:** XXXXXXXXXX

Is your firm a DGS-Verified Small Diverse Business?

Is your firm a DGS-Self-Certified Small Business? *8/5/2018*

To confirm your company's SDB/SB status and expiration, please click or use the following link:

<http://www.dgs.pa.gov/Businesses/Small Diverse Business Program/Small-Diverse-Business-Verification/Pages/Finding-Small-Diverse-Businesses.aspx#.WVPvzp3D->

SUBCONTRACTING INFORMATION

Percentage Commitment for SDB and SB Subcontracting Participation

Commitment percentages will automatically calculate in the SDB/SB fields below after you have completed the SDB and SB Subcontractor Listing on the "Listing" tab.

After examination of the contract documents, which are made a part hereof as if fully set forth herein, the Offeror commits to the following percentages of the total contract cost for Small Diverse Business and Small Business subcontracting participation.

Small Diverse Business Subcontracting percentage commitment:

0.000%

Small Business Subcontracting percentage commitment:

5.000%

**SMALL DIVERSE BUSINESS (SDB) AND SMALL BUSINESS (SB)
PARTICIPATION SUBMITTAL**

Listing SDB and SB Subcontractors

The Offeror must list in the chart below the SDBs and SBs that will be used to meet the percentage commitments provided above, along with the requested information about each SDB and SB Subcontractor. Include as many pages as necessary. Offerors must also include a Letter of Intent (LOI) for each SDB/SB listed. **To receive points for SDB or SB participation commitments, the SDB or SB must be listed in the Department's directory of self-certified SBs and DGS/BDISBO-verified SDBs as of the proposal due date.** The directory of self-certified SBs and DGS/BDISBO-verified SDBs can be accessed at the following link:

<http://www.dgs.pa.gov/Businesses/Small Diverse Business Program/Small-Diverse-Business-Verification/Pages/Finding-Small-Diverse-Businesses.aspx#.WVPvzp3D->

SDB/SB name, percent commitment to SDB/SB, and estimated \$ value of commitment will automatically populate in the LOI tabs.

Offeror Company's Name: Vicom Infinity Inc.

SDB/SB Subcontractor Name	SDB or SB	Primary Contact Name	Description of Services or Supplies to be Provided	% of Total Contract Cost Committed	Estimated \$ Value of Commitment for Initial Contract Term	Will SDB/SB be used for Options/ Renewals? (YES/NO)
PeopleNTech, LLC.	SB ☺	Nilesh Mishra	For services as described in RFP#6100044346, Appendix C, Cost	5.000%	\$298,550.00	YES ☺
	☺					☺
	☺					☺
	☺					☺
	☺					☺
	☺					☺
	☺					☺
	☺					☺

Total SDB % Commitment:	0.000%
Total SB % Commitment:	5.000%

7/11/2018

Nilesh Mishra
Chief Operating Officer
PeopleNTech, LLC
1604 Spring Hill Rd. STE 302
Vienna, VA 22182-7510
nilesh@peoplentech
[REDACTED]

Offeror: Vicom Infinity Inc.
RFP: 6100044346

Dear: Nilesh Mishra

This letter serves as confirmation of the intent of this offeror to utilize **PeopleNTech, LLC.**
on the above-referenced RFP issued by **Commonwealth of Pennsylvania**

If Offeror is the successful vendor, the referenced SDB/SB shall perform the following work, goods or services during the initial term of the prime contract and during any extensions, options or renewal periods of the prime contract exercised by the Commonwealth, as more specifically set forth below:

This will be determined when the Commonwealth releases this RFP's contract award, the term dates and as requests for quotes are released detailing the skills required for the services described in the next section.

Identify the specific work, goods or services the SDB/SB will perform below:

For services as described in RFP#6100044346, Appendix C, Cost Matrix, Rate Card for Related Services and Additional Professional Services.

These services represent **5.000%** of the total cost in the Offeror's cost submittal for the initial term of the contract. Dependent on final negotiated contract pricing and actual contract usage or volume, it is expected that above-referenced SDB/SB will receive an estimated **\$298,550** during the initial contract term.

The above-referenced SDB/SB represents that it meets the small or small diverse business requirements set forth in the RFP and all required documentation has been provided to the Offeror for its SDB/SB submission.

We look forward to the opportunity to serve **Commonwealth of Pennsylvania** on this project. If you have any questions concerning our small business or small diverse business commitment, please feel free to contact me at the number below.

Sincerely,

X

[REDACTED]
Ron Viola
Services Solution Manager
Vicom Infinity Inc.

Acknowledged

X

[REDACTED]
Nilesh Mishra
Chief Operating Officer
PeopleNTech, LLC

Event Summary - Mainframe and Midrange Server and Storage Devices

Type	Request for Proposal	Number	6100044346
Stage Title	-	Organization	CommonwealthPA
Currency	US Dollar	Event Status	Under Evaluation
Work Group	IT	Exported on	5/29/2018
Exported by	Thomas Schwartz	Estimated Value	-
Payment Terms	-		

Bid and Evaluation

Respond by Proxy	Disallow	Use Panel Questionnaire	Yes
Sealed Bid	Yes	Auto Score	No
		Cost Analysis	No
Alternate Items	No	Confidential Pricing	No

Visibility and Communication

Visible to Public Yes


Enter a short description for this public event

The Commonwealth of Pennsylvania is seeking to establish a mainframe and midrange server and storage devices and related services contract.

Commodity Codes

Commodity Code	Description
43210000	Computer Equipment and Accessories
81110000	Computer services

Event Dates

Time Zone	EDT
Released	-
Open	4/24/2018 10:00 AM
Close	5/29/2018 2:00 PM
Sealed Until	5/29/2018 2:00 PM
	 Show Sealed Bid Open Date to Supplier
Q&A Close	5/23/2018 2:42 PM

Description

- 1. Purpose.** This request for proposals (RFP) provides information to enable potential Offerors to prepare and submit proposals for the Commonwealth of Pennsylvania's consideration.
- 2. Issuing Office.** The **Department of General Services** ("Issuing Office") has issued this RFP on behalf of the Commonwealth. The sole point of contact in the Commonwealth for this RFP shall be the Contact listed above, who is the Issuing Officer for this RFP. Please refer all inquiries to the Issuing Officer. Any violation of this condition may be cause for the Issuing Office to reject the offending Offeror's proposal. Offerors must agree not to distribute any part of their proposals beyond the Issuing Office. An Offeror who shares information contained in its proposal with other Commonwealth personnel and/or competing Offeror may be disqualified.
- 3. Project Description.** The Commonwealth of Pennsylvania is seeking to establish a mainframe and midrange server and storage devices and related services contract, including installation, asset management, service integration, and support services. This RFP does not include x86 server and storage devices.
- 4. Type of Contract.** If the Issuing Office enters into a contract as a result of this RFP, it will be a **firm, fixed-price** contract and will contain the **Standard Contract Terms and Conditions for IT Supplies and Related Services** attached to this RFP in the **Buyer Attachments** section.
- 5. Rejection of Proposals.** The Issuing Office reserves the right, in its sole and complete discretion, to reject any proposal received as a result of this RFP.
- 6. Incurring Costs.** The Issuing Office is not liable for any costs the Offeror incurs in preparation and submission of its proposal, in participating in the RFP process or in anticipation of award of the contract.
- 7. Questions & Answers.** Questions must be submitted using the Q&A Board within this event. Questions must be submitted as individual questions. Questions must be submitted by the posted deadline. All questions and responses are considered an addendum to and part of this RFP. The Issuing Office shall not be bound by any verbal information, nor shall it be bound by any written information that is not either contained within the RFP or formally issued by the Issuing Office. The Issuing Office does not consider questions to be a protest of the specifications or the solicitation.
- 8. Addenda to the RFP.** Any revisions to this RFP will be made electronically within this site.
- 9. Response Date.** To be considered for selection, electronic proposals must be submitted on or before the time and date specified. The Issuing Office will reject any late proposals.
- 10. Proposal Submission:** To be considered, Offerors must submit a complete response to this RFP by the due date and time, from an official authorized to bind the Offeror to its provisions. Clicking the submit button within this site constitutes an electronic signature. A proposal being timely submitted and electronically signed by the Offeror are the two (2) mandatory responsiveness requirements and are non-waivable. The Issuing Office reserves the right, in its sole discretion, to (1) waive any other technical or immaterial nonconformities in an Offeror's proposal, (2) allow the Offeror to cure the nonconformity, or (3) consider the nonconformity in the scoring of the Offeror's proposal. The proposal must remain valid for **120 days** or until a contract is fully executed, whichever is later. If the Issuing Office selects the Offeror's proposal for award, the contents of the selected Offeror's proposal will become, except to the extent the contents are changed through Best and Final Offers or negotiations, contractual obligations.
- 11. Proposal Format:** To be considered, the proposal must respond to all proposal requirements. Each proposal consists of three submittal components: Technical, Cost, and Small Diverse Business and Small

Business Participation. Offerors should provide any other information thought to be relevant, but not applicable to the enumerated categories, as attachments. The Issuing Office reserves the right to request additional information which, in the Issuing Office's opinion, is necessary to assure that the Offeror's competence, number of qualified employees, business organization, and financial resources are adequate to perform according to the RFP. The Issuing Office may make investigations as deemed necessary to determine the ability of the Offeror to perform the Project, and the Offeror shall furnish to the Issuing Office all requested information and data.

12. Alternate Proposals. The Issuing Office has identified the basic approach to meeting its requirements, allowing Offerors to be creative and propose their best solution to meeting these requirements. The Issuing Office will not accept alternate proposals.

13. Discussions for Clarification. Offerors may be required to make an oral or written clarification of their proposals to the Issuing Office to ensure thorough mutual understanding and responsiveness to the solicitation requirements. The Issuing Office will initiate requests for clarification. Clarifications may occur at any stage of the evaluation and selection process prior to contract execution.

14. Prime Contractor Responsibilities. The contract will require the selected Offeror to assume responsibility for all services offered in its proposal whether it produces them itself or by subcontract. Further, the Issuing Office will consider the selected Offeror to be the sole point of contact with regard to all contractual matters.

15. Proposal Contents.

A. Confidential Information. The Commonwealth is not requesting confidential proprietary information or trade secrets to be included as part of Offerors' submissions. Accordingly, except as provided herein, Offerors should not label proposal submissions as confidential or proprietary or trade secret protected. Any Offeror who determines that it must divulge such information as part of its proposal must submit the signed written statement described in subsection c. below. After contract award, the selected Offeror must additionally provide a redacted version of its proposal, which removes only the confidential proprietary information and trade secrets, for required public disclosure purposes.

B. Commonwealth Use. All material submitted with the proposal shall be considered the property of the Commonwealth of Pennsylvania. The Commonwealth has the right to use any or all ideas not protected by intellectual property rights that are presented in any proposal regardless of whether the proposal becomes part of a contract. Notwithstanding any Offeror copyright designations contained in proposals, the Commonwealth shall have the right to make copies and distribute proposals internally and to comply with public record or other disclosure **requirements** under the provisions of any Commonwealth or United States statute or regulation, or rule or order of any court of competent jurisdiction.

C. Public Disclosure. After the award of a contract pursuant to this RFP, all proposal submissions are subject to disclosure in response to a request for public records made under the Pennsylvania Right-to-Know-Law, 65 P.S. § 67.101, et seq. If a proposal submission contains confidential proprietary information or trade secrets, a signed written statement to this effect must be provided with the submission in accordance with 65 P.S. § 67.707(b) for the information to be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests. Refer to the **Additional Required Documentation** section for a **Trade Secret Confidential Proprietary Information Notice Form** that may be utilized as the signed written statement, if applicable. If financial capability information is submitted, such financial capability information is exempt from public records disclosure under 65 P.S. § 67.708(b)(26).

16. Best and Final Offers (BAFO). The Issuing Office reserves the right to conduct discussions with Offerors for the purpose of obtaining “best and final offers” in one or more of the following ways, in any combination and order: schedule oral presentations, request revised proposals, conduct an online auction, and enter into pre-selection negotiations.

The following Offerors will **not** be invited by the Issuing Office to submit a Best and Final Offer: those Offerors which the Issuing Office has determined to be not responsible or whose proposals the Issuing Office has determined to be not responsive; those Offerors which the Issuing Office has determined in accordance with the **Offeror Responsibility** subsection from the submitted and gathered financial and other information, do not possess the financial capability, experience or qualifications to assure good faith performance of the contract; and those Offerors whose score for their technical submittal of the proposal is less than **75 %** of the total amount of technical points allotted to the technical criterion.

The Issuing Office may further limit participation in the best and final offers process to those remaining responsible Offerors which the Issuing Office has determined to be within the top competitive range of responsive proposals. The Evaluation Criteria shall also be used to evaluate the Best and Final offers. Price reductions offered through any online auction shall have no effect upon the Offeror’s Technical Submittal. Any reduction to commitments to Small Diverse Businesses and Small Businesses must be proportional to the reduction in the total price offered through any BAFO process or contract negotiations unless approved by the Bureau of Diversity Inclusion and Small Business Opportunities (BDISBO).

17. News Releases. Offerors shall not issue news releases, Internet postings, advertisements or any other public communications pertaining to this Project without prior written approval of the Issuing Office, and then only in coordination with the Issuing Office.

18. Term of Contract. The term of the contract will commence on the Effective Date and will end **in two (2) years with three (3) optional one (1) year renewals**. The Issuing Office will fix the Effective Date after the contract has been fully executed by the selected Offeror and by the Commonwealth and all approvals required by Commonwealth contracting procedures have been obtained. The selected Offeror shall not start the performance of any work prior to the Effective Date of the contract, and the Commonwealth shall not be liable to pay the selected Offeror for any service or work performed or expenses incurred before the Effective Date of the contract.

19. Notification of Selection for Contract Negotiations. The Issuing Office will notify all Offerors in writing of the Offeror selected for contract negotiations after the Issuing Office has determined, taking into consideration all of the evaluation factors, the proposal that is the most advantageous to the Issuing Office.

Prior to execution of the contract resulting from the RFP, the selected Offeror must be registered in the Commonwealth of Pennsylvania’s Vendor Master file. In order to register, Offerors must visit the Pa Supplier Portal at <https://www.pasupplierportal.state.pa.us/> or call the Customer Support Center at 877-435-7363 or 717-346-2676.

20. Notification of Award. Offerors whose proposals are not selected will be notified when contract negotiations have been successfully completed, and the Issuing Office has received the final negotiated contract signed by the selected Offeror.

21. Debriefing Conferences. Upon notification of award, Offerors whose proposals were not selected will be given the opportunity to be debriefed. The Issuing Office will schedule the debriefing at a mutually agreeable time. The debriefing will not compare the Offeror with other Offerors, other than the position of the Offeror’s proposal in relation to all other Offeror proposals. An Offeror’s exercise of the opportunity to be debriefed does not constitute nor toll the time for filing a protest.

22. RFP Protest Procedure. The RFP Protest Procedure is on the DGS website at [click here](#). A protest by a party that has not or has not yet submitted a proposal must be filed no later than the proposal

submission deadline. Offerors may file a protest within seven days after the protesting Offeror knew or should have known of the facts giving rise to the protest, but in no event may an Offeror file a protest later than seven days after the date the notice of award of the contract is posted on the DGS website. The date of filing is the date of receipt of the protest. A protest must be filed in writing with the Issuing Office. To be timely, the protest must be received by 4:00 p.m. on the seventh day.

23. Attachments to the RFP. All attachments to the RFP, including those contained in the **Buyer Attachments** and **Additional Required Documentation** sections, are incorporated into and made part of the RFP.

24. Evaluation Criteria. The Issuing Office has selected a committee of qualified personnel to review and evaluate timely submitted proposals. Independent of the committee, BDISBO will evaluate the Small Diverse Business and Small Business Participation Submittal and provide the Issuing Office with a rating for this component of each proposal. The following criteria will be used in evaluating each proposal:

A. Technical: The Issuing Office has established the weight for the Technical criterion for this RFP as **25%** of the total points. Evaluation will be based upon the following: **Soundness of Approach and Offeror Qualifications.** The final Technical scores are determined by giving the maximum number of technical points available to the proposal(s) with the highest raw technical score. The remaining proposals are rated by applying the Technical Scoring Formula set forth at the following webpage: [click here](#)

B. Cost: The Issuing Office has established the weight for the Cost criterion for this RFP as **55%** of the total points. The cost criterion is rated by giving the proposal with the lowest total cost the maximum number of Cost points available. The remaining proposals are rated by applying the Cost Formula set forth at the following webpage: [click here](#)

C. Small Diverse Business and Small Business Participation: BDISBO has established the minimum evaluation weight for the Small Diverse Business and Small Business Participation criterion for this RFP as **20%** of the total points. Refer to the **Small Diverse Business and Small Business Participation** document contained in the **RFP Question** section for more information and scoring methodology.

25. Offeror Responsibility. To be responsible, an Offeror must submit a responsive proposal and possess the capability to fully perform the contract requirements in all respects and the integrity and reliability to assure good faith performance of the contract. In order for an Offeror to be considered responsible for this RFP and therefore eligible for selection for best and final offers or selection for contract negotiations:

The total score for the technical submittal of the Offeror's proposal must be greater than or equal to **75%** of the available technical points and the Offeror must demonstrate the financial capability to assure good faith performance of the contract.

An Offeror who fails to demonstrate sufficient financial capability to assure good faith performance of the contract as specified herein may be considered by the Issuing Office, in its sole discretion, for Best and Final Offers or contract negotiation contingent upon such Offeror providing contract performance security for the first contract year cost proposed by the Offeror in a form acceptable to the Issuing Office. Based on the financial condition of the Offeror, the Issuing Office may require a certified or bank (cashier's) check, letter of credit, or performance bond conditioned upon the faithful performance of the contract by the Offeror. The required performance security must be issued or executed by a bank or surety company authorized to do business in the Commonwealth. The cost of the required performance security will be the sole responsibility of the Offeror and cannot increase the Offeror's cost proposal or the contract cost to the Commonwealth.

Further, the Issuing Office will award a contract only to an Offeror determined to be responsible in accordance with the most current version of [Commonwealth Management Directive 215.9, Contractor Responsibility Program](#).

26. Final Ranking and Award. After any best and final offer process is conducted, the Issuing Office will combine the evaluation committee's final technical scores, BDISBO's final Small Diverse Business and Small Business Participation Submittal scores, the final cost scores, and the domestic workforce utilization scores. The Issuing Office will rank responsible Offerors according to the total overall score assigned to each in descending order. The Issuing Office must select for contract negotiations the Offeror with the highest overall score. The Issuing Office has the discretion to reject all proposals or cancel the request for proposals at any time prior to the time a contract is fully executed when it is in the best interests of the Commonwealth. The reasons for the rejection or cancellation shall be made part of the contract file.

27. COSTARS Program. Information related to the COSTARS Program is incorporated in the **COSTARS Program Clause** contained in the **Buyer Attachments** section. If the Offeror elects to permit COSTARS members to participate in the contract resulting from this RFP, the Offeror should download, complete and upload the **COSTARS Election to Participate Form** contained in **Additional Required Documentation**. If the Offeror is asserting that it is a Department of General Services self-certified Small Business or verified Small Diverse Business, the Offeror must provide an active Department of General Services Small Business Certificate or Small Diverse Business Certificate, as applicable.

Stage Description

No description available.

1 ★ **Instructions To Supplier :**

Responsibility to Review.

Prerequisite Content:

Responsibility to Review RFP

The Offeror acknowledges and accepts full responsibility to ensure that it has reviewed the most current content of the RFP including any amendments to the RFP.

Certification

I certify that I have read and agree to the terms above.

Supplier Must Also Upload a File:

No

Buyer Attachments

Lot 1 - Mainframe Technical Submittal	Lot 1 - Mainframe Technical Submittal (revised 5.17.18).docx	../Attachments/Lot 1 - Mainframe Technical Submittal (revised 5.17.18).docx
Lot 2 - Midrange Technical Submittal	Lot 2 - Midrange Technical Submittal (revised 5.17.18).docx	../Attachments/Lot 2 - Midrange Technical Submittal (revised 5.17.18).docx
Appendix A, Standard Terms and Condition	Appendix A Standard Terms and Condition for IT Supplies and Related Services (revised 5.17.18).docx	../Attachments/Appendix A Standard Terms and Condition for IT Supplies and Related Services (revised 5.17.18).docx
Appendix B, Statement of Work Template	Appendix B Statement of Work Template.doc	../Attachments/Appendix B Statement of Work Template.doc
Appendix C, Cost Matrix (revised 5.17.18)	Appendix C Cost Matrix (revised 5.17.18).xlsx	../Attachments/Appendix C Cost Matrix (revised 5.17.18).xlsx
Appendix D, Software License Requirements Agreement	Appendix D Software License Requirements Agreement.docx	../Attachments/Appendix D Software License Requirements Agreement.docx
Appendix E, Non-Commonwealth Hosting Requirements	Appendix E Non-Commonwealth Hosting Requirements (revised 5.17.18).docx	../Attachments/Appendix E Non-Commonwealth Hosting Requirements (revised 5.17.18).docx
Appendix F, Dedicated Contacts	Appendix F Dedicated Contacts.xlsx	../Attachments/Appendix F Dedicated Contacts.xlsx
Appendix G, Monthly Report Template	Appendix G Monthly Report Template.xlsx	../Attachments/Appendix G Monthly Report Template.xlsx
Appendix H, Quarterly Report Template	Appendix H Quarterly Report Template.xlsx	../Attachments/Appendix H Quarterly Report Template.xlsx
Appendix I, Acceptance Certificate	Appendix I Acceptance Certificate.docx	../Attachments/Appendix I Acceptance Certificate.docx

RFP Questions

Group 1.1: Technical Questions

- 1.1.1 If responding to Lot 1 - Mainframe; please download, complete, and upload the Mainframe Technical Submittal from Buyer Attachments.
File Upload
- 1.1.2 If responding to Lot 1 - Mainframe; any additional attachments in support of the Mainframe Technical Submittal can be uploaded here. If multiple files are needed combine into a single document or create a .zip file combining the files into a single .zip file.
File Upload
- 1.1.3 If responding to Lot 1 - Mainframe; I have read and fully understand the performance standards listed in Section VI, I. Service Level Agreements of the Mainframe Technical Submittal.
Yes/No
- 1.1.4 If responding to Lot 2 - Midrange; please download, complete, and upload the Midrange Technical Submittal from Buyer Attachments.
File Upload
- 1.1.5 If responding to Lot 2 - Midrange; any additional attachments in support of the Midrange Technical Submittal can be uploaded here. If multiple files are needed combine into a single document or create a File Upload
- 1.1.6 If responding to Lot 2 - Midrange; I have read and fully understand the performance standards listed in Section VI, I. Service Level Agreements of the Midrange Technical Submittal.
Yes/No
- 1.1.7 Please download, complete, and upload Appendix F, Dedicated Contacts from Buyer Attachments.
File Upload
- 1.1.8 This RFP is subject to the Information Technology Policies (ITPs) issued by the Office of Administration, Office for Information Technology found at <http://www.oa.pa.gov/Policies/Pages/itp.aspx>. All proposals must be submitted on the basis that all ITPs are applicable to this procurement. It is the responsibility of the Offeror to read and be familiar with the ITPs. Notwithstanding the foregoing, if the Offeror believes that any ITP is not applicable to this procurement, it must list all such ITPs in its technical response, and explain why it believes the ITP is not applicable. The Issuing Office may, in its sole discretion, accept or reject any request that an ITP not be considered to be applicable. The Offeror's failure to list an ITP will result in its waiving its right to do so later, unless the Issuing Office, in its sole discretion, determines that
Text (Multi-Line)
- 1.1.9 Accessibility Needs. The Commonwealth's Executive Order 2016-03, 2016-03 - Establishing "Employment First" Policy and Increasing Competitive Integrated Employment for Pennsylvanians with a Disability, states that Commonwealth employees with disabilities may require accommodations of assistive technology in order to perform the functions of their jobs. The Commonwealth will further the objectives of providing appropriate accommodation and support through the contracts resulting from this procurement. Contractors must provide an accessibility plan and assistive technology for the products and services of this procurement, as applicable. If applicable, please upload provide an accessibility plan
File Upload

Group 1.2: Small Diverse Business and Small Business Participation

- 1.2.1 If responding to Lot 1 - Mainframe; please download, complete, and upload the attached SDB/SB Submittal Form, listing of SDB/SB subcontractors, and Letters of Intent (LOI). If this solicitation includes multiple lots, please include a separate Small Diverse Business and Small Business Participation Submittal for each lot for which you are submitting a proposal or quote. All fields must be completed prior
File Upload
SDBSB Participation Submittal - Lot 1 Mainframe - ../Attachments/QuestionAttachments/SDBSB Participation Submittal - Lot 1 Mainframe.xlsx
- 1.2.2 If responding to Lot 1 - Mainframe; attached is a Model Form of Small Diverse and Small Business

File Upload

Model Form of SDSDB Subcontractor Agreement - Lot 1 Mainframe -
../Attachments/QuestionAttachments/Model Form of SDSDB Subcontractor Agreement - Lot 1

- 1.2.3** If responding to Lot 1 - Mainframe; I have read and fully understand the Small and Small Diverse Business qualifications attached in question 1.2.1 above.

Yes/No

- 1.2.4** If responding to Lot 2 - Midrange; please download, complete, and upload the attached SDB/SB Submittal Form, listing of SDB/SB subcontractors, and Letters of Intent (LOI). If this solicitation includes multiple lots, please include a separate Small Diverse Business and Small Business Participation Submittal for each lot for which you are submitting a proposal or quote. All fields must be completed prior

File Upload

SDBSB Participation Submittal - Lot 2 Midrange - ../Attachments/QuestionAttachments/SDBSB Participation Submittal - Lot 2 Midrange.xlsx

- 1.2.5** If responding to Lot 2 - Midrange; attached is a Model Form of Small Diverse and Small Business

File Upload

Model Form of SDSDB Subcontractor Agreement - Lot 2 Midrange -
../Attachments/QuestionAttachments/Model Form of SDSDB Subcontractor Agreement - Lot 2

- 1.2.6** If responding to Lot 2 - Midrange; I have read and fully understand the Small and Small Diverse Business qualifications attached in question 1.2.4 above.

Yes/No

Group 1.3: Cost

- 1.3.1** Please use Appendix C, Cost Matrix to submit your cost proposal for this procurement. As an alternative, Offerors should provide a consumption based pricing model for the equipment procured through this solicitation. Please describe your ability to accommodate this model in the cost matrix. Do not include any assumptions in your submittal. If you do, your proposal may be rejected.

File Upload

Additional Required Documentation

Group 2.1: Standard Forms

- 2.1.1** Please download and complete the attached Reciprocal Limitations Act form.

File Upload

Reciprocal Limitations Act - ../Attachments/QuestionAttachments/GSPUR-89

- 2.1.2** Please download, sign, and attach the Iran Free Procurement Certification and Disclosure Form.

File Upload

Iran Free Procurement Certification Form - ../Attachments/QuestionAttachments/Iran Free Procurement Certification Form.pdf

- 2.1.3** If proposing as an Authorized Reseller, please attach a combined file with all Manufacturer Authorization Letters for this procurement. Each letter must be completed as stated in Section III.C. Manufacturer Authorization Letter of both technical submittal documents.

File Upload

- 2.1.4** Please download, complete, and attach the Trade Secret/Confidential Proprietary Information Notice.

File Upload

Trade Secret/Confidential Proprietary Information Notice -
../Attachments/QuestionAttachments/TradeSecret_ConfidentialPropertyInfoNotice (002).pdf

- 2.1.5** Any Offeror who determines that it must divulge trade secrets or confidential proprietary information as part of its proposal must submit a redacted version of its proposal, which removes only the confidential proprietary information and trade secrets, for required public disclosure purposes.

File Upload

- 2.1.6** Complete and sign the attached Lobbying Certification and Disclosure form (only applicable when federal funds are being used in the amount of \$100,000 or more).

File Upload

Lobbying Certification and Disclosure Form - ../Attachments/QuestionAttachments/BOP-1307 LOBBYING CERTIFICATION FORM.doc

- 2.1.7 Offeror shall indicate acceptance of participation in the COSTARS Program by checking yes. Further explanation of the program can be found in the attached file.

Yes/No

COSTARS Participation Clause - ../Attachments/QuestionAttachments/COSTARS Program Clause for Statewide Contract.doc

- 2.1.8 The Commonwealth has determined that this contract will be made available to external procurement activities. Further information can be found in the attached file.

File Upload

External Procurement Activities - ../Attachments/QuestionAttachments/Participating Addendum with an External Procurement Activity.docx

- 2.1.9 Please download, sign and attach the Domestic Workforce Utilization Certification Form.

File Upload

Domestic Workforce Utilization Form - ../Attachments/QuestionAttachments/Domestic Workforce Utilization Certification Form.doc

Group 2.2: Terms and Conditions

- 2.2.1 By submitting a proposal, the Offeror does so on the basis of the contract terms and conditions contained in Buyer Attachments.

Yes/No

Group 2.3: Offeror's Representation

- 2.3.1 By submitting a proposal, each Offeror understands, represents, and acknowledges the attached representations and authorizations.

Yes/No

Offerors Representations and Authorizations - ../Attachments/QuestionAttachments/Offerors Representations and Authorizations.docx

- 2.3.2 By submitting a proposal, you represent that: (1) you are making a formal submittal in response to a procurement issued by the Commonwealth pursuant to the Procurement Code (62 Pa.C.S. Section 101 et seq.); (2) you are authorized to submit the information on behalf of the person or entity identified; (3) this electronic submittal is deemed signed by you and you are authorized to bind the person or entity identified to the terms of the solicitation and this submittal; and (4) all of the information submitted is true and correct to the best of your knowledge, information, and belief. Any false statements made by you in this submittal are subject to the penalties of 18 Pa.C.S. §4904 (relating to unsworn falsification to

Yes/No

Q&A Board

Subject = Limitation of Liability T&Cs Section 32

Public Thread

Q: CoPA added the missing Limitation of Liability paragraph as Section 32 of Appendix A and provided the amended Appendix A on Wednesday, 5/16/2018. This new paragraph introduced Unlimited Liability for a Data Breach, a term which may be problematic for vendors. Would the Commonwealth consider revising this section?

Question added by: Thomas Schwartz

5/23/2018 8:33 AM EDT

A: Costs associated with a breach of the security of a system are unknown and can be large. Liability at this time is unknown without more information about the system being maintained and the data we plan to maintain in the system. The Commonwealth will not consider revising this section to adjust liability as it relates to data breach.

Answered by: Thomas Schwartz

5/23/2018 8:33 AM EDT

Subject = Manufacturer Authorization Letter

Public Thread

Q: IBM is now asking us to provide the name/address of the person who they should address the Manufacturer Authorization Letter to.

Question added by: Thomas Schwartz

5/18/2018 11:28 AM EDT

A: The Manufacturer Authorization Letter from the OEM may be addressed to either the issuing office or the Authorized Reseller. It must be completed as detailed in section III.C. Manufacturer Authorization Letter of the Technical Submittal.

Answered by: Thomas Schwartz

5/18/2018 11:28 AM EDT

Subject = 1.1.6 Lot 2 [REDACTED]

Public Thread

Q: This question is asking for a file upload. Should this question be a Yes/No answer type of question?

Question added by: [REDACTED]

5/7/2018 9:54 AM EDT

A: Yes, event question 1.1.6 regarding Lot 2 Service Level Agreements will be amended to allow for a Yes/No response.

Answered by: Thomas Schwartz

5/15/2018 9:17 AM EDT

Subject = BID6100044346 [REDACTED]

Public Thread

Q: The RFP includes a Cost Matrix (Appendix C). What are the sizes or requirements for the Mainframe or Power Servers that a vendor is asked to bid on?

Question added by: [REDACTED]

5/7/2018 9:51 AM EDT

A: The Commonwealth is seeking a minimum discount for an entire product line of Mainframe Equipment, Midrange Equipment, or both as detailed in the Cost Matrix. There are no sizes or requirements requested until a Statement of Work is developed.

Answered by: Thomas Schwartz

5/15/2018 9:11 AM EDT

Subject = Technical Submittal [REDACTED]

Public Thread

Q: 6. The Government did not provide specifications of the System z, POWER, and storage systems required for this solicitation. Since there are a variety of brands, generations, and technology levels of the subject systems currently in the market place, is the Commonwealth open to older generation or refurbished equipment?

Question added by: [REDACTED]

5/7/2018 9:07 AM EDT

A: The Commonwealth is interested in pricing for all new Equipment only, not refurbished. Older generation is acceptable if still new.

Answered by: Thomas Schwartz

5/15/2018 9:10 AM EDT

Subject = Technical Submittal [REDACTED]

Public Thread

Q: 5. Would the Commonwealth clarify and differentiate the differences between 'data storage' and 'equipment storage' as stated in both Lot1 and Lot2 description?

Question added by: [REDACTED]

5/7/2018 9:06 AM EDT

A: Equipment storage is any equipment needed to store the mainframe or midrange servers i.e. frame or rack.

Answered by: Thomas Schwartz

5/16/2018 9:18 AM EDT

Subject = Technical Submittal [REDACTED]	Public Thread
<p>Q: 4. Are operating systems such as z/OS, z/VM, Linux (SUSE, RedHat, Ubuntu), p/VM, and AIX required? Section I Project Description seems to suggest that operating system ought to be included but Section VI Requirements, subsection A Software, seems to suggest operating system is not required.</p> <p>A: Operating system requirements will be addressed at the time a Commonwealth agency submits a Statement of Work to a selected Offeror.</p>	<p>Question added by: [REDACTED] 5/7/2018 9:06 AM EDT</p> <p>Answered by: Thomas Schwartz 5/16/2018 9:26 AM EDT</p>
Subject = Technical Submittal [REDACTED]	Public Thread
<p>Q: 3. Is the Commonwealth expecting the vendor to provide system programming and system administration support that encompasses a broad scope of system management activities applicable to both the mainframe and the midrange POWER Systems? If so, will the Commonwealth clearly itemize the system management scope required for both the mainframe and the POWER system?</p> <p>A: System management scope will be addressed at the time the Commonwealth agency submits a Statement of Work to a selected Offeror.</p>	<p>Question added by: [REDACTED] 5/7/2018 9:06 AM EDT</p> <p>Answered by: Thomas Schwartz 5/16/2018 9:37 AM EDT</p>
Subject = Technical Submittal [REDACTED]	Public Thread
<p>Q: 2. In reference to the statement made in both lots' Technical Submittal document, section I, Project Description, second paragraph, "related Services" - "The Commonwealth is looking to procure Equipment and related Services to include, but not be limited to, IBM z Systems and Power Systems and their associates subsystems (including but not limited to batch scheduling, backup management, hardware monitoring and management, etc.)", the examples the Commonwealth provided seem to suggest the Commonwealth is requiring a variety of system management capabilities. Would the Commonwealth clarify what specific system management capabilities are required?</p> <p>A: System management scope will be addressed at the time the Commonwealth agency submits a Statement of Work to a selected Offeror.</p>	<p>Question added by: [REDACTED] 5/7/2018 9:05 AM EDT</p> <p>Answered by: Thomas Schwartz 5/16/2018 9:37 AM EDT</p>
Subject = Cost Matrix [REDACTED]	Public Thread
<p>Q: 1. Referencing Appendix C Cost Matrix, can the state please describe / detail the evaluation formulas/models for OEM discount entries?</p> <p>A: The Cost Matrix details the weights of 85% Equipment spend and 15% Maintenance/Extended Warranty spend. The average minimum discount provided by the Offeror in each category (Equipment and Maintenance/Extended Warranty) is applied to the estimated annual spend for evaluation purposes (Mainframe \$3,500,000 and Midrange \$1,500,000).</p>	<p>Question added by: [REDACTED] 5/7/2018 9:05 AM EDT</p> <p>Answered by: Thomas Schwartz 5/15/2018 9:09 AM EDT</p>
Subject = Question 2.1.7 COSTARS Participation [REDACTED]	Public Thread
<p>Q: Our assumption is that if awarded both Lots 1 and 2, that the annual fee for COSTARS will be a total of \$1500 (i.e. not \$1500x2=\$3000). Please confirm.</p> <p>A: Correct. If an Offeror proposes on 2 lots, both lots will be a part of a single contract. The COSTARS fee will be due annually for the single contract created.</p>	<p>Question added by: [REDACTED] 5/7/2018 8:48 AM EDT</p> <p>Answered by: Thomas Schwartz 5/15/2018 9:31 AM EDT</p>
Subject = INTENT OF BID [REDACTED]	Public Thread

Q: Is the intent of this RFP to build a list of potential equipment vendors that could supply Mainframe and Mid-Range servers to the Commonwealth of Pennsylvania, or is the intent to weigh submissions and create a smaller subset of vendors than all those submitting? If the intent is to create a smaller subset, we expect many equipment vendors may not meet the gross sales or other Small Diverse Businesses (SDB) and/or Small Businesses (SB) criteria to claim that status in the RFP and be eligible for upwards of 20% of the total weighting. Please clarify how responses are weighted particularly regarding equipment vendors in this space who automatically fail the SDB/SB criteria.

Question added by: [REDACTED] 5/6/2018 4:43 PM EDT

A: As per Section I of the Technical Submittal, this is intended to be a multiple award RFP, with contracts to be awarded to tall responsive and responsible Offerors. As a need arises, Commonwealth agencies will reach out with a Statement of Work to all selected Offerors that were awarded contracts in order to receive quotes.

Answered by: Thomas Schwartz 5/15/2018 8:59 AM EDT

Subject = Appendix E [REDACTED]

Public Thread

Q: Appendix E, Requirements for non-Commonwealth Hosted Applications/Services: Should the title on the first page be Appendix E rather than Appendix X?

Question added by: [REDACTED] 5/6/2018 4:39 PM EDT

A: Yes. The document header has been changed to reference Appendix E.

Answered by: Thomas Schwartz 5/15/2018 8:58 AM EDT

Subject = Appendix C, Cost Matrix Spreadsheet, Lots 1 and 2 [REDACTED]

Public Thread

Q: Since the RFP is specifically requesting IBM system z and IBM Power, why would there be a need for different OEM manufacturers? Shouldn't cells B16 through B24, as well as cells B30 through B38, only ever read "IBM"?

Question added by: [REDACTED] 5/6/2018 4:36 PM EDT

A: The RFP is requesting all mainframe and midrange server OEM's. IBM was used as an example to clarify their products were acceptable except for x86 models.

Answered by: Thomas Schwartz 5/15/2018 8:58 AM EDT

Subject = Appendix C, Cost Matrix Spreadsheet [REDACTED]

Public Thread

Q: For the Rate Card Tab - Will the services rate table costs be included in the RFP evaluation criteria?

Question added by: [REDACTED] 5/6/2018 4:34 PM EDT

A: No. The Rate Card will not be evaluated in the cost scoring. This tab is to inform Commonwealth agencies of which services a selected Offeror is capable of providing, if requested.

Answered by: Thomas Schwartz 5/15/2018 8:56 AM EDT

Subject = Appendix C, Cost Matrix Spreadsheet [REDACTED]

Public Thread

Q: For the Rate Card tab, should the rates be inclusive of anticipated travel costs, or can vendors assume that a particular Agency SOW would allow travel as a separate line item to be specified in the future?

Question added by: [REDACTED] 5/6/2018 4:33 PM EDT

A: Rates should include anticipated travel costs.

Answered by: Thomas Schwartz 5/15/2018 8:55 AM EDT

Subject = Appendix C, Cost Matrix Spreadsheet [REDACTED]

Public Thread

Q: For the Rate Card tab, are these rates considered "maximum" rates for purposes of a SOW requested by an agency?

Question added by: [REDACTED] 5/6/2018 4:32 PM EDT

A: Yes. These are maximum rates. When a Statement of Work requesting a price quote is submitted by a Commonwealth agency, that is when the Commonwealth is requesting the best price from the selected Offeror.

Answered by: Thomas Schwartz 5/15/2018 8:54 AM EDT

Subject = Appendix C, Cost Matrix Spreadsheet [REDACTED]

Public Thread

Q: Different discount percentages apply to different types of mainframes and servers. As an example, there may be different discounts in Lot 2 for POWER Servers (e.g. Scale out vs. Scale up). Should we use multiple line items showing these different discounts?

Question added by: [REDACTED]

5/6/2018 4:31 PM EDT

A: The Commonwealth is requesting a minimum discount percentage for an entire line of products, multiple line items are not necessary at this time. When a Statement of Work requesting a price quote is submitted by a Commonwealth agency, that is when the Commonwealth is requesting the best price from a selected Offeror.

Answered by: Thomas Schwartz

5/15/2018 8:54 AM EDT

Subject = Appendix C, Cost Matrix Spreadsheet [REDACTED]

Public Thread

Q: For the discount percentages, should vendors assume this is the minimum discount?

Question added by: [REDACTED]

5/6/2018 4:30 PM EDT

A: Yes. This is a minimum discount percentage.

Answered by: Thomas Schwartz

5/15/2018 8:53 AM EDT

Subject = Appendix C, Cost Matrix [REDACTED]

Public Thread

Q: The RFP requires that a vendor must be approved by the Manufacturer to be able to provide mainframes and mid-range servers, and therefore be able to service this equipment. Please clarify that other vendors who cannot obtain the Manufacturer Authorization Letter and therefore cannot supply these servers nor maintain them, cannot simply submit Appendix C with only services discounts and a rate card.

Question added by: [REDACTED]

5/6/2018 4:29 PM EDT

A: The Offeror must be able to submit a minimum discount to at least one product line in either Lot 1 or Lot 2 for the Rate Card to apply and to potentially be awarded a contract. If the Offeror is an authorized reseller it must provide a Manufacturer Authorization Letter from the OEM as detailed in the RFP.

Answered by: Thomas Schwartz

5/15/2018 8:52 AM EDT

Subject = Appendix A, Standard Terms and Conditions [REDACTED]

Public Thread

Q: Section 55(m)(i), page 51 of 63 – is it also an option for the Commonwealth agency to simply retain the drives?

Question added by: [REDACTED]

5/6/2018 4:26 PM EDT

A: Please refer to Paragraph VII.B(f) of the Technical Submittal.

Answered by: Thomas Schwartz

5/16/2018 9:17 AM EDT

Subject = Appendix A, Standard Terms and Conditions [REDACTED]

Public Thread

Q: Section 55(m)(iii), page 51 of 63 - Since this is a service and needs to be properly accounted for as a service by the Lessor, we would require the DOD overwrite or disposal to be a separate line item for such services as a lease/purchase, rather than including it in the rental amount for the hardware lease. Please acknowledge that the Commonwealth will indicate upfront the type of service the agency requires.

Question added by: [REDACTED]

5/6/2018 4:25 PM EDT

A: Please refer to Paragraphs VII.B(f) and (g) of the Technical Submittal. All Services and Equipment are to be included in the Commonwealth Agency's Statement of Work.

Answered by: Thomas Schwartz

5/16/2018 9:16 AM EDT

Subject = Appendix A, Standard Terms and Conditions [REDACTED]

Public Thread

Q: Section 55 (i) (ii), page 49 of 63 - Please confirm that upon terminating the financing for Lease Property, that the Leased Property would be returned to Contractor/Initial Assignee following terms in section 55 (m) on page 51 of 63.

Question added by: [REDACTED]

5/6/2018 4:24 PM EDT

A: Each subsection of Section 56 of Appendix A, Standard Terms and Conditions, should be read together.

Answered by: Thomas Schwartz

5/16/2018 9:16 AM EDT

Subject = Appendix A, Standard Terms and Conditions		Public Thread
<p>Q: Section 54(j), pages 41 & 42 of 63 - Should some of the instances of "Contract items" or "Contract Items" actually be "Installment Items"? If not, please clarify. (In Section 54 (j) - there is no use of "Contract items", just "Leased Items".)</p> <p>A: No. "Contract Items" refers to all items available on the contracts resulting from this RFP, be they purchased outright, procured through an Installment Purchase Order ("Installment Items") or procured through a Lease Purchase Order ("Leased Items"). Installment Items and Leased Items are subsets of Contract Items.</p>	<p>Question added by: [REDACTED]</p> <p>Answered by: Thomas Schwartz</p>	<p>5/6/2018 4:24 PM EDT</p> <p>5/17/2018 2:05 PM EDT</p>

Subject = Appendix A, Standard Terms and Conditions		Public Thread
<p>Q: Section 54(a) and 55(a), pages 35 of 63 (Sect. 54) and 44 of 63 (Sect. 55) - When the Hardware is on a Lease PO, will there be separate PO for the non-Hardware items to be Lease/Purchased or placed under Installment Payment terms, or will there be one PO which explicitly states which items are to be financed versus leased (i.e. will the PO state how each item will be obtained - Lease versus Lease/Purchase or Lease versus Installment Payment)?</p> <p>A: Leased items must be on a separate Purchase Order. Installment Purchase Items must be on a separate Purchase Order. Lease/Purchase items should be on a separate Purchase Order.</p>	<p>Question added by: [REDACTED]</p> <p>Answered by: Thomas Schwartz</p>	<p>5/6/2018 4:23 PM EDT</p> <p>5/16/2018 9:15 AM EDT</p>

Subject = Appendix A, Standard Terms and Conditions		Public Thread
<p>Q: Section 55 opening paragraph and (a) on page 44 of 63 - Our belief is that the non-Equipment items such as software or services (even if related to the Hardware items being Leased) should always be a Lease/Purchase or an Installment Payment since there is no title to pass through on these items - does the Commonwealth agree? or does the Commonwealth view it as valid to lease items that are not hardware?</p> <p>A: If non-hardware items are not included as part of the lease payment, then a separate Purchase Order must be issued for the outright payment of a non-hardware item.</p>	<p>Question added by: [REDACTED]</p> <p>Answered by: Thomas Schwartz</p>	<p>5/6/2018 4:22 PM EDT</p> <p>5/16/2018 9:13 AM EDT</p>

Subject = Appendix A, Standard Terms and Conditions		Public Thread
<p>Q: Section 55(a) on page 44 of 63 - Please clarify your view of the difference between a Lease and a Lease/Purchase. We view Lease as a transaction with either Fair Market Value end of lease options or where ownership can transfer at the end of the lease automatically or for a nominal amount. We view that only hardware can be Leased. We view that Lease/Purchase is a different construct that would be able to cover both hardware and non-hardware items. Does the Commonwealth agree with these statements? If not, please explain.</p> <p>A: Please refer to Section 55(c) of Appendix A, Standard Terms and Conditions, which differentiates between how title is transferred in a Lease scenario as opposed to a Lease/Purchase scenario.</p>	<p>Question added by: [REDACTED]</p> <p>Answered by: Thomas Schwartz</p>	<p>5/6/2018 4:21 PM EDT</p> <p>5/16/2018 9:39 AM EDT</p>

Subject = Appendix A, Standard Terms and Conditions		Public Thread
<p>Q: Section 54(l) and 55(o) pages 43 of 63 (Sect. 54) and 52 of 63 (Sect. 55) - When there is an Initial Assignee, would the transactions be able to be governed by Article 2A of the UCC? Please explain why the transactions would not fall under 2A of the UCC?</p> <p>A: Please refer to provisions of Sections 55 and 56 of Appendix A, Standard Terms and Conditions.</p>	<p>Question added by: [REDACTED]</p> <p>Answered by: Thomas Schwartz</p>	<p>5/6/2018 4:19 PM EDT</p> <p>5/16/2018 9:13 AM EDT</p>

Subject = Appendix A, Standard Terms and Conditions		Public Thread
<p>Q: Section 54 h (ii), page 39 of 63 – this section states: "The Initial Assignee may take title..." which appears to be in conflict with section 54(c)(i) on page 37 of 63. Please explain/clarify.</p> <p>A: Subsection 55(h) of Appendix A, Standard Terms and Conditions, applies to Assignment and Subsection 55(c) of Appendix A, Standard Terms and Conditions, applies to Title and Security Interest.</p>	Question added by: [REDACTED]	5/6/2018 4:17 PM EDT
	Answered by: Thomas Schwartz	5/16/2018 9:12 AM EDT
Subject = Appendix A, Standard Terms and Conditions		Public Thread
<p>Q: Sections 54(h)(ii) & 55.h (ii), pages 39 of 63 (Sect 54) and 47 of 63 (Sect 55) – Does the Commonwealth provide an acknowledgement of PO form or is the form up to the Contractor/Initial Assignee to provide?</p> <p>A: The form is for the Contractor/Initial Assignee to provide. No additional terms and conditions are to be included in the acknowledgement.</p>	Question added by: [REDACTED]	5/6/2018 4:16 PM EDT
	Answered by: Thomas Schwartz	5/16/2018 9:11 AM EDT
Subject = Appendix A, Standard Terms and Conditions		Public Thread
<p>Q: Section 55.c, page 45 of 63 – this section states that title shall not pass to the Lessee but remain with the Contractor or Initial Assignee. Please confirm this section regarding title is only applicable to hardware items, and therefore, not soft items, like SW or services.</p> <p>A: Subsection 55(c) of Appendix A, Standard Terms and Conditions, provides that title transfers at time of delivery and acceptance only in the case of a Lease/Purchase. Otherwise, title to the Leased Property remains with the Contractor until the "final installment or other concluding payment option." If non-hardware items are not included as part of the lease payment, then a separate Purchase Order must be issued for the outright payment of a non-hardware item.</p>	Question added by: [REDACTED]	5/6/2018 4:13 PM EDT
	Answered by: Thomas Schwartz	5/16/2018 9:10 AM EDT
Subject = Appendix A, Standard Terms and Conditions		Public Thread
<p>Q: Section 54.c, page 37 of 63 – this section states that title shall pass to the Purchaser at delivery. Please confirm this section regarding title, is only applicable to hardware items, and therefore, not soft items, like SW or services.</p> <p>A: Transfer of title as discussed in Section 54(c) of Appendix A, Standard Terms and Conditions, is only applicable to hardware items. If non-hardware items are not included as part of the lease payment, then a separate Purchase Order must be issued for the outright payment of a non-hardware item.</p>	Question added by: [REDACTED]	5/6/2018 4:11 PM EDT
	Answered by: Thomas Schwartz	5/16/2018 9:09 AM EDT
Subject = Appendix A, Standard Terms and Conditions		Public Thread
<p>Q: Page 33 of 63, section 51.a Confidentiality - this term has broad survivability stating "... (all of which survive the expiration or termination of this Contract)." Would the Commonwealth consider limiting the obligations to five years from initial disclosure?</p> <p>A: The Commonwealth will not amend this section.</p>	Question added by: [REDACTED]	5/6/2018 4:10 PM EDT
	Answered by: Thomas Schwartz	5/15/2018 8:50 AM EDT
Subject = Appendix A, Standard Terms and Conditions		Public Thread
<p>Q: Page 11 of 63, section 17.a. Supplies – will the Commonwealth please define what is meant by a "reasonable opportunity to inspect the Supplies"? For example, is 5 business days a reasonable time upon which the items would be deemed accepted?</p> <p>A: This can be addressed in the Statement of Work.</p>	Question added by: [REDACTED]	5/6/2018 4:09 PM EDT
	Answered by: Thomas Schwartz	5/16/2018 9:08 AM EDT

Subject = Appendix A, Standard Terms and Conditions**Public Thread**

Q: The Standard Terms and Conditions is missing a limitation of liability. Further, consequential damages are not disclaimed. Please note that the RFP has a limit of liability and negation of consequential damages in Appendix D Software License Requirements Agreement, however, this would only be applicable to associated software and specifically not applicable to hardware purchased or leased, nor to associated services nor XaaS or consumptive-based. Historically, contracts with the Commonwealth have limited direct damages to the contract value or the purchase order amount. These contracts have excluded consequential damages. Consequential damages are inherently speculative as it is almost impossible to demonstrate what would happen if a particular event has not occurred. Additionally, such damages bear no direct relationship to the value or charges for the product or services that may have caused the claim. Example paragraphs from recent Commonwealth contracts include: "LIMITATION OF LIABILITY a. The Contractor's liability to the Commonwealth under the Contract shall be limited to the greater of \$250,000 or the value of the Purchase Order. This limitation will apply, except as otherwise stated in this Section, regardless of the form of action, whether in contract or in tort, including negligence. This limitation does not, however, apply to damages for: 1) bodily injury; 2) death; 3) intentional injury; 4) damage to real property or tangible personal property for which the Contractor is legally liable; or 5) the Contractor's indemnity of the Commonwealth for patent, copyright, trade secret, or trademark protection. b. Notwithstanding anything to the contrary contained in the Contract, the Contractor shall not be liable to the Commonwealth for indirect, consequential, special or punitive damages."

Question added by: [REDACTED]

5/6/2018 4:08 PM EDT

A: Section 32, Limitation of Liability, will be added to the Standard Contract Terms and Conditions.

Answered by: Thomas Schwartz

5/15/2018 8:48 AM EDT

Subject = Appendix A, Standard Terms and Conditions**Public Thread**

Q: Section 12. Warranties – for services, will the Commonwealth consider adding: "The Contractor warrants that it provides Services using commercially reasonable care and skill in accordance with the agreed to Statement of Work, including any completion criteria, and that Project Materials will comply with the Statement of Work at the time of delivery. The Warranty for a Service ends when the Service ends." ?

Question added by: [REDACTED]

5/6/2018 4:06 PM EDT

A: This section will not be amended.

Answered by: Thomas Schwartz

5/16/2018 9:07 AM EDT

Subject = Appendix A, Standard Terms and Conditions**Public Thread**

Q: Section 10. Estimated Quantities – should this section of the contract be removed since the Commonwealth has not listed any estimated quantities?

Question added by: [REDACTED]

5/6/2018 4:04 PM EDT

A: No, this section should not be removed. If a term is inapplicable to a particular Statement of Work, it will not apply.

Answered by: Thomas Schwartz

5/15/2018 8:46 AM EDT

Subject = Appendix A, Standard Terms and Conditions**Public Thread**

Q: Section 5. Definitions, page 4, "Services" – should Services be defined as "All Contractor Activity necessary to satisfy the contract and agreed to in a Statement of Work?"

Question added by: [REDACTED]

5/6/2018 4:03 PM EDT

A: There is no need to amend this language as Statements of Work are part of the Contract.

Answered by: Thomas Schwartz

5/16/2018 9:05 AM EDT

Subject = Appendix A, Standard Terms and Conditions**Public Thread**

Q: Section 4.a., page 2 – there seems to be a word missing in this term. Should “The electronically-printed name of the Purchasing Agent on the _____ represents the signature....” state “The electronically-printed name of the Purchasing Agent on the Purchase Order represents the signature....”??

Question added by: [REDACTED]

5/6/2018 4:02 PM EDT

A: Section 4(a) of Appendix A, Standard Terms and Conditions, has been amended to correct the omission.

Answered by: Thomas Schwartz

5/16/2018 9:04 AM EDT

Subject = Accessibility Needs, question 1.1.8. [REDACTED]

Public Thread

Q: This section seems more related to the purchase of end user devices such as PC's, Laptops and monitors that would not be procured with POWER servers nor mainframes. Please clarify further this requirement as it relates to Lots 1 and 2.

Question added by: [REDACTED]

5/6/2018 3:58 PM EDT

A: If there are no Accessibility Needs for the Equipment being offered, then no additional documentation needs to be provided.

Answered by: Thomas Schwartz

5/15/2018 8:44 AM EDT

Subject = Small Diverse Business & Small Bus. Participation [REDACTED]

Public Thread

Q: Question 1.2.1 and 1.2.4: For this RFP, the Commonwealth is not committing volumes of purchases of mainframes or Power servers. Further, in the case of a prime utilizing an SDBSB for services, the Commonwealth may purchase server equipment and use internal CoPA resources to fulfill necessary services. Therefore, the Commonwealth is also not committing services purchases or may never use services. How can vendors commit a dollar amount and a dollar percentage to SDBSB(s), without any knowledge of a future requirement from an agency? Please provide guidance on how to fill out the SDBSB spreadsheet for this RFP.

Question added by: [REDACTED]

5/6/2018 3:55 PM EDT

A: The Small Diverse Business (SDB) and Small Business (SB) participation scores are based upon the percentage of a contract committed to utilizing SDBs and SBs. SDB/SB commitments are the proposer's strategic business decision. Because the total spend for a contract may vary, the dollar values of the commitments are expressed as estimates.

Answered by: Thomas Schwartz

5/22/2018 10:41 AM EDT

Subject = Small Diverse Business & Small Bus. Participation [REDACTED]

Public Thread

Q: Question 1.2: Is it permissible for an SDB or SB to submit a prime proposal, and also be a subcontractor to another vendor's prime proposal?

Question added by: [REDACTED]

5/6/2018 3:54 PM EDT

A: Yes, it is permissible an Offeror to submit a prime proposal and also be a subcontractor in another Offeror's proposal.

Answered by: Thomas Schwartz

5/15/2018 8:43 AM EDT

Subject = Technical Submittal, Lots 1&2 [REDACTED]

Public Thread

Q: Section VII.B.3, page 12 of 20: Please clarify: B.1 states that all related services must be expressly authorized in the original RFP/Contract, however B.3 states that an agency will develop a statement of work in the future. Upon award, will any and all services specified in a future SOW be considered “authorized”?

Question added by: [REDACTED]

5/6/2018 3:51 PM EDT

A: All services in a future Statement of Work are considered “authorized,” as long as they are within the scope of this RFP.

Answered by: Thomas Schwartz

5/16/2018 9:03 AM EDT

Subject = Technical Submittal, Lots 1&2 [REDACTED]

Public Thread

Q: Section VII.B Related Services, items B.1 and B.2, page 12 of 20: Beyond Maintenance/extended warranty services, what type of service qualifies as a “stand-alone services”? Please clarify the distinction between B.1 and B.2. B.1 seems to indicate that Related Services must be in conjunction with Equipment purchased through this contract, while B.2 indicates that procurement of equipment is not required.

Question added by: [REDACTED]

5/6/2018 3:49 PM EDT

A: Related service may be procured through the contracts resulting from this RFP for equipment purchased through the contracts resulting from this RFP. Related services may also be procured for equipment not procured through the contracts resulting from this RFP so long as it the related services are for equipment selected Offerors are offering to supply to the Commonwealth under a contract resulting from this RFP, and such related services are not otherwise prohibited by the contract under which the mainframe or midrange server was originally procured.

Answered by: Thomas Schwartz

5/15/2018 8:42 AM EDT

Subject = Technical Submittal, Lots 1&2 [REDACTED]

Public Thread

Q: Page 3 of 20, item E Subcontractors – Without knowing the scope of a future request, it is impossible to determine subcontractors, if any, at the time of this proposal. Will the Commonwealth waive this section and include it in individual requests from agencies in the future?

Question added by: [REDACTED]

5/6/2018 3:47 PM EDT

A: As set forth in Subsection III.E. of the Technical Submittal, “The selected Offeror is prohibited from subcontracting or outsourcing any part of this Project without the express written approval from the Commonwealth.” If not included as part of the Offeror’s proposal, a selected Offeror may propose a subcontractor(s) as part of a Commonwealth Agency’s Statement of Work.

Answered by: Thomas Schwartz

5/16/2018 9:02 AM EDT

Subject = Technical Submittal, Lots 1&2 [REDACTED]

Public Thread

Q: Page 1 of 20, item I – This section states that this will be a multi-award RFP and that an award will be made to “responsive and responsible Offerors”. If vendors are “responsive and responsible”, please clarify why there is weighting criteria (i.e., 25% technical, 55% cost, 20% small business).

Question added by: [REDACTED]

5/6/2018 3:45 PM EDT

A: Part II Chapter 07 Competitive Sealed Proposals (RFP Process) of the Manual 215.3, Procurement Handbook, establishes the criteria for scoring, but the percentages can be adjusted depending on the item being procured. Additionally, please refer to Sections 24 and 26 of the Solicitation Event Description for information relating to scoring, final ranking and award.

Answered by: Thomas Schwartz

5/15/2018 8:40 AM EDT

Subject = Technical Submittal, Lots 1&2 [REDACTED]

Public Thread

Q: Page 1 of 20, item I – This section states that this will be a multi-award RFP and that an award will be made to “responsive and responsible Offerors”. Will there be a maximum number of awarded vendors?

Question added by: [REDACTED]

5/6/2018 3:44 PM EDT

A: As per Section I of the Technical Submittal, this is intended to be a multiple award RFP, with contracts to be awarded to all responsive and responsible Offerors. As a need arises, Commonwealth agencies will reach out with a Statement of Work to all selected Offerors that were awarded contracts in order to receive quotes.

Answered by: Thomas Schwartz

5/15/2018 8:38 AM EDT

Subject = Technical Submittal, Lots 1&2 [REDACTED]

Public Thread

Q: Page 1 of 20, item 1 states “The resulting contracts will only be used for storage procurements if the required hardware is not available via the Information Technology Hardware Contract(s) for Storage Hardware, or if the Commonwealth agency can provide a best value justification which may include, but not limited to, lowest cost or most advantageous solution to procure through the resulting contract(s).” Aside from the specified storage devices, the Information Technology Hardware Contract(s) for Storage Hardware included a discount off of list price for “all other storage” under Appendix C., Cost Submittal. Why would storage need to be purchased off of this contract if the Information Technology Hardware Contract(s) for Storage Hardware includes “all other storage?”

Question added by: [REDACTED]

5/6/2018 3:43 PM EDT

A: Storage options purchased from contracts the resulting from this RFP are to be internal disk drives (inside the midrange or mainframe processor) unless the Commonwealth agency can provide sufficient justification on why it is the most advantageous solution to procure through the resulting contract(s). Justification will be reviewed at time of request by the Commonwealth agency. The Commonwealth agency must provide sufficient justification as to why it is most advantageous solution to procure through the resulting contract(s).

Answered by: Thomas Schwartz

5/16/2018 9:01 AM EDT

Subject = Technical Submittal, Lots 1&2; [REDACTED]

Public Thread

Q: Page 1 of 20, item I – the first paragraph states “This RFP does not include x86 server and storage devices.” Further the last paragraph of this section states “Storage options purchased from the resulting contract are to be in support of the operating system or maintenance of mainframe or midrange equipment, not standalone storage for other devices or network attached storage solutions.” Given that mainframe and mid-range storage can also be used for x86 storage purposes, how will the Commonwealth ensure that agencies will not use storage purchased from this contract for x86 purposes?

Question added by: [REDACTED]

5/6/2018 3:41 PM EDT

A: Storage options purchased from contracts resulting from this RFP are to be internal disk drives (inside the midrange or mainframe processor) and are to be procured at the same time the mainframe or midrange server is procured. The resulting contracts resulting from this RFP contracts will only be used for storage procurements if the required hardware is not available via the Information Technology Hardware Contract(s) for Storage Hardware unless the Commonwealth agency can provide sufficient justification on why it is the most advantageous solution to procure through the resulting contract(s). Additionally, Commonwealth Agencies will need prior approval from the Contract Manager to purchase only storage from contracts resulting from this RFP.

Answered by: Thomas Schwartz

5/16/2018 9:00 AM EDT

Subject = Tech Submittal, lots 1 & 2 [REDACTED]

Public Thread

Q: Page 1 of 20, item I, last paragraph – please clarify that any storage purchased using this contract is storage that is internal to the mainframe or mid-range server?

Question added by: [REDACTED]

5/6/2018 3:40 PM EDT

A: Storage options purchased from contracts resulting from this RFP are to be internal disk drives (inside the midrange or mainframe processor) and are to be procured at the same time the mainframe or midrange server is procured. Storage procurements that do not include a mainframe or midrange server component are prohibited unless the Commonwealth agency can provide sufficient justification on why procuring from the contract(s) resulting from this solicitation is the most advantageous solution.

Answered by: Thomas Schwartz

5/15/2018 8:29 AM EDT

Subject = Question 1.1.7, ITPs		Public Thread
<p>Q: Given the large volume of ITP's that the Commonwealth is asking vendors to review, will the Commonwealth grant a 2 week extension to the due date of the RFP?</p>	<p>Question added by: [REDACTED]</p>	<p>5/6/2018 3:38 PM EDT</p>
<p>A: No.</p>	<p>Answered by: Thomas Schwartz</p>	<p>5/15/2018 8:27 AM EDT</p>
Subject = BUYER ATTACHMENTS		Public Thread
<p>Q: In the Buyer Attachments section on the RFP portal the following Appendices are listed: A. Standard Terms and Conditions for IT Supplies and Related Service B. Statement of Work Template D. Software License Requirements Agreement (asked in Q9) E. Non-Commonwealth Hosting Requirements (asked in Q4) G. Monthly Report Template H. Quarterly Report Template I. Acceptance Certificate Is our assumption correct that these forms are only Informational at this time and will be fully reviewed by the awardees after the award and that our bid submission at this time does imply our agreement with these terms until and if we are awarded and receive requests for quotes or delivery of equipment, software or services?</p>	<p>Question added by: [REDACTED]</p>	<p>5/5/2018 10:40 AM EDT</p>
<p>A: Appendix A, Standard Terms and Condition for IT Supplies and Related Services will be a part of the contract agreements resulting from this RFP. Appendix B, Statement of Work Template; Appendix D, Software License Requirements Agreement; Appendix E, Non-Commonwealth Hosting Requirements; and Appendix I, Acceptance Certificate will be a part of quote requests at a later time of agency need. Appendix G, Monthly Report Template and Appendix H, Quarterly Report Template will be completed by Contractors regardless of sales volume on the frequency listed in the RFP.</p>	<p>Answered by: Thomas Schwartz</p>	<p>5/15/2018 8:26 AM EDT</p>
Subject = USE OF SUBCONTRACTORS FOR SERVICES		Public Thread
<p>Q: Do our services resources have to be our w2 employees, or can subcontractors be used?</p>	<p>Question added by: [REDACTED]</p>	<p>5/4/2018 8:08 PM EDT</p>
<p>A: Subcontractors may be utilized, so long as they are approved by the Commonwealth.</p>	<p>Answered by: Thomas Schwartz</p>	<p>5/15/2018 8:26 AM EDT</p>
Subject = T&L FOR SERVICES		Public Thread
<p>Q: Do our services rates have to include T&L or is that a separate breakout?</p>	<p>Question added by: [REDACTED]</p>	<p>5/4/2018 8:07 PM EDT</p>
<p>A: T&L should be included in the services rate.</p>	<p>Answered by: Thomas Schwartz</p>	<p>5/15/2018 8:23 AM EDT</p>
Subject = REMOTE SERVICE PERFORMANCE		Public Thread
<p>Q: Can any services personnel work remotely when possible?</p>	<p>Question added by: [REDACTED]</p>	<p>5/4/2018 8:06 PM EDT</p>
<p>A: Yes, with approval from requesting Commonwealth agency. This must be included in the Statement of Work.</p>	<p>Answered by: Thomas Schwartz</p>	<p>5/15/2018 8:22 AM EDT</p>
Subject = AUTOMATED SERVICES REQUEST NOTIFICATION		Public Thread
<p>Q: Will there be an automated services request notification to selected vendors for services (related or professional) needed and if so, will we be added to that notification list of vendors?</p>	<p>Question added by: [REDACTED]</p>	<p>5/4/2018 8:05 PM EDT</p>
<p>A: There will not be an automated service request notification. All service requests will be initiated by the Commonwealth agencies at a time of need.</p>	<p>Answered by: Thomas Schwartz</p>	<p>5/15/2018 8:20 AM EDT</p>
Subject = SOFTWARE and APPENDIX D		Public Thread

Q: The Technical Submittal form, Section V.A., states that no software is to be quoted beyond the hardware equipment build specified in the Manufacturer's Price List, however Appendix D. is a Software License Requirements Agreement. Is this 'Agreement' only informational at this point, possibly to be executed for future software purchases after the "RFP Award"?

Question added by: [REDACTED] 5/4/2018 8:04 PM EDT

A: Appendix D, Software License Requirements Agreement will be a part of quote requests, if applicable. If the Commonwealth already has a software license with the software publisher, then it will not be necessary.

Answered by: Thomas Schwartz 5/15/2018 8:20 AM EDT

Subject = CURRENT DISCOUNT CONTRACT [REDACTED]

Public Thread

Q: Does the Commonwealth have a standard discount contract in place with IBM today and if so is it available for Offerors to review?

Question added by: [REDACTED] 5/4/2018 8:03 PM EDT

A: The Commonwealth has a current contract for Servers, Data Storage Equipment, Integrated Systems & Related Services which includes IBM. It expires May 31, 2018. Please see <http://www.emarketplace.state.pa.us/BidContractDetails.aspx?ContractNo=4400012883> for contract details.

Answered by: Thomas Schwartz 5/16/2018 8:58 AM EDT

Subject = APPENDIX E [REDACTED]

Public Thread

Q: Appendix E is Requirements for non-Commonwealth Hosted Applications/Services. Please confirm if this appendix is for informational purposes only at this point, and that any future need for a hosted or consumption based solution will be specific to applications that are not currently hosted in the Commonwealth?

Question added by: [REDACTED] 5/4/2018 8:01 PM EDT

A: Correct. Appendix E will be attached to the Statement of Work by Commonwealth agencies requesting such services.

Answered by: Thomas Schwartz 5/15/2018 8:15 AM EDT

Subject = TECHNICAL SUBMITTAL FORMS SECTION 1 [REDACTED]

Public Thread

Q: The Technical Submittal forms in Section I. Project Services, state resulting contracts will only be used for Storage Hardware not available in the Information Technology Hardware Contracts, while the HW Cost Matrix is asking for storage equipment pricing and discounts. Can you please confirm that after the RFP award, only storage not available in your current Information Technology Hardware Contracts may be solicited to the future awardees?

Question added by: [REDACTED] 5/4/2018 8:00 PM EDT

A: Storage options purchased from contracts resulting from this RFP are to be internal disk drives (inside the midrange or mainframe processor) and are to be procured at the same time the mainframe or midrange server is procured. Storage procurements that do not include a mainframe or midrange server component are prohibited unless the Commonwealth agency can provide sufficient justification on why procuring from the contract(s) resulting from this solicitation is the most advantageous solution.

Answered by: Thomas Schwartz 5/16/2018 8:58 AM EDT

Subject = COST MATRICES [REDACTED]

Public Thread

Q: The cost matrices for HW, Storage and Consumption Based Models do not supply configurations or specifications to provide a list price and discount Can you please provide guidance on how we should approach this section to provide you meaningful data?

Question added by: [REDACTED] 5/4/2018 7:58 PM EDT

A: The Commonwealth is requesting a minimum discount percentage for an entire line of products. When a Statement of Work requesting a price quote is submitted by a Commonwealth agency, that is when the Commonwealth is requesting the best price from the selected Offeror.

Answered by: Thomas Schwartz 5/15/2018 8:13 AM EDT

Subject = BID 6100044346**Public Thread**

Q: Are any mainframe environments currently under any outsourcing or managed service contracts by a vendor today, and if so will future hardware and services requests for quotes to this RFP awardee be outside of those contracts?

Question added by:

5/4/2018 7:57 PM EDT

A: Yes, the Commonwealth has managed services as part of the Data Center - Pennsylvania Compute Services (PACS) contract # 4400014635. The contract(s) resulting from this RFP will be independent of the aforementioned contract.

Answered by: Thomas Schwartz

5/15/2018 8:13 AM EDT

Subject = Lot 2 Estimated List Price, Appendix C, Cost Matrix**Public Thread**

Q: The estimated list price for Lot 2 is listed as \$1,500,000 in column E, however the calculations in column F appear to be on a figure of \$3,500,000.

Question added by:

5/4/2018 12:53 PM EDT

A: Appendix C, Cost Matrix has been revised to correct the calculation error in Column F of Lot 2.

Answered by: Thomas Schwartz

5/15/2018 8:12 AM EDT

Subject = Cost Matrix Totals, Appendix C, Cost Matrix**Public Thread**

Q: The formulas in Appendix C, Cost Matrix assume that for each line entered on the spreadsheet, the same volume (\$3.5M averaged across all lines) is purchased. For example, if an Offeror provided a line item for Z Servers at 5% off of list, and a second line for Fujitsu G21 systems at 99% off of list, but the chances that the Commonwealth would purchase this item was extremely low, the Offeror in question would obtain a significantly better cost score, based on total overall cost, but without providing real value to the Commonwealth. Please provide how the Commonwealth will avoid this situation in its cost evaluation?

Question added by:

5/4/2018 12:53 PM EDT

A: Please refer to Sections 24 and 26 of the Solicitation Event Description for information relating to scoring, final ranking and award. Additionally, as per Section I of the Technical Submittal, this is intended to be a multiple award RFP, with contracts to be awarded to all responsive and responsible Offerors. As a need arises, Commonwealth agencies will reach out with a Statement of Work to all selected Offerors that were awarded contracts in order to receive quotes.

Answered by: Thomas Schwartz

5/15/2018 8:10 AM EDT

Subject = XaaS and consumption based, Technical Submittal, p**Public Thread**

Q: For management and hosting options of these systems at Offeror facilities (e.g. cloud based or outsourced environments), please identify how the Commonwealth will distinguish between midrange, mainframe and intel-based server workloads, as well as storage hosting. It would be expected that only Power i, AIX, Linux on Power, Linux on Z, and Z/OS workloads would be considered in-scope under this procurement and that associated x86 and storage cloud services would be procured under the cloud/hosted options in the new IT Hardware contract.

Question added by:

5/4/2018 12:53 PM EDT

A: The scope of this RFP is not limited to IBM as a manufacturer. As indicated in Section I of the Technical Submittals, "This RFP does not include x86 server and storage devices." The contracts resulting from this RFP will only be used for storage procurements if the required hardware is not available via the Information Technology Hardware Contract(s) for Storage Hardware unless the Commonwealth agency can provide sufficient justification on why it is the most advantageous solution to procure through the resulting contract(s).

Answered by: Thomas Schwartz

5/16/2018 8:56 AM EDT

Subject = Storage Devices, Technical Submittal, Page 1

Public Thread

Q: Is the RFP limited to those Offerors who can provide a Manufacturer's Authorization Letter for the associated IBM mainframe systems (LOT 1) and/or IBM midrange systems (LOT 2), and therefore would NOT allow a vendor who can provide only associated storage (but not the servers) to provide a bid?

Question added by: [REDACTED]

5/4/2018 12:53 PM EDT

A: The scope of this RFP is not limited to IBM as a manufacturer. Yes, this RFP is limited to OEMs or Offeror(s) who can provide a Manufacturer's Authorization Letter for the associated mainframe systems (LOT 1) and/or midrange systems (LOT 2).

Answered by: Thomas Schwartz

5/15/2018 8:08 AM EDT

Subject = Appendix C, Cost Matrix, Discount From List

Public Thread

Q: The Commonwealth has requested a discount off of the OEM's current list price for Power systems. In order to provide the best discounts possible to the Commonwealth, can the bidder divide the category by the specific server types? For example the discount off of list for a small midrange system may not be as aggressive as a discount off of list for a larger one.

Question added by: [REDACTED]

5/4/2018 12:52 PM EDT

A: The Commonwealth is requesting a minimum discount percentage for an entire line of products. When a Statement of Work requesting a price quote is submitted by a Commonwealth agency, that is when the Commonwealth is requesting the best price from the selected Offeror.

Answered by: Thomas Schwartz

5/15/2018 8:07 AM EDT

Subject = Appendix C, Cost Matrix, Discount From List

Public Thread

Q: The Commonwealth has requested a discount off of the OEM's current list price for Z Servers and Power systems. However, IBM does not have list prices for their zSystems. How should IBM resellers provide pricing to the Commonwealth in this instance?

Question added by: [REDACTED]

5/4/2018 12:52 PM EDT

A: The scope of this RFP is not limited to IBM as a manufacturer. Offer(s) shall provide their discount off of their IBM price list as an OEM or Authorized Reseller. In the event a discount cannot be provided off of the list price an Offeror would submit zero (0) % discount.

Answered by: Thomas Schwartz

5/16/2018 8:54 AM EDT

Subject = Services, Technical Submittal, page 12

Public Thread

Q: The Commonwealth has requested services that include requirements for packing materials, trucking costs, etc. However, the rate card in the Cost Matrix only includes Hourly Cost, not any materials. Will the bidder include these non-hourly costs in the response to the statement of work at the time of purchase of these associated services?

Question added by: [REDACTED]

5/4/2018 12:52 PM EDT

A: All items shall be delivered F.O.B. Destination therefore packing materials, trucking costs and other necessary costs associated with shipping shall be included within the equipment cost. Please refer to Section 9 of Appendix A, Standard Contract Terms and Conditions, and Sections VII.B(b)(2) and VII.B(e)(1)(iii)(A) of the Technical Submittal.

Answered by: Thomas Schwartz

5/16/2018 8:53 AM EDT

Subject = Asset Tagging, Technical Submittal, page 13

Public Thread

Q: The OEM may not offer a Windows Management Instrumentation (WMI) for asset tagging on Z Servers and Power systems provided under this contract. Will the Commonwealth consider waiving this requirement for non-Windows servers?

Question added by: [REDACTED]

5/4/2018 12:52 PM EDT

A: The scope of this RFP is not limited to IBM as a manufacturer. As set forth in Paragraph VII.B(c)(1)(ii), the identification tag number requirement to be readable from WMI (Windows Management Instrumentation) is only required if applicable as determined by the Commonwealth Agency at time of request.

Answered by: Thomas Schwartz

5/16/2018 8:43 AM EDT

Subject = Asset Flexibility, Technical Submittal, page 12 [REDACTED]

Public Thread

Q: Since the Commonwealth has not made a request of a specific configuration or configurations as part of this RFP, how should Offerors respond to question 8 on page 12?

Question added by: [REDACTED]

5/4/2018 12:51 PM EDT

A: Since specific configurations will only be requested at the Commonwealth agency level, Paragraph VII.A(8) will be deleted from Lot 1 and Lot 2 Technical Submittals.

Answered by: Thomas Schwartz

5/15/2018 8:04 AM EDT

Subject = Price List Updates, Technical Submittal, Page 11 [REDACTED]

Public Thread

Q: IBM has stated that they do not publish price lists for Z Servers. Since Lot 1 of this procurement is focused on IBM Z Servers, how will the Commonwealth handle this?

Question added by: [REDACTED]

5/4/2018 12:51 PM EDT

A: The scope of this RFP is not limited to IBM as a manufacturer. If proposing an IBM solution, Offer(s) shall provide their discount off their IBM price list as an OEM or Authorized Reseller. In the event a discount cannot be provided off the list price an Offeror would submit a zero (0) % discount.

Answered by: Thomas Schwartz

5/16/2018 8:42 AM EDT

Subject = Subcontracting for Services, Technical Submittal, [REDACTED]

Public Thread

Q: The Commonwealth has indicated in this statement that they desire OEM or OEM Authorized Service Providers to perform work under this contract; however, many services requested in section B, Related Services, on page 12 do not require this level of certification and this will result in increased hourly costs. Does the Commonwealth intend the services in this section to be warranty and maintenance repair services?

Question added by: [REDACTED]

5/4/2018 12:50 PM EDT

A: Any warranty and maintenance repair services or other services which would impact the warranty of the equipment must be provided by an OEM or OEM Authorized Service Provider. Please refer to Sections VI.E and VII.A(5)(f) of Lot 1 and Lot 2 Technical Submittals.

Answered by: Thomas Schwartz

5/15/2018 8:03 AM EDT

Subject = Hosting and XaaS Models, Technical Submittal, page [REDACTED]

Public Thread

Q: The Commonwealth is forward thinking in providing the capability to procure XaaS and hosted solutions. Will the Commonwealth provide terms and conditions that cover these unique methods of procurement, or will these be listed inside an agreed to Statement of Work at the time of request for these solutions?

Question added by: [REDACTED]

5/4/2018 12:50 PM EDT

A: Requirements or service agreements specific to XaaS and hosted solutions will be included as part of the agreed Statement of Work at the time of request for these solutions. Please refer to Appendix E, Non-Commonwealth Hosting Requirements.

Answered by: Thomas Schwartz

5/16/2018 8:36 AM EDT

Subject = Storage Devices, Technical Submittal, Page 1 [REDACTED]

Public Thread

Q: Please clarify exactly what storage would be considered in scope for this procurement as "in support of the operating system or maintenance of mainframe and midrange equipment." This statement can be construed as conflicting with "Not standalone storage for other devices or network attached storage solutions." Does the Commonwealth intend that only internal disk drives (inside the midrange or mainframe processor) be the only storage to be provided under this contract?

Question added by: [REDACTED]

5/4/2018 12:50 PM EDT

A: Storage options purchased from contracts resulting from this RFP are to be internal disk drives (inside the midrange or mainframe processor) and are to be procured at the same time the mainframe or midrange server is procured. Storage procurements that do not include a mainframe or midrange server component are prohibited unless the Commonwealth agency can provide sufficient justification on why procuring from the contract(s) resulting from this solicitation is the most advantageous solution.

Answered by: Thomas Schwartz

5/16/2018 8:35 AM EDT

Subject = Storage Devices, Technical Submittal, Page 1 [REDACTED]

Public Thread

Q: The Commonwealth has recently completed an 18 month process to choose Best Value suppliers for most of its significant technology hardware categories, including Enterprise Storage (Lot 6). However, the terms on page one indicate that the Best Value supplier from that contract must compete to provide enterprise storage on multiple factors, including "best value justification," cost and solution. This appears to be in direct contrast with the direction of the prior procurement, given that contract has an existing waiver process that allows non-best value storage to be purchased if it is justified. Please provide clarification on this.

Question added by: [REDACTED]

5/4/2018 12:49 PM EDT

A: The contracts resulting from this solicitation may be used for storage procurements ONLY when the required hardware is not available via the Information Technology Hardware Contract(s) for Storage Hardware. The Commonwealth agency must provide sufficient justification on why procuring from the contract(s) resulting from this solicitation is the most advantageous solution.

Answered by: Thomas Schwartz

5/15/2018 8:01 AM EDT

Subject = Multiple Award RFP, Technical Submittal Page 1, Ev [REDACTED]

Public Thread

Q: Since an award will be made to all responsive and responsible Offerors that meet the requirements, which includes 75% of the technical points available and financial viability, how will the Commonwealth use the combined scoring of SDB, cost and technical to determine who is a responsive and responsible offeror?

Question added by: [REDACTED]

5/4/2018 12:49 PM EDT

A: Please refer to Sections 24 and 26 of the Solicitation Event Description for information relating to scoring, final ranking and award.

Answered by: Thomas Schwartz

5/15/2018 7:59 AM EDT

Subject = Equipment to be Proposed, Technical Submittal page [REDACTED]

Public Thread

Q: The project description includes IBM Z Servers and Power Systems, but says "it is not limited to" those systems. Please clarify that this RFP is limited to IBM Power and Z Servers.

Question added by: [REDACTED]

5/4/2018 12:49 PM EDT

A: This RFP is to procure mainframe and midrange servers. The only exclusion is IBM X86 models which are available on the statewide IT Hardware contract. All other mainframe and midrange server models are eligible whether they are from IBM or another OEM.

Answered by: Thomas Schwartz

5/15/2018 9:28 AM EDT

Subject = Limitation of Liability [REDACTED]

Public Thread

Q: The Standard Contract Terms and Conditions do not include clauses typically found in Commonwealth IT hardware contracts, including Limitation of Liability and negation of consequential and incidental damages. The Software License Requirements Agreement includes these terms on pages 5-6. Having no limitation of liability is problematic for many companies, but especially for any small disadvantaged businesses considering a response. Please consider adding these terms to the contract.

Question added by: [REDACTED]

5/4/2018 12:49 PM EDT

A: Section 32, Limitation of Liability, will be added to the Standard Contract terms and Conditions.

Answered by: Thomas Schwartz

5/15/2018 7:58 AM EDT

Subject = Historical Spending [REDACTED]

Public Thread

Q: Please provide the historical spending by Commonwealth agencies (not COSTARS) for IBM Power and IBM mainframe over the term of the existing contract, if possible.

Question added by: [REDACTED]

5/4/2018 12:48 PM EDT

A: No. Historical spend by the Commonwealth as a whole is provided on Appendix C, Cost Matrix. Spend data by individual agency is not considered relevant to this solicitation.

Answered by: Thomas Schwartz

5/15/2018 7:57 AM EDT

Subject = Contract Term, IT Terms and Conditions, page 1 [REDACTED]

Public Thread

Q: The most recent IT Hardware contracts had 3 year initial contract terms, with a single two year extension. Is there a reason for contract terms that are different in this procurement?

Question added by: [REDACTED]

5/4/2018 12:48 PM EDT

A: No. There is no correlation between the contract term of this solicitation and the contract term of IT Hardware.

Answered by: Thomas Schwartz

5/15/2018 7:55 AM EDT

Subject = SHARING OF QUESTIONS/ANSWERS [REDACTED]

Private Thread

Q: Are all questions/answers visible to all Bidders or are questions asked under the "My Questions" tab visible only to the Bidder asking the question (with questions asked under the "Public" tab visible to all Bidders)?

Question added by: [REDACTED]

4/27/2018 3:55 PM EDT

A: All questions and answers pertaining to the solicitation will be posted publicly for all potential Offerors to see. The Commonwealth, at its sole discretion, may respond directly to a supplier if the question is administrative or process in nature.

Answered by: Thomas Schwartz

4/27/2018 4:26 PM EDT

Subject = BID 6100044346 [REDACTED]

Public Thread

Q: Is this RFP strictly to approve vendors wanting to be on put on the vendor contract list for future solicitations or is this Bid for a specific HW purchase at this time?

Question added by: [REDACTED]

4/25/2018 4:33 PM EDT

A: At time of need, a Commonwealth purchasing agent would reach out to the contract account manager to request a quote based on the specifications they require. Specifics relating to each order, including Related Services, Professional Services, and software and hardware specifications, will be addressed in the Statement of Work at the time of the order.

Answered by: Thomas Schwartz

4/26/2018 8:40 AM EDT

Technical Submittal – Lot 1 Mainframe

- I. Project Description.** The Commonwealth of Pennsylvania (“Commonwealth”) is seeking to establish a mainframe and midrange server and storage devices (“Equipment”) and related services (“Services”) contract, including installation, asset management, service integration, and support services. This RFP does not include x86 server and storage devices.

The Commonwealth is looking to procure Equipment and related Services to include, but not be limited to, IBM z Systems and Power Systems and their associates subsystems (including but not limited to batch scheduling, backup management, hardware monitoring and management, etc.) and operating systems as well as management and hosting options of these systems at designated Commonwealth facilities and/or Selected Offeror facilities as defined in a Statement of Work (“SOW”) utilizing **Appendix B, Statement of Work Template**. This procurement is open to all Equipment manufacturers and Authorized resellers.

The Commonwealth is seeking various procurement options, including purchasing, leasing, X-as-a-Service (XaaS) and consumption based pricing models. The Commonwealth agency will identify the procurement option at time of requesting a quote.

This will be a multiple-award RFP. An award will be made to responsive and responsible Offerors (“Selected Offerors”) that meet the requirements specified in these Specifications. The RFP has been broken down into the following Lots listed below with the award approach for each Lot:

Lot 1: Mainframe, Data Storage & Equipment Storage.

Lot 2: Midrange Server, Data Storage & Equipment Storage.

Offerors can propose on a single lot or both lots in **Appendix C, Cost Matrix**. A Selected Offeror may only submit quotes in response to the lot(s) they are awarded. The Commonwealth retains the right to award both lots, reject both lots or to award only one lot.

The resulting contracts will only be used for storage procurements if the required hardware is not available via the Information Technology Hardware Contract(s) for Storage Hardware, or if the Commonwealth agency can provide a best value justification which may include, but not limited to, lowest cost or most advantageous solution to procure through the resulting contract(s). Storage options purchased from the resulting contract are to be in support of the operating system or maintenance of mainframe or midrange equipment, not standalone storage for other devices or network attached storage solutions.

- II. Statement of the Project.** State in succinct terms your understanding of the project presented or the service required by this RFP.

Offeror Response

III. Qualifications.

- A. Company Overview.** Offerors shall provide a company overview describing their organization.

Offeror Response

- B. Prior Experience.** Include experience in providing mainframe and midrange server and storage devices and related services. Experience shown should be work done by individuals who will be assigned to this project as well as that of your company. Studies or projects referred to must be identified and the name of the customer shown, including the name, address, telephone number, and email address of the responsible official of the customer, company, or agency who may be contacted.

Offeror Response

- C. Manufacturer Authorization Letter.** If an Offeror is proposing as an Authorized Reseller for an Original Equipment Manufacturer (“OEM”), they must submit a Manufacturer Authorization Letter which clearly states the Offeror is authorized to provide the OEM’s equipment and services to the Commonwealth for this RFP. The Manufacturer Authorization Letter must be signed by an authorized representative for the OEM and must reference Commonwealth RFP 6100044346 for Mainframe and Midrange Server and Storage Devices. An Offeror must submit a Manufacturer Authorization Letter for each OEM for which the Offeror is proposing, unless the Offeror is the OEM.

D. Personnel.

- (1) **Key Personnel.** For key personnel, such as, the Account Manager and Account Representative; include the employee’s name and, through a resume or similar document, the Project personnel’s education and experience in the role for which they will serve in this project. Indicate the responsibilities each individual will have in this Project and how long each has been with your company. Resumes are not to include personal information that will, or will be likely to, require redaction prior to release of the proposal under the *Right-to-Know Law*. This includes home addresses and phone numbers, Social Security Numbers, Drivers’ License numbers or numbers from state ID cards issued in lieu of a Drivers’ License, financial account numbers, etc. If the Commonwealth requires any of this information for security verification or other purposes, the information will be requested separately and as necessary.

- (2) **Personnel.** Offeror(s) shall describe its capabilities to provide personnel required to perform the services which may be requested through the contract resulting from this RFP, such as warranty, installation, professional, and other related services.

Offeror Response

- E. Subcontractors.** Provide a subcontracting plan for all subcontractors, including small diverse **business** and small business subcontractors, who will be assigned to the Project. The selected Offeror is prohibited from subcontracting or outsourcing any part of this Project without the express written approval from the Commonwealth. Refer to Section 8 of **Appendix A, Standard Contract Terms and Conditions for IT Supplies and Related Services** regarding removal of a subcontractor from the project. Replacement of a subcontractor shall be handled in the same manner as the replacement of dedicated contacts, please see **Section VII.A(4)(b)**. Upon award of the contract resulting from this RFP, subcontractors included in the proposal submission are deemed approved. For each position included in your subcontracting plan provide:

- (1) name of subcontractor;
- (2) address of subcontractor;
- (3) number of years worked with the subcontractor;
- (4) number of employees by job category to work on this project;
- (5) description of services to be performed;
- (6) what percentage of time the staff will be dedicated to this project;
- (7) geographical location of staff; and
- (8) resumes (if appropriate and available).

Offeror Response

- IV. Training.** Upon request, the selected Offeror may be required to provide training and training materials. See **Section VII.B.3.h. Training** for requirements set forth by the Commonwealth. Offeror(s) shall describe its capabilities to provide training, if requested.

Offeror Response

- V. Financial Capability.** Describe your company's financial stability and economic capability to perform the contract requirements. The Commonwealth reserves the right to request additional information to evaluate an Offeror's financial capability.

Offeror Response

VI. Requirements.

- A. Software.** All Equipment purchased or leased should be provided without an operating system, unless the operating system software is a part of the Equipment as specified in the Manufacturer's Price List or as requested by the Commonwealth in the SOW. The Selected Offeror may not offer Equipment which requires commercially available software for its use, unless and until the Commonwealth has entered into a software license agreement with the software licensor. The Selected Offeror must inform any such software licensor that it must enter into a software license agreement with the Commonwealth that includes the applicable provisions set forth in **Appendix D, Software License Requirements Agreement** located in the Buyer Attachments section, as a material part of the licensor's software license agreement.
- B. Electrical Requirements.** All Equipment being offered must be UL approved. The Selected Offeror shall identify any special voltage needed beyond the standard 110v as part of Pre-Sales Support. The Commonwealth will furnish suitable electrical current to operate the Equipment.
- C. Hosting Requirements.** Any hosting services being offered must adhere to the non-Commonwealth hosting requirements as described in **Appendix E, Non-Commonwealth Hosting Requirements**. The Selected Offeror must adhere to current Commonwealth policies. Any updates to the Non-Commonwealth Hosting Requirements will be included as part of the SOW when hosting services are requested by the Commonwealth.
- D. As a Service model.** The Commonwealth may request an XaaS model such as Mainframe as a Service or Infrastructure as a Service. These Services will be included as part of the SOW when requested by a Commonwealth agency.
- E. Subcontracting for Services.** Any Services not provided by the OEM must be provided by an OEM Authorized Service Provider that has been approved in advance by the Commonwealth.
- F. Additional Discounts.** Commonwealth agencies are required to obtain quotes from all Selected Offerors, per desired OEM, on orders exceeding \$10,000; however, a Commonwealth agency may request quotes for orders of all sizes. Selected Offerors are encouraged to offer lower prices for all requests for quotes, especially requests for quotes with high quantities. The Commonwealth may negotiate additional price concessions on all orders.
- G. Order Fulfillment.**
- (1) The Selected Offeror must be capable of accepting orders via the Commonwealth's purchasing credit card (Pcard) in addition to purchase

orders generated via the Commonwealth’s SAP Supplier Relationship Management (SRM) system, the Commonwealth’s standard order type.

- (2) The Selected Offeror shall be responsible for tracking all orders from initial request through receipt of the Equipment or Service.
- (3) The Selected Offeror’s delivery methods must adhere to **Section 9, Delivery** and **Section 17, Acceptance of Appendix A, Standard Contract Terms and Conditions for IT Supplies and Related Services**.

Offerors shall describe their order fulfillment process and how it adheres to the above requirements.

Offeror Response

H. Quote Requirements.

- (1) The Commonwealth’s contract management team must approve the quote format before any quotes may be issued.
- (2) All quotes, at a minimum, must comply with the following:
 - (a) Include: contract number, manufacturer contract number (if applicable); service period (if applicable); manufacturer product ID; manufacturer product title; line item descriptions; list price so the Commonwealth can verify discounts on quotes; expected delivery date; and related purchase order number(s) when Stand-alone Services are procured.
 - (b) No additional terms and conditions may be attached to a quote.

I. Service Level Agreements (SLAs):

- (1) The following SLAs and **service** credits apply to the Selected Offeror’s performance with each individual Commonwealth agency.

RFP Requirement	Service Level Agreements	Service Credits
Customer Inquiry Response Time (CIRT)	The Selected Offeror must return phone calls or respond to emails regarding initial request, queries, and problems within a maximum of four (4) business hours after a phone call is placed or an email is received.	N/A

Quote Delivery for Standard Catalog Items (QDCI)	The Selected Offeror must provide quotes to the Commonwealth agency within two (2) business days or other date specified in the request for quote for hardware currently in the Selected Offeror's catalog.	N/A
Delivery of Equipment.	Within 30 business days of order acceptance or on the date agreed upon by the Commonwealth or Commonwealth agency and the Selected Offeror.	1% of the cost of the order.
Invoice Receipt	The Selected Offeror must provide invoices for all orders within 60 days from the order date.	1% credit on the purchase order for each late invoice.
Incorrect shipment to the Commonwealth.	<ul style="list-style-type: none"> • Corrected within 10 business days. • Corrected within 10 to 30 business days. • Corrected within 30 to 60 business days. 	<ul style="list-style-type: none"> • 1% of the cost of the order. • 2% of the cost of the order. • 3% of the cost of the order.
Quarterly Reporting.	The reports must be provided to the Commonwealth no later than 15 business days after the end of the quarter.	If the Selected Offeror fails to meet the SLA for two (2) quarters within a calendar year, the Selected Offeror will be ineligible to receive orders from any Commonwealth agency for six (6) months .
Monthly Reporting.	The reports must be provided to the Commonwealth no later than 10 business days after the end of the month.	If the Selected Offeror fails to meet the SLA for two (2) consecutive months or three (3) months within a calendar year , the Selected Offeror may be ineligible to receive orders from any Commonwealth agency for six (6) months .

The Selected Offeror must reimburse the Commonwealth within **45 days** of the missed SLA. The Selected Offeror must pay the service credits by deducting the amount from an invoice or by sending a check addressed to the Commonwealth of Pennsylvania for the amount of the service credits. All checks must be sent to the following address:

Office of Comptroller Operations

Revenue & Cash Management
555 Walnut St., 9th Floor
Harrisburg PA 17101-1925

The Selected Offeror must attach, along with its check, a breakdown of the reimbursement which includes, at a minimum: Commonwealth agency, SRM purchase order number and reimbursement amount.

The Offeror shall describe how it will perform the services in this RFP while meeting the required SLAs.

Offeror Response

- (2) The Commonwealth may include additional SLAs as part of the SOW when ordering Equipment or Services.

J. Emergency Preparedness. To support continuity of operations during an emergency, including a pandemic, the Commonwealth needs a strategy for maintaining operations for an extended period of time. One part of this strategy is to ensure that essential contracts that provide critical business services to the Commonwealth have planned for such an emergency and put contingencies in place to provide needed goods and services.

- (1) Describe how you anticipate such a crisis will impact your operations.
- (2) Describe your emergency response continuity of operations plan. Please attach a copy of your plan, or at a minimum, summarize how your plan addresses the following aspects of pandemic preparedness:
 - (a) Employee training (describe your organization's training plan, and how frequently your plan will be shared with employees)
 - (b) Identified essential business functions and key employees (within your organization) necessary to carry them out
 - (c) Contingency plans for:
 - (1) How your organization will handle staffing issues when a portion of key employees are incapacitated due to illness.
 - (2) How employees in your organization will carry out the essential functions if contagion control measures prevent them from coming to the primary workplace.

- (d) How your organization will communicate with staff and suppliers when primary communications systems are overloaded or otherwise fail, including key contacts, chain of communications (including suppliers), etc.
- (e) How and when your emergency plan will be tested, and if the plan will be tested by a third-party.

Offeror Response

VII. Contract Services. Describe in narrative form your technical plan for accomplishing the work using the task descriptions as your reference point. Modifications of the task descriptions are permitted; however, reasons for changes should be fully explained. Indicate the number of person hours allocated to each task. Include a Program Evaluation and Review Technique (PERT) or similar type display, time related, showing each event. If more than one approach is apparent, comment on why you chose this approach.

A. Required Services. These services are required by the awarded Selected Offerors at no additional cost to the Commonwealth.

- (1) Pre-Sales Support. The Selected Offeror must be capable of providing pre-sales support without additional service fees, including appropriate support personnel (e.g. those with technical design/architecture expertise) to assist Commonwealth agencies in identifying appropriate products based on their needs.

Offeror Response

- (2) Supply Chain Management/Managed Logistics. The Selected Offeror must provide staging and storage at no additional cost (unless otherwise defined in the **SOW**), respond quickly to changing needs and provide an effective order expediting process, if necessary.

Offeror Response

- (3) Quotes during Term of Contract. Selected Offerors shall provide a quote for Equipment, when requested by the Commonwealth, at any time during the term of the Contract. The Selected Offeror must honor all quotes for at least **ninety (90) days**

Offeror Response

(4) Contacts.

(a) **General.** Offerors must identify the following contacts in **Appendix F, Dedicated Contacts** located in the Buyer Attachments section. Information relating to dedicated contacts is as follows:

(1) **Account Manager.** The Selected Offeror must provide a dedicated Account Manager who will be the main point of contact for the Commonwealth. **The Commonwealth will consider the Account Manager to be the sole point of contact with regard to contractual and purchase order matters.** The Account Manager must be an employee of the Selected Offeror and must be authorized to make binding decisions on behalf of the Selected Offeror. The Account Manager's responsibilities will include, but will not be limited to: providing administrative, supervisory and technical direction to the account representatives; monitoring work performance for accuracy, timeliness, efficiency and adherence to contract requirements; coordinating the resolution of contract problems; and the implementation and completion of problem escalation procedures.

(2) **Account Representative(s).** The Account Manager may also serve as an Account Representative. The Selected Offeror must provide an Account Representative to facilitate Commonwealth agency requests, which include, but are not limited to, providing quotes for Equipment and/or Services, reporting, providing recommendations on Equipment and Services, and tracking order fulfillment. Account representative will be the main point of contact for all Commonwealth agency requests. The Account Representatives is expected to have sufficient technical expertise to ensure proper orders are taken.

(3) **Service Contact.** A dedicated service phone number should be provided.

(b) **Replacement of dedicated contacts.** After dedicated contacts are assigned and approved by the Commonwealth, the Selected Offeror may not divert or replace dedicated contacts without written approval of the Commonwealth and in accordance with the following procedures.

(1) The Selected Offeror shall notify the Commonwealth at least **60 calendar days** in advance of the proposed diversion or

replacement of dedicated contacts, and providing the name, qualifications and background check of the person who will replace the diverted or removed staff. Within **10 calendar days** of receipt of the diversion or replacement notice, the Commonwealth will notify the Selected Offeror whether the proposed diversion is acceptable or if the replacement is approved.

- (2) Advance notification is not required for changes in dedicated contacts due to resignations, death and disability, dismissal for cause or dismissal as a result of termination of a subcontract or any other cause that is beyond the control of the Selected Offeror. However, the Commonwealth must approve the replacement dedicated contacts. Replacement of dedicated contacts whose availability changes for reasons beyond the control of the Selected Offeror must occur:
 - (i) on a temporary basis, within **one week** of the availability change; and
 - (ii) on a permanent basis, no longer than **30 calendar days** from the availability change.
- (3) The Commonwealth may request that the Selected Offeror remove one or more of its staff persons from the contract at any time, with **30 calendar days'** written notice. If a staff person is removed from the Contract, the Selected Offeror will have **10 days** to fill the vacancy with a staff person acceptable in terms of experience and skills, subject to the Commonwealth approval.

Offeror Response

- (5) Warranty Service. Costs shall include a **minimum one-year warranty** covering parts and labor against defects in workmanship and materials for all Equipment purchased under this Contract. See **Section 12, Warranties of Appendix A, Standard Contract Terms and Conditions for IT Supplies and Related Services.** The warranty period shall commence upon acceptance of the items by the Commonwealth. See **Section 17, Acceptance of Appendix A, Standard Contract Terms and Conditions for IT Supplies and Related Services.**
 - (a) The Selected Offeror shall honor the warranty specified by the OEM for all Equipment being offered, at no additional cost to the Commonwealth.

- (b) The Selected Offeror shall include the most recent software and firmware patches, fixes and upgrades, if available from the OEM, for Equipment during the warranty period, at no additional cost to the Commonwealth.
- (c) The Selected Offeror shall provide a central point of contact to address warranty service issues. The Selected Offeror must make available technical support contacts through the internet and provide a toll-free contact number.
- (d) The Selected Offeror shall be capable of receiving service calls on a **24-hour per day** basis, **365 days** of the year, during a warranty period.
- (e) The Selected Offeror may provide warranty services outside of business hours if agreed upon by the Commonwealth agency and the Selected Offeror.
- (f) The Selected Offeror must be capable, either directly or through the OEM, to perform on-site warranty services. Warranty is defined as the standard provided by the OEM for the period of time indicated in the Contract.

Offeror Response

- (6) Price List Updates. The Selected Offeror shall provide the Commonwealth with a hyperlink to the OEM's current price list twice per year between June 20 and June 30, and between December 21 and December 31. The Commonwealth may request the OEM's current price list at any time.

Offeror Response

- (7) Accessibility Needs. The Commonwealth's [Executive Order 2016-03, Establishing "Employment First" Policy and Increasing Competitive Integrated Employment for Pennsylvanians with a Disability](#), states that Commonwealth employees with disabilities may require accommodations of assistive technology in order to perform the functions of their jobs. The Commonwealth will further the objectives of providing appropriate accommodation and support through the contracts resulting from this RFP. Offerors must provide an accessibility plan and assistive technology for the various Lots of this RFP, as applicable. Any additional cost per unit for items with assistive technology must be included as a separate line item on pricing quotes.

Offeror Response

B. Related Services.

- (1) Offerors may provide additional related services in conjunction with the Equipment they are offering to supply to the Commonwealth under the Contract resulting from this RFP (“Related Services”). However, any Related Services provided by the Offeror must be: (1) expressly authorized in the original RFP/Contract, (2) directly related to the delivery, installation or normal use of the Equipment referenced in this RFP/Contract, (3) initiated/ordered at the time of product purchase or during the term of the contract for services on Equipment purchased through the contract resulting from this RFP.
- (2) Related Services for mainframes and servers not procured under the contract resulting from this RFP (“Stand-alone Services”), are within the scope of this Contract, so long as not otherwise prohibited by the contract under which the mainframe or midrange server was originally procured.
- (3) The Commonwealth agency will develop a SOW for optional Related Services utilizing **Appendix B, Statement of Work Template** located in the Buyer Attachments section, which will be attached to the associated purchase order. The Selected Offeror shall provide a proposed hourly cost on the Rate Card tab of **Appendix C, Cost Matrix** for all listed Related Services. The Selected Offeror must identify any subcontractors that will be used along with a brief description of the Related Services. All Related Services may be purchased at the Commonwealth’s discretion.

Related Services are as follows:

- (a) Maintenance/Extended Warranty Services.
 - (1) The Selected Offeror shall provide a written quote for maintenance/extended warranty services, when requested by a Commonwealth agency, at any time during the term of the Contract resulting from this RFP.
 - (2) Stand-alone orders for maintenance/extended warranty services made during the term of the Contract may extend up to **four (4) years** past the expiration date of the Contract resulting from this RFP.
- (b) Installation.

- (1) The Selected Offeror shall, at a minimum:
 - (i) Work with the Commonwealth agency to develop a schedule to deliver the Equipment at the location.
 - (ii) Assign a project manager to every installation;
 - (iii) Install the Equipment within twenty-four (24) hours of delivery, unless otherwise agreed upon by the Selected Offeror and the Commonwealth agency.
 - (iv) Unpack the Equipment and rack mount or install as required.
 - (v) Set up and connect all required data and system cables, power and external devices to the Equipment.
 - (vi) Power on the Equipment.
 - (vii) Perform visual and physical system checks that can be performed with an operating system.
 - (viii) Provide status reports of installations completed, installations outstanding, and issues.
- (2) As part of the SOW, the Commonwealth agency will specify whether the Selected Offeror must remove all packing materials and boxes from the site within **one (1) week** after the installation has been completed.
- (3) The Selected Offeror must have the ability to integrate the physical hardware, based on Commonwealth agency requirements, for operational effectiveness.

(c) Asset Tagging (On-site & Off-site).

- (1) The Selected Offeror shall, at a minimum:
 - (i) Affix an identification tag number and Commonwealth agency inventory asset tag to the Equipment.
 - (ii) Ensure that the identification tag number is readable from WMI (Windows Management Instrumentation), if applicable.
 - (iii) Ensure that the location of the identification tag is easily accessible and readable by the user. Identification numbers will be used as a reference for service calls.
 - (iv) Provide identification numbers, serial numbers, Commonwealth agency inventory asset tag numbers,

and other identification information for all installations at a site, when requested by the Commonwealth in an electronic format, that can be incorporated into existing Equipment databases. The Commonwealth agency will provide database formats to be used by the Selected Offeror.

- (2) As part of the SOW, the Commonwealth agency will specify if the service will be performed on-site or off-site.

(d) Data Transfer.

- (1) The Selected Offeror shall, at a minimum:
 - (i) Migrate/transfer all specified applications and data onto the new system;
 - (ii) Disconnect all systems; and
 - (iii) Not retain any data associated with the data transfer.
- (2) The Selected Offeror may transfer data using the Commonwealth's network, a crossover cable or Commonwealth-owned and provided external hard drive.

(e) Preparation for Shipment.

- (1) The Selected Offeror shall, at a minimum:
 - (i) Verify the functionality and condition of the equipment with the Commonwealth agency;
 - (ii) Disconnect the existing Equipment and remove it from the area; and
 - (iii) Fully prepare and pack the Equipment for delivery. This includes, but is not limited to:
 - (A) Securely boxing and palletizing (if necessary) the Equipment in appropriate, clearly labeled, shipping containers and according to accepted commercial practice, without extra charge for packing materials, cases, or other types of containers.

- (B) If requested by the Commonwealth, all containers and packaging will become and remain property of the Commonwealth.

(f) Hard Drive Removal.

- (1) The Selected Offeror shall, at a minimum:

- (i) Arrive at the Commonwealth designated location at the time scheduled with the Commonwealth agency to uninstall and fully remove the hard drive in question;
- (ii) Verify the functionality and condition of the equipment with the Commonwealth agency.
- (iii) Cleanse the hard drive as detailed in Commonwealth ITP SEC015, *Data Cleansing Policy*, http://www.oa.pa.gov/Policies/Documents/itp_sec015.pdf; and
- (iv) Allow the following disposition of hard drives that are defective or at the end-of-lease at the discretion of each Commonwealth agency with no additional cost to the Commonwealth.

- (A) The Commonwealth agency may keep the defective or leased hard drive.

- (B) Selected Offeror must cleanse the hard drive as detailed in Commonwealth ITP SEC-015, *Data Cleansing Policy*, http://www.oa.pa.gov/Policies/Documents/itp_sec015.pdf.

- (2) The Commonwealth agency may choose to keep the removed hard drive and provide delivery location of removed hard drive.

(g) Disk Wipe Service.

- (1) *On-Premise Disk Wipe.* The Selected Offeror shall, at a minimum:

- (i) Uninstall the equipment from the Commonwealth agency at the scheduled time;

- (ii) Arrive at the Commonwealth-designated location at the scheduled time; and
 - (iii) Cleanse the device in the equipment as detailed in Commonwealth ITP SEC015, *Data Cleansing Policy*, http://www.oa.pa.gov/Policies/Documents/itp_sec015.pdf, at its current location and provide proof of the disk wipe to the Commonwealth agency.
- (2) *Off-Premise Disk Wipe.* The Selected Offeror shall, at a minimum:
- (i) Uninstall, pack, and pick up the equipment from the Commonwealth agency at the scheduled time;
 - (ii) Cleanse the device as detailed in Commonwealth ITP SEC015, *Data Cleansing Policy*, http://www.oa.pa.gov/Policies/Documents/itp_sec015.pdf, at a location approved by the Commonwealth and provide proof of the disk wipe to the Commonwealth agency; and
 - (iii) Return and reinstall the equipment at the time and location specified by the Commonwealth agency.
- (h) Relocation.
- (1) The Selected Offeror shall, at a minimum:
- (i) Provide relocation of equipment:
 - (A) within the same building;
 - (B) within a 25-mile radius;
 - (C) beyond a 25-mile radius.
 - (ii) Verify the functionality and condition of the equipment with the Commonwealth agency;
 - (iii) Unpack and reinstall equipment at the new location designated by the Commonwealth agency; and

- (iv) If relocation required the Equipment to be repacked, the Selected Offeror must remove the packing material.
- (2) Damages resulting from the transfer of equipment during relocation are not the responsibility of the Commonwealth.
- (i) Equipment Return to DGS Surplus Warehouse. The Selected Offeror shall, at a minimum, deliver the packed Equipment to the DGS warehouse located at:

DGS Surplus Warehouse
2221 Forster St.
Harrisburg, PA 17125

(j) Training.

- (1) The Selected Offeror shall provide training for Commonwealth staff, if requested by the Commonwealth agency. The training shall include, at a minimum, basic system familiarization and system operation.
- (2) Training shall be provided at the location where the Equipment will be located. At any time within **90 days** of the initial training the Selected Offeror must provide follow-up training at no additional cost if requested by the Commonwealth. The follow-up training shall include, at a minimum, basic system familiarization and system operation.

(k) Professional Services.

The Selected Offeror must be capable of providing additional professional Services to the Commonwealth upon request. The Selected Offeror shall provide a proposed blended hourly cost on the Rate Card tab of **Appendix C, Cost Matrix** for all available Professional Services. These professional Services may include, but not be limited to, transition assistance, disaster recovery services, or security services. Professional Services may include on site or off-site engagements and take place during business and non-business hours.

If additional professional services are requested, the Commonwealth agency will develop a SOW for each service order which will be attached to the associated purchase order. The Offeror shall provide

a price for all listed professional Services. All professional Services may be purchased at the Commonwealth's discretion.

VIII. Reports and Project Control. The selected Offeror shall create, maintain, and execute the following plans, reports, and supporting documentation in a format agreed to by the Commonwealth.

A. Quarterly Business Reviews. The Selected Offeror and the Commonwealth agree to meet quarterly to review current configurations, lifecycles and product roadmaps to determine product viability. All product lifecycle and roadmap information provided by the Selected Offeror will be kept confidential by the Commonwealth. The objective of this meeting is to reach a mutual agreement on product replacement during the life of the Contract. Additionally, any pending changes that will have a material effect on the Commonwealth's purchasing need to be discussed and viable alternatives presented. These quarterly meetings will also serve as an opportunity for the Selected Offeror to identify contract improvement opportunities and cost savings opportunities for the Commonwealth.

B. Reporting.

(1) Monthly Reports.

The Selected Offeror must provide monthly reports to each using Commonwealth agency and a consolidated monthly report to the Department of General Services, Bureau of Procurement. The monthly reports must include all activity by the Commonwealth, as well as for any external procurement activity by other state entities. The Selected Offeror must provide monthly reports to the Commonwealth no later than **10 business days** after the end of the month.

The Selected Offeror must utilize the **Appendix G, Monthly Report Template** located in the Buyer Attachments section. A monthly report must consist of, and include at a minimum:

- (a) Ordering and delivery report of Equipment purchases which includes, at a minimum: Agency Information, Equipment Information, Order Information, Shipment and Delivery Information and Invoice Information.
- (b) Problem and response report which includes, at a minimum: Agency Information, Servers, Equipment Information and Problem/Response Information.
- (c) Service level report which includes, at a minimum: Agency information, Off-the-shelf SLA computation, Custom SLA computation and Incorrect Shipment Correction SLA computation.

- (d) Outstanding issues report which includes, at a minimum: Agency Information and Outstanding Issue Summary.

(2) Quarterly Reports.

The Selected Offeror must provide quarterly reports to the Commonwealth no later than **15 business days** after the end of a quarter. A quarter is defined by the Commonwealth as follows:

- Quarter 1: January through March.
- Quarter 2: April through June.
- Quarter 3: July through September.
- Quarter 4: October through December.

The Selected Offeror must utilize the **Appendix H, Quarterly Report Template** located in the Buyer Attachments section, which includes the following:

- (a) Sales summary report which includes, at a minimum:
- (1) Agency Information: Identifying information for the Commonwealth agency.
 - (2) Maintenance/Services Information: Detailed description of the maintenance/services being performed.
 - (3) Equipment Information: Detailed information about the Equipment purchased, including the manufacturer; product description/base configuration details; manufacturer part number; any additional upgrades purchased; and quantity.
 - (4) Order Information: Detailed breakout of the total price of the order. This includes the quantity provided; base configuration cost; and cost and quantity of any upgrades purchased. Include the appropriate item cost or list price and associated markup or discount.
 - (5) Invoice Information: Invoice information for the associated order.
- (b) Problem and response report, which includes, at a minimum: Agency Information; Equipment Information; Maintenance/Services Information; and Problem/Response Information.

- (c) Outstanding issues summary report which includes, at a minimum: Agency Information and Outstanding Issue Summary.
 - (d) Quarterly summary report—to be delivered in person at Quarterly Business Reviews (QBRs)—of quarterly contract activities; achievements; challenges; and Selected Offeror’s recommendations for the Commonwealth.
 - (e) Detailed SLA metric report. The Selected Offeror will be responsible for tracking and quarterly reporting on the SLA metrics listed in **Section VI.I Service Level Agreements (SLAs)**. The format of the report must be approved by the Commonwealth before ordering can commence.
- (3) Additional Reports. Additional reports may be added, or removed, by the Commonwealth at any time.

IX. Objections and Additions to Standard Contract Terms and Conditions.

The Issuing Office will reject any proposal that is conditioned on the negotiation of the terms and conditions set out in the Terms and Conditions contained in the Buyer Attachment section or to other provisions of the RFP.

Technical Submittal – Lot 2 Midrange Server

- I. Project Description.** The Commonwealth of Pennsylvania (“Commonwealth”) is seeking to establish a mainframe and midrange server and storage devices (“Equipment”) and related services (“Services”) contract, including installation, asset management, service integration, and support services. This RFP does not include x86 server and storage devices.

The Commonwealth is looking to procure Equipment and related Services to include, but not be limited to, IBM z Systems and Power Systems and their associates subsystems (including but not limited to batch scheduling, backup management, hardware monitoring and management, etc.) and operating systems as well as management and hosting options of these systems at designated Commonwealth facilities and/or Selected Offeror facilities as defined in a Statement of Work (“SOW”) utilizing **Appendix B, Statement of Work Template**. This procurement is open to all Equipment manufacturers and Authorized resellers.

The Commonwealth is seeking various procurement options, including purchasing, leasing, X-as-a-Service (XaaS) and consumption based pricing models. The Commonwealth agency will identify the procurement option at time of requesting a quote.

This will be a multiple-award RFP. An award will be made to responsive and responsible Offerors (“Selected Offerors”) that meet the requirements specified in these Specifications. The RFP has been broken down into the following Lots listed below with the award approach for each Lot:

Lot 1: Mainframe, Data Storage & Equipment Storage.

Lot 2: Midrange Server, Data Storage & Equipment Storage.

Offerors can propose on a single lot or both lots in **Appendix C, Cost Matrix**. A Selected Offeror may only submit quotes in response to the lot(s) they are awarded. The Commonwealth retains the right to award both lots, reject both lots or to award only one lot.

The resulting contracts will only be used for storage procurements if the required hardware is not available via the Information Technology Hardware Contract(s) for Storage Hardware, or if the Commonwealth agency can provide a best value justification which may include, but not limited to, lowest cost or most advantageous solution to procure through the resulting contract(s). Storage options purchased from the resulting contract are to be in support of the operating system or maintenance of mainframe or midrange equipment, not standalone storage for other devices or network attached storage solutions.

- II. Statement of the Project.** State in succinct terms your understanding of the project presented or the service required by this RFP.

Offeror Response

III. Qualifications.

- A. Company Overview.** Offerors shall provide a company overview describing their organization.

Offeror Response

- B. Prior Experience.** Include experience in providing mainframe and midrange server and storage devices and related services. Experience shown should be work done by individuals who will be assigned to this project as well as that of your company. Studies or projects referred to must be identified and the name of the customer shown, including the name, address, telephone number, and email address of the responsible official of the customer, company, or agency who may be contacted.

Offeror Response

- C. Manufacturer Authorization Letter.** If an Offeror is proposing as an Authorized Reseller for an Original Equipment Manufacturer (“OEM”), they must submit a Manufacturer Authorization Letter which clearly states the Offeror is authorized to provide the OEM’s equipment and services to the Commonwealth for this RFP. The Manufacturer Authorization Letter must be signed by an authorized representative for the OEM and must reference Commonwealth RFP 6100044346 for Mainframe and Midrange Server and Storage Devices. An Offeror must submit a Manufacturer Authorization Letter for each OEM for which the Offeror is proposing, unless the Offeror is the OEM.

D. Personnel.

- (1) **Key Personnel.** For key personnel, such as, the Account Manager and Account Representative; include the employee’s name and, through a resume or similar document, the Project personnel’s education and experience in the role for which they will serve in this project. Indicate the responsibilities each individual will have in this Project and how long each has been with your company. Resumes are not to include personal information that will, or will be likely to, require redaction prior to release of the proposal under the *Right-to-Know Law*. This includes home addresses and phone numbers, Social Security Numbers, Drivers’ License numbers or numbers from state ID cards issued in lieu of a Drivers’ License, financial account numbers, etc. If the Commonwealth requires any of this information for security verification or other purposes, the information will be requested separately and as necessary.

- (2) **Personnel.** Offeror(s) shall describe its capabilities to provide personnel required to perform the services which may be requested through the contract resulting from this RFP, such as warranty, installation, professional, and other related services.

Offeror Response

- E. Subcontractors.** Provide a subcontracting plan for all subcontractors, including small diverse **business** and small business subcontractors, who will be assigned to the Project. The selected Offeror is prohibited from subcontracting or outsourcing any part of this Project without the express written approval from the Commonwealth. Refer to Section 8 of **Appendix A, Standard Contract Terms and Conditions for IT Supplies and Related Services** regarding removal of a subcontractor from the project. Replacement of a subcontractor shall be handled in the same manner as the replacement of dedicated contacts, please see **Section VII.A(4)(b)**. Upon award of the contract resulting from this RFP, subcontractors included in the proposal submission are deemed approved. For each position included in your subcontracting plan provide:

- (1) name of subcontractor;
- (2) address of subcontractor;
- (3) number of years worked with the subcontractor;
- (4) number of employees by job category to work on this project;
- (5) description of services to be performed;
- (6) what percentage of time the staff will be dedicated to this project;
- (7) geographical location of staff; and
- (8) resumes (if appropriate and available).

Offeror Response

- IV. Training.** Upon request, the selected Offeror may be required to provide training and training materials. See **Section VII.B.3.h. Training** for requirements set forth by the Commonwealth. Offeror(s) shall describe its capabilities to provide training, if requested.

Offeror Response

- V. Financial Capability.** Describe your company's financial stability and economic capability to perform the contract requirements. The Commonwealth reserves the right to request additional information to evaluate an Offeror's financial capability.

Offeror Response

VI. Requirements.

- A. Software.** All Equipment purchased or leased should be provided without an operating system, unless the operating system software is a part of the Equipment as specified in the Manufacturer's Price List or as requested by the Commonwealth in the SOW. The Selected Offeror may not offer Equipment which requires commercially available software for its use, unless and until the Commonwealth has entered into a software license agreement with the software licensor. The Selected Offeror must inform any such software licensor that it must enter into a software license agreement with the Commonwealth that includes the applicable provisions set forth in **Appendix D, Software License Requirements Agreement** located in the Buyer Attachments section, as a material part of the licensor's software license agreement.
- B. Electrical Requirements.** All Equipment being offered must be UL approved. The Selected Offeror shall identify any special voltage needed beyond the standard 110v as part of Pre-Sales Support. The Commonwealth will furnish suitable electrical current to operate the Equipment.
- C. Hosting Requirements.** Any hosting services being offered must adhere to the non-Commonwealth hosting requirements as described in **Appendix E, Non-Commonwealth Hosting Requirements**. The Selected Offeror must adhere to current Commonwealth policies. Any updates to the Non-Commonwealth Hosting Requirements will be included as part of the SOW when hosting services are requested by the Commonwealth.
- D. As a Service model.** The Commonwealth may request an XaaS model such as Mainframe as a Service or Infrastructure as a Service. These Services will be included as part of the SOW when requested by a Commonwealth agency.
- E. Subcontracting for Services.** Any Services not provided by the OEM must be provided by an OEM Authorized Service Provider that has been approved in advance by the Commonwealth.
- F. Additional Discounts.** Commonwealth agencies are required to obtain quotes from all Selected Offerors, per desired OEM, on orders exceeding \$10,000; however, a Commonwealth agency may request quotes for orders of all sizes. Selected Offerors are encouraged to offer lower prices for all requests for quotes, especially requests for quotes with high quantities. The Commonwealth may negotiate additional price concessions on all orders.
- G. Order Fulfillment.**
- (1) The Selected Offeror must be capable of accepting orders via the Commonwealth's purchasing credit card (Pcard) in addition to purchase

orders generated via the Commonwealth’s SAP Supplier Relationship Management (SRM) system, the Commonwealth’s standard order type.

- (2) The Selected Offeror shall be responsible for tracking all orders from initial request through receipt of the Equipment or Service.
- (3) The Selected Offeror’s delivery methods must adhere to **Section 9, Delivery** and **Section 17, Acceptance of Appendix A, Standard Contract Terms and Conditions for IT Supplies and Related Services**.

Offerors shall describe their order fulfillment process and how it adheres to the above requirements.

Offeror Response

H. Quote Requirements.

- (1) The Commonwealth’s contract management team must approve the quote format before any quotes may be issued.
- (2) All quotes, at a minimum, must comply with the following:
 - (a) Include: contract number, manufacturer contract number (if applicable); service period (if applicable); manufacturer product ID; manufacturer product title; line item descriptions; list price so the Commonwealth can verify discounts on quotes; expected delivery date; and related purchase order number(s) when Stand-alone Services are procured.
 - (b) No additional terms and conditions may be attached to a quote.

I. Service Level Agreements (SLAs):

- (1) The following SLAs and **service** credits apply to the Selected Offeror’s performance with each individual Commonwealth agency.

RFP Requirement	Service Level Agreements	Service Credits
Customer Inquiry Response Time (CIRT)	The Selected Offeror must return phone calls or respond to emails regarding initial request, queries, and problems within a maximum of four (4) business hours after a phone call is placed or an email is received.	N/A

Quote Delivery for Standard Catalog Items (QDCI)	The Selected Offeror must provide quotes to the Commonwealth agency within two (2) business days or other date specified in the request for quote for hardware currently in the Selected Offeror's catalog.	N/A
Delivery of Equipment.	Within 30 business days of order acceptance or on the date agreed upon by the Commonwealth or Commonwealth agency and the Selected Offeror.	1% of the cost of the order.
Invoice Receipt	The Selected Offeror must provide invoices for all orders within 60 days from the order date.	1% credit on the purchase order for each late invoice.
Incorrect shipment to the Commonwealth.	<ul style="list-style-type: none"> • Corrected within 10 business days. • Corrected within 10 to 30 business days. • Corrected within 30 to 60 business days. 	<ul style="list-style-type: none"> • 1% of the cost of the order. • 2% of the cost of the order. • 3% of the cost of the order.
Quarterly Reporting.	The reports must be provided to the Commonwealth no later than 15 business days after the end of the quarter.	If the Selected Offeror fails to meet the SLA for two (2) quarters within a calendar year, the Selected Offeror will be ineligible to receive orders from any Commonwealth agency for six (6) months .
Monthly Reporting.	The reports must be provided to the Commonwealth no later than 10 business days after the end of the month.	If the Selected Offeror fails to meet the SLA for two (2) consecutive months or three (3) months within a calendar year , the Selected Offeror may be ineligible to receive orders from any Commonwealth agency for six (6) months .

The Selected Offeror must reimburse the Commonwealth within **45 days** of the missed SLA. The Selected Offeror must pay the service credits by deducting the amount from an invoice or by sending a check addressed to the Commonwealth of Pennsylvania for the amount of the service credits. All checks must be sent to the following address:

Office of Comptroller Operations

Revenue & Cash Management
555 Walnut St., 9th Floor
Harrisburg PA 17101-1925

The Selected Offeror must attach, along with its check, a breakdown of the reimbursement which includes, at a minimum: Commonwealth agency, SRM purchase order number and reimbursement amount.

The Offeror shall describe how it will perform the services in this RFP while meeting the required SLAs.

Offeror Response

- (2) The Commonwealth may include additional SLAs as part of the SOW when ordering Equipment or Services.

J. Emergency Preparedness. To support continuity of operations during an emergency, including a pandemic, the Commonwealth needs a strategy for maintaining operations for an extended period of time. One part of this strategy is to ensure that essential contracts that provide critical business services to the Commonwealth have planned for such an emergency and put contingencies in place to provide needed goods and services.

- (1) Describe how you anticipate such a crisis will impact your operations.
- (2) Describe your emergency response continuity of operations plan. Please attach a copy of your plan, or at a minimum, summarize how your plan addresses the following aspects of pandemic preparedness:
 - (a) Employee training (describe your organization's training plan, and how frequently your plan will be shared with employees)
 - (b) Identified essential business functions and key employees (within your organization) necessary to carry them out
 - (c) Contingency plans for:
 - (1) How your organization will handle staffing issues when a portion of key employees are incapacitated due to illness.
 - (2) How employees in your organization will carry out the essential functions if contagion control measures prevent them from coming to the primary workplace.

- (d) How your organization will communicate with staff and suppliers when primary communications systems are overloaded or otherwise fail, including key contacts, chain of communications (including suppliers), etc.
- (e) How and when your emergency plan will be tested, and if the plan will be tested by a third-party.

Offeror Response

VII. Contract Services. Describe in narrative form your technical plan for accomplishing the work using the task descriptions as your reference point. Modifications of the task descriptions are permitted; however, reasons for changes should be fully explained. Indicate the number of person hours allocated to each task. Include a Program Evaluation and Review Technique (PERT) or similar type display, time related, showing each event. If more than one approach is apparent, comment on why you chose this approach.

A. Required Services. These services are required by the awarded Selected Offerors at no additional cost to the Commonwealth.

- (1) Pre-Sales Support. The Selected Offeror must be capable of providing pre-sales support without additional service fees, including appropriate support personnel (e.g. those with technical design/architecture expertise) to assist Commonwealth agencies in identifying appropriate products based on their needs.

Offeror Response

- (2) Supply Chain Management/Managed Logistics. The Selected Offeror must provide staging and storage at no additional cost (unless otherwise defined in the **SOW**), respond quickly to changing needs and provide an effective order expediting process, if necessary.

Offeror Response

- (3) Quotes during Term of Contract. Selected Offerors shall provide a quote for Equipment, when requested by the Commonwealth, at any time during the term of the Contract. The Selected Offeror must honor all quotes for at least **ninety (90) days**

Offeror Response

(4) Contacts.

(a) **General.** Offerors must identify the following contacts in **Appendix F, Dedicated Contacts** located in the Buyer Attachments section. Information relating to dedicated contacts is as follows:

(1) **Account Manager.** The Selected Offeror must provide a dedicated Account Manager who will be the main point of contact for the Commonwealth. **The Commonwealth will consider the Account Manager to be the sole point of contact with regard to contractual and purchase order matters.** The Account Manager must be an employee of the Selected Offeror and must be authorized to make binding decisions on behalf of the Selected Offeror. The Account Manager's responsibilities will include, but will not be limited to: providing administrative, supervisory and technical direction to the account representatives; monitoring work performance for accuracy, timeliness, efficiency and adherence to contract requirements; coordinating the resolution of contract problems; and the implementation and completion of problem escalation procedures.

(2) **Account Representative(s).** The Account Manager may also serve as an Account Representative. The Selected Offeror must provide an Account Representative to facilitate Commonwealth agency requests, which include, but are not limited to, providing quotes for Equipment and/or Services, reporting, providing recommendations on Equipment and Services, and tracking order fulfillment. Account representative will be the main point of contact for all Commonwealth agency requests. The Account Representatives is expected to have sufficient technical expertise to ensure proper orders are taken.

(3) **Service Contact.** A dedicated service phone number should be provided.

(b) **Replacement of dedicated contacts.** After dedicated contacts are assigned and approved by the Commonwealth, the Selected Offeror may not divert or replace dedicated contacts without written approval of the Commonwealth and in accordance with the following procedures.

(1) The Selected Offeror shall notify the Commonwealth at least **60 calendar days** in advance of the proposed diversion or

replacement of dedicated contacts, and providing the name, qualifications and background check of the person who will replace the diverted or removed staff. Within **10 calendar days** of receipt of the diversion or replacement notice, the Commonwealth will notify the Selected Offeror whether the proposed diversion is acceptable or if the replacement is approved.

- (2) Advance notification is not required for changes in dedicated contacts due to resignations, death and disability, dismissal for cause or dismissal as a result of termination of a subcontract or any other cause that is beyond the control of the Selected Offeror. However, the Commonwealth must approve the replacement dedicated contacts. Replacement of dedicated contacts whose availability changes for reasons beyond the control of the Selected Offeror must occur:
 - (i) on a temporary basis, within **one week** of the availability change; and
 - (ii) on a permanent basis, no longer than **30 calendar days** from the availability change.
- (3) The Commonwealth may request that the Selected Offeror remove one or more of its staff persons from the contract at any time, with **30 calendar days'** written notice. If a staff person is removed from the Contract, the Selected Offeror will have **10 days** to fill the vacancy with a staff person acceptable in terms of experience and skills, subject to the Commonwealth approval.

Offeror Response

- (5) Warranty Service. Costs shall include a **minimum one-year warranty** covering parts and labor against defects in workmanship and materials for all Equipment purchased under this Contract. See **Section 12, Warranties of Appendix A, Standard Contract Terms and Conditions for IT Supplies and Related Services.** The warranty period shall commence upon acceptance of the items by the Commonwealth. See **Section 17, Acceptance of Appendix A, Standard Contract Terms and Conditions for IT Supplies and Related Services.**
 - (a) The Selected Offeror shall honor the warranty specified by the OEM for all Equipment being offered, at no additional cost to the Commonwealth.

- (b) The Selected Offeror shall include the most recent software and firmware patches, fixes and upgrades, if available from the OEM, for Equipment during the warranty period, at no additional cost to the Commonwealth.
- (c) The Selected Offeror shall provide a central point of contact to address warranty service issues. The Selected Offeror must make available technical support contacts through the internet and provide a toll-free contact number.
- (d) The Selected Offeror shall be capable of receiving service calls on a **24-hour per day** basis, **365 days** of the year, during a warranty period.
- (e) The Selected Offeror may provide warranty services outside of business hours if agreed upon by the Commonwealth agency and the Selected Offeror.
- (f) The Selected Offeror must be capable, either directly or through the OEM, to perform on-site warranty services. Warranty is defined as the standard provided by the OEM for the period of time indicated in the Contract.

Offeror Response

- (6) Price List Updates. The Selected Offeror shall provide the Commonwealth with a hyperlink to the OEM's current price list twice per year between June 20 and June 30, and between December 21 and December 31. The Commonwealth may request the OEM's current price list at any time.

Offeror Response

- (7) Accessibility Needs. The Commonwealth's [Executive Order 2016-03, Establishing "Employment First" Policy and Increasing Competitive Integrated Employment for Pennsylvanians with a Disability](#), states that Commonwealth employees with disabilities may require accommodations of assistive technology in order to perform the functions of their jobs. The Commonwealth will further the objectives of providing appropriate accommodation and support through the contracts resulting from this RFP. Offerors must provide an accessibility plan and assistive technology for the various Lots of this RFP, as applicable. Any additional cost per unit for items with assistive technology must be included as a separate line item on pricing quotes.

Offeror Response

B. Related Services.

- (1) Offerors may provide additional related services in conjunction with the Equipment they are offering to supply to the Commonwealth under the Contract resulting from this RFP (“Related Services”). However, any Related Services provided by the Offeror must be: (1) expressly authorized in the original RFP/Contract, (2) directly related to the delivery, installation or normal use of the Equipment referenced in this RFP/Contract, (3) initiated/ordered at the time of product purchase or during the term of the contract for services on Equipment purchased through the contract resulting from this RFP.
- (2) Related Services for mainframes and servers not procured under the contract resulting from this RFP (“Stand-alone Services”), are within the scope of this Contract, so long as not otherwise prohibited by the contract under which the mainframe or midrange server was originally procured.
- (3) The Commonwealth agency will develop a SOW for optional Related Services utilizing **Appendix B, Statement of Work Template** located in the Buyer Attachments section, which will be attached to the associated purchase order. The Selected Offeror shall provide a proposed hourly cost on the Rate Card tab of **Appendix C, Cost Matrix** for all listed Related Services. The Selected Offeror must identify any subcontractors that will be used along with a brief description of the Related Services. All Related Services may be purchased at the Commonwealth’s discretion.

Related Services are as follows:

- (a) Maintenance/Extended Warranty Services.
 - (1) The Selected Offeror shall provide a written quote for maintenance/extended warranty services, when requested by a Commonwealth agency, at any time during the term of the Contract resulting from this RFP.
 - (2) Stand-alone orders for maintenance/extended warranty services made during the term of the Contract may extend up to **four (4) years** past the expiration date of the Contract resulting from this RFP.
- (b) Installation.

- (1) The Selected Offeror shall, at a minimum:
 - (i) Work with the Commonwealth agency to develop a schedule to deliver the Equipment at the location.
 - (ii) Assign a project manager to every installation;
 - (iii) Install the Equipment within twenty-four (24) hours of delivery, unless otherwise agreed upon by the Selected Offeror and the Commonwealth agency.
 - (iv) Unpack the Equipment and rack mount or install as required.
 - (v) Set up and connect all required data and system cables, power and external devices to the Equipment.
 - (vi) Power on the Equipment.
 - (vii) Perform visual and physical system checks that can be performed with an operating system.
 - (viii) Provide status reports of installations completed, installations outstanding, and issues.
- (2) As part of the SOW, the Commonwealth agency will specify whether the Selected Offeror must remove all packing materials and boxes from the site within **one (1) week** after the installation has been completed.
- (3) The Selected Offeror must have the ability to integrate the physical hardware, based on Commonwealth agency requirements, for operational effectiveness.

(c) Asset Tagging (On-site & Off-site).

- (1) The Selected Offeror shall, at a minimum:
 - (i) Affix an identification tag number and Commonwealth agency inventory asset tag to the Equipment.
 - (ii) Ensure that the identification tag number is readable from WMI (Windows Management Instrumentation), if applicable.
 - (iii) Ensure that the location of the identification tag is easily accessible and readable by the user. Identification numbers will be used as a reference for service calls.
 - (iv) Provide identification numbers, serial numbers, Commonwealth agency inventory asset tag numbers,

and other identification information for all installations at a site, when requested by the Commonwealth in an electronic format, that can be incorporated into existing Equipment databases. The Commonwealth agency will provide database formats to be used by the Selected Offeror.

- (2) As part of the SOW, the Commonwealth agency will specify if the service will be performed on-site or off-site.

(d) Data Transfer.

- (1) The Selected Offeror shall, at a minimum:
 - (i) Migrate/transfer all specified applications and data onto the new system;
 - (ii) Disconnect all systems; and
 - (iii) Not retain any data associated with the data transfer.
- (2) The Selected Offeror may transfer data using the Commonwealth's network, a crossover cable or Commonwealth-owned and provided external hard drive.

(e) Preparation for Shipment.

- (1) The Selected Offeror shall, at a minimum:
 - (i) Verify the functionality and condition of the equipment with the Commonwealth agency;
 - (ii) Disconnect the existing Equipment and remove it from the area; and
 - (iii) Fully prepare and pack the Equipment for delivery. This includes, but is not limited to:
 - (A) Securely boxing and palletizing (if necessary) the Equipment in appropriate, clearly labeled, shipping containers and according to accepted commercial practice, without extra charge for packing materials, cases, or other types of containers.

- (B) If requested by the Commonwealth, all containers and packaging will become and remain property of the Commonwealth.

(f) Hard Drive Removal.

- (1) The Selected Offeror shall, at a minimum:

- (i) Arrive at the Commonwealth designated location at the time scheduled with the Commonwealth agency to uninstall and fully remove the hard drive in question;
- (ii) Verify the functionality and condition of the equipment with the Commonwealth agency.
- (iii) Cleanse the hard drive as detailed in Commonwealth ITP SEC015, *Data Cleansing Policy*, http://www.oa.pa.gov/Policies/Documents/itp_sec015.pdf; and
- (iv) Allow the following disposition of hard drives that are defective or at the end-of-lease at the discretion of each Commonwealth agency with no additional cost to the Commonwealth.

- (A) The Commonwealth agency may keep the defective or leased hard drive.

- (B) Selected Offeror must cleanse the hard drive as detailed in Commonwealth ITP SEC-015, *Data Cleansing Policy*, http://www.oa.pa.gov/Policies/Documents/itp_sec015.pdf.

- (2) The Commonwealth agency may choose to keep the removed hard drive and provide delivery location of removed hard drive.

(g) Disk Wipe Service.

- (1) *On-Premise Disk Wipe.* The Selected Offeror shall, at a minimum:

- (i) Uninstall the equipment from the Commonwealth agency at the scheduled time;

- (ii) Arrive at the Commonwealth-designated location at the scheduled time; and
 - (iii) Cleanse the device in the equipment as detailed in Commonwealth ITP SEC015, *Data Cleansing Policy*, http://www.oa.pa.gov/Policies/Documents/itp_sec015.pdf, at its current location and provide proof of the disk wipe to the Commonwealth agency.
- (2) *Off-Premise Disk Wipe.* The Selected Offeror shall, at a minimum:
- (i) Uninstall, pack, and pick up the equipment from the Commonwealth agency at the scheduled time;
 - (ii) Cleanse the device as detailed in Commonwealth ITP SEC015, *Data Cleansing Policy*, http://www.oa.pa.gov/Policies/Documents/itp_sec015.pdf, at a location approved by the Commonwealth and provide proof of the disk wipe to the Commonwealth agency; and
 - (iii) Return and reinstall the equipment at the time and location specified by the Commonwealth agency.
- (h) Relocation.
- (1) The Selected Offeror shall, at a minimum:
- (i) Provide relocation of equipment:
 - (A) within the same building;
 - (B) within a 25-mile radius;
 - (C) beyond a 25-mile radius.
 - (ii) Verify the functionality and condition of the equipment with the Commonwealth agency;
 - (iii) Unpack and reinstall equipment at the new location designated by the Commonwealth agency; and

- (iv) If relocation required the Equipment to be repacked, the Selected Offeror must remove the packing material.
- (2) Damages resulting from the transfer of equipment during relocation are not the responsibility of the Commonwealth.
- (i) Equipment Return to DGS Surplus Warehouse. The Selected Offeror shall, at a minimum, deliver the packed Equipment to the DGS warehouse located at:

DGS Surplus Warehouse
2221 Forster St.
Harrisburg, PA 17125

(j) Training.

- (1) The Selected Offeror shall provide training for Commonwealth staff, if requested by the Commonwealth agency. The training shall include, at a minimum, basic system familiarization and system operation.
- (2) Training shall be provided at the location where the Equipment will be located. At any time within **90 days** of the initial training the Selected Offeror must provide follow-up training at no additional cost if requested by the Commonwealth. The follow-up training shall include, at a minimum, basic system familiarization and system operation.

(k) Professional Services.

The Selected Offeror must be capable of providing additional professional Services to the Commonwealth upon request. The Selected Offeror shall provide a proposed blended hourly cost on the Rate Card tab of **Appendix C, Cost Matrix** for all available Professional Services. These professional Services may include, but not be limited to, transition assistance, disaster recovery services, or security services. Professional Services may include on site or off-site engagements and take place during business and non-business hours.

If additional professional services are requested, the Commonwealth agency will develop a SOW for each service order which will be attached to the associated purchase order. The Offeror shall provide

a price for all listed professional Services. All professional Services may be purchased at the Commonwealth's discretion.

VIII. Reports and Project Control. The selected Offeror shall create, maintain, and execute the following plans, reports, and supporting documentation in a format agreed to by the Commonwealth.

A. Quarterly Business Reviews. The Selected Offeror and the Commonwealth agree to meet quarterly to review current configurations, lifecycles and product roadmaps to determine product viability. All product lifecycle and roadmap information provided by the Selected Offeror will be keep **confidential** by the Commonwealth. The objective of this meeting is to reach a mutual agreement on product replacement during the life of the Contract. Additionally, any pending changes that will have a material effect on the Commonwealth's purchasing need to be discussed and viable alternatives presented. These quarterly meetings will also serve as an opportunity for the Selected Offeror to identify contract improvement opportunities and cost savings opportunities for the Commonwealth.

B. Reporting.

(1) Monthly Reports.

The Selected Offeror must provide monthly reports to each using Commonwealth agency and a consolidated monthly report to the Department of General Services, Bureau of Procurement. The monthly reports must include all activity by the Commonwealth, as well as for any external procurement activity by other state entities. The Selected Offeror must provide monthly reports to the Commonwealth no later than **10 business days** after the end of the month.

The Selected Offeror must utilize the **Appendix G, Monthly Report Template** located in the Buyer Attachments section. A monthly report must consist of, and include at a minimum:

- (a) Ordering and delivery report of Equipment purchases which includes, at a minimum: Agency Information, Equipment Information, Order Information, Shipment and Delivery Information and Invoice Information.
- (b) Problem and response report which includes, at a minimum: Agency Information, Servers, Equipment Information and Problem/Response Information.
- (c) Service level report which includes, at a minimum: Agency information, Off-the-shelf SLA computation, Custom SLA computation and Incorrect Shipment Correction SLA computation.

- (d) Outstanding issues report which includes, at a minimum: Agency Information and Outstanding Issue Summary.

(2) Quarterly Reports.

The Selected Offeror must provide quarterly reports to the Commonwealth no later than **15 business days** after the end of a quarter. A quarter is defined by the Commonwealth as follows:

- Quarter 1: January through March.
- Quarter 2: April through June.
- Quarter 3: July through September.
- Quarter 4: October through December.

The Selected Offeror must utilize the **Appendix H, Quarterly Report Template** located in the Buyer Attachments section, which includes the following:

- (a) Sales summary report which includes, at a minimum:
- (1) Agency Information: Identifying information for the Commonwealth agency.
 - (2) Maintenance/Services Information: Detailed description of the maintenance/services being performed.
 - (3) Equipment Information: Detailed information about the Equipment purchased, including the manufacturer; product description/base configuration details; manufacturer part number; any additional upgrades purchased; and quantity.
 - (4) Order Information: Detailed breakout of the total price of the order. This includes the quantity provided; base configuration cost; and cost and quantity of any upgrades purchased. Include the appropriate item cost or list price and associated markup or discount.
 - (5) Invoice Information: Invoice information for the associated order.
- (b) Problem and response report, which includes, at a minimum: Agency Information; Equipment Information; Maintenance/Services Information; and Problem/Response Information.

- (c) Outstanding issues summary report which includes, at a minimum: Agency Information and Outstanding Issue Summary.
 - (d) Quarterly summary report—to be delivered in person at Quarterly Business Reviews (QBRs)—of quarterly contract activities; achievements; challenges; and Selected Offeror’s recommendations for the Commonwealth.
 - (e) Detailed SLA metric report. The Selected Offeror will be responsible for tracking and quarterly reporting on the SLA metrics listed in **Section VI.I Service Level Agreements (SLAs)**. The format of the report must be approved by the Commonwealth before ordering can commence.
- (3) Additional Reports. Additional reports may be added, or removed, by the Commonwealth at any time.

IX. Objections and Additions to Standard Contract Terms and Conditions.

The Issuing Office will reject any proposal that is conditioned on the negotiation of the terms and conditions set out in the Terms and Conditions contained in the Buyer Attachment section or to other provisions of the RFP.

**STANDARD CONTRACT
TERMS AND CONDITIONS FOR IT SUPPLIES AND RELATED SERVICES**

1. Term of Contract

The Initial Term of the Contract shall be **two (2)** year(s).

The term of the Contract shall commence on the Effective Date (as defined below) and shall end on the Expiration Date identified in the Contract, subject to the other provisions of the Contract.

The Effective Date shall be: (a) the Effective Date printed on the Contract after the Contract has been fully executed by the Contractor and the Commonwealth (signed and approved as required by Commonwealth contracting procedures); or (b) the "Valid from" date printed on the Contract, whichever is later.

2. Renewal of Contract Term

The Contract may be renewed for a maximum of **three (3)** additional **one (1)** year term(s), so long as Commonwealth provides written notice to Contractor of its intention to extend the Contract by letter prior to the expiration of the term of the agreement, or any extension thereof. The Commonwealth may exercise the renewal as individual year or multiple year term(s). Any renewal will be under the same terms, covenants and conditions. No further document is required to be executed to renew the term of the contract.

3. Extension of Contract Term

The Commonwealth reserves the right, upon notice to the Contractor, to extend the term of the Contract for up to three (3) months upon the same terms and conditions.

4. Signatures

- (a) The Contract shall not be a legally binding contract until the fully-executed Contract has been sent to the Contractor. No Commonwealth employee has the authority to verbally direct the commencement of any work or delivery of any supply under this Contract prior to the Effective Date. The Contractor hereby waives any claim or cause of action for any service or work performed prior to the Effective Date.

The Contract may be signed in counterparts. The Contractor shall sign the Contract and return it to the Commonwealth. After the Contract is signed by the Contractor and returned to the Commonwealth, it will be processed for Commonwealth signatures and approvals. When the Contract has been signed and approved by the Commonwealth as required by Commonwealth contracting procedures, the Commonwealth shall create a Contract output form which shall: 1) clearly indicate "Fully executed" at the top of the form; 2) include a printed Effective Date and 3)

include the printed name of the Purchasing Agent indicating that the document has been electronically signed and approved by the Commonwealth. Until the Contractor receives the Contract output form with this information on the Contract output form, there is no legally binding contract between the parties. The Contract and/or Purchase Order may be electronically signed by the Commonwealth. The electronically-printed name of the Purchasing Agent on the Contract and/or Purchase Order represents the signature of that individual who has the authority, on behalf of the Commonwealth, to bind the Commonwealth to the terms of the Contract. If the Contract output form does not have "Fully Executed" at the top of the first page and does not have the name of the Purchasing Agent printed in the appropriate box, the Contract has not been fully executed.

The fully-executed Contract may be sent to the Contractor electronically or through facsimile equipment. The electronic transmission of the Contract shall require acknowledgement of receipt of the transmission by the Contractor. Receipt of the electronic or facsimile transmission of the Contract shall constitute receipt of the fully-executed Contract.

The Commonwealth and the Contractor specifically agree as follows:

- (i) No handwritten signature shall be required in order for the Contract to be legally enforceable.
- (ii) The parties agree that no writing shall be required in order to make the Contract legally binding, notwithstanding contrary requirements in any law. The parties hereby agree not to contest the validity or enforceability of a genuine Contract or acknowledgement issued electronically under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements be in writing and signed by the party bound thereby. Any genuine Contract or acknowledgement issued electronically, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of a genuine Contract or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the Contract or acknowledgement were not in writing or signed by the parties. A Contract or acknowledgment shall be deemed to be genuine for all purposes if it is transmitted to the location designated for such documents.
- (iii) Each party will immediately take steps to verify any document that appears to be obviously garbled in transmission or improperly formatted to include re-transmission of any such document if necessary.

5. Definitions

As used in this Contract, these words shall have the following meanings:

- (a) Agency: The department, board, commission or other agency of the Commonwealth of Pennsylvania listed as the Purchasing Agency. If a COSTARS entity or external procurement activity has issued an order against this Contract, that entity shall also be identified as “Agency.”
- (b) Contracting Officer: The person authorized to administer this Contract for the Commonwealth and to make written determinations with respect to the Contract.
- (c) Days: Calendar days, unless specifically indicated otherwise.
- (d) Developed Works or Developed Materials: All documents, sketches, drawings, designs, works, papers, files, reports, computer programs, computer documentation, data, records, software, samples or any other tangible material without limitation authored or prepared by Contractor as the work product covered in the scope of work for the Project.
- (e) Documentation: All materials required to support and convey information about the Services or Supplies required by this Contract. It includes, but is not necessarily restricted to, written reports and analyses; diagrams, maps, logical and physical designs; system designs; computer programs; flow charts; disks and/or other machine-readable storage media.
- (f) Expiration Date: The last valid date of this Contract, as indicated in the Contract documents to which these Terms are attached.
- (g) Services: All Contractor activity necessary to satisfy the Contract.
- (h) Supplies: All tangible and intangible property including, but not limited to materials and equipment, provided by the Contractor to satisfy the Contract.
- (i) Terms. These Standard Contract Terms and Conditions for IT Supplies and Related Services.

6. Purchase Orders

Commonwealth agencies may issue Purchase Orders against the Contract. These orders constitute the Contractor’s authority to make delivery. All Purchase Orders received by the Contractor up to and including the expiration date of the Contract are acceptable and must be performed in accordance with the Contract. Each Purchase Order will be deemed to incorporate the terms and conditions set forth in the Contract.

Purchase Orders may be electronically signed by the Agency. The electronically-printed name of the purchaser represents the signature of that individual who has the authority, on behalf of the Commonwealth, to authorize the Contractor to proceed.

Purchase Orders may be issued electronically or through facsimile equipment. The electronic transmission of a purchase order shall require acknowledgement of receipt of the transmission by the Contractor. Receipt of the electronic or facsimile transmission of the Purchase Order shall constitute receipt of an order. Orders received by the Contractor after 4:00 p.m. will be considered received the following business day.

The Commonwealth and the Contractor specifically agree as follows:

- (i) No handwritten signature shall be required in order for the Contract or Purchase Order to be legally enforceable.
- (ii) The parties agree that no writing shall be required in order to make the Purchase Order legally binding. The parties hereby agree not to contest the validity or enforceability of a Purchase Order or acknowledgement issued electronically under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements be in writing and signed by the party bound thereby. Any Purchase Order or acknowledgement issued electronically, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of Purchase Orders or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the Purchase Order or acknowledgement were not in writing or signed by the parties. A Purchase Order or acknowledgment shall be deemed to be genuine for all purposes if it is transmitted to the location designated for such documents.
- (iii) Each party will immediately take steps to verify any document that appears to be obviously garbled in transmission or improperly formatted to include re-transmission of any such document if necessary.

Purchase Orders under ten thousand dollars (\$10,000) in total amount may also be made in person or by telephone using a Commonwealth Purchasing Card. When an order is placed by telephone, the Commonwealth agency shall provide the agency name, employee name, credit card number, and expiration date of the card. Contractors agree to accept payment through the use of the Commonwealth Purchasing Card.

7. Independent Prime Contractor

In performing its obligations under the Contract, the Contractor will act as an independent contractor and not as an employee or agent of the Commonwealth. The Contractor will be responsible for all Services in this Contract whether or not the Contractor provides them directly. Further, the Contractor is the sole point of contact with regard to all contractual matters, including payment of any and all charges resulting from the Contract.

8. Subcontracts

The Contractor may subcontract any portion of the Services described in this Contract to third parties selected by Contractor and approved in writing by the Commonwealth, whose approval shall not be unreasonably withheld. Notwithstanding the above, if Contractor has disclosed the identity of Subcontractor(s) together with the scope of work to be subcontracted in its bid/proposal, award of the Contract is deemed approval of all named Subcontractors and a separate approval is not required. The existence of any subcontract shall not change the obligations of Contractor to the Commonwealth under this Contract. Upon request of the Commonwealth, the Contractor must provide the Commonwealth with an unredacted copy of the subcontract agreement between the Contractor and the subcontractor in accordance with the provisions of the CONFIDENTIALITY provision of this Contract. The Commonwealth reserves the right, for good cause, to require that the Contractor remove a subcontractor from the project. The Commonwealth will not be responsible for any costs incurred by the Contractor in replacing the subcontractor if good cause exists.

9. Delivery

- (a) Supply Delivery: All items shall be delivered F.O.B. Destination. The Contractor agrees to bear the risk of loss, injury, or destruction of the item(s) ordered prior to receipt of the items by the Commonwealth. Such loss, injury, or destruction shall not release the Contractor from any contractual obligations. Except as otherwise provided in this Contract, all item(s) must be delivered within the time period specified. Time is of the essence and, in addition to any other remedies, the Contract is subject to termination for failure to deliver as specified. Unless otherwise stated in this Contract, delivery must be made within **thirty (30) days** after the Effective Date.
- (b) Services Delivery: The Contractor shall proceed with all due diligence in the performance of the Services with qualified personnel, in accordance with the completion criteria set forth in the Contract.

10. Estimated Quantities

It shall be understood and agreed that any quantities listed in the Contract are estimated only and may be increased or decreased in accordance with the actual requirements of the Commonwealth and that the Commonwealth in accepting any bid/proposal or portion thereof, contracts only and agrees to purchase only the materials and services in such quantities as represent the actual requirements of the Commonwealth. The Commonwealth reserves the right to purchase materials

and services covered under the Contract through a separate competitive procurement procedure, whenever Commonwealth deems it to be in its best interest.

11. Prior Notice

The Contractor is required to notify the Commonwealth Delivery Location when shipment is to be made in order that a Commonwealth representative may be present to receive the Contract Item(s) when they are delivered.

12. Warranties

- (a) The Contractor warrants that all Supplies furnished and all Services performed by the Contractor, its agents and subcontractors shall be free and clear of any defects in workmanship or materials and conform in all material respects to the functional specifications for the Supplies furnished and Services performed and/or the requirements of the Contract. Unless otherwise stated in the Contract, all Supplies are warranted for a period of one **(1) year** following delivery by the Contractor and acceptance by the Commonwealth. The Contractor shall repair, replace or otherwise correct any problem with the delivered Supplies. When an item is replaced, it shall be replaced with an item of equivalent or superior quality without any additional cost to the Commonwealth.
- (b) The Contractor hereby represents and warrants to the Commonwealth that the Contractor will not cause or take any action that may directly or indirectly cause a disruption of the Commonwealth's operations.
- (c) Contractor warrants that it has the necessary legal rights, including licenses to third party products, tools or materials, to perform the Services and deliver the Supplies and Developed Materials under this Contract.
- (d) THE FOREGOING EXPRESS WARRANTIES ARE THE CONTRACTOR'S SOLE AND EXCLUSIVE WARRANTIES AND NO OTHER WARRANTIES, EXPRESS OR IMPLIED, SHALL APPLY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- (e) All warranties shall survive final acceptance.

13. Patent, Copyright, Trademark and Trade Secret Protection

- (a) The Contractor shall 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 or foreign patents, copyrights, or trademarks, or for a misappropriation of trade secrets arising out of performance of this Contract, including all work, services, materials, reports, studies, and computer programs provided by the Contractor, and in any such suit or

proceeding will satisfy any final award for such infringement, including costs. The Commonwealth agrees to give Contractor 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 may, however, in its sole discretion and under the terms it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Contractor, the Commonwealth will cooperate with all reasonable requests of Contractor made in the defense of such suits. No settlement which prevents the Commonwealth from continuing to use the Developed Works as provided herein shall be made without the Commonwealth's prior written consent. 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 Contractor that, in the event it requests that the Commonwealth to provide support to the Contractor in defending any such claim, the Contractor shall reimburse the Commonwealth for all expenses (including attorneys' fees, if such are made necessary by the Contractor's request) incurred by the Commonwealth for such support. If OAG does not delegate the defense of the matter, the Contractor's obligation to indemnify ceases. The Contractor will, at its expense, provide whatever cooperation OAG requests in the defense of the suit.

- (b) The Contractor agrees to exercise reasonable due diligence to prevent claims of infringement on the rights of third parties. The Contractor certifies that, in all respects applicable to this Contract, it has exercised and will continue to exercise due diligence to ensure that all Supplies furnished and Services performed under this Contract do not infringe on the patents, copyrights, trademarks, trade secrets or other proprietary interests of any kind which may be held by third parties. The Contractor also agrees to certify that Supplies furnished and Services performed for the Commonwealth under this Contract shall be free and clear from all claims of any nature.
- (c) If the defense of the suit is delegated to the Contractor, the Contractor shall pay all damages and costs awarded therein against the Commonwealth. If information and assistance are furnished by the Commonwealth at the Contractor's written request, it shall be at the Contractor's expense, but the responsibility for such expense shall be only that within the Contractor's written authorization.
- (d) If, in the Contractor's opinion, the products, materials, reports, studies, or computer programs furnished hereunder are likely to or do become subject to a claim of infringement of a United States patent, copyright, or trademark, or for a misappropriation of trade secret, then without diminishing the Contractor's obligation to satisfy any final award, the Contractor may, at its option and expense, substitute functional equivalents for the alleged infringing products, materials, reports, studies, or computer programs or, at the Contractor's option and expense,

obtain the rights for the Commonwealth to continue the use of such products, materials, reports, studies, or computer programs.

- (e) If any of the products, materials, reports, studies, or computer programs provided by the Contractor are in such suit or proceeding held to constitute infringement and the use or publication thereof is enjoined, the Contractor shall, at its own expense and at its option, either procure the right to publish or continue use of such infringing products, materials, reports, studies, or computer programs, replace them with non-infringing items, or modify them so that they are no longer infringing.
- (f) If the Contractor is unable to do any of the preceding, the Contractor agrees to pay the Commonwealth:
 - (i) any amounts paid by the Commonwealth less a reasonable amount based on the acceptance and use of the deliverable;
 - (ii) any license fee less an amount for the period of usage of any software; and
 - (iii) the prorated portion of any service fees representing the time remaining in any period of service for which payment was made.
- (a) The obligations of the Contractor under this section continue without time limit and survive the termination of this contract.
- (b) Notwithstanding the above, the Contractor shall have no obligation for:
 - (i) modification of any product, service, or deliverable provided by the Commonwealth;
 - (ii) any material provided by the Commonwealth to the Contractor and incorporated into, or used to prepare, a product, service, or deliverable;
 - (iii) use of the product, service, or deliverable in other than its specified operating environment;
 - (iv) the combination, operation, or use of the product, service, or deliverable with other products, services, or deliverables not provided by the Contractor as a system or the combination, operation, or use of the product, service, or deliverable, with any products, data, or apparatus that the Contractor did not provide;
 - (v) infringement of a non-Contractor product alone;
 - (vi) the Commonwealth's distribution, marketing or use beyond the scope contemplated by the Contract; or

- (vii) the Commonwealth's failure to use corrections or enhancements made available to the Commonwealth by the Contractor at no charge.
- (c) The obligation to indemnify the Commonwealth, under the terms of this section, shall be the Contractor's sole and exclusive obligation for the infringement or misappropriation of intellectual property.

14. Intellectual Property and Right to Use

The Contractor hereby grants to the Commonwealth a non-exclusive right to access and to use the hardware and software comprising all or part of the Supplies and Services. The Commonwealth's use of the software is subject to the following:

- (a) Product License. The Contractor grants the Commonwealth a non-exclusive license to use the software required to operate the Supplies.
- (b) Contractor Intellectual Property. The Commonwealth acknowledges that, in the course of providing and performing the Supplies and Services, the Contractor may use software and related processes, instructions, methods, and techniques that have been previously developed by Contractor and that same shall remain the sole and exclusive property of the Contractor. The Contractor retains ownership of all Contractor Intellectual Property that the Contractor delivers to the Commonwealth pursuant to the Supplies provided and Services performed.
- (c) Commonwealth Intellectual Property and Data. The Commonwealth owns all Data and all Commonwealth Intellectual Property provided to the Contractor pursuant to this Contract or collected or generated by the Contractor on behalf of the Commonwealth pursuant to this Contract. The Commonwealth grants the Contractor a non-exclusive, royalty-free, world-wide license to use, copy, display, distribute, transmit and prepare derivative works of the Commonwealth's Intellectual Property and Data only to fulfill the purposes of this Contract and any applicable PO. The Commonwealth's license to the Contractor is limited by the terms of this Contract.
- (d) Third Party Intellectual Property. If a Supply or Service under this Contract is commercially available software or requires commercially available software for use, the Contractor shall inform the third-party licensor of the software that it will be required to enter into a software license agreement with the Commonwealth that includes terms and conditions acceptable to the Commonwealth, to the extent necessary for the Commonwealth to use the Third Party Intellectual Property in accordance with the terms of the Contract.
- (e) Click Through Terms. In order to access or use hardware or software, the Commonwealth will click through electronic terms and conditions where they appear, provided that the provision of the Services or Supplies are subject to the terms and conditions of this Contract, and such electronic terms and conditions shall

have no force or effect as to Services or Supplies and shall not be legally binding on the Commonwealth.

- (f) No Transfer of Right, Title or Interest. Except as expressly set forth in this Contract, nothing in this Contract shall be construed as granting to or conferring upon Contractor, any right, title, or interest in any physical or intellectual property that is now owned or subsequently owned by the Commonwealth or any third party. Except as expressly set forth in this Contract, nothing in this Contract shall be construed as granting to or conferring upon the Commonwealth, any right, title, or interest in any physical or intellectual property that is now owned or subsequently owned by the Contractor.

15. Commonwealth Data

The Commonwealth owns all Data provided to the Contractor pursuant to this Contract or collected or generated by the Contractor on behalf of the Commonwealth pursuant to this Contract. Commonwealth grants Contractor a non-exclusive, royalty-free, world-wide license to use, copy, display, distribute, transmit and prepare derivative works using the Commonwealth's Data only to fulfill the purposes of this Contract and any applicable PO. The Commonwealth's license to Contractor is limited by the terms of this Contract. Unless the solicitation specifies otherwise:

- (i) All Data must be stored within the United States.
- (ii) All Data must travel networks which are approved in writing by the Commonwealth.
- (iii) Data may not be stored in a state which asserts jurisdiction over disputes regarding data stored within that state.
- (iv) The Contractor shall be responsible for maintaining the privacy, security, and integrity of Data in its or its subcontractors' possession.
- (v) All Data shall be accessible to the Commonwealth upon request, and in a form acceptable to the Commonwealth.
- (vi) All Data shall be surrendered to the Commonwealth upon request.
- (vii) Any Data shall be destroyed by the Contractor at the Commonwealth's request.
- (viii) Any Data shall be held for litigation or public records purposes by the Contractor at the Commonwealth's request, and in accordance with the security, privacy, and accessibility requirements of this Contract.
- (ix) Contractor shall comply with all applicable data protection, data security, data privacy and data breach notification laws, including but not limited to

the *Commonwealth Breach of Personal Information Notification Act*, Act of December 22, 2005, P.L. 474, No. 94, as amended, 73 P.S. §§ 2301—2329.

- (x) Contractor shall be solely responsible for any costs, losses, fines or damages incurred by the Commonwealth due to Data being accessed, used, released, disclosed and/or acquired in an unauthorized manner.

16. Information Technology Policies

The Contractor shall comply with the IT standards and policies issued by the Governor's Office of Administration, Office for Information Technology (OA/OIT) (located at: <http://www.oa.pa.gov/Policies/Pages/itp.aspx>), including the accessibility standards set out in IT Policy ACC001, *Accessibility Policy*. The Contractor shall ensure that Services and Supplies procured under this Contract comply with the applicable standards. In the event such standards change during the Contractor's performance, and the Commonwealth requests that the Contractor comply with the changed standard, then any incremental costs incurred by the Contractor to comply with such changes shall be paid for pursuant to a change order to the Contract.

17. Acceptance

- (a) Supplies: No Supplies received by the Commonwealth shall be deemed accepted until the Commonwealth has had a reasonable opportunity to inspect the Supplies. Any Supplies that are discovered to be defective or fail to conform to the specifications may be rejected upon initial inspection or at any later time if the defects contained in the Supplies or the noncompliance with the specifications were not reasonably ascertainable upon the initial inspection. It shall thereupon become the duty of the Contractor to remove rejected item(s) from the premises without expense to the Commonwealth within **fifteen (15) days** after notification. Rejected Supplies left longer than **fifteen (15) days** will be regarded as abandoned, and the Commonwealth shall have the right to dispose of them as its own property and shall retain that portion of the proceeds of any sale which represents the Commonwealth's costs and expenses in regard to the storage and sale of the Supplies. Upon notice of rejection, the Contractor shall immediately replace all such rejected Supplies with others conforming to the specifications and which are not defective. If the Contractor fails, neglects or refuses to do so, the Commonwealth shall then have the right to procure a corresponding quantity of such Supplies, and deduct from any monies due or that may thereafter become due to the Contractor, the difference between the price stated in the Contract and the cost thereof to the Commonwealth.
- (b) Services: Acceptance of Services, including Developed Works, will occur in accordance with an Approval Plan (Plan) submitted by the Contractor and approved by the Commonwealth. Upon approval of the Plan by the Commonwealth, the Plan becomes part of this Contract. For contracts where the development of software, the configuration of software or the modification of software is the deliverable, the

Plan must include an Acceptance Test Plan. The Acceptance Test Plan will provide for a Final Acceptance Test, and may provide for Interim Milestone Acceptance Tests. Each Acceptance Test will be designed to demonstrate that the Developed Works conform to the functional specification for the Developed Works, if any, and/or the requirements of this Contract. Contractor shall notify the Commonwealth when the deliverable is completed and ready for acceptance testing. The Commonwealth will not unreasonably delay commencement of acceptance testing.

18. Product Conformance

The Commonwealth reserves the right to require any and all Contractors to:

- (i) Provide certified data from laboratory testing performed by the Contractor, or performed by an independent laboratory, as specified by the Commonwealth.
- (ii) Supply published manufacturer product Documentation.
- (iii) Permit a Commonwealth representative to witness testing at the Contractor's location or at an independent laboratory.
- (iv) Complete a survey/questionnaire relating to the bid requirements and specifications.
- (v) Provide customer references.
- (vi) Provide a product demonstration at a location near Harrisburg or the using agency location.

19. Rejected Material Not Considered Abandoned

The Commonwealth shall have the right to not regard any rejected material as abandoned and to demand that the Contractor remove the rejected material from the premises within **thirty (30) days** of notification. The Contractor shall be responsible for removal of the rejected material as well as proper clean-up. If the Contractor fails or refuses to remove the rejected material as demanded by the Commonwealth, the Commonwealth may seek payment from, or set-off from any payments due to the Contractor under this or any other Contract with the Commonwealth, the costs of removal and clean-up. This is in addition to all other rights to recover costs incurred by the Commonwealth.

20. Compliance with Law

The Contractor shall comply with all applicable federal and state laws and regulations and local ordinances in the performance of the Contract.

21. Environmental Provisions

In the performance of the Contract, the Contractor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations, including, but not limited to, the [Clean Streams Law](#), Act of June 22, 1937, (P.L. 1987, No. 394), as amended [35 P.S. § 691.601](#) et seq.; the [Pennsylvania Solid Waste Management Act](#), Act of July 7, 1980 (P.L. 380, No. 97), as amended, [35 P.S. § 6018.101 et seq.](#); and the [Dam Safety and Encroachment Act](#), Act of November 26, 1978 (P.L. 1375, No. 325), as amended, 32 P.S. § 693.1.

22. Post-Consumer Recycled Content

Except as specifically waived by the Department of General Services in writing, any products which are provided to the Commonwealth as a part of the performance of the Contract must meet the minimum percentage levels for total recycled content as specified Environmental Protection Agency in its Comprehensive Procurement Guidelines, which can be found at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

23. Recycled Content Enforcement

The Contractor may be required, after delivery of the Contract item(s), to provide the Commonwealth with documentary evidence that the item(s) was in fact produced with the required minimum percentage of post-consumer and recovered material content.

24. Compensation

- (a) Compensation for Supplies: The Contractor shall be required to furnish the awarded Supplies at the price(s) quoted in the Purchase Order. All Supplies shall be delivered within the time period(s) specified in the Purchase Order. The Contractor shall be compensated only for Supplies that are delivered and accepted by the Commonwealth.
- (b) Compensation for Services: The Contractor shall be required to perform the specified Services at the price(s) quoted in the Contract or Purchase Order. All Services shall be performed within the time period(s) specified in the Contract or Purchase Order. The Contractor shall be compensated only for Services performed to the satisfaction of the Commonwealth. The Contractor shall not be allowed or paid travel or per diem expenses except as specifically set forth in the Contract. If not otherwise specified in the Contract, 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](#).

25. Billing Requirements

Unless the Contractor has been authorized by the Commonwealth for Evaluated Receipt Settlement or Vendor Self-Invoicing, the Contractor shall include in all of its invoices the following minimum information:

- (i) Vendor name and “Remit to” address, including SAP Vendor number;
- (ii) Bank routing information, if ACH;
- (iii) SAP Purchase Order number;
- (iv) Delivery Address, including name of Commonwealth agency;
- (v) Description of the Supplies/Services delivered in accordance with SAP Purchase Order (include purchase order line number if possible);
- (vi) Quantity provided;
- (vii) Unit price;
- (viii) Price extension;
- (ix) Total price; and
- (x) Delivery date of Supplies or Services.

If an invoice does not contain the minimum information set forth in this section, or, if applicable, comply with the provisions located at <http://www.budget.pa.gov/Programs/Pages/E-Invoicing.aspx>, relating to the Commonwealth E-Invoicing Program, the Commonwealth may return the invoice as improper. If the Commonwealth returns an invoice as improper, the time for processing a payment will be suspended until the Commonwealth receives a correct invoice. The Contractor may not receive payment until the Commonwealth has received a correct invoice.

Contractors are required to establish separate billing accounts with each using agency and invoice them directly. Each invoice shall be itemized with adequate detail and match the line item on the Purchase Order. In no instance shall any payment be made for Services to the Contractor that are not in accordance with the prices on the Purchase Order, the Contract, updated price lists or any discounts negotiated by the purchasing agency.

26. Payment

- (a) The Commonwealth shall put forth reasonable efforts to make payment by the required payment date. The required payment date is:
 - (i) the date on which payment is due under the terms of the Contract;

- (ii) **thirty (30) days** after a proper invoice actually is received at the “Bill To” address if a date on which payment is due is not specified in the Contract (a “proper” invoice is not received until the Commonwealth accepts the service as satisfactorily performed); or
 - (iii) the payment date specified on the invoice if later than the dates established by (i) and (ii) above.
- (b) Payment may be delayed if the payment amount on an invoice is not based upon the price(s) as stated in the Contract. If any payment is not made within **fifteen (15) days** after the required payment date, the Commonwealth may pay interest as determined by the Secretary of Budget 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](#). See, *Procurement Handbook, Part I, Chapter 18, A 8*. Payment should not be construed by the Contractor as acceptance of the service performed by the Contractor. The Commonwealth reserves the right to conduct further testing and inspection after payment, but within a reasonable time after performance, and to reject the service if such post payment testing or inspection discloses a defect or a failure to meet specifications. The Contractor agrees that the Commonwealth may set off the amount of any state tax liability or other obligation of the Contractor or its subsidiaries to the Commonwealth against any payments due the Contractor under any contract with the Commonwealth.
- (c) The Commonwealth shall have the option of using the Commonwealth purchasing card to make purchases under the Contract or Purchase Order. The Commonwealth’s purchasing card is similar to a credit card in that there will be a small fee which the Contractor will be required to pay and the Contractor will receive payment directly from the card issuer rather than the Commonwealth. Any and all fees related to this type of payment are the responsibility of the Contractor. In no case will the Commonwealth allow increases in prices to offset credit card fees paid by the Contractor or any other charges incurred by the Contractor, unless specifically stated in the terms of the Contract or Purchase Order.

27. ACH Payments

The Commonwealth will make contract payments through Automated Clearing House (ACH).

- (i) Within **10 days** of award of the contract or purchase order, the Contractor must submit or must have already submitted their ACH information within their user profile in the Commonwealth’s procurement system (SRM).
- (ii) The Contractor must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the Commonwealth

of Pennsylvania's ACH remittance advice to enable the Contractor to properly apply the state agency's payment to the invoice submitted.

- (iii) It is the responsibility of the Contractor to ensure that the ACH information contained in SRM is accurate and complete. Failure to maintain accurate and complete information may result in delays in payments.

28. Taxes

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. 237400001-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 state 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.

29. Assignment of Antitrust Claims

The Contractor and the Commonwealth recognize that in actual economic practice, overcharges by the Contractor's suppliers resulting from violations of state or federal antitrust laws are in fact borne by the Commonwealth. As part of the consideration for the award of the Contract, and intending to be legally bound, the Contractor assigns to the Commonwealth all right, title and interest in and to any claims the Contractor now has, or may acquire, under state or federal antitrust laws relating to the Supplies and Services which are the subject of this Contract.

30. Hold Harmless Provision

- (a) The Contractor shall hold the Commonwealth harmless from and indemnify the Commonwealth against any and all third party claims, demands and actions based upon or arising out of any activities performed by the Contractor and its employees and agents under this Contract, provided the Commonwealth gives Contractor 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 may, however, in its sole discretion and under such terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Contractor, the Commonwealth will cooperate with all reasonable requests of Contractor made in the defense of such suits.

- (b) Notwithstanding the above, neither party shall enter into any settlement without the other party's written consent, which shall not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow the Contractor to control the defense and any related settlement negotiations.

31. Sovereign Immunity

No provision of this Contract shall be construed to waive or limit the sovereign immunity of the Commonwealth of Pennsylvania or its governmental sub-units.

32. Limitation of Liability

- (a) General. The Contractor's liability to the Commonwealth under this Contract shall be limited to the greater of \$250,000 or the value of this Contract (including any amendments). This limitation will apply, except as otherwise stated in this section, regardless of the form of action, whether in contract or in tort, including negligence. This limitation does not, however, apply to any damages:
 - (i) for bodily injury;
 - (ii) for death;
 - (iii) for intentional injury;
 - (iv) for damage to real property or tangible personal property for which the Contractor is legally liable;
 - (v) under Section 13, Patent, Copyright, Trademark and Trade Secret Protection;
 - (vi) related to a breach of the security of a system maintained or managed by the Licensor; or
 - (vii) under Section 64, Virus, Malicious, Mischievous or Destructive Programming.
- (b) The Contractor will not be liable for consequential or incidental damages, except for damages as set forth in subsection (a), or as otherwise specified in the Contract.

33. Audit Provisions

The Commonwealth shall have the right, at reasonable times and at a site designated by the Commonwealth, to audit the books, documents and records of the Contractor to the extent that the books, documents and records relate to costs or pricing data for the Contract. The Contractor agrees to maintain records which will support the prices charged and costs incurred for the Contract. The Contractor shall preserve books, documents, and records that relate to costs or

pricing data for the Contract for a period of **three (3) years** from date of final payment. The Contractor shall give full and free access to all records to the Commonwealth and/or their authorized representatives.

34. Single Audit Act of 1984

In compliance with the *Single Audit Act of 1984*, 31 U.S.C. § 7501, *et seq.*, the Contractor agrees to the following:

- (i) This Contract is subject to audit by federal and state agencies or their authorized representative in accordance with the auditing standards promulgated by the Comptroller General of the **United** States and specified in Government Auditing Standards, 1994 Revisions (Yellow Book).
- (ii) The audit requirement of this Contract will be satisfied if a single audit is performed under the provisions of the Single Audit Act of 1984, 31 U.S.C. Section 7501, *et seq.*, and all rules and regulations promulgated pursuant to the Act.
- (iii) The Commonwealth reserves the right for federal and state agencies or their authorized representatives to perform additional audits of a financial/compliance, economy/efficiency, or program results nature, if deemed necessary.
- (iv) The Contractor further agrees to comply with requirements that may be issued by the state agency upon receipt of additional guidance received from the federal government regarding the Single Audit Act of 1984.

35. Default

- (a) The Commonwealth may, subject to the Force Majeure provisions of this Contract, and in addition to its other rights under the Contract, declare the Contractor in default by written notice thereof to the Contractor, and terminate (as provided in the Termination Provisions of this Contract) the whole or any part of this Contract or any Purchase Order for any of the following reasons:
 - (i) Failure to begin delivering Supplies or performing Services within the time specified in the Contract or Purchase Order or as otherwise specified;
 - (ii) Failure to deliver Supplies or perform Services with sufficient labor, equipment, or material to insure the completion of the specified work in accordance with the Contract or Purchase Order terms;
 - (iii) Unsatisfactory performance of the work;

- (iv) Failure to deliver the Supply(ies) or perform Services within the time specified in the Contract or Purchase Order or as otherwise specified;
 - (v) Improper delivery;
 - (vi) Failure to provide a Supply(ies) or perform Services that conform with the specifications referenced in the Contract or Purchase Order;
 - (vii) Delivery of a defective Supply;
 - (viii) Failure or refusal to remove material, or remove and replace any work rejected as defective or unsatisfactory;
 - (ix) Discontinuance of furnishing Supplies or performing Services without approval;
 - (x) Failure to resume furnishing Supplies or performing Services that were discontinued, within a reasonable time after notice to do so;
 - (xi) Insolvency or bankruptcy;
 - (xii) Assignment made for the benefit of creditors;
 - (xiii) Failure or refusal within **10 days** after written notice by the Contracting Officer, to make payment or show cause why payment should not be made, of any amounts due for Supplies furnished or Services performed, for equipment rentals, or for utility services rendered;
 - (xiv) Failure to protect, repair or make good any damage or injury to property;
 - (xv) Breach of any provision of the Contract;
 - (xvi) Failure to comply with representations made in the Contractor's bid/proposal; or
 - (xvii) Failure to comply with applicable industry standards, customs and practice.
- (b) In the event that the Commonwealth terminates this Contract or any Purchase Order in whole or in part as provided in subsection (a) above, the Commonwealth may procure, upon such terms and in such manner as it determines, Supplies and/or Services similar or identical to those so terminated, and the Contractor shall be liable to the Commonwealth for any reasonable excess costs for such similar or identical items included within the terminated part of the Contract or Purchase Order.

- (c) If the Contract or a Purchase Order is terminated as provided in subsection (a) above, the Commonwealth, in addition to any other rights provided in this section, may require the Contractor to transfer title and deliver immediately to the Commonwealth in the manner and to the extent directed by the Contracting Officer, such partially completed items, including, where applicable, reports, working papers and other Documentation, as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract or Purchase Order as has been terminated. Except as provided below, payment for completed work accepted by the Commonwealth shall be at the Contract price. Except as provided below, payment for partially completed items including, where applicable, reports and working papers, delivered to and accepted by the Commonwealth shall be in an amount agreed upon by the Contractor and Contracting Officer. The Commonwealth may withhold from amounts otherwise due the Contractor for such completed or partially completed works, such sum as the Contracting Officer determines to be necessary to protect the Commonwealth against loss.
- (d) The rights and remedies of the Commonwealth provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- (e) The Commonwealth's failure to exercise any rights or remedies provided in this section shall not be construed to be a waiver by the Commonwealth of its rights and remedies in regard to the event of default or any succeeding event of default.
- (f) Following exhaustion of the Contractor's administrative remedies as set forth in the Contract Controversies Provision of the Contract, the Contractor's exclusive remedy shall be to seek damages in the Commonwealth Board of Claims.

36. Force Majeure

Neither party will incur any liability to the other if its performance of any obligation under this Contract is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but are not limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes.

The Contractor shall notify the Commonwealth orally within **five (5) days** and in writing within **ten (10) days** of the date on which the Contractor becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under the contract is prevented or delayed and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay. The Contractor shall have the burden of proving that such cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting Documentation as the Commonwealth may reasonably request. After receipt of such

notification, the Commonwealth may elect to cancel the Contract, cancel the Purchase Order, or to extend the time for performance as reasonably necessary to compensate for the Contractor's delay.

In the event of a declared emergency by competent governmental authorities, the Commonwealth by notice to the Contractor, may suspend all or a portion of the Contract or Purchase Order.

37. Termination Provisions

The Commonwealth has the right to terminate this Contract or any Purchase Order issued thereunder for any of the reasons set forth in this section. Termination shall be effective upon written notice to the Contractor.

- (a) Termination for convenience: The Commonwealth may terminate the Contract, or a Purchase Order issued against the Contract, in whole or in part, without cause by giving Contractor **30 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). Any such termination shall be accomplished by delivery to the Contractor of a Notice of Termination specifying the extent to which performance under this Contract is terminated either in whole or in part and the date on which such termination becomes effective.

In the event of termination hereunder, Contractor shall receive payment for the following:

- (i) all Supplies furnished and Services performed consistent with the terms of the Contract prior to the effective date of termination;
- (ii) all actual and reasonable costs incurred by Contractor as a result of the termination of the Contract; and

In no event shall the Contractor be paid for any loss of anticipated profit (by the Contractor or any subcontractor), loss of use of money, or administrative or overhead costs. Failure to agree on any termination costs shall be a dispute handled in accordance with the CONTRACT CONTROVERSIES provision of this Contract.

The Contractor shall cease providing Supplies and Services as of the date set forth in the Notice of Termination, and shall be paid only for such Supplies and Services as have already been satisfactorily furnished or rendered up to and including the termination date set forth in said notice, or as may be otherwise provided for in said Notice of Termination, and for such Supplies furnished or Services performed during the **30-day** notice period, if requested by the Commonwealth.

- (b) Non-appropriation: The Commonwealth's obligation to make payments during any Commonwealth fiscal year succeeding the current fiscal year shall be subject to

availability and appropriation of funds. When funds (state and/or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the Commonwealth shall have the right to terminate the Contract or a Purchase Order in whole or in part. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Supplies or Services delivered under the Contract. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid from any appropriations available for that purpose.

- (c) Termination for cause: The Commonwealth may, in addition to its other rights under this Contract, terminate this Contract in whole or in part by providing written notice of default to the Contractor if the Contractor materially fails to perform its obligations under the Contract and does not cure such failure within **30 days** or, if a cure within such period is not practical, commence a good faith effort to cure such failure to perform within the specified period or such longer period as the Commonwealth may specify in the written notice specifying such failure, and diligently and continuously proceed to complete the cure. The Contracting Officer shall provide any notice of default or written cure notice for Contract terminations.

In the event the Commonwealth terminates this Contract in whole or in part as provided in this subsection (c), the Commonwealth may procure services similar to those so terminated, and the Contractor shall be liable to the Commonwealth for the difference between the Contract price for the terminated portion of the Supplies or Services and the actual and reasonable cost (but in no event greater than the fair market value) of producing substitute equivalent Supplies or Services for the terminated Supplies or Services, provided that the Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this section.

The Commonwealth shall also have the right, upon written notice to the Contractor, to terminate the Contract or a Purchase Order for other cause as specified in the Contract or by law. If it is later determined that the Commonwealth erred in terminating the Contract or a Purchase Order for cause, then, at the Commonwealth's discretion, the Contract or Purchase Order shall be deemed to have been terminated for convenience under subsection (a) above.

38. Contract 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 Contract, the Contractor must, within **six (6) months** after the cause of action accrues, file a written claim with the contracting officer for a determination. The claim shall state all grounds upon which the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum. At the time the claim is filed, or within **sixty (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 Contractor 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 Contractor. The contracting officer shall send his/her written determination to the Contractor. 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 **fifteen (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 Contractor may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Contractor shall proceed diligently with the performance of the Contract in a manner consistent with the determination of the contracting officer and the Commonwealth shall compensate the Contractor pursuant to the terms of the Contract.

39. Assignability and Subcontracting

- (a) Subject to the terms and conditions of this section, this Contract shall be binding upon the parties and their respective successors and assigns.
- (b) The Contractor shall not subcontract with any person or entity to perform all or any part of the furnishing of Supplies or performance of Services under this Contract without the prior written consent of the Contracting Officer, whose consent may be withheld at their sole and absolute discretion.
- (c) The Contractor may not assign, in whole or in part, this Contract or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the Contracting Officer, whose consent may be withheld at their sole and absolute discretion.
- (d) Notwithstanding the foregoing, the Contractor may, without the consent of the Contracting Officer, assign its rights to payment to be received under the Contract, provided that the Contractor provides written notice of such assignment to the

Contracting Officer together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of this Contract.

- (e) For the purposes of this Contract, the term “assign” shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in the Contractor provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.
- (f) Any assignment consented to by the Contracting Officer shall be evidenced by a written assignment agreement executed by the Contractor and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the Contract and to assume the duties, obligations, and responsibilities being assigned.
- (g) A change of name by the Contractor, following which the Contractor’s federal identification number remains unchanged, shall not be considered to be an assignment hereunder. The Contractor shall give the Contracting Officer written notice of any such change of name.

40. Other Contractors

The Commonwealth may undertake or award other contracts for additional or related Supplies furnished or Services performed, and the Contractor shall fully cooperate with other contractors and Commonwealth employees and coordinate its Supplies or Services with such additional work as may be required. The Contractor shall not commit or permit any act that will interfere with the performance of Supplies furnished or Services performed by any other contractor or by Commonwealth employees. This section shall be included in the Contracts of all contractors with which this Contractor will be required to cooperate. The Commonwealth shall equitably enforce this section as to all contractors to prevent the imposition of unreasonable burdens on any contractor.

41. Nondiscrimination/Sexual Harassment Clause

The Contractor agrees:

- (a) In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the *Pennsylvania Human Relations Act* (PHRA) and applicable federal laws, against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- (b) Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual

orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract.

- (c) The Contractor and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contracted services are performed shall satisfy this requirement for employees with an established work site.
- (d) The Contractor and each subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
- (e) The Contractor and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws, regulations and policies relating to nondiscrimination and sexual harassment. The Contractor and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report (“EEO-1”) with the U.S. Equal Employment Opportunity Commission (“EEOC”) and shall file an annual EEO-1 report with the EEOC as required for employers’ subject to *Title VII of the Civil Rights Act of 1964*, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Contractor and each subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.
- (f) The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
- (g) The Contractor’s and each subcontractor’s obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor and each subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.

- (h) The Commonwealth may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

42. Contractor Integrity Provisions

It is essential that those who seek to contract with the Commonwealth of Pennsylvania (“Commonwealth”) observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Commonwealth contracting and procurement process.

- (a) **DEFINITIONS.** For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this section:
 - (i) “Affiliate” means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
 - (ii) “Consent” means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract.
 - (iii) “Contractor” means the individual or entity, that has entered into this contract with the Commonwealth.
 - (iv) “Contractor Related Parties” means any affiliates of the Contractor and the Contractor’s executive officers, Pennsylvania officers and directors, or owners of 5 percent or more interest in the Contractor.
 - (v) “Financial Interest” means either:
 - (1) Ownership of more than a five percent interest in any business; or
 - (2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
 - (vi) “Gratuity” means tendering, giving or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The

exceptions set forth in the *Governor's Code of Conduct, Executive Order 1980-18*, the 4 Pa. Code § 7.153(b), shall apply.

(vii) “Non-bid Basis” means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.

(b) In furtherance of this policy, Contractor agrees to the following:

(i) Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with the Commonwealth.

(ii) Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.

(iii) Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.

(iv) Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.

(v) Contractor certifies to the best of its knowledge and belief that within the last **five (5) years** Contractor or Contractor Related Parties have not:

- (1) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
- (2) been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
- (3) had any business license or professional license suspended or revoked;
- (4) had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
- (5) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

If Contractor cannot so certify to the above, then it must submit along with its bid, proposal or contract a written explanation of why such certification cannot be made and the Commonwealth will determine whether a contract may be entered into with the Contractor. The Contractor's obligation pursuant to this certification is ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to immediately notify the Commonwealth in writing if at any time during the term of the contract if becomes aware of any event which would cause the Contractor's certification or explanation to change. Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the contract.

- (vi) Contractor shall comply with the requirements of the [Lobbying Disclosure Act](#) (65 Pa. C.S. § 13A01, *et seq.*) regardless of the method of award. If this contract was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the Section 1641 of the [Pennsylvania Election Code](#) (25 P.S. §3260a).
- (vii) When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or the Office of the State Inspector General in writing.
- (viii) Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission

of the bid or proposal, during any contract negotiations or during the term of the contract, to include any extensions thereof. Contractor shall immediately notify the Commonwealth in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

- (ix) Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract. Contractor shall incorporate this subsection in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third party beneficiaries shall be created thereby.
- (x) For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

43. Contractor Responsibility Provisions

For the purpose of these provisions, the term Contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee or lessor, who has furnished or performed or seeks to furnish or perform, goods, supplies, services, leased space, construction or other activity, under a contract, grant, lease, purchase order or reimbursement agreement with the Commonwealth of Pennsylvania (Commonwealth). The term Contractor includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.

- (a) The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid/Contract, a written explanation of why such certification cannot be made.
- (b) The Contractor also certifies, in writing, that as of the date of its execution of this Bid/Contract it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.
- (c) The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the Contractor, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within **15 days** of the date of suspension or debarment.
- (d) The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.
- (e) The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

- (f) The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at <http://www.dgs.pa.gov> or contacting the:

Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg, PA 17125
Telephone No: (717) 783-6472
FAX No: (717) 787-9138

44. Americans With Disabilities Act

- (a) Pursuant to federal regulations promulgated under the authority of *The Americans With Disabilities Act*, 28 C.F.R. § 35.101 et seq., the Contractor understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Contract or from activities provided for under this Contract on the basis of the disability. As a condition of accepting this contract, the Contractor agrees to comply with the “General Prohibitions Against Discrimination,” 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of *The Americans With Disabilities Act* which are applicable to all benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.
- (b) The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Contractor’s failure to comply with the provisions of subsection (a) above.

45. Covenant Against Contingent Fees

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Commonwealth shall have the right to terminate the Contract without liability or in its discretion to deduct from the Contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

46. Applicable Law

This Contract shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. The Contractor consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or

defense that such forum is not convenient or proper. The Contractor agrees that any such court shall have in personam jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.

47. Integration

This Contract, including all referenced documents, and any Purchase Order constitutes the entire agreement between the parties. No agent, representative, employee or officer of either the Commonwealth or the Contractor has authority to make, or has made, any statement, agreement or representation, oral or written, in connection with the Contract, 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 the Contract. No modifications, alterations, changes, or waiver to the Contract or any of its terms shall be valid or binding unless accomplished by a written amendment signed by both parties.

48. Order of Precedence

In the event there is a conflict among the documents comprising this Contract, the Commonwealth and the Contractor agree on the following order of precedence: the Contract; the solicitation; and the Contractor's response to the solicitation.

49. Controlling Terms and Conditions

The terms and conditions of this Contract shall be the exclusive terms of agreement between the Contractor and the Commonwealth. Other terms and conditions or additional terms and conditions included or referenced in the Contractor'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 Contractor and not binding on the Commonwealth.

50. Changes

The Commonwealth reserves the right to make changes at any time during the term of the Contract or any renewals or extensions thereof: 1) to increase or decrease the quantities resulting from variations between any estimated quantities in the Contract and actual quantities; 2) to make changes to the Services within the scope of the Contract; 3) to notify the Contractor that the Commonwealth is exercising any Contract renewal or extension option; or 4) to modify the time of performance that does not alter the scope of the Contract to extend the completion date beyond the Expiration Date of the Contract or any renewals or extensions thereof. Any such change shall be made by the Contracting Officer by notifying the Contractor in writing. The change shall be effective as of the date of the change, unless the notification of change specifies a later effective date. Such increases, decreases, changes, or modifications will not invalidate the Contract, nor, if performance security is being furnished in conjunction with the Contract, release the security obligation. The Contractor agrees to provide the Service in accordance with the change order. Any dispute by the Contractor in regard to the performance required by any notification of change shall be handled through the Contract Controversies section.

51. Background Checks

- (a) The Contractor must, at its expense, arrange for a background check for each of its employees, as well as the employees of any of its subcontractors, who will have access to Commonwealth facilities, either through on-site access or through remote access. Background checks are to be conducted via the Pennsylvania State Police 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 and on an annual basis thereafter.
- (b) Before the Commonwealth will permit access to the Contractor, the Contractor must provide written confirmation that the background checks have been conducted. If, at any time, it is discovered that a Contractor employee has a criminal record that includes a felony or misdemeanor involving terroristic behavior, 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 Contractor 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 unless the Commonwealth consents to the access, in writing, prior to the access. The Commonwealth may withhold its consent in its sole discretion. Failure of the Contractor to comply with the terms of this section on more than one occasion or Contractor's failure to appropriately address any single failure to the satisfaction of the Commonwealth may result in the Contractor being deemed in default of its Contract.
- (c) The Commonwealth specifically reserves the right of the Commonwealth 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 contracting agency and DGS set forth in Enclosure 3 of [Commonwealth Management Directive 625.10 Amended](#) (June 4, 2014) *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 Contractor for contracted personnel photo identification or access badges.

52. Confidentiality

- (a) The Contractor agrees to protect the confidentiality of the Commonwealth's confidential information. The Commonwealth agrees to protect the confidentiality

of Contractor's confidential information. In order for information to be deemed confidential, the party claiming confidentiality must designate the information as "confidential" in such a way as to give notice to the other party (notice may be communicated by describing the information, and the specifications around its use or disclosure, in the applicable document). Neither party may assert that information owned by the other party is such party's confidential information. The parties agree that such confidential information shall not be copied, in whole or in part, or used or disclosed except when essential for authorized activities under this Contract and, in the case of disclosure, where the recipient of the confidential information has agreed to be bound by confidentiality requirements no less restrictive than those set forth herein. Each copy of such confidential information shall be marked by the party making the copy with any notices appearing in the original. Upon expiration or termination of this Contract, the receiving party will return to the disclosing party all copies of the confidential information in the receiving party's possession, other than one copy, (where permitted by law or regulation) which may be maintained for archival purposes only, and which will remain subject to this Contract's security, privacy, data retention/destruction and confidentiality provisions (all of which shall survive the expiration or termination of this Contract). Both parties agree that a material breach of these requirements may, after failure to cure within the period specified in this Contract, and at the discretion of the non-breaching party, result in termination for default pursuant to the DEFAULT provision of this Contract, in addition to other remedies available to the non-breaching party.

- (b) Insofar as information is not otherwise protected by law or regulation, the obligations stated in this section do not apply to information:
 - (i) already known to the recipient at the time of disclosure other than through the contractual relationship and not otherwise subject to any obligation of non-disclosure or confidentiality;
 - (ii) independently generated by the recipient and not derived from the information supplied by the disclosing party;
 - (iii) known or available to the public, except where such knowledge or availability is the result of unauthorized disclosure by the recipient of the proprietary information;
 - (iv) disclosed to the recipient without a similar restriction by a third party who has the right to make such disclosure; or
 - (v) required to be disclosed by the recipient by law, regulation, court order, or other legal process.

There shall be no restriction with respect to the use or disclosure of any ideas, concepts, know-how or data processing techniques developed alone or jointly with

the Commonwealth in connection with Services provided to the Commonwealth under this Contract.

- (c) The Contractor 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 and submit un-redacted version of the appropriate document, and
 - (ii) Prepare and submit a redacted version of the document that redacts the information that is asserted to be confidential or proprietary information or a trade secret. The Contractor shall use a redaction program that ensures the information is permanently and irreversibly redacted, or
 - (iii) Prepare and submit a signed written statement that identifies confidential or proprietary information or trade secrets and that states:
 - (i) the attached material contains confidential or proprietary information or trade secrets;
 - (ii) the Contractor is submitting the material in both redacted and un-redacted format, if possible, in accordance with 65 P.S. § 67.707(b); and
 - (iii) the Contractor is requesting that the material be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests.
 - (iv) Submit the two (2) documents along with the signed written statement to the Commonwealth.

53. Sensitive Information

- (a) The Contractor shall not publish or otherwise disclose, except to the Commonwealth or the Contractor's subcontractors and except matters of public record (which is to be determined entirely in the discretion of the Commonwealth), any information or data obtained hereunder from private individuals, organizations, or public agencies.
- (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 Contract for any purpose not connected with the parties' Contract responsibilities except with consent pursuant to applicable law and regulations. All documents associated with direct disclosures of this kind must be announced to and open for inspection by the Commonwealth.

- (c) Rights and obligations of the parties under this section survive the expiration or termination of this Contract.

54. Small Diverse Business Commitment

Contractor shall meet and maintain the commitments to small diverse businesses in the Small Diverse Business (“SDB”) portion of its Bid/Proposal. Any proposed change to a SDB commitment must be submitted to the DGS Bureau of Diversity, Inclusion and Small Business Opportunities (“BDISBO”), which will make a recommendation as to a course of action to the Commonwealth Contracting Officer. Contractor shall complete the Prime Contractor’s Quarterly Utilization Report and submit it to the Commonwealth Contracting Officer and BDISBO within **ten (10) workdays** at the end of each calendar quarter that the Contract is in effect.

55. Installment Purchase Additional Terms and Conditions

To the extent that the Contractor offers the Commonwealth or any purchasing agency (“Purchaser”) the option to pay for any items covered by the Contract in installments over time, these Installment Purchase Terms and Conditions shall, in addition to the other terms and conditions of the Contract, govern the installment purchase, except to the extent the Contractor assigns an Installment Purchase to an Initial Assignee, in which case the Initial Assignee shall be bound to the obligations of the Contractor only as specified in these Installment Purchase Terms and Conditions. If a Purchaser desires to purchase items on an installment basis, the Purchaser shall indicate its Installment Purchase election on the PO issued to the Contractor (“Installment Purchase PO”). By issuing an Installment Purchase PO, the Purchaser explicitly agrees to these Installment Purchase Terms and Conditions. Any items covered by an Installment Purchase shall be called “Installment Items” in these Installment Purchase Terms and Conditions. To the extent that there is a conflict between the other terms and conditions of the Contract and these Installment Purchase Terms and Conditions, these Installment Purchase Terms and Conditions shall prevail to the extent that the Purchaser has elected an Installment Purchase option.

- (a) Term of Installment Purchase

The Contractor may provide any Installment Items under the Contract for any term up to **60 months**. The Purchaser shall identify the term selected on the Installment Purchase PO. The Installment Purchase term shall commence on the date the Purchaser accepts the Installment Items by executing the Acceptance Certificate, and the term shall continue for the length specified on the Installment Purchase PO. The form of the Acceptance Certificate is attached as **Appendix I** to the RFP.

If the Contractor delivers the Contract items in more than one delivery, unless otherwise specified in the Specifications for this procurement, the Purchaser will provide separate acceptance certificates for each delivery of the items, and the Purchaser will make separate payments for the Contract items corresponding to the amount of Contract items delivered and accepted **30 days** prior to the payment due date.

(b) Payments

- (i) Full Term Intention. The Purchaser shall pay the applicable monthly payment for the Installment Items. The Purchaser shall continue payment for the full Installment Purchase term, unless the Purchaser terminates the Installment Purchase, either for Contractor default as set forth in the Default provision of the Contract or for non-appropriation of funds as specified in this section.
- (ii) Non-Appropriation. The Purchaser's obligation is payable only and solely from funds allotted for the purpose of the Installment Purchase. If sufficient funds are not appropriated for continuation of performance under any Installment Purchase for any fiscal year subsequent to the one in which the Purchaser issued the Installment Purchase PO, the Purchaser may return the Installment items to the Contractor/Initial Assignee (as applicable), and thereafter the Contractor/Initial Assignee will release the Purchaser of all further obligations under the Installment Purchase, provided:
 - (1) The Purchaser delivers unencumbered title to the Installment items to the contractor or Initial Assignee (if applicable);
 - (2) The Purchaser returns the Installment items to the Contractor/Initial Assignee in good condition, reasonable wear and tear excepted; and
 - (3) The Purchaser gives **30 days'** written notice of the failure of appropriations to the Contractor/Initial Assignee, along with a certification that the Installment Items are not being replaced by similar items from another vendor. In the event the Purchaser returns the Installment Items for failure of appropriations, the Purchaser shall pay all amounts then due under the Installment Purchase through the end of the fiscal year for which sufficient funds were appropriated for the Installment Purchase.

(c) Title and Security Interest

- (i) The title to the Installment Items shall pass to the Purchaser at the time and place of delivery to the Purchaser of each unit of equipment. The Contractor or its Initial Assignee shall have a purchase money security interest in the Installment Items until payment of all installments as set forth in the payment schedule are made, or if the Purchaser prepays its installments, upon payment of the agreed amount between the Contractor and the Purchaser as set forth in Subsection (i), Financing and Prepayment, of this Section.

- (1) Upon payment of the final installment or other concluding payment option, neither the Contractor nor its assignee shall have any further interest in the Installment Items.
- (2) The Installment Items shall remain personal property and shall not become a fixture or affixed to real property without consent of the Contractor/assignee.
- (3) At the request of the Contractor or Initial Assignee, the Purchaser will join the Contractor/assignee in executing one or more UCC-1 financing statements.
- (4) The Purchaser will keep the Installment Items free and clear of all encumbrances except the Contractor's/assignee's security interest.

(d) Use and Location of, and Alteration to Installment Items

The Purchaser shall keep the Installment Items within the confines of the Commonwealth of Pennsylvania and shall inform the Contractor/Initial Assignee upon request of the location of the Installment Items. The Purchaser, at its own cost and expense, shall maintain the Installment Items in good operating condition and will not use or deal with the Installment Items in any manner which is inconsistent with the terms of the Contract or any applicable laws and regulations. The Purchaser agrees not to misuse, abuse, or waste the Installment Items and the Purchaser will not allow the Installment Items to deteriorate, except for ordinary wear and tear resulting from their intended use. No alterations, changes, or modifications to the Installment Items shall be made without the approval of the Contractor/Initial Assignee.

(e) Assumption of Risks

(i) The Purchaser shall, after acceptance of the Installment Items, assume and bear the risk of damage to, or loss or theft of, the Installment Items (including all component parts) from any cause other than action or inaction of the Contractor/assignee. The loss or damage of the Installment Items shall not impair any obligation of the Purchaser under these Installment Purchase Terms and Conditions, which shall continue in full force and effect. In the event that all or part of the Installment Items shall, as a result of the above-mentioned causes, become, in the Purchaser's reasonable determination, lost, stolen, destroyed, rendered unusable, or irreparably damaged, then the Purchaser shall notify the Contractor/assignee in writing. At its option, the Purchaser shall elect either:

- (1) to replace the equipment with like equipment, or

- (2) to pay pro rata to the Contractor/assignee all payments then currently due according to the payment schedule, plus the pro rata principal portion of any remaining installments. The “pro rata principal portion of remaining installment payments” is that percentage of the principal portion of remaining installment payments as of the date of payment that the cost of the units of the equipment lost, stolen, destroyed, or rendered irreparably unusable or damaged bears to the total cost of the equipment determined by the amounts set forth in the field purchase order.
 - (ii) The Purchaser assumes all risks and liabilities for injury to or death of any person, or damage to any property, arising out of the Purchaser’s possession, use, operation, condition, or storage of any Installment Items, as more fully set forth in Paragraph (i) of Subsection (g) of this Section.
 - (iii) The Purchaser agrees to insure the Installment Items as provided under Paragraph (ii) of Subsection (g) of this Section.
- (f) Warranties
- (i) The Purchaser shall have the benefit of any and all manufacturer or supplier warranties for the Installment Items.
 - (ii) The Contractor/Initial Assignee and any subsequent assignee warrants that neither the Contractor/Initial Assignee or subsequent assignee, nor anyone acting or claiming through these parties by assignment or otherwise, will interfere with the Purchaser’s quiet enjoyment of the Installment Items so long as no event of default as defined in Subsection (j) of this Section shall have occurred and be continuing.
- (g) Liability
- (i) The Purchaser assumes all risks and liabilities for injury to or death of any person or damage to any property, arising out of the Purchaser’s possession, use, operation, condition, or storage of any Installment Item, whether such injury or death be of agents or employees of the Purchaser or of third parties, and whether such property damage be to the Purchaser’s property or the property of others; provided, however, that the damage or injury results from the action or inaction of the Purchaser, its agents or employees, and provided that judgment has been obtained against the Purchaser, its agents or employees. This provision shall not be construed to limit the governmental immunity of any Purchaser.
 - (ii) The Purchaser shall, during the Installment Purchase term, either self-insure or purchase insurance to cover the risks it has assumed under Paragraph (i)

of this Subsection, including but not limited to risks of public liability and property damage.

(h) Assignment

- (i) The Purchaser shall not assign any Installment Purchase PO or other interest in the Installment items without the prior written consent of the Contractor or its assignee. The Contractor may assign, and/or grant security interests in whole or in part in, the Installment Purchase to an Initial Assignee, who in turn may further assign and/or grant a security interest in an Installment Purchase to a subsequent assignee without the Purchaser's consent. Any other Contractor assignment shall require the Purchaser's prior written consent. Upon written notice to the Purchaser, the Contractor may assign payments under any Installment Purchase to a third party.
- (ii) The Contractor may assign, without DGS or Purchaser consent, any Installment Purchase PO to a third party ("Initial Assignee") who will fund the purchase of the Installment Items. The Initial Assignee may take title to, and assume the right to receive all payments for, the Installment Items. The Contractor shall notify the Purchaser of any Installment Purchase PO assignment in its acknowledgment of the Installment Purchase PO to the Purchaser, providing the Purchaser with a copy of the assignment agreement between the Contractor and the Initial Assignee.
- (iii) Notwithstanding any provisions to the contrary in the Contract, in the event of an assignment to an Initial Assignee, the Initial Assignee shall be bound only to the Contractor's obligations specified in these Installment Purchase Terms and Conditions. An Initial Assignee shall not be responsible for any of the Contractor's additional representations, warranties, covenants, or obligations under the Contract Documents. By issuing an Installment Purchase PO, the Purchaser waives any claims it may have under the Installment Purchase against the Initial Assignee for any loss, damage, or expense caused by, defect in, or use or maintenance of any Installment Item. The Purchaser acknowledges that the Initial Assignee is not the supplier of the Installment Items and is not responsible for their selection or installation. After the ordering Purchaser executes, and the Initial Assignee receives, an acceptance certificate in the form attached to these Installment Purchase Terms and Conditions, if any portion of the Installment Items is unsatisfactory for any reason, the ordering Purchaser shall, nevertheless, continue to make payments under the applicable Installment Purchase terms and shall make any claim against the Contractor or the manufacturer, not against the Initial Assignee or any subsequent assignee of the Initial Assignee.
- (iv) After a Purchaser executes and the Initial Assignee receives an acceptance certificate:

- (1) The Purchaser shall, regardless of whether any portion of the Installment Items is unsatisfactory for any reason, nevertheless, continue to make payments under the applicable Installment Purchase and shall make any claim relating to the Installment Items against the Contractor or the manufacturer, not against the Initial Assignee or any subsequent assignee; and
- (2) The rights of the Initial Assignee and any subsequent assignee to receive payments are absolute and unconditional and shall not be affected by any defense or right of set-off.

(v) Warranty Disclaimer

IN THE EVENT THE CONTRACTOR ASSIGNS AN INSTALLMENT PURCHASE TO AN INITIAL ASSIGNEE, SUCH INITIAL ASSIGNEE AND ANY SUBSEQUENT ASSIGNEE MAKE NO WARRANTY (OTHER THAN A WARRANTY OF QUIET ENJOYMENT OF THE INSTALLMENT ITEMS), EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. AS TO THE INITIAL ASSIGNEE AND ANY SUBSEQUENT ASSIGNEE, THE PURCHASER TAKES THE EQUIPMENT AND ANY FINANCED ITEM "AS IS." IN NO EVENT SHALL THE INITIAL ASSIGNEE OR ANY SUBSEQUENT ASSIGNEE HAVE ANY LIABILITY FOR, NOR SHALL THE PURCHASER HAVE ANY REMEDY AGAINST, THE INITIAL ASSIGNEE OR ANY SUBSEQUENT ASSIGNEE FOR CONSEQUENTIAL DAMAGES, LOSS OF SAVINGS, OR LOSS OF USE.

(i) Financing and Prepayment

- (i) If the Contractor is not the supplier of the Installment Items, the Contractor will pay the charges for the Installment Items directly to the supplier. In the event the Contractor assigns the Installment Purchase to an Initial Assignee, the Initial Assignee will pay the charges directly to the Contractor or the supplier, as applicable. If the Contractor has assigned payments under the Installment Purchase to an Initial Assignee, the Purchaser's obligation to make payments for the Installment Items for which the Purchaser has executed and delivered acceptance certificates shall not be affected by any discontinuance, return, or destruction of any license or licensed program materials, or by any Purchaser dissatisfaction with any Installment Item.
- (ii) The Purchaser may at any time elect to prepay its remaining Installment Purchase payments. The Purchaser shall provide notice of the intended prepayment date, which shall be at least one month after the date of the

notice. Depending on market conditions at the time, the Contractor/Initial Assignee may reduce the balance of the remaining payments to reflect the requested prepayment and shall advise the Purchaser of the balance to be paid.

- (iii) If the Purchaser purchases Contract items related to an Installment Item prior to the expiration of the Installment Purchase terms, or if the Installment Purchase is terminated for any reason except non-appropriation as described in Subsection (b) of these Installment Purchase Terms and Conditions, and if the Installment Item has been delivered and the Purchaser has executed and delivered to the Contractor an acceptance certificate, the Purchaser shall prepay such Installment Item.

(j) Remedies for Default

- (i) If the Purchaser does not make a required payment within **30 days** after its due date and such nonpayment continues for **15 days** after receipt of written notice from the Contractor/Initial Assignee that the Purchaser is delinquent in payment, if the Purchaser breaches any other provision under these Terms and Conditions and such breach continues for **15 days** after receipt of written notice of the breach from the Contractor/Initial Assignee, or if the Purchaser files any petition or proceeding (or has a petition or proceeding filed against it) under any bankruptcy, insolvency, or similar law, the Contractor/Initial Assignee may pursue and enforce the following remedies, individually or collectively:

- (1) Terminate the applicable Installment Purchase.

- (2) Take possession of any or all Contract items in the Purchaser's possession, without any court order or other process of law. For such purpose, upon written notice of its intention to do so, the Contractor or its assignee may enter upon the premises where the Contract items may be and remove and repossess the Contract items, from the premises without being liable to the Purchaser in any action or legal proceedings. The Contractor/assignee may, at its option, sell the repossessed Contract items at public or private sale for cash or credit. The Purchaser shall be liable for the Contractor's/assignee's expenses of retaking possession, including without limitation the removal of the Contract items and placing the Contract items in good operating condition (if not in good operating condition at the time of removal) in accordance with the manufacturer's specifications. Repossessed Contract items shall include only those items that were purchased under the Installment Purchase.

- (3) Recover from the Purchaser all payments then due, plus the net present value of the amount of the remaining payments. The present value of such remaining payments shall be calculated using a discount rate equal to the average of the weekly two- and three-year Treasury Constant Maturities published by the Federal Reserve Board for the last calendar week of the month preceding the contractor's/assignee's termination of the applicable Installment Purchase. The Treasury Constant Maturities are published in Statistical Release H.15 and may be accessed via the [Federal Reserve Board's Internet website](#).
 - (ii) In the event of Contractor default under the Default provision of the Contract, the Purchaser may pursue one or more of the following remedies:
 - (1) If the payments under the Installment Purchase have been assigned to an Initial Assignee, the Purchaser shall continue to make payments for those Contract Items which have been delivered and for which the Purchaser has provided acceptance certificates to the Contractor/Initial Assignee.
 - (2) The Purchaser may cancel, without liability for payment, its order for any Contract items which have not been delivered and for which it has not issued acceptance certificates. In this instance, the amount of the Contract payments will be recalculated to take into consideration and pay for the actual number of Contract items which were delivered and accepted. If no Installment items have been delivered and accepted, the Purchaser may terminate the Installment Purchase without liability for any payment.
 - (3) If payments have not been assigned, the Purchaser may set off or counterclaim any and all damages incurred by the Purchaser as a result of the contractor's default against its obligation to make payments.
 - (k) Compliance with Internal Revenue Code
 - (i) Tax Exempt Financing. If it intends to provide tax exempt financing, the Contractor/Initial Assignee must file, in timely fashion, any reports the Internal Revenue Service may require with respect to the order under the Internal Revenue Code (IRC). The Purchaser shall cooperate with the Contractor/Initial Assignee in the preparation and execution of these documents. The Purchaser shall also keep a copy of each notification of assignment with the Purchaser's counterpart of the order and shall not, during the Installment Purchase term, permit the Installment Items to be directly or indirectly used for a private business use within the meaning of Section 141 of the IRC.

(ii) **Governmental Status.** Eligible Purchasers include State entities or political subdivisions of a State for the purpose of Section 103(a) of the IRC as well as tax exempt non-profit corporations and entities under 501(c)(4) of the IRC. Any misrepresentation of a Purchaser's status under the IRC shall constitute an event of default by the Purchaser. If the Internal Revenue Service rules that the Purchaser does not so qualify under either Section 103(a) or 501(c)(4) of the IRC, or if the Purchaser fails to cooperate with the Contractor/Initial Assignee in the preparation and execution of any reports required under Section 124 or 149 of the IRC (including 8038G and 8038GC forms), the Purchaser will, upon demand, pay the Contractor/Initial Assignee a sum the Contractor/Initial Assignee determines sufficient to return the Contractor/Initial Assignee to the economic status it would otherwise have received.

(l) **Governing Law**

All Purchases made under these Installment Purchase Terms and Conditions shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, except that the parties agree that Article 2A of the Uniform Commercial Code shall not apply or govern transactions under these Installment Purchase Terms and Conditions.

(m) **Notices**

Service of all notices under these Installment Purchase Terms and Conditions shall be sufficient if delivered to the Purchaser at the address set forth in the applicable Installment Purchase PO, or to the Contractor/Initial Assignee at the address set forth in its acknowledgment of the Installment Purchase PO, including any attached document.

Notices by mail shall be effective when deposited in the U.S. mail, properly addressed, with sufficient paid postage. Notices delivered by hand or by overnight courier shall be effective when actually received.

56. Leasing Additional Terms and Conditions

To the extent that the Contractor offers the Commonwealth or any purchasing agency ("Lessee") the option to lease any items covered by the Contract, these Leasing Terms and Conditions shall, in addition to the other terms and conditions of the Contract, govern the Lease, except to the extent the Contractor assigns a Lease to an Initial Assignee, in which case the Initial Assignee shall be bound to the obligations of the Contractor only as specified in these Leasing Terms and Conditions. If a Lessee desires to lease contract items, the Lessee shall indicate its leasing election on the PO issued to the Contractor ("Lease PO"). By issuing a Lease PO, the Lessee explicitly agrees to these Leasing Terms and Conditions. Any items covered by a Lease shall be called "Leased Property" in these Leasing Terms and Conditions. To the extent that there is a conflict between

the other terms and conditions of the Contract and these Leasing Terms and Conditions, these Leasing Terms and Conditions shall prevail to the extent that the Lessee has elected a leasing option.

(a) Term of Lease

The Contractor may provide any Leased Property under the Contract for any term up to **60 months**, including a Fair Market Value Option for Lease/Purchases. The Lessee shall identify the term selected, as well as its election of either a Lease or Lease/Purchase option, on the Lease PO. The Lease term shall commence on the date the Lessee accepts the Leased Property by executing the Acceptance Certificate, and the term shall continue for the length specified on the Lease PO. The form of the Acceptance Certificate is attached as **Appendix I** to the RFP.

If the Contractor delivers the Leased Property in more than one delivery, unless otherwise specified in the Specifications for this procurement, the Lessee will provide separate acceptance certificates for each delivery of the items, and the Lessee will make periodic payments for the Leased Property corresponding to the amount of the Leased Property delivered and accepted **30 days** prior to the payment due date.

(b) Payments

- (i) Full Term Intention. The Lessee shall pay the applicable monthly or annual rent payment for the Leased Property for the full Lease term, unless the Lessee terminates the Lease, either for Contractor default as set forth in the Default provision of the Contract or for non-appropriation of funds as specified in this section.
- (ii) Non-Appropriation. The Lessee's obligation is payable only and solely from funds allotted for the purpose of the Lease. If sufficient funds are not appropriated for continuation of performance under any Lease for any fiscal year subsequent to the one in which the Lessee issued the Lease PO, the Lessee may return the Leased Property to the Contractor/Initial Assignee (as applicable), and thereafter the Contractor/Initial Assignee shall release the Lessee of all further obligations under the Lease, provided:
 - (1) The Lessee delivers unencumbered title to the Leased Property to the Contractor or Initial Assignee (if applicable);
 - (2) The Lessee returns the Leased Property to the Contractor/Initial Assignee in good condition, reasonable wear and tear excepted; and
 - (3) The Lessee gives **30 days'** written notice of the failure of appropriations to the Contractor/Initial Assignee, along with a certification that the Leased Property is not being replaced by

similar items from another vendor. In the event the Lessee returns the Leased Property for failure of appropriations, the Lessee shall pay all amounts then due under the Lease through the end of the fiscal year for which sufficient funds were appropriated for the Lease.

(c) Title

(i) Title to the Leased Property shall not pass to the Lessee but shall remain in the Contractor or Initial Assignee, whichever applies; except in the case of a Lease/Purchase, the title shall pass to the Lessee upon payment of the final installment or other concluding payment option.

(1) Upon payment of the final installment or other concluding payment option, neither the Contractor nor its assignee shall have any further interest in the Leased Property.

(2) The Leased Property shall remain personal property and shall not become a fixture or affixed to real property without consent of the Contractor/assignee.

(3) At the request of the Contractor or Initial Assignee, the Lessee will join the Contractor/assignee in executing one or more UCC-1 financing statements.

(4) The Lessee will keep the Leased Property free and clear of all encumbrances except the Contractor's/assignee's security interest.

(d) Use and Location of, and Alteration to Leased Property

The Lessee shall keep the Leased Property within the confines of the Commonwealth of Pennsylvania and shall inform the Contractor/Initial Assignee upon request of the location of the Leased Property. The Lessee, at its own cost and expense, shall maintain the Leased Property in good operating condition and will not use or deal with the Leased Property in any manner which is inconsistent with the terms of the Contract or any applicable laws and regulations. The Lessee agrees not to misuse, abuse, or waste the Leased Property and the Lessee will not allow the Leased Property to deteriorate, except for ordinary wear and tear resulting from their intended use. No alterations, changes, or modifications to the Leased Property shall be made without the approval of the Contractor/Initial Assignee.

(e) Risk of Loss

The Contractor shall assume and bear the risk of loss or damage to, or theft of, the Leased Property and all component parts while the Leased Property or parts are in the Lessee's possession, unless the Lessee could have prevented such loss, damage,

or theft by exercising reasonable care or diligence in the use, protection, or care of the Leased Property or parts. No loss or damage to the Leased Property or parts shall impair any Contractor or Lessee obligation under the Lease, except as expressly provided in these Leasing Terms and Conditions. If the damage could not have been prevented by the Lessee's exercise of reasonable care or diligence, and the Contractor determines the Leased Property or parts can be economically repaired, the Contractor shall repair or cause to be repaired all damages to the Leased Property or their parts. In the event that the any of the Leased Property or their parts are stolen or destroyed, or if in the Contractor's opinion they are rendered irreparable, unusable, or damaged, the affected Leased Property shall be considered a total loss and the Lease shall terminate as to that Leased Property, and the Lessee's obligation to pay rent for the affected Leased Property shall be deemed to have ceased as of the date of the loss.

(f) Warranties

- (i) The Lessee shall have the benefit of any and all manufacturer or supplier warranties for the Leased Property during the Lease term.
- (ii) The Contractor/Initial Assignee and any subsequent assignee warrants that neither the Contractor/Initial Assignee or subsequent assignee, nor anyone acting or claiming through these parties by assignment or otherwise, will interfere with the Lessee's quiet enjoyment of the Leased Property so long as no event of default as defined in Subsection (j) of this Section shall have occurred and be continuing.

(g) Liability

- (i) The Lessee assumes all risks and liabilities for injury to or death of any person or damage to any property, arising out of the Lessee's possession, use, operation, condition, or storage of any Leased Property, whether such injury or death be of agents or employees of the Lessee or of third parties, and whether such property damage be to the Lessee's property or the property of others; provided, however, that the damage or injury results from the action or inaction of the Lessee, its agents or employees, and provided that judgment has been obtained against the Lessee, its agents or employees. This provision shall not be construed to limit the governmental immunity of any Lessee.
- (ii) The Lessee shall, during the Lease term, either self-insure or purchase insurance to cover the risks it has assumed under Paragraph (i) of this Subsection, including but not limited to risks of public liability and property damage.

(h) Assignment

- (i) The Lessee shall not assign any Lease PO or other interest in the Leased Property without the prior written consent of the Contractor or its assignee. The Contractor may assign, and/or grant security interests in whole or in part in, the Lease PO and Leased Property to an Initial Assignee, who in turn may further assign and/or grant a security interest in a Lease to a subsequent assignee without the Lessee's consent. Any other Contractor assignment shall require the Lessee's prior written consent. Upon written notice to the Lessee, the Contractor may assign payments under any Lease to a third party.
- (ii) The Contractor may assign, without Lessee consent, any Lease PO to a third party ("Initial Assignee") who will fund the purchase of the Leased Property. The Initial Assignee may take title to, and assume the right to receive all rental payments for, the Leased Property. The Contractor shall notify the Lessee of any Lease PO assignment in its acknowledgment of the Lease PO to the Lessee, providing the Lessee with a copy of the assignment agreement between the Contractor and the Initial Assignee.
- (iii) Notwithstanding any provisions to the contrary in the Contract, in the event of an assignment to an Initial Assignee, the Initial Assignee shall be bound only to the Contractor's obligations specified in these Leasing Terms and Conditions. An Initial Assignee shall not be responsible for any of the Contractor's additional representations, warranties, covenants, or obligations under the Contract Documents. By issuing a Lease PO, the Lessee waives any claims it may have under the Lease against the Initial Assignee for any loss, damage, or expense caused by, defect in, or use or maintenance of any Leased Property. The Lessee acknowledges that the Initial Assignee is not the supplier of the Leased Property and is not responsible for their selection or installation. After the ordering Lessee executes, and the Initial Assignee receives, an Acceptance Certificate, if any portion of the Leased Property is unsatisfactory for any reason, the ordering Lessee shall, nevertheless, continue to make payments under the applicable Lease terms and shall make any claim against the Contractor or the manufacturer, not against the Initial Assignee or any subsequent assignee of the Initial Assignee.
- (iv) After a Lessee executes and the Initial Assignee receives an Acceptance Certificate:
 - (1) The Lessee shall, regardless of whether any portion of the Leased Property is unsatisfactory for any reason, nevertheless, continue to make payments under the applicable Lease and shall make any claim relating to the Leased Property against the Contractor or the manufacturer, not against the Initial Assignee or any subsequent assignee; and

(2) The rights of the Initial Assignee and any subsequent assignee to receive rental payments are absolute and unconditional and shall not be affected by any defense or right of set-off.

(v) Warranty Disclaimer

IN THE EVENT THE CONTRACTOR ASSIGNS A LEASE TO AN INITIAL ASSIGNEE, SUCH INITIAL ASSIGNEE AND ANY SUBSEQUENT ASSIGNEE MAKE NO WARRANTY (OTHER THAN A WARRANTY OF QUIET ENJOYMENT OF THE LEASED PROPERTY), EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. AS TO THE INITIAL ASSIGNEE AND ANY SUBSEQUENT ASSIGNEE, THE LESSEE TAKES THE LEASED PROPERTY "AS IS." IN NO EVENT SHALL THE INITIAL ASSIGNEE OR ANY SUBSEQUENT ASSIGNEE HAVE ANY LIABILITY FOR, NOR SHALL THE LESSEE HAVE ANY REMEDY AGAINST, THE INITIAL ASSIGNEE OR ANY SUBSEQUENT ASSIGNEE FOR CONSEQUENTIAL DAMAGES, LOSS OF SAVINGS, OR LOSS OF USE.

(i) Financing and Prepayment

- (i) If the Contractor is not the supplier of the Leased Property, the Contractor will pay the charges for the Leased Property directly to the supplier. In the event the Contractor assigns the Lease to an Initial Assignee, the Initial Assignee will pay the charges directly to the Contractor or the supplier, as applicable. If the Contractor has assigned rental payments under the Lease to an Initial Assignee, the Lessee's obligation to make rental payments for the Leased Property for which the Lessee has executed and delivered acceptance certificates shall not be affected by any discontinuance, return, or destruction of any license or licensed program materials, or by any Lessee dissatisfaction with any Leased Property.
- (ii) The Lessee may at any time terminate the financing for any Leased Property by prepaying its remaining rental payments. The Lessee shall provide notice of the intended prepayment date, which shall be at least one month after the date of the notice. Depending on market conditions at the time, the Contractor/Initial Assignee may reduce the balance of the remaining rental payments to reflect the requested prepayment and shall advise the Lessee of the balance to be paid.
- (iii) If the Lessee purchases Contract items related to Leased Property prior to the expiration of the Lease term, or if the Lease is terminated for any reason except non-appropriation as described in Subsection (b) of this Section, and if the

Leased Property has been delivered and the Lessee has executed and delivered to the Contractor an acceptance certificate, the Lessee shall prepay such Leased Property.

(j) Remedies for Default

(i) If the Lessee does not make a required payment within **30 days** after its due date and such nonpayment continues for **15 days** after receipt of written notice from the Contractor/Initial Assignee that the Lessee is delinquent in payment, if the Lessee breaches any other provision under these Leasing Terms and Conditions and such breach continues for **15 days** after receipt of written notice of the breach from the Contractor/Initial Assignee, or if the Lessee files any petition or proceeding (or has a petition or proceeding filed against it) under any bankruptcy, insolvency, or similar law, the Contractor/Initial Assignee may pursue and enforce the following remedies, individually or collectively:

(1) Terminate the applicable Lease.

(2) Take possession of any or all Leased Property in the Lessee's possession, without any court order or other process of law. For such purpose, upon written notice of its intention to do so, the Contractor or its assignee may enter upon the premises where the Leased Property may be and remove and repossess the Leased Property, from the premises without being liable to the Lessee in any action or legal proceedings. The Contractor/assignee may, at its option, sell the repossessed Leased Property at public or private sale for cash or credit. The Lessee shall be liable for the Contractor's/assignee's expenses of retaking possession, including without limitation the removal of the Leased Property and placing the Leased Property in good operating condition (if not in good operating condition at the time of removal) in accordance with the manufacturer's specifications. Repossessed Leased Property shall include only those items that were leased or lease/purchased under the Lease.

(3) Recover from the Lessee all rental payments then due, plus the net present value of the amount of the remaining rental payments. The present value of such remaining rental payments shall be calculated using a discount rate equal to the average of the weekly two- and three-year Treasury Constant Maturities published by the Federal Reserve Board for the last calendar week of the month preceding the contractor's/assignee's termination of the applicable Lease. The Treasury Constant Maturities are published in Statistical Release H.15 and may be accessed via the [Federal Reserve Board's Internet website](#).

(ii) In the event of Contractor default under the Default provision of the Contract, the Lessee may pursue one or more of the following remedies:

(1) If the rental payments under the Lease have been assigned to an Initial Assignee, the Lessee shall continue to make payments for that Leased Property which has been delivered and for which the Lessee has provided acceptance certificates to the Contractor/Initial Assignee.

(2) The Lessee may cancel, without liability for payment, its order for any Leased Property which has not been delivered and for which it has not issued acceptance certificates. In this instance, the amount of the rental payments will be recalculated to take into consideration and pay for the actual amount of Leased Property which was delivered and accepted. If no Leased Property has been delivered and accepted, the Lessee may terminate the Lease without liability for any payment.

(3) If payments have not been assigned, the Lessee may set off or counterclaim any and all damages incurred by the Lessee as a result of the Contractor's default against its obligation to make rental payments.

(k) Purchase Option

If the Lessee is not in default, it shall have the right at the expiration of the Lease term to buy the Leased Property "as is with no additional warranty" by tendering the purchase option amount the parties have established. For any Lease with a Fair Market Value Option, the fair market value of the equipment shall be established by the Contractor/Initial Assignee and shall not exceed the then-current purchase price of the Leased Property as established in the Contract. Upon the Lessee's exercise of a purchase option and payment of the required amount to the Contractor/Initial Assignee, all right, title, and interest in the Leased Property shall pass to the Lessee.

(l) Extension

If the Lessee does not elect to purchase the Leased Property at the expiration of a Lease term, and the Lessee is not in default under the Lease, the Lessee may elect to extend the Lease by written notification to the Contractor/Initial Assignee. The Lessee will make any elective extension under the same Leasing Terms and Conditions, including any rent payable (not less than fair market rental value), and will continue until the earlier of termination by either party upon one month's prior written notice, or five years from the date of installation.

(m) Return of Leased Property

At the expiration or termination of a Lease for any Leased Property, or upon Contractor/Initial Assignee demand pursuant to Subsection (j) of this Section, the Lessee shall promptly return the Leased Property, freight prepaid, to any location in the continental United States specified by the Contractor/Initial Assignee. The Lessee shall pay the required rent for the Leased Property until they have been shipped to the Contractor.

- (i) Since DGS has, as a matter of policy, determined that all hard drives contain information that is confidential or sensitive, the Contractor shall, at its discretion, either remove and destroy any hard drive from the Leased Property or clean the hard drive to Office of Administration/U.S. Department of Defense standards, and the Contractor shall provide written certification to the Lessee that the hard drive has been destroyed or cleaned to Office of Administration/U.S. Department of Defense standards.
- (ii) Except in the event of a total loss of any or all Leased Property as described in Subsection (e) of this Section, and except for any costs associated with the removal, destruction, and cleaning of any hard drives, the Lessee shall pay any costs the Contractor/Initial Assignee incurs to restore the Leased Property to good operating condition in accordance with the Contract specifications. All parts the Contractor/Initial Assignee may remove and replace shall become the Contractor's/Initial Assignee's property.
- (iii) The Contractor's/Initial Assignee's costs associated with the cleaning of any hard drive to Office of Administration/U.S. Department of Defense standards and the removal and destruction of any hard drive(s) shall be included in the rental amount. The Lessee shall not be required to pay additional charges for the Contractor's/Initial Assignee's cleaning of a hard drive to Office of Administration/U.S. Department of Defense standards nor for the Contractor's/Initial Assignee's removal and destruction of any hard drive(s) upon the return of a Leased item.

(n) Compliance with Internal Revenue Code

- (i) Tax Exemption Financing. If it intends to provide tax exempt financing, the Contractor/Initial Assignee must file, in timely fashion, any reports the Internal Revenue Service may require with respect to the order under the Internal Revenue Code (IRC). The Lessee shall cooperate with the Contractor/Initial Assignee in the preparation and execution of these documents. The Lessee shall also keep a copy of each notification of assignment with the Lessee's counterpart of the order and shall not, during the Lease term, permit the Leased Property to be directly or indirectly used for a private business use within the meaning of Section 141 of the IRC.

(ii) Governmental Status. Eligible Lessees include State entities or political subdivisions of a State for the purpose of Section 103(a) of the IRC as well as tax exempt non-profit corporations and entities under 501(c)(4) of the IRC. Any misrepresentation of a Lessee's status under the IRC shall constitute an event of default by the Lessee. If the Internal Revenue Service rules that the Lessee does not so qualify under either Section 103(a) or 501(c)(4) of the IRC, or if the Lessee fails to cooperate with the Contractor/Initial Assignee in the preparation and execution of any reports required under Section 124 or 149 of the IRC (including 8038G and 8038GC forms), the Lessee will, upon demand, pay the Contractor/Initial Assignee a sum the Contractor/Initial Assignee determines sufficient to return the Contractor/Initial Assignee to the economic status it would otherwise have received.

(o) Governing Law

All Leases made under these Leasing Terms and Conditions shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, except that the parties agree that Article 2A of the Uniform Commercial Code shall not apply or govern transactions under these Leasing Terms and Conditions.

(p) Notices

Service of all notices under these Leasing Terms and Conditions shall be sufficient if delivered to the Lessee at the address set forth in the applicable Lease PO, or to the Contractor/Initial Assignee at the address set forth in its acknowledgment of the Lease PO, including any attached document. Notices by mail shall be effective when deposited in the U.S. mail, properly addressed, with sufficient paid postage.

Notices delivered by hand or by overnight courier shall be effective when actually received.

57. Insurance

(a) The Contractor shall procure and maintain at its expense and require its subcontractors to procure and maintain, as appropriate, the following types of insurance, issued by companies acceptable to the Commonwealth and authorized to conduct such business under the laws of the Commonwealth of Pennsylvania:

(b) Workers' Compensation Insurance for all of the Contractor's employees and those of any subcontractor engaged in performing Services in accordance with the *Worker's Compensation Act*, the Act of June 2, 1915, P.L. 736, No. 338, reenacted and amended June 21, 1939, P.L. 520, No. 281, as amended, 77 P.S. §§ 101—2708.

(i) Public liability and property damage insurance to protect the Commonwealth, the Contractor, and any and all Subcontractors from claims

for damages for personal injury (including bodily injury), sickness or disease, accidental death, and damage to property, including loss of use resulting from any property damage which may arise from its operations under this Contract, whether such operation be by the Contractor, by any Subcontractor, or by anyone directly or indirectly employed by either. The limits of such insurance shall be in an amount not less than \$500,000 per person and \$2,000,000 per occurrence, personal injury and property damage combined. Such policies shall be occurrence rather than claims-made policies and shall name the Commonwealth of Pennsylvania as an additional insured. The insurance shall not contain any endorsements or any other form designed to limit and restrict any action by the Commonwealth as an additional insured against the insurance coverages in regard to the work performed for the Commonwealth.

- (ii) Prior to commencing work under the Contract, the Contractor shall provide the Commonwealth with a copy of each current certificate of insurance. These certificates shall contain a provision that coverages afforded under the policies will not be canceled or changed in such a way to cause the coverage to fail to comply with the requirements of this subsection (b) until at least **fifteen (15) days'** prior written notice has been given to the Commonwealth.

- (c) The Contractor agrees to maintain such insurance for the life of the Contract.

58. Notice

Any written notice to any party under this Contract 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, and sent to following:

- (a) If to the Contractor: the Contractor's address as recorded in the Commonwealth's Supplier Registration system.
- (b) If to the Commonwealth: the address of the Issuing Office as set forth on the Contract.

59. Right-To-Know Law

- (a) The Pennsylvania *Right-to-Know Law*, 65 P.S. §§ 67.101—3104, ("RTKL") applies to this Contract. For the purpose of these provisions, the term "the Commonwealth" shall refer to the contracting Commonwealth agency.
- (b) If the Commonwealth needs the Contractor's assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal

contact information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.

- (c) Upon written notification from the Commonwealth that it requires the Contractor's assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), the Contractor shall:
 - (i) Provide the Commonwealth, within **ten (10) calendar days** after receipt of written notification, access to, and copies of, any document or information in the Contractor's possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
 - (ii) Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.
- (d) If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within **seven (7) calendar days** of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.
- (e) The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within **five (5) business days** of receipt of written notification of the Commonwealth's determination.
- (f) If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.
- (g) The Commonwealth will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.

- (h) The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Contractor agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.
- (i) The Contractor's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Contractor has Requested Information in its possession.

60. Enhanced Minimum Wage

- (a) Enhanced Minimum Wage. Contractor/Lessor agrees to pay no less than \$10.15 per hour to its employees for all hours worked directly performing the services called for in this Contract/Lease, and for an employee's hours performing ancillary services necessary for the performance of the contracted services or lease when such employee spends at least twenty per cent (20%) of their time performing ancillary services in a given work week.
- (b) Adjustment. Beginning January 1, 2017, and annually thereafter, Contractor/Lessor shall pay its employees described in subsection (a) above an amount that is no less than the amount previously in effect; increased from such amount by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (United States city average, all items, not seasonally adjusted), or its successor publication as determined by the United States Bureau of Labor Statistics; and rounded to the nearest multiple of \$0.05. The applicable adjusted amount shall be published in the Pennsylvania Bulletin by March 1 of each year to be effective the following July 1.
- (c) Exceptions. These Enhanced Minimum Wage Provisions shall not apply to employees:
 - (i) exempt from the minimum wage under the Minimum Wage Act of 1968;
 - (ii) covered by a collective bargaining agreement;
 - (iii) required to be paid a higher wage under another state or federal law governing the services, including the Prevailing Wage Act and Davis-Bacon Act; or

- (iv) required to be paid a higher wage under any state or local policy or ordinance.
- (d) Notice. Contractor/Lessor shall post these Enhanced Minimum Wage Provisions for the entire period of the contract conspicuously in easily-accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed.
- (e) Records. Contractor/Lessor must maintain and, upon request and within the time periods requested by the Commonwealth, furnish all employment and wage records necessary to document compliance with these Enhanced Minimum Wage Provisions.
- (f) Sanctions. Failure to comply with these Enhanced Minimum Wage Provisions may result in the imposition of sanctions, which may include, but shall not be limited to, termination of the contract or lease, nonpayment, debarment or referral to the Office of General Counsel for appropriate civil or criminal referral.
- (g) Subcontractors. Contractor/Lessor shall include the provisions of these Enhanced Minimum Wage Provisions in every subcontract so that these provisions will be binding upon each subcontractor.

61. Manufacturer's Price Reduction

If, prior to the delivery of the awarded Supplies by the Contractor, a price reduction is announced by the original equipment manufacturer, a comparative price reduction will be given to the Commonwealth by the Contractor.

62. Special Requirements

The Commonwealth reserves the right to purchase Supplies and Services within the scope of this Contract through other procurement methods whenever the Commonwealth deems it to be in its best interest.

63. Prevailing Minimum Wages

If applicable to this Contract, the Contract with the awarded vendor is subject to and shall comply with the provisions, duties, obligations, remedies and penalties of the *Pennsylvania Prevailing Wage Act*, [The Act of August 15, 1961](#), P.L. 987, No. 442, as amended, 43 P.S. §§ 165-1—165-17 and its regulations 34 Pa. Code §§ [9.101—9.112](#), which are incorporated herein by reference as if fully set forth herein. The Contractor shall pay no less than the wage rates including contributions for employee benefits as determined by the Secretary of Labor and Industry (hereinafter referred to in this paragraph as “Secretary”) for each craft or classification of all workers needed to perform this Contract during the term hereof for the county in which the work is to be performed. In compliance with said *Pennsylvania Prevailing Wage Act*, the Prevailing

Minimum Wage Predetermination, as approved by the Secretary, is attached hereto and made a part hereof.

- (a) The provisions of this paragraph shall apply to all work performed on the contract by the contractor and to all work performed on the contract by all subcontractors. The contractor shall insert in each of its subcontracts all of these required contract provisions and stipulations contained in this paragraph and such other stipulations as may be required.
- (b) No worker may be employed on the public work except in accordance with the classifications set forth in the decisions of the Secretary. In the event that additional or different classifications are necessary, the procedure set forth in section 8 of the Act (43 P.S. § 165-8) and section 9.107 of the Act's Regulations (relating to petition for review of rates and hearings) shall be followed.
- (c) Workers employed or working on the public work shall be paid unconditionally, regardless of whether any contractual relationship exists or the nature of a contractually relationship which may be alleged to exist between a contractor, subcontractor and workers, at least once a week without deduction or rebate, on any account, either directly or indirectly, except authorized deductions, the full amounts due at the time of payment, computed at the rates applicable to the time worked in the appropriate classification. Nothing in the contract, the Prevailing Wage Act or its Regulations prohibits the payment of more than the general prevailing minimum wage rates as determined by the Secretary to any worker or public work.
- (d) The contractor and each subcontractor shall post for the entire period of construction the wage determination decisions of the Secretary, including the effective date of changes thereof, in a prominent and easily accessible place or places at the site of the work and at the place or places used by them to pay workers their wages. The posted notice of wage rates shall contain the following information:
 - (i) The name of project.
 - (ii) The name of public body for which it is being constructed.
 - (iii) The crafts and classifications of workers listed in the Secretary's general prevailing minimum wage rate determination for the particular project.
 - (iv) The general prevailing minimum wage rates determined for each craft and classification and the effective date of changes.
 - (v) A statement advising workers that if they have been paid less than the general prevailing minimum wage rate for their job classification or that the contractor or subcontractor are not complying with the act or the regulations in any manner whatsoever, the worker may file a protest in writing with the

Secretary of Labor and Industry within **3 months** of the date of the occurrence, objecting to the payment to a contractor to the extent of the amount due or to become due to them as wages for work performed on the public work project. A worker paid less than the rate specified in the contract shall have a civil right of action for the difference between the wage paid and the wages stipulated in the contract, which right of action must be exercised within **6 months** from the occurrence of the event creating the right.

- (e) The contractor and subcontractors shall keep an accurate record showing the name, craft or classification, number of hours worked per day, and the actual hourly rate of wage paid including employee benefits, to each worker employed by the contractor or subcontractor in connection with the public work. The record shall include deductions from each worker. The record shall be preserved for **2 years** from the date of payment and shall be open at reasonable hours to the inspection of the public body awarding the contract and to the Secretary or the Secretary's authorized representatives.
- (f) Apprentices shall be limited to numbers in accordance with a bona fide apprenticeship program registered with and approved by the Pennsylvania Apprenticeship and Training Council and only apprentices whose training and employment are in full compliance with *The Apprenticeship and Training Act* (43 P.S. §§ 90.1—90.10), approved July 14, 1961 and the regulations issued thereto shall be employed on the public work project. A worker using the tools of a craft who does not qualify as an apprentice within the provisions of this subsection shall be paid the rate predetermined for journeymen in that particular craft or classification.
- (g) Wages shall be paid without deductions except authorized deductions. Employers not parties to a contract requiring contributions for employee benefits which the Secretary of Labor & Industry has determined to be included in the general prevailing minimum wage rate shall pay the monetary equivalent thereof directly to the workers.
- (h) Payment of compensation to workers for work performed on public work on a lump sum basis, or a piece work system, or a price certain for the completion of a certain amount of work, or the production of a certain result shall be deemed a violation of the Act, regardless of the average hourly earnings resulting therefrom.
- (i) Each contractor and each subcontractor shall file a statement each week and a final statement at the conclusion of the work on the contract with the contracting agency, under oath, and in form satisfactory to the Secretary, certifying that workers have been paid wages in strict conformity with the provisions of the contract. If wages remain unpaid, the contractor or subcontractor shall set forth the amount of wages due and owing to each worker respectively. A copy of the form entitled

“Contractor’s or Subcontractor’s Weekly Payroll Certification for Public Works Projects” is attached hereto.

- (j) Before final payment is made, a final wage certification must be submitted by all contractors and subcontractors.

64. Virus, Malicious, Mischievous or Destructive Programming

- (a) Notwithstanding any other provision in this Contract to the contrary, if the Contractor or any of its employees, subcontractors or consultants introduces a virus or malicious, mischievous or destructive programming into the Commonwealth’s software or computer networks and has failed to comply with the Commonwealth software security standards, and provided further that the Commonwealth can demonstrate that the virus or malicious, mischievous or destructive programming was introduced by the Contractor or any of its employees, subcontractors or consultants, the Contractor shall be liable for any damage to any data and/or software owned or licensed by the Commonwealth. The Contractor 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 result from the Contractor’s failure to take proactive measures to keep virus or malicious, mischievous or destructive programming from originating from the Contractor, its servants, agents or employees through appropriate firewalls and maintenance of anti-virus software and software security updates (such as operating systems security patches, etc.). In the event of destruction or modification of software, the Contractor shall eliminate the virus, malicious, mischievous or destructive programming, restore the Commonwealth’s software, and be liable to the Commonwealth for any resulting damages. The Contractor shall be responsible for reviewing Commonwealth software security standards in effect at the commencement of the Contract and complying with those standards. The Contractor’s liability shall cease if the Commonwealth has not fully complied with its own software security standards.
- (b) The Contractor shall perform a security scan on any software or computer program developed by the Contractor or its subcontractors in a country other than the United States of America that may come in contact with the Commonwealth’s software or computer networks. Contractor shall perform such security scan prior to introducing any such software or computer program into a Commonwealth development environment, test environment or production environment. The results of these security scans will be provided to the Commonwealth prior to installing into any Commonwealth development environment, test environment or production environment. The Commonwealth may perform, at its discretion, additional security scans on any software or computer program prior to installing in a Commonwealth environment as listed above.

- (c) The Commonwealth may, at any time, audit, by a means deemed appropriate by the Commonwealth, any computing devices being used by representatives of the Contractor to provide Services to the Commonwealth that will be connected to a Commonwealth network for the sole purpose of determining whether those devices have anti-virus software with current virus signature files and the current minimum operating system patches or workarounds have been installed. Devices found to be out of compliance will immediately be disconnected and will not be permitted to connect or reconnect to the Commonwealth network until the proper installations have been made. The Commonwealth shall not install any software or monitoring tools on the Contractor's equipment without the Contractor's written consent to do so.
- (d) The Contractor may use the anti-virus software used by the Commonwealth to protect Contractor's computing devices used in the course of providing Services to the Commonwealth.
- (e) Neither the Commonwealth nor the Issuing Agency will be responsible for any damages to the Contractor's computers, data, software, etc. caused as a result of the installation of the Commonwealth's anti-virus software or monitoring software on the Contractor's computers.

65. Service Levels

- (a) The Contractor shall comply with the procedures and requirements of the Service Level Agreements, if any, which are made part of this Contract.
- (b) Where there are expressly defined Service Levels, Contractor shall measure and report its performance against these standards on at least a monthly basis, except as many otherwise be agreed between the Parties in respect of Services performed less frequently than monthly. All Services without expressly defined Service Levels must be performed at least to the same degree of accuracy, completeness, efficiency, quality and timeliness as is provided by well-managed suppliers providing services similar to the Services, so long as such performance is commercially and operationally reasonable.
- (c) The Commonwealth's acceptance of any financial credit incurred by the Contractor in favor of the Commonwealth for a Service Level default ("Service Level Credit") shall not bar or impair Commonwealth's rights and remedies in respect of the failure or root cause as set forth elsewhere in this Contract, including without limitation claims for liquidated damages, injunctive relief and termination rights, provided however, Service Level Credits paid would be credited against any such claims for damages.

66. Hazardous Substances

- (a) The Contractor shall provide information to the Commonwealth about the identity and hazards of hazardous substances supplied or used by the Contractor in the performance of the Contract. The Contractor must comply with Act 159 of October 5, 1984, P.L. 734, No., 159, known as the *Worker and Community Right-to-Know Act*, as amended, 35 P.S. §§ 7301—7320 (the “Act”) and the regulations promulgated pursuant thereto at [34 Pa. Code §§ 301.1—323.6](#).
- (b) Labeling. The Contractor shall insure that each individual product (as well as the carton, container or package in which the product is shipped) of any of the following substances (as defined by the Act and the regulations) supplied by the Contractor is clearly labeled, tagged or marked with the information listed in paragraphs (i) through (iv):
- (i) Hazardous substances:
- (1) The chemical name or common name,
 - (2) A hazard warning, and
 - (3) The name, address and telephone number of the manufacturer.
- (ii) Hazardous mixtures:
- (1) The common name, but if none exists, then the trade name,
 - (2) The chemical or common name of special hazardous substances comprising .01% or more of the mixture,
 - (3) The chemical or common name of hazardous substances consisting 1.0% or more of the mixture,
 - (4) A hazard warning, and
 - (5) The name, address and telephone number of the manufacturer.
- (iii) Single chemicals:
- (1) The chemical name or the common name,
 - (2) A hazard warning, if appropriate, and
 - (3) The name, address and telephone number of the manufacturer.
- (iv) Chemical Mixtures:
- (1) The common name, but if none exists, then the trade name,

- (2) A hazard warning, if appropriate,
 - (3) The name, address, and telephone number of the manufacturer, and
 - (4) The chemical name or common name of either the top five (5) substances by volume or those substances consisting of 5.0% or more of the mixture.
- (v) A common name or trade name may be used only if the use of the name more easily or readily identifies the true nature of the hazardous substance, hazardous mixture, single chemical, or mixture involved.
- (vi) Container labels shall provide a warning as to the specific nature of the hazard arising from the substance in the container.
- (vii) The hazard warning shall be given in conformity with one of the nationally recognized and accepted systems of providing warnings, and hazard warnings shall be consistent with one or more of the recognized systems throughout the workplace. Examples are:
- (1) NFPA 704, Identification of the Fire Hazards of Materials.
 - (2) National Paint and Coatings Association: Hazardous Materials Identification System.
 - (3) American Society for Testing and Materials, Safety Alert Pictorial Chart.
 - (4) American National Standard Institute, Inc., for the Precautionary Labeling of Hazardous Industrial Chemicals.
- (viii) Labels must be legible and prominently affixed to and displayed on the product and the carton, container, or package so that employees can easily identify the substance or mixture present therein.
- (c) Material Safety Data Sheet. The Contractor shall provide Material Safety Data Sheets (MSDS) with the information required by the Act and the regulations for each hazardous substance or hazardous mixture. The Commonwealth must be provided an appropriate MSDS with the initial shipment and with the first shipment after an MSDS is updated or product changed. For any other chemical, the Contractor shall provide an appropriate MSDS, if the manufacturer, importer, or supplier produces or possesses the MSDS. The Contractor shall also notify the Commonwealth when a substance or mixture is subject to the provisions of the Act. Material Safety Data Sheets may be attached to the carton, container, or package mailed to the Commonwealth at the time of shipment.

67. Publicity/Advertisement

The Contractor must obtain 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.

68. Additional Federal Provisions

Additional contract provisions may be incorporated into this Contract pursuant to federal law, regulation or policy.

CONTRACT #
Statement of Work

for

Commonwealth of PA – (Agency)

PO Number: _____

AGENCY CONTACT:
AGENCY ADDRESS:

PHONE:
FAX:
E-MAIL:

A. Introduction

This Statement of Work ("SOW") is made ("Effective Date"), by and between the Commonwealth of PA – ("Insert name of Agency"), with its principal office located at (Insert full Agency Address) (hereinafter referred to as "Agency") and Insert full Supplier name, with its principal place of business at Insert full business Address (hereinafter referred to as "Supplier"). Supplier and Agency may also be referred individually as "Party" or collectively as "Parties."

Agency is responsible for promptly obtaining all required consents necessary for the Supplier to provide the services described in this Statement of Work. A required consent means any consent or approval required to give the Supplier software, firmware and other products to enable Supplier and Supplier's approved subcontractors to perform the services set forth in this Statement of Work without infringing on the ownership or license rights (including patent and copyright) of the providers or owners of such products.

The terms and conditions of contract #XXXXXXXXXXXX shall govern this SOW.

B. Project Overview and Tasks

Specifications, Agency Requirements, & Room Preparation:

Any requirements for the agency must be inserted here

Performance Standards / Service Levels:

Any requirements for the agency must be inserted here

Supplier will perform the following tasks (the "Project"):

Insert exact description of work to be performed to include such tasks as installation, training, or other related tasks.

C. Time Estimates / Delivery Schedule

The actual Project start date will depend on following:

(below are examples only, ensure dates are provided)

- 1.) Scheduled availability of a qualified systems engineer. 5/10/06
- 2.) Receipt of equipment. 5/20/06
- 3.) Completion necessary cabling, ISP connection, etc. by other vendors if applicable. 5/20/06
- 4.) Receipt of signed SOW from Agency prior to proposed start date. 5/5/06

D. Project Cost

Project Cost is: \$

All work associated with the Project is performed during Mondays through Fridays, between the hours of 8am and 5pm local time, excluding holidays.

(Ensure an exact costing breakdown is provided)

E. SOW Acceptance

This SOW is acceptable. I (We) hereby acknowledge and confirm that I (We) have read this SOW and accept and approve the scope of work and related terms. I (We) understand that if additional work is required that by its nature was not known or determined at the time this SOW was executed, a written change order describing the additional work and any related expenses is required.

Please sign and FAX/email to **Supplier** at **fax number/email address**

Supplier

Commonwealth of PA – “**Agency**”

Approved (date): _____

Print Name of Authorized Signatory

Authorized **Supplier** Signature

Authorized **Agency** Signature

Authorized **Supplier** Signature

Title

F. Project Completed and Accepted

The Project was completed in accordance with this SOW. I (We) hereby accept as completed all work indicated in this SOW. I (We) acknowledge at there is nothing that should prevent prompt payment in accordance with the terms indicated above.

Approved (date): _____

Print Name of Authorized Signatory

Authorized **Supplier** Signature

Authorized **Agency** Signature

Authorized **Supplier** Signature

Title

PLEASE ATTACH HARD COPY OF PURCHASE ORDER
REFERENCING THIS SOW

SOFTWARE LICENSE REQUIREMENTS AGREEMENT

PA Supplier ID Number: _____

SOFTWARE/SERVICES LICENSE REQUIREMENTS AGREEMENT BETWEEN THE COMMONWEALTH OF PENNSYLVANIA, ACTING BY AND THROUGH THE DEPARTMENT OF GENERAL SERVICES AND



This Software/Services License Requirements Agreement (“Agreement”) by and between [redacted] (“Licensor”) and the **Commonwealth of Pennsylvania**, acting by and through the **Department of General Services** (“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.**

SOFTWARE LICENSE REQUIREMENTS AGREEMENT

- (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

SOFTWARE LICENSE REQUIREMENTS AGREEMENT

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:

SOFTWARE LICENSE REQUIREMENTS AGREEMENT

- (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;

SOFTWARE LICENSE REQUIREMENTS AGREEMENT

- (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

SOFTWARE LICENSE REQUIREMENTS AGREEMENT

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

SOFTWARE LICENSE REQUIREMENTS AGREEMENT

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.

SOFTWARE LICENSE REQUIREMENTS AGREEMENT

- (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 sub-contractor, 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:

SOFTWARE LICENSE REQUIREMENTS AGREEMENT

- (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

SOFTWARE LICENSE REQUIREMENTS AGREEMENT

- (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. Agency-specific Sensitive and Confidential Commonwealth Data.

- (a) The Licensor understands that its level of access may allow it to view or access highly sensitive and confidential Commonwealth and third-party data. This data is

SOFTWARE LICENSE REQUIREMENTS AGREEMENT

subject to various state and federal laws and policies that vary from Commonwealth Agency to Commonwealth Agency, and from program to program within a Commonwealth Agency. If applicable, prior to the issuance of a purchase order or other procurement document for a Licensed Product or the deployment of a Licensed Product on any Commonwealth Agency's facilities, the Licensor must receive and sign off on particular instructions and limitations as dictated by that Commonwealth Agency, including but not limited to, as necessary, Business Associate Agreements as required by the *Health Insurance Portability and Accountability Act* (HIPAA), as amended, a sample of which is attached hereto as Attachment 3. This sign-off document (a sample of which is attached hereto as Attachment 4), will include a description of the nature of the data which may be implicated based on the nature of the Licensor's access, and will incorporate the HIPAA Business Associate Agreement if it is applicable.

- (b) The Licensor hereby certifies and warrants that, after being informed by the Commonwealth Agency of the nature of the data which may be implicated and prior to the installation of the Licensed Products), the Licensor is and shall remain compliant with all applicable state and federal law and policy regarding the data's protection, and with the requirements memorialized in every completed and signed Sign-Off document. Every sign-off document completed by the Commonwealth Agency and signed by at least one signatory of the Licensor authorized to bind the Licensor is valid and is hereby integrated and incorporated by reference into this Agreement.
- (c) This section does not require a Commonwealth Agency to exhaustively list the law to which implicated data is subject; the Commonwealth Agency is obligated only to list the nature of the data implicated by the Licensor's access, to refer the Licensor to its privacy and security policies, and to specify requirements that are not otherwise inherent in compliance with law and policy.
- (d) The requirements of this section are in addition to and not in lieu of other requirements of this Agreement and its Attachments and Exhibits having to do with data privacy and security, including but not limited to the requirement that the Licensor comply with Attachment 2, *Requirements for Non-Commonwealth Hosting Applications/Services*, and all applicable Commonwealth Information Technology Policies (ITPs), which can be found at: <http://www.oa.pa.gov/Policies/Pages/itp.aspx>.
- (e) The Licensor shall conduct additional background checks, in addition to those required in section, as may be required by a Commonwealth Agency in its sign-off documents. The Licensor shall educate and hold its agents, employees, contractors and subcontractors to standards at least as stringent as those contained in this Agreement. The Licensor shall provide information regarding its agents, employees, contractors and subcontractors to the Commonwealth upon request.

SOFTWARE LICENSE REQUIREMENTS AGREEMENT

- 15. 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.
- 16. 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.
- 17. Taxes-Federal, State and Local; Interest.**
- (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).
- 18. Commonwealth Audit Responsibilities.**
- (a) The Commonwealth will maintain, and promptly provide to the Licensor upon request, accurate records regarding use of the Licensed Products by or for the Commonwealth. If the Commonwealth becomes aware of any unauthorized use of all or any part of the Licensed Products, 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 another procurement document.

SOFTWARE LICENSE REQUIREMENTS AGREEMENT

- (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 software license audit right under this Agreement.
- 19. 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.
- 20. 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.
- 21. Attorneys’ Fees.** The Commonwealth will not pay attorneys’ fees incurred by or paid by the Licensor.
- 22. 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

SOFTWARE LICENSE REQUIREMENTS AGREEMENT

the contracting officer and the Licensor. The contracting officer shall send his/her 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.

23. Insurance.

- (a) The Licensor shall maintain at its expense, and require its agents, contractors and subcontractors to procure and maintain, as appropriate, the following types and amounts of insurance issued by companies acceptable to the Commonwealth and authorized to conduct such business under the laws of the Commonwealth:
 - (i) Workers' Compensation Insurance for all of the employees engaged in performing Services in accordance with the *Worker's Compensation Act*, the Act of June 2, 1915, P.L. 736, No. 338, reenacted and amended June 21, 1939, P.L. 520, No. 281, as amended, 77 P.S. §§ 101—2708.
 - (ii) Commercial general liability insurance providing coverage from claims for damages for personal injury, death (including bodily injury), sickness or disease, accidental death and damage to and property of others, including loss of use resulting from any property damage which may arise from the Licensor's operations under this Agreement, whether such operation be by the Licensor, its agent, contractor or subcontractor, or by anyone directly or indirectly employed by either. The limits of such insurance shall be in an amount not less than \$500,000 per person and \$2,000,000 per occurrence, personal injury and property damage combined. Such policies shall be occurrence based rather than claims-made policies and shall name the Commonwealth of Pennsylvania as an additional insured, as its interests may appear. The insurance shall not contain any endorsements or any other form designed to limit and restrict any action by the Commonwealth as an additional insured against the insurance coverages in regard to the Services performed for or supplies provided to the Commonwealth.
 - (iii) Professional and Technology-Based Services Liability Insurance (insuring against damages and claim expenses as a result of claims arising from any actual or alleged wrongful acts in performing cyber and technology

SOFTWARE LICENSE REQUIREMENTS AGREEMENT

activities) in the amount of \$2,000,000, per accident/occurrence/annual aggregate.

- (iv) Technology Products Liability/Professional Liability/Errors & Omissions Insurance in the amount of \$2,000,000, per accident/occurrence/annual aggregate, covering the Licensor, its employees, agents, contractors, and subcontractors in the performance of all services.
- (v) Comprehensive crime insurance in an amount of not less than \$5,000,000 per claim.
- (vi) Information Security and Privacy Liability Insurance including Privacy Notification Costs (including coverage for Technology Professional Liability if not covered under Licensor's Professional Liability/Errors and Omissions Insurance referenced above) in the amount of \$3,000,000, per accident/occurrence/annual aggregate, covering the Licensor, its employees, agents, contractors, and subcontractors in the performance of all services.

(b) Certificate of Insurance. Prior to providing Licensed Products under this Agreement, and annually thereafter, the Licensor shall provide the Commonwealth with a copy of each current certificate of insurance required by this section. These certificates shall contain a provision that coverages afforded under the policies will not be canceled or changed in such a way to cause the coverage to fail to comply with the requirements of this section until at least **15 days'** prior written notice has been received by the Commonwealth. Such cancellation or change shall not relieve the Licensor of its continuing obligation to maintain insurance coverage in accordance with this section.

(c) Insurance coverage length. The Licensor agrees to maintain such insurance for the life of any applicable purchase order issued pursuant to the Agreement.

24. Federal Requirements. If applicable, in addition to the requirements set forth in Section 14 of this Agreement, the Licensor must receive and sign off on particular federal requirements that a Commonwealth Agency may be required to include when utilizing federal funds to procure the Licensed Products. This sign-off document (a sample of which is attached hereto as Attachment 4), in addition to any applicable requirements of Section 14 of this Agreement, will include a description of the required federal provisions, along with the applicable forms necessary for the Licensor execute, as necessary. The sign-off document, along with attachments, must be attached to the purchase order.

25. 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

SOFTWARE LICENSE REQUIREMENTS AGREEMENT

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.

26. **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](#).
27. **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.
28. **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.
29. **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.
30. **Waiver.** Failure to enforce any provision will not constitute a waiver.
31. **Severability.** If any provision is found unenforceable, it and any related provisions will be interpreted to best accomplish the unenforceable provision's essential purpose.
32. **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.
33. **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,

SOFTWARE LICENSE REQUIREMENTS AGREEMENT

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.

SOFTWARE LICENSE REQUIREMENTS AGREEMENT

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

DEPARTMENT OF GENERAL SERVICES

See Section 25
Agency Head or Designee

APPROVED AS TO FORM AND LEGALITY:

See Section 25
Office of Chief Counsel

See Section 25
Office of General Counsel

See Section 25
Office of Attorney General

APPROVED:

See Section 25
Comptroller

SOFTWARE LICENSE REQUIREMENTS AGREEMENT

ATTACHMENT 1

LIST OF LICENSED PRODUCTS

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

Licensed Products:

The Licensed Products include (list all titles covered by this Agreement):

SOFTWARE LICENSE REQUIREMENTS AGREEMENT

ATTACHMENT 2

Requirements for Non-Commonwealth Hosted Applications/Services

The purpose of this Attachment is to define requirements for technology solutions procured by the Commonwealth that are not hosted within Commonwealth infrastructure.

A. Hosting Requirements

1. The Licensor or its subcontractor shall supply all hosting equipment (hardware and software) required for the cloud services and performance of the software and services set forth in the Quote and Statement of Work.
2. The Licensor shall provide secure access to applicable levels of users via the internet.
3. The Licensor shall use commercially reasonable resources and efforts to maintain adequate internet connection bandwidth and server capacity.
4. The Licensor or its subcontractors shall maintain all hosting equipment (hardware and software) and replace as necessary to maintain compliance with the Service Level Agreements.
5. The Licensor shall monitor, prevent and deter unauthorized system access. Any and all known attempts must be reported to the Commonwealth within **two (2) business days**. In the event of any impermissible disclosure unauthorized loss or destruction of Confidential Information, the receiving Party must immediately notify the disclosing Party and take all reasonable steps to mitigate any potential harm or further disclosure of such Confidential Information. In addition, pertaining to the unauthorized access, use, release, or disclosure of data, the Licensor shall comply with state and federal data breach notification statutes and regulations, and shall report security incidents to the Commonwealth within **one (1) hour** of when the Licensor has reasonable confirmation of such unauthorized access, use, release, or disclosure of data.
6. The Licensor or the Licensor's subcontractor shall allow the Commonwealth or its delegate, at times chosen by the Commonwealth, and within at least **three (3) business days'** notice, to review the hosted system's data center locations and security architecture.
7. The Licensor's employees or subcontractors, who are directly responsible for day-to-day monitoring and maintenance of the hosted system, shall have industry standard certifications applicable to the environment and system architecture used.
8. The Licensor or the Licensor's subcontractor shall locate servers in a climate-controlled environment. The Licensor or the Licensor's contractor shall house all servers and equipment in an operational environment that meets industry standards

SOFTWARE LICENSE REQUIREMENTS AGREEMENT

including climate control, fire and security hazard detection, electrical needs, and physical security.

9. The Licensor shall examine applicable system and error logs daily to minimize and predict system problems and initiate appropriate action.
10. The Licensor shall completely test and apply patches for all third-party software products in the server environment before release.
11. The Licensor shall provide the Commonwealth with its annual American Institute of Certified Public Accountants (AICPA) Attestation Standard (AT) Sec. 101 Service Organization Control (“SOC”) 2, Type 2 certification (AT Sec. 101 SOC 2, Type 2), or an equivalent certification approved by the Commonwealth. Equivalent certifications include, but are not limited to: International Organization of Standards (ISO) 2700x certification; certification under the [Federal Information Security Management Act \(FISMA\)](#); and AT Sec. 101 SOC 3 (SysTrust/WebTrust) certification. Annually, Licensor shall provide an AT Sec. 101 SOC 2, Type 2 audit report, or its equivalent, to the Commonwealth upon request.

B. Security Requirements

1. The Licensor shall conduct a third-party independent security/vulnerability assessment at its own expense on an annual basis.
2. The Licensor shall comply with the Commonwealth’s directions/resolutions to remediate the results of the security/vulnerability assessment to align with the standards of the Commonwealth.
3. The Licensor shall use industry best practices to protect access to the system with a firewall and firewall rules to prevent access by non-authorized users and block all improper and unauthorized access attempts.
4. The Licensor shall use industry best practices to provide applicable system intrusion detection and prevention in order to detect intrusions in a timely manner.
5. The Licensor shall use industry best practices to provide applicable malware and virus protection on all servers and network components.
6. The Licensor shall limit access to Commonwealth-specific systems and services and provide access only to those staff that must have access to provide services proposed.
7. The Licensor shall provide the Services, using security technologies and techniques in accordance with industry best practices and the Commonwealth’s ITPs set forth in Attachment 2-A, including those relating to the prevention and detection of intrusions, and any other inappropriate use or access of systems and networks.

SOFTWARE LICENSE REQUIREMENTS AGREEMENT

C. Data Storage

1. The Licensor shall use industry best practices to update and patch all applicable systems and third-party software security configurations to reduce security risk. The Licensor shall protect their operational systems with applicable anti-virus, host intrusion protection, incident response monitoring and reporting, network firewalls, application firewalls, and employ system and application patch management to protect its network and customer data from unauthorized disclosure.
2. The Licensor shall be solely responsible for applicable data storage required.
3. The Licensor shall take all commercially viable and applicable measures to protect the data including, but not limited to, the backup of the servers on a daily basis in accordance with industry best practices and encryption techniques.
4. The Licensor agrees to have appropriate controls in place to protect critical or sensitive data and shall employ stringent policies, procedures, to protect that data particularly in instances where such critical or sensitive data may be stored on a Licensor-controlled or Licensor-owned electronic device.
5. The Licensor shall utilize a secured backup solution to prevent loss of data, back up all data every day and store backup media. Stored backup media must be kept in an all-hazards protective storage safe at the worksite and when taken offsite. All back up data and media shall be encrypted.

D. Adherence to Policy

1. Licensor support and problem resolution solution shall provide a means to classify problems as to criticality and impact and with appropriate resolution procedures and escalation process for classification of each problem.
2. Licensor shall abide by the applicable Commonwealth's Information Technology Policies (ITPs), a list of the most relevant being attached hereto as Attachment 2-A.
3. Licensor shall comply with all pertinent federal and state privacy regulations.

E. Closeout

When the purchase order's or other procurement document's term expires or terminates, and a new purchase order or other procurement document has not been issued by a Commonwealth Agency to the Commonwealth Software Reseller within **sixty (60) days** of expiration or termination, or at any other time at the written request of the Commonwealth, the Licensor must promptly return to the Commonwealth all Commonwealth's data (and all copies of this information) that is in the Licensor's

SOFTWARE LICENSE REQUIREMENTS AGREEMENT

possession or control. The Commonwealth's data shall be returned in a format agreed to by the Commonwealth.

SOFTWARE LICENSE REQUIREMENTS AGREEMENT

ATTACHMENT 2-A

Information Technology Policies (ITPs) for Outsourced/Licensor(s)-hosted Solutions

ITP Number	Title	Type
ACC001	IT Accessibility Policy	Policy
INF001	Database Management Systems	Policy
INF003	Data Modeling Standards	Policy
INFRM006	Electronic Documents Management Systems	Policy
PRV001	Commonwealth of Pennsylvania Electronic Information Privacy Policy	Policy
SEC001	Enterprise Host Security Software Suite Standards and Policy	Policy
SEC004	Enterprise Web Application Firewall	Policy
SEC005	Commonwealth Application Certification and Accreditation	Policy
SEC007	Minimum Standards for User IDSs and Passwords	Policy
SEC010	Virtual Private Networks Standards	Policy
SEC011	Enterprise Policy and Software Standards for Agency Firewalls	Policy
SEC019	Policy and Procedures for Protecting Commonwealth Electronic Data	Policy
SEC020	Encryption Standards for Data at Rest	Policy
SEC024	IT Security Incident Reporting Policy	Policy
SEC025	Proper Use and Disclosure of Personally Identifiable Information (PII)	Policy
SEC031	Encryption Standards for Data in Transit	Policy
SEC034	Enterprise Firewall Rule Set	Policy
SFT006	Internet Browser Policy	Policy
SFT007	Office Productivity Software Policy	Policy
SYM003	Off-site Storage for Commonwealth Agencies	Policy
SYM006	Commonwealth IT Resources Patching Policy	Policy

SOFTWARE LICENSE REQUIREMENTS AGREEMENT

Attachment 3

COMMONWEALTH OF PENNSYLVANIA SAMPLE BUSINESS ASSOCIATE AGREEMENT (*Business Associate Agreements as provided by Agencies may differ*)

WHEREAS, the _____ (Covered Entity) and _____ (Business Associate) intend to protect the privacy and security of certain Protected Health Information (PHI) to which Business Associate may have access in order to provide goods or services to or on behalf of Covered Entity, in accordance with the *Health Insurance Portability and Accountability Act of 1996*, as amended, Pub. L. No. 104-191 (HIPAA), the *Health Information Technology for Economic and Clinical Health (HITECH) Act*, as amended, Title XIII of Division A and Title IV of Division B of the *American Recovery and Reinvestment Act of 2009* (ARRA), as amended, Pub. L. No. 111-5 (Feb. 17, 2009) and related regulations, the HIPAA Privacy Rule (Privacy Rule), 45 C.F.R. Parts 160 and 164, as amended, the HIPAA Security Rule (Security Rule), 45 C.F.R. Parts 160, 162 and 164, as amended, 42 C.F.R. §§ 431.301—431.302, 42 C.F.R. Part 2, 45 C.F.R. § 205.50, 42 U.S.C. § 602(a)(1)(A)(iv), 42 U.S.C. § 1396a(a)(7), 35 P.S. § 7607, 50 Pa. C.S. § 7111, 71 P.S. § 1690.108(c), 62 P.S. § 404, 55 Pa. Code Chapter 105, 55 Pa. Code Chapter 5100, the Pennsylvania *Breach of Personal Information Notification Act*, Act of December 22, 2005, P.L. 474, No. 94, as amended, 73 P.S. §§ 2301—2329, and other relevant laws, including subsequently adopted provisions applicable to use and disclosure of confidential information, and applicable agency guidance; and,

WHEREAS, Business Associate may receive PHI from Covered Entity, or may create or obtain PHI from other parties for use on behalf of Covered Entity, which PHI may be used or disclosed only in accordance with this Agreement and the standards established by applicable laws and agency guidance; and

WHEREAS, Business Associate may receive PHI from Covered Entity, or may create or obtain PHI from other parties for use on behalf of Covered Entity, which PHI must be handled in accordance with this Agreement and the standards established by HIPAA, the HITECH Act and related regulations, the Privacy Rule, the Security Rule and other applicable laws and agency guidance.

NOW, THEREFORE, Covered Entity and Business Associate agree as follows:

1. Definitions.

- (a) “**Business Associate**” shall have the meaning given to such term under HIPAA, the HITECH Act and related regulations, the Privacy Rule, the Security Rule and agency guidance.
- (b) “**Covered Entity**” shall have the meaning given to such term under HIPAA, the HITECH Act and related regulations, the Privacy Rule, the Security Rule and agency guidance.

SOFTWARE LICENSE REQUIREMENTS AGREEMENT

- (c) **“HIPAA”** shall mean the *Health Insurance Portability and Accountability Act of 1996*, as amended, Pub. L. No. 104-191.
- (d) **“HITECH Act”** shall mean the *Health Information Technology for Economic and Clinical Health (HITECH) Act*, as amended, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5 (Feb. 17, 2009).
- (e) **“Privacy Rule”** shall mean the standards for privacy of individually identifiable health information in 45 C.F.R. Parts 160 and 164, as amended, and related agency guidance.
- (f) **“Protected Health Information”** or **“PHI”** shall have the meaning given to such term under HIPAA, the HITECH Act and related regulations, the Privacy Rule, the Security Rule (all as amended) and agency guidance.
- (g) **“Security Rule”** shall mean the security standards in 45 C.F.R. Parts 160, 162 and 164, as amended, and related agency guidance.
- (h) **“Unsecured PHI”** shall mean PHI that is not secured through the use of a technology or methodology as specified in HITECH Act regulations, as amended, and agency guidance or as otherwise defined in the HITECH Act, as amended.

2. Stated Purposes for Which Business Associate May Use or Disclose PHI. The Parties hereby agree that Business Associate shall be permitted to use and/or disclose PHI provided by or obtained on behalf of Covered Entity for the following stated purposes, except as otherwise stated in this Agreement:

NO OTHER DISCLOSURES OF PHI OR OTHER INFORMATION ARE PERMITTED.

3. BUSINESS ASSOCIATE OBLIGATIONS.

- (a) **Limits on Use and Further Disclosure.** Business Associate shall not further use or disclose PHI provided by, or created or obtained on behalf of, Covered Entity

SOFTWARE LICENSE REQUIREMENTS AGREEMENT

other than as permitted or required by this Addendum, as requested by Covered Entity, or as required by law and agency guidance.

- (b) **Appropriate Safeguards.** Business Associate shall establish and maintain appropriate safeguards to prevent any use or disclosure of PHI other than as provided for by this Agreement. Appropriate safeguards shall include implementing administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic PHI that is created, received, maintained or transmitted on behalf of the Covered Entity and limiting use and disclosure to applicable minimum necessary requirements as set forth in applicable federal and state statutory and regulatory requirements and agency guidance.
- (c) **Reports of Improper Use or Disclosure.** Business Associate hereby agrees that it shall report to _____ at _____, within **two (2) days** of discovery any use or disclosure of PHI not provided for or allowed by this Agreement.
- (d) **Reports on Security Incidents.** In addition to following the breach notification requirements in section 13402 of the *Health Information Technology for Economic and Clinical Health Act of 2009* (“HITECH Act”), as amended, and related regulations, the Privacy Rule, the Security Rule, agency guidance and other applicable federal and state laws, Business Associate shall report to _____ at _____, **within two (2) days** of discovery any security incident of which it becomes aware. At the sole expense of Business Associate, Business Associate shall comply with all federal and state breach notification requirements, including those applicable to Business Associate and those applicable to Covered Entity. Business Associate shall indemnify the Covered Entity for costs associated with any incident involving the acquisition, access, use or disclosure of Unsecured PHI in a manner not permitted under federal or state law and agency guidance. For purposes of the security incident reporting requirement, inconsequential unsuccessful incidents that occur on a daily basis, such as scans, “pings,” or other unsuccessful attempts to penetrate computer networks or servers containing electronic PHI maintained by Business Associate, need not be reported in accordance with this section, but may instead be reported in the aggregate on a monthly basis.
- (e) **Subcontractors and Agents.** At any time PHI is provided or made available to Business Associate subcontractors or agents, Business Associate shall provide only the minimum necessary PHI for the purpose of the covered transaction and shall first enter into a subcontract or contract with the subcontractor or agent that contains substantially the same terms, conditions and restrictions on the use and disclosure of PHI as contained in this Agreement.
- (f) **Right of Access to PHI.** Business Associate shall allow, for any PHI maintained in a designated record set, Covered Entity to have access to and copy an individual’s

SOFTWARE LICENSE REQUIREMENTS AGREEMENT

PHI within **five (5) business days** of receiving a written request from the Covered Entity. Business Associate shall provide PHI in the format requested, if it is readily producible in such form and format; or if not, in a readable hard copy form or such other form and format as agreed to by Business Associate and the individual. If the request is for information maintained in one or more designated record sets electronically and if the individual requests an electronic copy of such information, Business Associate must provide Covered Entity with access to the PHI in the electronic form and format requested by the individual, if it is readily producible in such form and format; or, if not, in a readable electronic form and format as agreed to by the Business Associate and Covered Entity. If any individual requests from Business Associate or its agents or subcontractors access to PHI, Business Associate shall notify Covered Entity within **five (5) business days**. Business Associate shall further conform with all of the requirements of [45 C.F.R. § 164.524](#) and other applicable laws, including the HITECH Act, as amended, related regulations and agency guidance. Business Associate shall indemnify Covered Entity for costs/damages associated with Business Associate's failure to respond within the time frames set forth in this subsection [3\(f\)](#).

- (g) **Amendment and Incorporation of Amendments.** Within **five (5) business days** of receiving a written request from Covered Entity for an amendment of PHI maintained in a designated record set, Business Associate shall make the PHI available and incorporate the amendment to enable Covered Entity to comply with [45 C.F.R. § 164.526](#), applicable federal and state law, including the HITECH Act, as amended and related regulations, the Privacy Rule, the Security Rule and agency guidance. If any individual requests an amendment from Business Associate or its agents or subcontractors, Business Associate shall notify Covered Entity within **five (5) business days**.
- (h) **Provide Accounting of Disclosures.** Business Associate shall maintain a record of all disclosures of PHI made by Business Associate which are not excepted from disclosure accounting requirements under HIPAA, HITECH and related regulations, the Privacy Rule or the Security Rule (all as amended) in accordance with [45 C.F.R. § 164.528](#) and other applicable laws and agency guidance, including the HITECH Act and related regulations. Such records shall include, for each disclosure, the date of the disclosure, the name and address of the recipient of the PHI, a description of the PHI disclosed, the name of the individual who is the subject of the PHI disclosed, and the purpose of the disclosure. Business Associate shall make such record available to the Covered Entity within **five (5) business days** of a written request for an accounting of disclosures. Business Associate shall indemnify Covered Entity for costs/damages associated with Business Associate's failure to respond within the time frames set forth in this subsection [3\(h\)](#).
- (i) **Requests for Restriction.** Business Associate shall comply with requests for restrictions on disclosures of PHI about an individual if the disclosure is to a health plan for purposes of carrying out payment or health care operations (and is not for treatment purposes), and the PHI pertains solely to a health care item or service for

SOFTWARE LICENSE REQUIREMENTS AGREEMENT

which the service involved was paid in full out-of-pocket. For other requests for restriction, Business associate shall otherwise comply with the Privacy Rule, as amended, and other applicable statutory and regulatory requirements and agency guidance.

- (j) **Access to Books and Records.** Business Associate shall make its internal practices, books and records relating to the use or disclosure of PHI received from, or created or received, by Business Associate on behalf of the Covered Entity, available to the Secretary of Health and Human Services or designee for purposes of determining compliance with applicable laws and agency guidance.
- (k) **Return or Destruction of PHI.** At termination of this Agreement, Business Associate hereby agrees to return or destroy all PHI provided by or obtained on behalf of Covered Entity. Business Associate agrees not to retain any copies of the PHI after termination of this Agreement. If return or destruction of the PHI is not feasible, Business Associate agrees to extend the protections of this Agreement to limit any further use or disclosure until such time as the PHI may be returned or destroyed. If Business Associate elects to destroy the PHI, it shall certify to Covered Entity that the PHI has been destroyed.
- (l) **Maintenance of PHI.** Notwithstanding subsection 3(k) of this Agreement, Business Associate and its subcontractors or agents shall retain all PHI throughout the term of the Agreement and shall continue to maintain the information required under the various documentation requirements of this Agreement (such as those in subsection 3(h)) for a period of **six (6) years** after termination of the Agreement, unless Covered Entity and Business Associate agree otherwise.
- (m) **Mitigation Procedures.** Business Associate agrees to establish and to provide to Covered Entity upon request, procedures for mitigating, to the maximum extent practicable, any harmful effect from the use or disclosure of PHI in a manner contrary to this Agreement or the Privacy Rule, as amended. Business Associate further agrees to mitigate any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this Agreement or applicable laws and agency guidance.
- (n) **Sanction Procedures.** Business Associate agrees that it shall develop and implement a system of sanctions for any employee, subcontractor or agent who violates this Agreement, applicable laws or agency guidance.
- (o) **Grounds for Breach.** Non-compliance by Business Associate with this Agreement or the Privacy or Security Rules, as amended, is a breach of the Agreement, if Business Associate knew or reasonably should have known of such non-compliance and failed to immediately take reasonable steps to cure the non-compliance. Commonwealth may elect to terminate Business Associate's contract for such breach.

SOFTWARE LICENSE REQUIREMENTS AGREEMENT

- (p) **Termination by Commonwealth.** Business Associate authorizes termination of this Agreement by the Commonwealth if the Commonwealth determines, in its sole discretion, that the Business Associate has violated a material term of this Agreement.
- (q) **Failure to Perform Obligations.** In the event Business Associate fails to perform its obligations under this Agreement, Covered Entity may immediately discontinue providing PHI to Business Associate. Covered Entity may also, at its option, require Business Associate to submit to a plan of compliance, including monitoring by Covered Entity and reporting by Business Associate, as Covered Entity in its sole discretion determines to be necessary to maintain compliance with this Agreement and applicable laws and agency guidance.
- (r) **Privacy Practices.** Covered Entity will provide Business Associate with all applicable forms, including but not limited to, any form used for Notice of Privacy Practices, Accounting for Disclosures, or Authorization, upon the effective date designated by the Program or Covered Entity. Covered Entity may change applicable privacy practices, documents and forms. The Business Associate shall make reasonable endeavors to implement changes as soon as practicable, but not later than **45 days** from the date of notice of the change. Business Associate shall otherwise comply with all applicable laws and agency guidance pertaining to notices of privacy practices, including the requirements set forth in [45 C.F.R. § 164.520](#).

4. OBLIGATIONS OF COVERED ENTITY.

- (a) **Provision of Notice of Privacy Practices.** Covered Entity shall provide Business Associate with the notice of privacy practices that the Covered Entity produces in accordance with applicable law and agency guidance, as well as changes to such notice. Covered Entity will post on its website any material changes to its notice of privacy practices by the effective date of the material change.
- (b) **Permissions.** Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by individual to use or disclose PHI of which Covered Entity is aware if such changes affect Business Associate's permitted or required uses and disclosures.
- (c) **Restrictions.** Covered Entity shall notify Business Associate in writing of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, as amended, and other applicable laws and applicable agency guidance, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- (d) **Requests.** Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA, HITECH and

SOFTWARE LICENSE REQUIREMENTS AGREEMENT

related regulations, the Privacy Rule or the Security Rule, all as amended, if done by Covered Entity.

5. MISCELLANEOUS.

- (a) **Regulatory References.** A reference in this Addendum to a section in HIPAA, HITECH and related regulations, the Privacy Rule or the Security Rule refers to the most current version of the section in effect or as amended.
- (b) **Amendment.** The parties agree to take such action as is necessary to amend this Addendum from time to time in order to ensure compliance with the requirements of the HIPAA, HITECH and related regulations, the Privacy Rule, the Security Rule and any other applicable law, all as amended.
- (c) **Conflicts.** In the event that any terms of this Agreement are inconsistent with the terms of the Agreement, then the terms of this Agreement shall control.

Attachment 4

Sign-Off Document No. _____, under Agreement No. _____
Between
[Licensor _____], and the Commonwealth of PA, [Agency]
[Licensor _____] Agency-level Deployment

This document becomes, upon its execution by the signatories named below, a legally valid, binding part of Software/Services License Requirements Agreement No. _____ between the Commonwealth and _____(Licensor) and is subject to the terms of that Agreement.

Scope of Deployment (need not be entire agency):

Nature of Data implicated or potentially implicated:

Agency Policies to which Licensor. is subject (incorporated by reference):

Background checks (describe if necessary):

Additional requirements (describe with specificity):

Is Licensor. a Business Associate (yes or no)?

If yes, the attached Business Associates Agreement, as completed by the Agency, is applicable and is hereby incorporated into this Sign-Off Document by reference.

Agency Contact Person signature and Date: _____

[Licensor _____]
Authorized Signatory and Date: _____

Appendix E

Requirements for non-Commonwealth Hosted Applications/Services

The purpose of this appendix is to define requirements for technology solutions procured by the Commonwealth that are not hosted within Commonwealth infrastructure.

A. Hosting Requirements

1. The selected Offeror shall supply all hosting equipment (hardware and software) required for performance of the Contract.
2. The selected Offeror shall provide secure access to all levels of users via the internet.
3. The selected Offeror shall use commercially reasonable resources and efforts to maintain adequate internet connection bandwidth and server capacity.
4. The selected Offeror shall maintain all hosting equipment (hardware and software) and replace as necessary to maintain compliance with the Service Level Agreements as described in **{insert reference to SLA section or appendix }**.
5. The selected Offeror shall monitor, prevent and deter unauthorized system access. Any and all known attempts must be reported to the Commonwealth within the timeframe set out by the RFP. In the event of any impermissible disclosure, loss or destruction of Confidential Information, the receiving Party must immediately notify the disclosing Party and take all reasonable steps to mitigate any potential harm or further disclosure, loss or destruction of such Confidential Information. In addition, pertaining to the unauthorized access, use, release, or disclosure of data, the selected Offeror shall comply with state and federal data breach notifications regulations and is to report security incidents to the Commonwealth within one (1) hour of when the selected Offeror knew of such unauthorized access, use, release, or disclosure of data.
6. The selected Offeror shall allow the Commonwealth or its delegate, at times chosen by the Commonwealth, to review the hosted system's location and security architecture.
7. The selected Offeror staff, directly responsible for day-to-day monitoring and maintenance, shall have industry standard certifications applicable to the environment and system architecture used.
8. The selected Offeror shall locate servers in a climate-controlled environment. Offeror shall house all servers and equipment in an operational environment that meets industry standards including climate control, fire and security hazard detection, electrical needs, and physical security.
9. The selected Offeror shall examine system and error logs daily to minimize and predict system problems and initiate appropriate action.
10. The selected Offeror shall completely test and apply patches for all third-party software products before release.
11. The Licensor shall provide the Commonwealth with its annual American Institute of Certified Public Accountants (AICPA) Attestation Standard (AT) Sec. 101 Service Organization Control ("SOC") 2, Type 2 certification (AT Sec. 101 SOC 2, Type 2), or an equivalent certification approved by the

Commonwealth. Equivalent certifications include, but are not limited to: International Organization of Standards (ISO) 2700x certification; certification under the [Federal Information Security Management Act](#) (FISMA); and AT Sec. 101 SOC 3 (SysTrust/WebTrust) certification. Annually, Licensor shall provide an AT Sec. 101 SOC 2, Type 2 audit report, or its equivalent, to the Commonwealth upon request.

B. System Availability

1. The selected Offeror shall make available the system and any custom software on a **{basis for system availability ex. 24 x 7}** basis as established by the **{insert bid type ex. RFP}**.
2. The selected Offeror shall perform routine maintenance during the planned weekly maintenance period of **{insert weekly maintenance period ex. Daily from Midnight to 5am Eastern time}**. Routine maintenance shall include, but is not limited to, server upgrades/patching, software upgrades/patching and hardware maintenance. **{Remove the following sentence if this is not an availability requirement}** In order to maintain system availability, the Offeror is expected to rollover to a backup site during maintenance periods.
3. The selected Offeror shall perform non-routine maintenance at a mutually agreeable time with **{insert time period for advance notice ex. two (2) weeks}** advance notice to the Commonwealth.
4. From time to time, emergency maintenance may be required to bring down the system. In such situations, if possible, the selected Offeror shall give advance notice, before the system goes down for maintenance, to the Commonwealth. The selected Offeror will limit the emergency maintenance to those situations which require immediate action of bringing down the system that cannot wait for the next scheduled maintenance period. **{Remove the following sentence if this is not an availability requirement}** It is expected that the Offeror will rollover to a backup site during any such emergency maintenance.

C. Security Requirements

1. The selected Offeror shall conduct a third party independent security/vulnerability assessment at its own expense on an annual basis and submit the results of such assessment to the Commonwealth within **{insert time period ex. three (3) business days}**
2. The selected Offeror shall comply with Commonwealth directions/resolutions to remediate the results of the security/vulnerability assessment to align with the standards of the Commonwealth.
3. The selected Offeror shall use industry best practices to protect access to the system with a firewall and firewall rules to prevent access by non-authorized users and block all improper and unauthorized access attempts.
4. The selected Offeror shall use industry best practices to provide system intrusion detection and prevention in order to detect intrusions in a timely manner.
5. The selected Offeror shall use industry best practices to provide virus protection on all servers and network components.

6. The selected Offeror shall limit access to the system and servers and provide access only to those staff that must have access to provide services proposed.
7. The Selected Offeror will provide all Services, using security technologies and techniques in accordance with industry best practices and the Commonwealth's security policies, procedures, and requirements, including those relating to the prevention and detection of fraud and any other inappropriate use or access of systems and networks.

D. Data Storage

1. The selected Offeror shall use industry best practices to update all systems and third party software security patches to reduce security risk. The Selected Offeror shall protect their systems with anti-virus, host intrusion protection, incident response monitoring and reporting, network firewalls, application firewalls, and employ system and application patch management to protect its network and customer data from unauthorized disclosure.
2. The selected Offeror shall be solely responsible for all data storage required.
3. The selected Offeror shall take all necessary measures to protect the data including, but not limited to, the backup of the servers on a daily basis in accordance with industry best practices and encryption techniques.
4. The Selected Offeror agrees to have appropriate controls in place to protect critical or sensitive data and shall employ stringent policies, procedures, and best practices to protect that data particularly in instances where sensitive data may be stored on a Selected Offeror controlled or owned electronic device.
5. The selected Offeror shall utilize a secured backup solution to prevent loss of data, back up all data every day and store backup media. Storage of backup media offsite is required. **{Insert any data retention period for data storage}**. Stored media must be kept in an all-hazards protective storage safe at the worksite and when taken offsite. All back up data and media shall be encrypted.

E. Disaster Recovery

1. The selected Offeror shall employ reasonable disaster recovery procedures to assist in preventing interruption in the use of the system.

F. Data Exchange/Interface Requirements

1. PCI Compliance **{Only use if selected Offeror processes payment card data.}**

The Selected Offeror is obliged to adhere to the Payment Card Industry Data Security Standard (PCI DSS) if it processes payment card data. Moreover, The Selected Offeror certifies that their Information Technology practices conform to and meet current PCI DSS standards as defined by The PCI Security Standards Council at https://www.pcisecuritystandards.org/security_standards/index.php.

The Selected Offeror will monitor these PCI DSS standards and its Information Technology practices and the Selected Offeror will notify the Commonwealth within one (1) week, if its

Requirements for non-Commonwealth Hosted Applications Services Template v1.20170726

practices should not conform to such standards. The SELECTED OFFEROR will provide a letter of certification to attest to meeting this requirement and agrees to the Commonwealth's right-to-audit either by Commonwealth or external 3rd party auditors.

Selected Offeror agrees that it may (1) create, (2) receive from or on behalf of Commonwealth, or (3) have access to, payment card records or record systems containing cardholder data including credit card numbers (collectively, the "Cardholder Data"). Selected Offeror shall comply with the Payment Card Industry Data Security Standard ("PCI-DSS") requirements for Cardholder Data that are prescribed by the payment brands (as appropriate including Visa, MasterCard, American Express, Discover), as they may be amended from time to time (collectively, the "PCIDSS Requirements"). Selected Offeror acknowledges and agrees that Cardholder Data may only be used for assisting in completing a card transaction, for fraud control services, for loyalty programs, or as specifically agreed to by the payment brands, for purposes of this Agreement or as required by applicable law.

G. Adherence to Policy

1. The selected Offeror support and problem resolution solution shall provide a means to classify problems as to criticality and impact and with appropriate resolution procedures and escalation process for each classification of problem.
2. The selected Offeror shall abide by all the Commonwealth's policies (Information Technology Policies (ITPs)).
3. The Selected Offeror shall comply with all pertinent federal and state privacy regulations.

H. Closeout

1. When the contract term expires or terminates, and at any other time at the written request of the Commonwealth; the selected Offeror must promptly return to the Commonwealth all its data (and all copies of this information), in a format agreed to by the Commonwealth, that is in the selected Offeror's possession or control.

Dedicated Contacts

Instructions: Fill in the yellow cells below with the appropriate contact information. The Account Manager and Account Representative can be the same person. The phone number is the only information required for the Service Contact.

	Contact Name	Contact Email	Contact Phone
Account Manager:			
Account Representative:			
Service Contact:			

ACCEPTANCE CERTIFICATE

Purchase order number _____ dated _____ 20 _____, by and between _____ (Contractor)
and _____ (Commonwealth Agency).

ACCEPTANCE CERTIFICATE

The undersigned hereby certifies and represents to, and agrees with, the contractor or its assignee as follows:

1. A unit(s) of the equipment and/or financed item(s) identified on the attached schedule have/has been delivered to _____ and accepted on the date indicated below.
2. The Commonwealth agency had conducted such inspection and/or testing of the unit(s) of the equipment and/or financed item(s) as it deems necessary and appropriate and hereby acknowledges that it accepts the such unit(s) of equipment.
3. The Commonwealth agency is not in any event of default as defined in RFP 6100044346 and no event which, with notice or lapse of item, or both, would become an event of default, has occurred and is continuing at the date thereof.

Commonwealth Agency

Name

Title

Date

SMALL DIVERSE BUSINESS AND SMALL BUSINESS PARTICIPATION SUBMITTAL

A. General Information. The Issuing Office encourages participation by Small Diverse Businesses (SDB) and Small Businesses (SB) as prime contractors and encourages all prime contractors to make significant commitments to use SDBs and SBs as subcontractors and suppliers.

A SB must meet each of the following requirements:

- Δ The business must be for-profit, United States business;
- Δ The business must be independently owned;
- Δ The business may not be dominant in its field of operation;
- Δ The business may not employ more than 100 full-time or full-time equivalent employees;
- Δ The business, by type, may not exceed the following three-year average gross sales:
 - o Procurement Goods and Services: \$20 million
 - o Construction: \$20 million
 - o Building Design Services: \$7 million
 - o Information Technology Goods and Services: \$25 million

For credit in the RFP scoring process, a SB must complete the Department of General Services (DGS)/Bureau of Diversity, Inclusion and Small Business Opportunities (BDISBO) self-certification process. Additional information on this process can be found here: [Small Business Self-Certification.](#)

A SDB is a DGS-verified minority-owned small business, woman-owned small business, veteran-owned small business, service-disabled veteran-owned small business, LGBT-owned small business, Disability-owned small business, or other small businesses as approved by DGS, that are owned and controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages.

For credit in the RFP scoring process, a SDB must complete the DGS verification process. Additional information on this process can be found here: [Small Diverse Business Verification.](#)

An Offeror that qualifies as a SDB or SB and submits a proposal as a prime contractor is not prohibited from being included as a subcontractor in separate proposals submitted by other Offerors. A SDB or SB may be included as a subcontractor with as many prime contractors as it chooses in separate proposals.

The Department's directory of self-certified SBs and DGS/BDISBO-verified SDBs can be accessed here: [Find Small and Small Diverse Businesses.](#)

B. SDB and SB Participation Evaluation. BDISBO has established the minimum evaluation weight for the SDB and SB Participation criterion for this RFP as 20% of the total points.

- 1) The SDB and SB point allocation is based entirely on the percentage of the contract cost committed to SDB and SB participation. If the proposer is a SDB, 100% of the contract cost is allocated to SDB participation. If the proposer is a SB, 100% of the contract cost is allocated to SB participation.
- 2) A total combined SDB/SB commitment less than one percent (1%) of the total contract cost is considered de minimis and will receive no SDB or SB points.
- 3) Based on a maximum total of 200 available points for the SDB/SB Participation Submittal, the scoring mechanism is as follows:

$$\text{SDB and SB Raw Score} = 200 (\text{SDB}\% + (1/3 * \text{SB } \%))$$

- 4) The SDB and SB Raw Score is capped at 200.

The Offeror with the highest raw score will receive 200 points. Each Offeror's raw score will be pro-rated against the Highest Offeror's raw score by applying the formula set forth here:

[RFP Scoring Formula.](#)

- 5) The Offeror's prior performance in meeting its contractual obligations, SDBs and SBs will be considered by BDISBO during the scoring process. To the extent the Offeror has failed to meet prior contractual commitments, BDISBO may recommend to the Issuing Office that the Offeror be determined non-responsible for the limited purpose of eligibility to receive SDB and SB points.

Questions regarding the SDB and SB Programs, including questions about the self-certification and verification processes can be directed to:

Department of General Services

Bureau of Diversity, Inclusion and Small Business Opportunities (BDISBO)

Room 601, North Office Building

Harrisburg, PA 17125

Phone: (717) 783-3119

Fax: (717) 787-7052

[Email: RA-BDISBOVerification@pa.gov](mailto:RA-BDISBOVerification@pa.gov)

[Website: www.dgs.pa.gov](http://www.dgs.pa.gov)

C. SDB/SB Participation Submittal. All Offerors are required to submit the attached SDB/SB Participation Submittal Form in its entirety and related Letter(s) of Intent. **To receive points for SDB or SB participation commitments, the SDB or SB must be listed in the Department's directory of self-certified SBs and DGS/BDISBO-verified SDBs as of the proposal due date and time. BDISBO reserves the right to adjust overall SDB or SB commitments to correctly align with the SDB or SB status of a prime contractor or subcontractor as of the solicitation due date and time, and also to reflect the correct sum of individual subcontracting commitments listed within the Letters of Intent.**

If there are multiple Letters of Intent, please combine them into one document and upload them with your response. The Letter(s) of Intent must be signed by both the Offeror and the SDB or SB for each of the identified SDB or SB subcontractors. Please use the attached Letter of Intent template and include all highlighted information.

Each SDB or SB commitment credited by BDISBO along with the overall percentage of SDB and SB commitments will become contractual obligations of the selected Offeror.

Offerors will not receive credit for any commitments for which information as above is not included in the SDB/SB Participation Submittal. Offerors will not receive credit for stating that they will find a SDB or SB after the contract is awarded.

Equal employment opportunity and contract compliance statements referring to company equal employment opportunity policies or past contract compliance practices do not constitute proof of SDB and/or SB Status or entitle an Offeror to receive credit for SDB or SB participation.

D. Contract Requirements.

All contracts containing SDB and SB Participation must contain the following contract provisions to be maintained through the initial contract term and any subsequent options or renewals:

1. Each SDB and SB commitment which was credited by BDISBO and the total percentage of such SDB and SB commitments made at the time of proposal submittal, BAFO, or contract negotiations, as applicable, become contractual obligations of the selected Offeror upon execution of its contract with the Commonwealth.
2. All SDB and SB subcontractors credited by BDISBO must perform at least 50% of the work subcontracted to them.
3. The individual percentage commitments made to SDBs and SBs cannot be altered without written approval from BDISBO.
4. SDB and SB commitments must be maintained in the event the contract is assigned to another prime contractor.
5. The selected Offeror and each SDB and SB for which a commitment was credited by BDISBO must submit a final, definitive subcontract agreement signed by the selected Offeror and the SDB and/or SB to BDISBO within 30 days of the final execution date of the Commonwealth contract. A Model Subcontract Agreement which may be used to satisfy this requirement is provided as an attachment – **Model Form of Small Diverse and Small Business Subcontract Agreement**. The subcontract must contain:
 - a) The specific work, supplies or services the SDB and/or SB will perform; location for work performed; how the work, supplies or services relate to the project; and the specific timeframe during the initial term and any extensions, options and renewals of the prime contract when the work, supplies or services will be provided or performed.

- b)** The fixed percentage commitment and associated estimated dollar value that each SDB and/or SB will receive based on the final negotiated cost for the initial term of the prime contract.
 - c)** Payment terms indicating that the SDB and/or SB will be paid for work satisfactorily completed within 14 days of the selected Offeror's receipt of payment from the Commonwealth for such work.
 - d)** Commercially reasonable terms for the applicable business/industry that are no less favorable than the terms of the selected Offeror's contract with the Commonwealth and that do not place disproportionate risk on the SDB and/or SB relative to the nature and level of the SDB's and/or SB's participation in the project.
- 6.** If the selected Offeror and a SDB or SB credited by BDISBO cannot agree upon a definitive subcontract within 30 days of the final execution date of the Commonwealth contract, the selected Offeror must notify BDISBO.
- 7.** The Selected Offeror shall complete the Prime Contractor's Quarterly Utilization Report and submit it to the contracting officer of the Issuing Office and BDISBO within ten (10) business days at the end of each quarter of the contract term and any subsequent options or renewals. This information will be used to track and confirm the actual dollar amount paid to SDB and SB subcontractors and suppliers and will serve as a record of fulfillment of the the contractual commitment. If there was no activity during the quarter, the form must be completed by stating "No activity in this quarter." A late fee of \$100.00 per day may be assessed against the Selected Offeror if the Utilization Report is not submitted in accordance with the schedule above.
- 8.** The Selected Offeror shall notify the Contracting Officer of the Issuing Office and BDISBO when circumstances arise that may negatively impact the selected Offeror's ability to comply with SDB and/or SB commitments and to provide a corrective action plan. Disputes will be decided by the Issuing Office and DGS.
- 9.** If the Selected Offeror fails to satisfy its SDB and/or SB commitment(s), it may be subject to a range of sanctions BDISBO deems appropriate. Such sanctions include, but are not limited to, one or more of the following: a determination that the selected Offeror is not responsible under the Contractor Responsibility Program; withholding of payments; suspension or termination of the contract together with consequential damages; revocation of the selected Offeror's SDB and/or SB status; and/or suspension or debarment from future contracting opportunities with the Commonwealth.

**SMALL DIVERSE BUSINESS (SDB) AND SMALL BUSINESS (SB)
PARTICIPATION SUBMITTAL**

Project Description:

RFP #:

Proposal Due Date:

Commonwealth Agency Name:

OFFEROR (Prime Contractor) INFORMATION

Offeror Company's Name:

Offeror Contact Name: **Email:**

Title: **Phone:**

Is your firm a DGS-Verified Small Diverse Business? **Verif Exp:**

Is your firm a DGS-Self-Certified Small Business? **Cert Exp:**

To confirm your company's SDB/SB status and expiration, please click or use the following link:

<http://www.dgs.pa.gov/Businesses/Small Diverse Business Program/Small-Diverse-Business-Verification/Pages/Finding-Small-Diverse-Businesses.aspx#.WVPvzp3D->

SUBCONTRACTING INFORMATION

Percentage Commitment for SDB and SB Subcontracting Participation

Commitment percentages will automatically calculate in the SDB/SB fields below after you have completed the SDB and SB Subcontractor Listing on the "Listing" tab.

After examination of the contract documents, which are made a part hereof as if fully set forth herein, the Offeror commits to the following percentages of the total contract cost for Small Diverse Business and Small Business subcontracting participation.

Small Diverse Business Subcontracting percentage commitment:

0.000%

Small Business Subcontracting percentage commitment:

0.000%

**SMALL DIVERSE BUSINESS (SDB) AND SMALL BUSINESS (SB)
PARTICIPATION SUBMITTAL**

Listing SDB and SB Subcontractors

The Offeror must list in the chart below the SDBs and SBs that will be used to meet the percentage commitments provided above, along with the requested information about each SDB and SB Subcontractor. Include as many pages as necessary. Offerors must also include a Letter of Intent (LOI) for each SDB/SB listed. **To receive points for SDB or SB participation commitments, the SDB or SB must be listed in the Department’s directory of self-certified SBs and DGS/BDISBO-verified SDBs as of the proposal due date.** The directory of self-certified SBs and DGS/BDISBO-verified SDBs can be accessed at the following link:

<http://www.dgs.pa.gov/Businesses/Small Diverse Business Program/Small-Diverse-Business-Verification/Pages/Finding-Small-Diverse-Businesses.aspx#.WVPvzp3D->

SDB/SB name, percent commitment to SDB/SB, and estimated \$ value of commitment will automatically populate in the LOI tabs.

Offeror Company's Name: 0

SDB/SB Subcontractor Name	SDB or SB	Primary Contact Name	Description of Services or Supplies to be Provided	% of Total Contract Cost Committed	Estimated \$ Value of Commitment for Initial Contract Term	Will SDB/SB be used for Options/Renewals? (YES/NO)
	▼					▼
	▼					▼
	▼					▼
	▼					▼
	▼					▼
	▼					▼
	▼					▼
	▼					▼

Total SDB % Commitment: 0.000%

Total SB % Commitment: 0.000%

MM/DD/YYYY

[SDB/SB Contact Name]
[Title]
[SDB/SB Company Name]
[Address]
[City, State, Zip]
[Email]
[Phone #]

Offeror:
RFP:

Dear: [SDB/SB Contact Name]

This letter serves as confirmation of the intent of this offeror to utilize [redacted] on the above-referenced RFP issued by [redacted]

If Offeror is the successful vendor, the referenced SDB/SB shall perform the following work, goods or services during the initial term of the prime contract and during any extensions, options or renewal periods of the prime contract exercised by the Commonwealth, as more specifically set forth below:

[Identify the specific time periods during the initial contract term and any extensions, options and renewals when the work, goods or services will be provided or performed]

Identify the specific work, goods or services the SDB/SB will perform below:

[Identify the specific work, goods or services the SDB/SB will perform]

These services represent [redacted] of the total cost in the Offeror's cost submittal for the initial term of the contract. Dependent on final negotiated contract pricing and actual contract usage or volume, it is expected that above-referenced SDB/SB will receive an estimated [redacted] during the initial contract term.

The above-referenced SDB/SB represents that it meets the small or small diverse business requirements set forth in the RFP and all required documentation has been provided to the Offeror for its SDB/SB submission.

We look forward to the opportunity to serve [redacted] on this project. If you have any questions concerning our small business or small diverse business commitment, please feel free to contact me at the number below.

Sincerely,

X

Offeror Contact Name:
Title:
Offeror Company's Name:

Acknowledged,

X

[SDB/SB Contact Name]
[Title]
[SDB/SB Company Name]

**MODEL FORM OF SMALL DIVERSE AND SMALL BUSINESS
SUBCONTRACTOR AGREEMENT**

This Subcontractor Agreement ("Subcontract") is made effective as of _____, 20__, by and between _____, ("Contractor") and _____, a Small Diverse Business or Small Business ("Subcontractor") (collectively referred to as the "Parties").

RECITALS

Contractor has entered into a contract dated _____ (the "Prime Contract") with the Department of _____ of the Commonwealth of Pennsylvania ("Commonwealth"). Under the Prime Contract, Contractor has agreed to provide certain supplies, services or construction ("Services") to the Commonwealth.

In connection with the Procurement leading to the Prime Contract, Contractor and Subcontractor entered into a letter agreement dated _____ ("Letter of Intent") whereby the Contractor committed a certain percentage of work ("Small Diverse Business or Small Business Commitment") under the Prime Contract to the Subcontractor.

As contemplated by the Letter of Intent and in accordance with the provisions of the Procurement and Prime Contract, the Parties have agreed to enter into this Subcontract to fulfill the Small Diverse Business or Small Business Commitment expressed in the Letter of Intent and as required by the Prime Contract.

DEFINITIONS

The following words and terms when used in this Subcontract shall have the following meanings:

Bureau – The Department’s Bureau of Diversity, Inclusion and Small Business Opportunities.

Contracting Officer – The person authorized to administer and make written determinations for the Commonwealth with respect to the Prime Contract.

Department – The Department of General Services of the Commonwealth of Pennsylvania.

Issuing Office – The department, board, commission or other agency of the Commonwealth of Pennsylvania that issued the Procurement.

Procurement – The Invitation for Bids, Request for Quotes, Request for Proposals or other solicitation and all associated final procurement documentation issued by the Commonwealth to obtain proposals from firms for award of the Prime Contract.

Small Business – A business in the United States which is independently owned, not dominant in its field of operation, employs no more than 100 full-time or full-time equivalent employees, and

earns less than \$7 million in gross annual revenues for building design, \$20 million in gross annual revenues for sales and services and \$25 million in gross annual revenues for those businesses in the information technology sales or service business.

Small Diverse Business – A Department-verified minority-owned small business, woman-owned small business, veteran-owned small business, service-disabled veteran-owned small business, LGBT-owned small business, or disability-owned small business.

AGREEMENT

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

1. Subcontractor Representations. Subcontractor represents and warrants to Contractor as follows:

(a) Subcontractor is self-certified as a Small Business in accordance with the requirements and procedures established by the Bureau of Diversity, Inclusion and Small Business Opportunities; [Subcontractor is also verified as a Small Diverse Business by the Bureau of Diversity, Inclusion and Small Business Opportunities in accordance with the requirements and procedures established by the Bureau;]

(b) Subcontractor possesses the necessary knowledge, experience, expertise, capital, resources and personnel required to perform the Services it will provide under this Subcontract;

(c) Subcontractor (i) is duly organized, validly existing and in good standing under the laws of its state of incorporation or organization, (ii) has the power and authority to own its properties and to carry on business as now being conducted, and (iii) has the power to execute and deliver this Subcontract;

(d) The execution and performance by Subcontractor of the terms and provisions of this Subcontract have been duly authorized by all requisite action, and neither the execution nor the performance of this Subcontract by Subcontractor will violate any provision of law, any order of any court or other agency of government, the organizational documents of Subcontractor or any indenture, agreement or other instrument to which Subcontractor is a party, or by which Subcontractor is bound, or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under, or except as may be provided by this Subcontract, result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Subcontractor pursuant to, any such indenture agreement or instrument;

(e) Subcontractor has obtained all licenses, permits and approvals required to perform the Services it will provide under this Subcontract; and

(f) Subcontractor is not under suspension or debarment by the Commonwealth or any other governmental entity, instrumentality or authority.

2. Contractor Representations. Contractor represents and warrants to Subcontractor as follows:

(a) Contractor (i) is duly organized, validly existing and in good standing under the laws of its state of incorporation or organization, (ii) has the power and authority to own its properties and to carry on business as now being conducted, and (iii) has the power to execute and deliver this Subcontract;

(b) The execution and performance by Contractor of the terms and provisions of this Subcontract by Contractor have been duly authorized by all requisite action, and neither the execution nor the performance of this Subcontract will violate any provision of law, any order of any court or other agency of government, the organizational documents of Contractor or any indenture, agreement or other instrument to which Contractor is a party, or by which Contractor is bound, or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under, or except as may be provided by this Subcontract, result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Contractor pursuant to, any such indenture agreement or instrument;

(c) Contractor has obtained all licenses, permits and approvals required to perform the Services to be provided by Contractor under the Prime Contract; and

(d) Contractor is not under suspension or debarment by the Commonwealth or any other governmental entity, instrumentality or authority.

3. Relationship of the Parties. The provisions of this Subcontract are not intended to create, nor shall be deemed or construed to create, any joint venture, partnership or other relationship between Contractor and Subcontractor, other than that of independent entities contracting with each other solely for the purpose of carrying out the provisions of this Subcontract. Neither of the Parties to this Subcontract, nor any of their respective employees, agents, or other representatives, shall be construed to be the agent, employee or representative of the other party. Neither party shall have the authority to bind the other party, nor shall a party be responsible for the acts or omissions of the other party, unless otherwise stated in this Subcontract. Similarly, the Parties expressly acknowledge that neither the Contractor nor the Subcontractor is an agent, employee or representative of the Commonwealth and each party covenants not to represent itself accordingly.

4. Prime Contract Flow-Down.

(a) General. This agreement is a subcontract under the Prime Contract and all provisions of the Prime Contract and any amendments thereto applicable to the Services being performed by the Subcontractor shall extend to and be binding upon the Parties as part of this Subcontract.

(b) Specific. The Parties agree to comply with the following provisions of the Prime Contract, which are incorporated herein by reference:

- (1) The Americans with Disabilities Act Provisions.
- (2) Nondiscrimination/Sexual Harassment Clause.
- (3) Contractor Integrity Provisions.
- (4) Contractor Responsibility Provisions.

(c)

Termination.

Should the Prime Contract be terminated pursuant to the terms and conditions provided in the Procurement, such termination shall have the same effect on this Subcontract. Payment for Services provided as of the date of termination must be made in accordance with the Section 13 of this Subcontract.

(d)

Audit Provisions.

The Commonwealth shall have the right, at reasonable times and at a site designated by the Commonwealth, to audit the books, documents, and records of the Parties to the extent that the books, documents, and records relate to the Parties' compliance with the provisions set forth in subsection (b) above or to the Small Diverse Business or Small Business Commitment effectuated through this Subcontract. The Parties shall preserve such books, documents, and records for a period of three years from the date of final payment hereunder. The Parties shall give full and free access to all such records to the Commonwealth and/or its authorized representatives.

5. Order of Precedence. The Letter of Intent, Procurement and Prime Contract are incorporated herein by reference into this Subcontract. In the event of any conflict or inconsistency among the individual components of this Subcontract, such conflict or inconsistency shall be resolved by observing the following order of precedence:

- (a) This Subcontract;
- (b) The Letter of Intent;
- (c) The Prime Contract; and
- (d) The Procurement.

6. Further Action. The Parties shall take such actions and complete, execute and deliver any and all documents or instruments necessary to carry out the terms and provisions of this Subcontract, to effectuate the purpose of this Subcontract, and to fulfill the obligations of each party hereunder.

7. Description of Services. Subcontractor will perform the following Services for the Contractor which Contractor is obligated to provide to the Commonwealth under the Prime Contract:

[DESCRIBE IN DETAIL THE SPECIFIC SUPPLIES, SERVICES OR CONSTRUCTION THE SUBCONTRACTOR WILL PROVIDE OR PERFORM]

8. Small Diverse Business or Small Business Commitment. The above-referenced Services represent ___ % of the final negotiated total cost for the initial term of the Prime Contract. Any proposed change to the Small Diverse Business or Small Business Commitment must be submitted in writing to the Bureau which will make a recommendation to the Commonwealth Contracting Officer regarding a course of action.

9. Performance of Services. Subcontractor may not subcontract more than 50% of the work subcontracted to it hereunder without written permission from the Bureau. Subcontractor will perform the Services strictly in accordance with any applicable plans and specifications as contained in the Prime Contract and the reasonable deadlines set by Contractor in view of the requirements of the Prime Contract, and in a good workmanlike manner consistent with industry standards, meeting all applicable local, state and federal laws, regulations and policies.

10. Location of Services. Subcontractor will provide the Services at the following address(es):

11. Timeframe for Performance of Services. The Services will be provided by Subcontractor during the initial term of the Prime Contract, and during any extensions, options or renewal periods of the Prime Contract exercised by the Commonwealth, as more specifically set forth below:

[IDENTIFY THE SPECIFIC TIME PERIODS DURING THE INITIAL CONTRACT TERM AND EXTENSIONS, OPTIONS AND RENEWALS WHEN THE SUBCONTRACTOR WILL PERFORM COMPONENT SERVICES]

12. Pricing of Services. Subcontractor shall provide or perform the Services at the pricing specified in Exhibit ___ to this Subcontract. [ATTACH A BILL OF MATERIALS, RATE CARD OR OTHER APPROPRIATE COST SHEET COVERING THE SERVICES TO BE PROVIDED.]

13. Payment for Services. Contractor shall exert reasonable and diligent efforts to collect prompt payment from the Commonwealth. Contractor shall pay Subcontractor in proportion to amounts received from the Commonwealth which are attributable to the Services performed by Subcontractor. Contractor shall pay Subcontractor within fourteen (14) days after the Contractor receives such payment from the Commonwealth, unless the parties expressly agree upon a different payment schedule or structure as set forth below:

14. Utilization Reports. Both the Contractor and Subcontractor shall complete Quarterly Utilization Reports (or similar type documents containing the same information) and submit them to the Contracting Officer and to the Bureau within ten (10) business days at the end of each quarter. This information will be used to determine the actual dollar amount paid to Subcontractor and will also serve as a record of fulfillment of Contractor's Small Diverse Business and Small Business Commitments. If there was no activity during the quarter, then the form must be completed by stating "No activity in this quarter." A late fee of \$100.00 per day may be assessed against the Contractor if its Utilization Report is not submitted in accordance with the schedule above.

15. Change Orders. If the Commonwealth issues any change order or other formal contract instrument either expanding or limiting the work to be performed under the Prime Contract, the Parties shall accept such Change Orders. Contractor agrees to provide Subcontractor with written notice of any such change orders that affect the Services to be provided by the Subcontractor hereunder as soon as practical after Contractor receives such notice. Any resulting increase or decrease in the Services, Small Diverse Business or Small Business Commitment provided for in Paragraphs 7 or 8 above must be in writing, mutually agreed to, and signed by both Parties and communicated to the Bureau. If the Parties are unable to reach an agreement regarding any adjustment to the Services, Small Diverse Business or Small Business Commitment necessitated by a Commonwealth Change Order, the Parties must submit the matter in writing to the Bureau which will make a recommendation to the Contracting Officer regarding a course of action.

16. Force Majeure. Neither party will incur any liability to the other if its performance of any obligation under this Subcontract is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but are not limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemic and quarantines, general strikes throughout the trade, and freight embargoes. The existence of such causes beyond a party's control shall extend the period for performance to such extent as may be necessary to enable complete performance in the exercise of reasonable diligence after the causes have been removed.

17. Dispute Resolution.

(a) The Parties will attempt to resolve any dispute arising out of or relating to this Subcontract through friendly negotiations.

(1) The Parties expressly acknowledge and confer upon the Bureau and Contracting Officer the authority to adjudicate disputes that the Parties cannot resolve amicably concerning the Parties' compliance with their Small Diverse Business and Small Business Commitments as provided in the Prime Contract and this Subcontract.

(2) The Bureau may recommend to the Contracting Officer a range of sanctions it deems appropriate if the Bureau determines a party has failed to satisfy or perform its Small Diverse Business or Small Business commitment. Such sanctions include, but are not limited to, one or more of the following: a determination that the party is not responsible under the Contractor Responsibility Program; withholding of Prime Contract and/or Subcontract payments; suspension or termination of the Prime Contract and/or Subcontract together with consequential damages; revocation of the party's Small Business self-certification status and/or Small Diverse Business verification status; and/or suspension or debarment of one or both parties from future contracting opportunities with the Commonwealth.

(3) The Parties' acknowledge that their prior performance in meeting their Small Diverse Businesses and Small Businesses contractual obligations will be considered by the Bureau during future procurement scoring processes. To the extent a party has failed to meet prior contractual commitments, the Bureau may recommend to the Issuing Office that the party be determined non-responsible for the limited purpose of eligibility to receive SDB/SB points or consideration as a qualified Small Diverse Business or Small Business.

(b) Nothing herein shall be construed to prevent either party from seeking such relief as provided by law in a court or tribunal of competent jurisdiction.

18. Notices. Any written notice to any party under this Subcontract 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, and sent to the following:

If to Contractor:

If to Subcontractor:

19. Waiver. No waiver by either party of any breach of this Subcontract shall be deemed to waive any other breach. No acceptance of payment or performance after any breach shall be deemed a waiver of any breach. No failure or delay to exercise any right by a party upon another's default shall prevent that party from later exercising that right, nor shall such failure or delay operate as a waiver of any default.

20. Severability. If any provision of this Subcontract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Subcontract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

21. Assignment. Neither party may assign or transfer this Subcontract without the prior written consent of the Commonwealth. If Contractor's Prime Contract with the Commonwealth is assigned to another contractor, the new contractor must maintain the Small Diverse Business and Small Business Commitment set forth in the Prime Contract as implemented through this Subcontract.

22. Applicable Law. This Subcontract shall be governed by the laws of the Commonwealth of Pennsylvania.

23. Entire Agreement. This Subcontract constitutes the entire agreement of the Parties regarding the subject of this Subcontract as of the date of execution. No other agreement or understandings, verbal or written, expressed or implied, are a part of this Subcontract unless specified herein.

24. Amendment. This Subcontract may be modified or amended only if made in writing and signed by both Parties. Any proposed change to the Contractor's Small Diverse Business or Small Business Commitment to Subcontractor must be submitted in writing to the Bureau which will make a recommendation to the Contracting Officer regarding a course of action.

25. Binding Effect. This Subcontract shall be binding upon, and inure to the benefit of, the Parties and their respective heirs, representatives, successors and assigns.

26. Counterparts. This Subcontract may be executed by the Parties in counterparts, each of which together shall be deemed an original but all of which together shall constitute one and the same instrument. A party's delivery of a duly executed signature page of this Subcontract in electronic format shall have the same force and effect as delivery of an original signature page.

ADDITIONAL TERMS AND CONDITIONS

[THE PARTIES MAY INCLUDE ADDITIONAL TERMS AND CONDITIONS APPROPRIATE FOR THE SERVICES TO BE PROVIDED SO LONG AS THEY ARE COMMERCIALY REASONABLE TERMS FOR THE APPLICABLE BUSINESS OR INDUSTRY, ARE NO LESS FAVORABLE THAN THE TERMS OF THE PRIME CONTRACT, AND DO NOT PLACE DISPROPORTIONATE RISK ON THE SMALL DIVERSE BUSINESS OR SMALL BUSINESS RELATIVE TO THE NATURE AND LEVEL OF THE SMALL DIVERSE BUSINESS' OR SMALL BUSINESS' PARTICIPATION IN THE PROJECT. SUCH TERMS MAY INCLUDE:

Background Checks
Confidentiality/Disclosure of Information
Data Security

Insurance
Invoicing Requirements
Environmental Protection
Intellectual Property Rights
Record Retention/Audits
Service Level Agreements (SLAs) (consistent with Prime Contract SLAs)
Public Works Construction Requirements (including Bonding, E-Verify, Prevailing Wage, and Prompt Payment provisions)

IN WITNESS WHEREOF, the Parties hereto have caused this Subcontract to be executed by their duly authorized officers as set forth below.

Contractor

Subcontractor

Insert Company Name

Insert Company Name

By: _____
Signature

By: _____
Signature

Printed Name

Printed Name

Title

Title

Date

Date

RECIPROCAL LIMITATIONS ACT REQUIREMENTS

Please Complete Applicable Portion of Pages 3 & 4 and Return with Bid.

NOTE: These Requirements Do Not Apply To Bids Under \$10,000.00

I. REQUIREMENTS

- A.** The Reciprocal Limitations Act requires the Commonwealth to give preference to those bidders offering supplies produced, manufactured, mined or grown in Pennsylvania as against those bidders offering supplies produced, manufactured, mined or grown in any state that gives or requires a preference to supplies produced, manufactured, mined or grown in that state. The amount of the preference shall be equal to the amount of the preference applied by the other state for that particular supply.

The following is a list of states which have been found by the Department of General Services to have applied a preference for in-state supplies and the amount of the preference:

	STATE	PREFERENCE
1.	Alaska	7% (applies only to timber, lumber, and manufactured lumber products originating in the state)
2.	Arizona	5% (construction materials produced or manufactured in the state only)
3.	Hawaii	10%
4.	Illinois	10% for coal only
5.	Iowa	5% for coal only
6.	Louisiana	4% meat and meat products 4% catfish 10% milk & dairy products 10% steel rolled in Louisiana 7% all other products
7.	Montana	5% for residents * 3% for non-residents* *offering in-state goods, supplies, equipment and materials
8.	New Mexico	5%
9.	New York	3% for purchase of food only
10.	Oklahoma	5%
11.	Virginia	4% for coal only
12.	Washington	5% (fuels mined or produced in the state only)
13.	Wyoming	5%

- B.** The Reciprocal Limitations Act requires the Commonwealth to give preference to those bidders offering printing performed in Pennsylvania as against those bidders offering printing performed in any state that gives or requires a preference to printing performed in that state. The amount of the preference shall be equal to the amount of the preference applied by the other state for that particular category of printing.

The following is a list of states which have been found by the Department of General Services to have applied a preference for in-state printing and the amount of the preference:

	STATE	PREFERENCE
1.	Hawaii	15%
2.	Idaho	10%
3.	Louisiana	3%
4.	Montana	8%
5.	New Mexico	5%
6.	Wyoming	10%

- C.** The Reciprocal Limitations Act, also requires the Commonwealth to give resident bidders a preference against a nonresident bidder from any state that gives or requires a preference to bidders from that state or exclude bidders from states that exclude nonresident bidders. The amount of the preference shall be equal to the amount of the preference applied by the state of the nonresident bidder. The following is a list of the states which have been found by the Department of General Services to have applied a preference for in-state bidders and the amount of the preference:

STATE	PREFERENCE
1. Alaska	5% (supplies only)
2. Arizona	5% (construction materials from Arizona resident dealers only)
3. California	5% (for supply contracts only in excess of \$100,000.00)
4. Connecticut	10% (for supplies only)
5. Montana	3%
6. New Mexico	5% (for supplies only)
7. South Carolina	2% (under \$2,500,000.00) 1% (over \$2,500,000.00)
	This preference does not apply to construction contracts nor where the price of a single unit exceeds \$10,000.
8. West Virginia	2.5% (for the construction, repair or improvement of any buildings)
9. Wyoming	5%

STATE	PROHIBITION
1. New Jersey	For supply procurements or construction projects restricted to Department of General Services Certified Small Businesses, New Jersey bidders shall be excluded from award even if they themselves are Department of General Services Certified Small Businesses.

D. The Reciprocal Limitations Act also requires the Commonwealth not to specify, use or purchase supplies which are produced, manufactured, mined or grown in any state that prohibits the specification for, use, or purchase of such items in or on its public buildings or other works, when such items are not produced, manufactured, mined or grown in such state. The following is a list of the states which have been found by the Department of General Services to have prohibited the use of out-of-state supplies:

STATE	PROHIBITION
1. Alabama	Only for printing and binding involving "messages of the Governor to the Legislature", all bills, documents and reports ordered by and for the use of the Legislature or either house thereof while in session; all blanks, circulars, notices and forms used in the office of or ordered by the Governor, or by any state official, board, commission, bureau or department, or by the clerks of the supreme court . . . /and other appellate courts/; and all blanks and forms ordered by and for the use of the Senate and Clerk or the House of Representatives, and binding the original records and opinions of the Supreme Court . . . /and other appellate courts/
2. Georgia	Forest products only
3. Indiana	Coal
4. Michigan	Printing
5. New Mexico	Construction
6. Ohio	Only for House and Senate bills, general and local laws, and joint resolutions; the journals and bulletins of the Senate and house of Representatives and reports, communications, and other documents which form part of the journals; reports, communications, and other documents ordered by the General Assembly, or either House, or by the executive department or elective state officers; blanks, circulars, and other work for the use of the executive departments, and elective state officers; and opinions of the Attorney General.
7. Rhode Island	Only for food for state institutions.

*If the bid discloses that the bidder is offering to supply one of the above-listed products that is manufactured, mined, or grown in the listed state, it shall be rejected. Contractors are prohibited from supplying these items from these states.

II. CALCULATION OF PREFERENCE

In calculating the preference, the amount of a bid submitted by a Pennsylvania bidder shall be reduced by the percentage preference which would be given to a nonresident bidder by its state of residency (as found by the Department of General Services in Paragraph C_{above}). Similarly, the amount of a bid offering Pennsylvania goods, supplies, equipment or materials shall be reduced by the percentage preference which would be given to another bidder by the state where the goods, supplies, equipment or materials are produced, manufactured, mined or grown (as found by the Department of General Services in Paragraphs A and B above).

THIS FORM MUST BE COMPLETED AND RETURNED WITH THE BID

III. STATE OF MANUFACTURE

All bidders must complete the following chart by listing the name of the manufacturer and the state (or foreign country) of manufacture for each item. If the item is domestically produced, the bidder must indicate the state in the United States where the item will be manufactured. **This chart must be completed and submitted with the bid or no later than two (2) business days after notification from the Issuing Office to furnish the information. Failure to complete this chart and provide the required information prior to the expiration of the second business day after notification shall result in the rejection of the bid.**

ITEM NUMBER	NAME OF MANUFACTURER	STATE (OR FOREIGN COUNTRY) OF MANUFACTURE

IV. BIDDER'S RESIDENCY

A. In determining whether the bidder is a nonresident bidder from a state that gives or requires a preference to bidders from that state, the address given on the first page of this invitation to bid shall be used by the Commonwealth. If that address is incorrect, or if no address is given, the correct address should be provided in the space below:

Correct Address: _____

- B.** In order to claim the preference provided under Section I.B., Pennsylvania resident bidders must complete the following or have such information on file with the Issuing Office:
1. Address of bidder's bona fide establishment in Pennsylvania at which it was transacting business on the date when bids for this contract/requisition were first solicited: _____
 2. **a.** If the bidder is a corporation:
 - (1) The corporation is or is not incorporated under the laws of the Commonwealth of Pennsylvania.
 - (a) If the bidder is incorporated under the laws of the Commonwealth of Pennsylvania, provide date of incorporation: _____
 - (b) If the bidder is not incorporated under the laws of the Commonwealth of Pennsylvania, it must have a certificate of authority to do business in the Commonwealth of Pennsylvania from the Pennsylvania Department of State as required by the Pennsylvania Business Corporation Law (15 P.S. §2001). Provide date of issuance of certificate of authority: _____
 - (2) The corporation is or is not conducting business in Pennsylvania under an assumed or fictitious name. If the bidder is conducting business under an assumed or fictitious name, it must register the fictitious name with the Secretary of the Commonwealth and the office of the prothonotary of the county wherein the registered office of such corporation is located as required by the Fictitious Corporate Name Act, as amended 15 P.S. §51 et seq. Corporate bidders conducting business under an assumed or fictitious name must provide date of registry of the assumed or fictitious name: _____
 - b.** If the bidder is a partnership:
 - (1) The partnership is or is not conducting business in Pennsylvania under an assumed or fictitious name. If the bidder is conducting business under an assumed or fictitious name, it must file with the Secretary of the Commonwealth and the office of the prothonotary the county wherein the principal place of business is located as required by the Fictitious Name Act of May 24, 1945, P.L. 967, as amended 54 P.S. §28.1. Partnerships conducting business under an assumed or fictitious name must provide the date of filing of the assumed or fictitious name with the Secretary of the Commonwealth: _____
 - (2) The partnership is or is not a limited partnership formed under the laws of any jurisdiction other than the Commonwealth of Pennsylvania. If the bidder is an Out-of-state limited partnership, it must register with the Pennsylvania Department of State as required by the Act of July 10, 1981, P.L. 237, as amended, 59 Pa. C.S.A. §503. Out-of-state limited partnerships must provide the date of registry with the Pennsylvania Department of State: _____
 - c.** If the bidder is an individual:

He or she is or is not conducting business under an assumed or fictitious name. If the bidder is conducting business under an assumed or fictitious name, he or she must file with the Secretary of the Commonwealth and the office of the prothonotary in the county wherein the principal place of business is located as required by the Fictitious Name Act of May 24, 1945, P.L. 967, as amended, 54 P.S. §28.1. Individuals conducting business under an assumed or fictitious name must provide the date of filing of the assumed or fictitious name with the Secretary of the Commonwealth: _____

IRAN FREE PROCUREMENT CERTIFICATION FORM

(Pennsylvania’s Procurement Code Sections 3501-3506, 62 Pa.C.S. §§ 3501-3506)

To be eligible for an award of a contract with a Commonwealth entity for goods or services worth at least \$1,000,000 or more, a vendor must either: a) certify it is **not** on the current list of persons engaged in investment activities in Iran created by the Pennsylvania Department of General Services (“DGS”) pursuant to Section 3503 of the Procurement Code **and** is eligible to contract with the Commonwealth under Sections 3501-3506 of the Procurement Code; or b) demonstrate it has received an exception from the certification requirement for that solicitation or contract pursuant to Section 3503(e).

To comply with this requirement, please insert your vendor or financial institution name and complete **one** of the options below. Please note: Pennsylvania law establishes penalties for providing false certifications, including civil penalties equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts. (Section 3503 of the Procurement Code.)

OPTION #1 - CERTIFICATION

I, the official named below, certify I am duly authorized to execute this certification on behalf of the vendor/financial institution identified below, and the vendor/financial institution identified below is **not** on the current list of persons engaged in investment activities in Iran created by DGS **and** is eligible to contract with the Commonwealth of Pennsylvania Sections 3501-3506 of the Procurement Code.

<i>Vendor Name/Financial Institution (Printed)</i>	
<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	<i>Date Executed</i>

OPTION #2 – EXEMPTION

Pursuant to Procurement Code Section 3503(e), DGS may permit a vendor/financial institution engaged in investment activities in Iran, on a case-by-case basis, to enter into a contract for goods and services.

If you have obtained a written exemption from the certification requirement, please fill out the information below, and attach the written documentation demonstrating the exemption approval.

<i>Vendor Name/Financial Institution (Printed)</i>	
<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	<i>Date Executed</i>

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 containing information believed to be exempt from public disclosure, including 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. In addition, in order to protect the safety and security of individuals, infrastructure, and information technology systems, the Commonwealth requires third parties to designate as confidential any information submitted by the third parties that, if disclosed, would be reasonably likely to jeopardize safety or security.

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 Pennsylvania's *Right-to-Know Law*, [65 P.S. §§ 67.101—67.3104](#), or laws relating to trade secret or confidential proprietary information.

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, quote, grant application, statement of work, technical schematics):

Please provide a brief explanation of why the materials are being submitted to the Commonwealth (e.g. response to bid, RFP or RFQ #12345, application for grant XYZ being offered by the Department of Health, documents required to be submitted under law ABC):

Please indicate if any information has been included that you believe is exempt from public disclosure by checking the appropriate box below: (*Note: Financial information submitted in response to an RFP or IFB to demonstrate economic capability is exempt from public disclosure in accordance with Section 708(b)(26) of the Right-to-Know Law, 65 P.S. 67.708(b)(26).*)

- No information has been included that I believe is exempt from public disclosure.**
- Information has been included that I believe is exempt from public disclosure.**

Please provide a list detailing which portions of the material being submitted you believe are exempt from public disclosure. This includes trade secret, confidential or proprietary information, or information that if disclosed would be reasonably likely to jeopardize the safety or security of an individual, infrastructure, or information technology system. Please provide an explanation of why you think those materials constitute a trade secret, confidential or proprietary information, or why disclosure of those materials would be reasonably likely to jeopardize safety or security. 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: Without substantial justification, the following information will not be considered a trade secret or confidential proprietary information:

- Any information submitted as part of a vendor’s cost response.
- Information submitted as part of a vendor’s technical response or statement of work that does not implicate safety and security, or pertain to specific business practices or product specification.
- Information submitted as part of a vendor’s technical or small diverse business and small 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.

<u>Page Number</u>	<u>Description</u>	<u>Explanation</u>

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, confidential or proprietary information, or information that if disclosed would be reasonably likely to jeopardize the safety or security of an individual, infrastructure or information technology system, where that data or information 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, confidential or proprietary, or would be reasonably likely to result in a safety or security risk if disclosed. The undersigned also agrees to 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 that the information is trade secret, confidential, proprietary or is reasonably likely to result in a safety or security risk if disclosed, if the Commonwealth determines that the undersigned has not met the burden of establishing that the information constitutes a trade secret, confidential, or is otherwise exempt. The undersigned also acknowledges that if only a certain part of the submitted material is found to constitute a trade secret, is confidential or proprietary, or is otherwise exempt, 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

LOBBYING CERTIFICATION FORM

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure of Lobbying Activities, which can be found at:

<http://www.whitehouse.gov/sites/default/files/omb/assets/omb/grants/sfillin.pdf>

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed under *Section 1352, Title 31, U. S. Code*. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than **\$100,000** for such failure.

SIGNATURE: _____

TITLE: _____ DATE: _____

COSTARS PROGRAM CLAUSE

COSTARS Purchasers. Section 1902 of the Commonwealth Procurement Code, 62 Pa.C.S. § 1902 (“Section 1902”), authorizes local public procurement units and state-affiliated entities (together, “COSTARS Members”) to participate in Commonwealth procurement contracts that the Department of General Services (“DGS”) may choose to make available to COSTARS Members. DGS has identified this Contract as one which will be made available for COSTARS Members’ participation.

A. Only those entities registered with DGS are authorized to participate as COSTARS Members in this Contract. A COSTARS Member may be either a local public procurement unit or a state-affiliated entity.

1. A “local public procurement unit” is:

- Any political subdivision (local government unit), such as a municipality, school district, or commission;
- Any public authority (including authorities formed under the Municipality Authorities Act of 1955 or other authorizing legislation, such as the Public Transportation Law or the Aviation Code);
- Any tax-exempt, nonprofit educational institution or organization;
- Any tax-exempt, nonprofit public health institution or organization;
- Any nonprofit fire, rescue, or ambulance company; and
- Any other entity that spends public funds for the procurement of supplies, services, and construction (such as a council of governments, an area government, or an organization that receives public grant funds).

The Department reserves the right to review and determine eligible applicants as local public procurement units on a case-by-case basis.

2. A state-affiliated entity is a Commonwealth authority or other Commonwealth entity that is not a Commonwealth agency. The term includes:

- The Pennsylvania Turnpike Commission;
- The Pennsylvania Housing Finance Agency;
- The Pennsylvania Municipal Retirement System;
- The Pennsylvania Infrastructure Investment Authority;
- The State Public School Building Authority;
- The Pennsylvania Higher Education Facilities Authority, and
- The State System of Higher Education.

The COSTARS Program is not available for use by Executive Agencies and Independent Agencies as defined by the Commonwealth Procurement Code, or any agency or entity using funds appropriated to the Department of General Services through Capital Budget Project Itemization legislation for the procurement of furniture, fixtures, and equipment.

3. A complete list of local public procurement units and state-affiliated entities that have registered with DGS and that are authorized to procure items from the Contract can be found at <http://www.costars.state.pa.us/SearchCOMember.aspx>.

- B. COSTARS Members have the option to purchase from this Contract, from any DGS contract established exclusively for COSTARS Members in accordance with the requirements of Section 1902, from any other cooperative procurement contracts, or from their own procurement contracts established in accordance with the applicable laws governing such procurements. The Contractor understands and acknowledges that there is no guarantee that a COSTARS Member will place an order under this Contract, and that the decision to procure from this Contract is within the sole discretion of each COSTARS Member.
- C. DGS is acting as a facilitator for COSTARS Members who may wish to purchase under this Contract. COSTARS Members that participate in this Contract and issue purchase orders (“POs”) to Contractors are third party beneficiaries who have the right to sue and be sued for breach of this Contract without joining the Commonwealth or DGS as a party. The Commonwealth will not intervene in any action between a Contractor and a COSTARS Member unless substantial interests of the Commonwealth are involved.
- D. COSTARS Members electing to participate in this Contract will order items directly from the Contractor and be responsible for payment directly to the Contractor.
- E. Those Contractors electing to permit COSTARS Members to procure from this Contract shall pay the Required Administrative Fee applicable to the Contractor’s classification:

Contractor Classification	Required Administrative Fee
DGS-verified Small Diverse Business Bidder	\$166
DGS Self-Certified Small Business Bidder	\$500
All Other Bidders	\$1,500

1. Each bidder electing to permit COSTARS Members to participate in the Contract must submit the COSTARS Program Election to Participate form with its bid submittal and pay the applicable Administrative Fee upon Contract award in order to sell the awarded items/services to COSTARS Members. If the bidder is a Department of General Services Self-Certified Small Business or Department of General Services-verified Small Diverse Business, a copy of its active Small Business Contracting Program certificate must be included with the bid submittal.
2. At the beginning of each Contract year and upon any Contract renewal, the Contractor shall submit a check for the required amount, payable to “Commonwealth of PA”. The Contractor must pay the Administrative Fee at each contract renewal date to continue to sell the awarded items/services to COSTARS Members.

- F. DGS has registered the COSTARS name and logo (together, the “COSTARS Brand”) as a trademark with the Pennsylvania Department of State. Therefore, the Contractor may use the COSTARS Brand only as permitted under in this Subsection.
1. The Contractor shall pay the Administrative Fee covering its participation in the program, including without limitation any use of the COSTARS Brand, for each year of the Contract period. The fee is payable upon Contract award and prior to the renewal date for each succeeding Contract period.
 2. DGS grants the Contractor a nonexclusive license to use the COSTARS Brand, subject to the following conditions:
 - a. The Contractor agrees not to transfer to any third party, including without limitation any of its subcontractors or suppliers, any privileges it may have to use the COSTARS Brand under this Contract.
 - b. The Contractor agrees not to use the COSTARS Brand to represent or imply any Commonwealth endorsement or approval of its products or services.
 - c. The Contractor is permitted to use the COSTARS Brand in broadcast, or Internet media solely in connection with this Contract and any other Contract with the Commonwealth under which it has agreed to make sales to COSTARS Purchasers. The Contractor may use the COSTARS Brand on business cards, brochures, and other print publications so long as the purpose is to identify the Contractor as a COSTARS vendor, and only so long as the required Contract fee is kept current.
 - d. Should this Contract terminate for any reason, the Contractor agrees promptly to remove the COSTARS Brand from any and all print and electronic media and to refrain from using the COSTARS Brand for any purpose whatsoever from the date of Contract termination forward.
 - e. The Contractor agrees to defend, indemnify, and hold harmless the Commonwealth of Pennsylvania and DGS from and against all claims, demands, liabilities, obligations, costs, and expenses of any nature whatsoever arising out of or based upon the Contractor’s use of the COSTARS Brand.
 - f. The Contractor agrees it has no property rights in the use of the COSTARS Brand by virtue of this nonexclusive license. The Contractor expressly waives any claims, including without limitation due process claims that may otherwise be available under the law in the event of any dispute involving these terms of use.
- G. The Contractor shall furnish to the DGS COSTARS Program Office a quarterly electronic Contract sales report detailing the previous quarter’s Contract purchasing activity, using the form and in the format prescribed by DGS. The Contractor shall submit its completed quarterly report no later than the fifteenth calendar day of the succeeding Contract quarter.
1. The Contractor shall submit the reports through the web-based COSTARS Suppliers’ Gateway of the PA Supplier Portal at

<https://pasupplierportal.state.pa.us/irj/portal/anonymous>, Enterprise Applications. If a Contractor does not have access to the Internet, the Contractor shall send the reports, using the form and in the format prescribed by DGS, on compact disc via US Postal Service to the DGS COSTARS Program Office, Bureau of Procurement, 6th Floor Forum Place, 555 Walnut Street, Harrisburg, PA 17101-1914.

2. For each PO received, the Contractor shall include on the report the name and address of each COSTARS-Registered Purchaser that has used the Contract along with the sales date, and dollar volume of sales to the specific Purchaser for the reporting period.
3. DGS may suspend the Contractor's participation in the COSTARS Program for failure to provide the Quarterly Sales Report within the specified time.

H. Additional information regarding the COSTARS Program is available on the DGS COSTARS Website at www.costars.state.pa.us.

1. If the Contractor is aware of any qualified entity not currently registered and wishing to participate in the COSTARS Program, please refer the potential purchaser to the DGS COSTARS Website at www.costars.state.pa.us, where it may register by completing the online registration form and receiving DGS confirmation of its registration. To view a list of currently-registered COSTARS member entities, please visit the COSTARS website.
2. Direct all questions concerning the COSTARS Program to:

Department of General Services
COSTARS Program
555 Walnut Street, 6th Floor
Harrisburg, PA 17101
Telephone: 1-866-768-7827
E-mail GS-PACostars@pa.gov

Participating Addendum with an External Procurement Activity

Participating Addendum with an External Procurement Activity. Section 1902 of the *Commonwealth Procurement Code*, 62 Pa.C.S. § 1902, permits external procurement activities to participate in cooperative purchasing agreements for the procurement of services, supplies or construction.

A. **Definitions.** The following words and phrases have the meanings set forth in this provision:

1. *External procurement activity:* The term, as defined in 62 Pa. C. S. § 1901, means a “buying organization not located in the Commonwealth [of Pennsylvania] which if located in this Commonwealth would qualify as a public procurement unit [under 62 Pa. C.S. §1901]. An agency of the United States is an external procurement activity.”
2. *Participating addendum:* A bilateral agreement executed by the Contractor and an external procurement activity that clarifies the operation of the Contract for the external procurement activity concerned. The terms and conditions in any participating addendum shall affect only the procurements of the purchasing entities under the jurisdiction of the external procurement activity signing the participating addendum.
3. *Public procurement unit:* The term, as defined in 62 Pa. C. S. § 1901, means a “local public procurement unit or purchasing agency.”
4. *Purchasing agency:* The term, as defined in 62 Pa. C. S. § 103, means a “Commonwealth agency authorized by this part or any other law to enter into contracts for itself or as the agent of another Commonwealth agency.”

B. **General.** A participating addendum shall incorporate the terms and conditions of the Contract resulting from this RFP. The Contractor shall not be required to enter into any participating addendum.

C. **Additional Terms.**

1. A participating addendum may include additional terms that are required by the law governing the external procurement activity.
2. A participating addendum may include new, mutually agreed upon terms that clarify ordering procedures specific to a participating external procurement activity.
3. The construction and effect of any participating addendum shall be governed by and construed in accordance with the laws governing the external procurement activity.

4. If an additional term requested by the external procurement activity will result in an increased cost to the Contractor, the Contractor shall adjust its pricing up or down accordingly.

D. Prices.

1. **Price adjustment.** For any costs affecting the percent markup that the Contractor will or will not incur or that differ from costs incurred or not incurred in the fulfillment of this Contract, the Contractor shall adjust its pricing up or down accordingly. These costs may include, but not be limited to:
 - a) State and local taxes;
 - b) Unemployment and workers compensation fees;
 - c) E-commerce transaction fees; and
 - d) Costs associated with additional terms, established pursuant to this **Part I, Section I-32.**
2. The Contractor's pricing for an external procurement activity shall be firm and fixed for the duration of the initial term of the Contract. After the initial term of the Contract, if the Contract is renewed, the Contractor's pricing may be adjusted up or down based on market conditions only with the mutual agreement of both the Contractor and any external procurement activity.

E. Usage Reports on External Procurement Activities. The Contractor shall furnish to the Contracting Officer an electronic quarterly usage report, preferably in spreadsheet format no later than the fifteenth calendar day of the succeeding calendar quarter. Reports shall be e-mailed to the Contracting Officer for the Contract. Each report shall indicate the name and address of the Contractor, contract number, period covered by the report, the name of the external procurement activity that has used the Contract and the total volume of sales to the external procurement activity for the reporting period.

F. Electronic Copy of Participating Addendum. The Contractor, upon request of the Contracting Officer, shall submit **one** electronic copy of the participating addendum to the Contracting Officer within **ten** days after request.

DOMESTIC WORKFORCE UTILIZATION CERTIFICATION

To the extent permitted by the laws and treaties of the United States, each proposal will be scored for its commitment to use the domestic workforce in the fulfillment of the contract. Maximum consideration will be given to those offerors who will perform the contracted direct labor exclusively within the geographical boundaries of the United States or within the geographical boundaries of a country that is a party to the World Trade Organization Government Procurement Agreement. Those who propose to perform a portion of the direct labor outside of the United States and not within the geographical boundaries of a party to the World Trade Organization Government Procurement Agreement will receive a correspondingly smaller score for this criterion. In order to be eligible for any consideration for this criterion, offerors must complete and sign the following certification. This certification will be included as a contractual obligation when the contract is executed. Failure to complete and sign this certification will result in no consideration being given to the offeror for this criterion.

I, _____ [title] of _____ [name of Contractor] a _____ [place of incorporation] corporation or other legal entity, ("Contractor") located at _____ [address], having a Social Security or Federal Identification Number of _____, do hereby certify and represent to the Commonwealth of Pennsylvania ("Commonwealth") (Check **one** of the boxes below):

All of the direct labor performed within the scope of services under the contract will be performed exclusively within the geographical boundaries of the United States or one of the following countries that is a party to the World Trade Organization Government Procurement Agreement: Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Chinese Taipei, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Liechtenstein, Lithuania, Luxemburg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom

OR

_____ percent (____%) [Contractor must specify the percentage] of the direct labor performed within the scope of services under the contract will be performed within the geographical boundaries of the United States or within the geographical boundaries of one of the countries listed above that is a party to the World Trade Organization Government Procurement Agreement. Please identify the direct labor performed under the contract that will be performed outside the United States and not within the geographical boundaries of a party to the World Trade Organization Government Procurement Agreement and identify the country where the direct labor will be performed: _____

[Use additional sheets if necessary]

The Department of General Services [or other purchasing agency] shall treat any misstatement as fraudulent concealment of the true facts punishable under Section 4904 of the *Pennsylvania Crimes Code*, Title 18, of Pa. Consolidated Statutes.

Attest or Witness:

Corporate or Legal Entity's Name

Signature/Date

Signature/Date

Printed Name/Title

Printed Name/Title

Offeror's Representations and Authorizations. By submitting its proposal, each Offeror understands, represents, and acknowledges that:

- A.** All of the Offeror's information and representations in the proposal are material and important, and the Issuing Office may rely upon the contents of the proposal in awarding the contract(s). The Commonwealth shall treat any misstatement, omission or misrepresentation as fraudulent concealment of the true facts relating to the Proposal submission, punishable pursuant to 18 Pa. C.S. § 4904.
- B.** The Offeror has arrived at the price(s) and amounts in its proposal independently and without consultation, communication, or agreement with any other Offeror or potential offeror.
- C.** The Offeror has not disclosed the price(s), the amount of the proposal, nor the approximate price(s) or amount(s) of its proposal to any other firm or person who is an Offeror or potential offeror for this RFP, and the Offeror shall not disclose any of these items on or before the proposal submission deadline specified in the RFP.
- D.** The Offeror has not attempted, nor will it attempt, to induce any firm or person to refrain from submitting a proposal on this contract, or to submit a proposal higher than this proposal, or to submit any intentionally high or noncompetitive proposal or other form of complementary proposal.
- E.** The Offeror makes its proposal in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive proposal.
- F.** To the best knowledge of the person signing the proposal for the Offeror, the Offeror, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last **four** years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding or proposing on any public contract, except as the Offeror has disclosed in its proposal.
- G.** To the best of the knowledge of the person signing the proposal for the Offeror and except as the Offeror has otherwise disclosed in its proposal, the Offeror has no outstanding, delinquent obligations to the Commonwealth including, but not limited to, any state tax liability not being contested on appeal or other obligation of the Offeror that is owed to the Commonwealth.
- H.** The Offeror is not currently under suspension or debarment by the Commonwealth, any other state or the federal government, and if the Offeror cannot so certify, then it shall submit along with its proposal a written explanation of why it cannot make such certification.

- I.** The Offeror has not made, under separate contract with the Issuing Office, any recommendations to the Issuing Office concerning the need for the services described in its proposal or the specifications for the services described in the proposal.
- J.** Each Offeror, by submitting its proposal, authorizes Commonwealth agencies to release to the Commonwealth information concerning the Offeror's Pennsylvania taxes, unemployment compensation and workers' compensation liabilities.
- K.** Until the selected Offeror receives a fully executed and approved written contract from the Issuing Office, there is no legal and valid contract, in law or in equity, and the Offeror shall not begin to perform.
- L.** The Offeror is not currently engaged, and will not during the duration of the contract engage, in a boycott of a person or an entity based in or doing business with a jurisdiction which the Commonwealth is not prohibited by Congressional statute from engaging in trade or commerce.



June 8, 2018

Thomas M. Schwartz
Issuing Officer
Bureau of Procurement
Commonwealth of Pennsylvania, Department of General Services
6th Floor Forum Place
555 Walnut Street
Harrisburg, PA 17101

Re: TECHNICAL CLARIFICATION – Department of General Services
RFP 6100044346 Mainframe and Midrange Storage

Dear Mr. Schwartz,

With regard to your letter dated June 8th requesting Technical Clarification on the above RFP, please be advised that Vicom Infinity agrees to remove the suggested language, and we agree fully to Section VI – I, Service Level Agreements (SLAs) of the Technical Submittal. Our revised response is below:

Offeror Response

We have reviewed the Service Level Agreements (SLAs) as described in the table in Section VI.I. and we will comply with all of them.

If you require this response in any other format, please let us know.
Thank you for your consideration.

Respectfully,

John Daly
Vicom Infinity
Infinity Systems Software
[REDACTED] (cell)

TECHNICAL CLARIFICATION

June 8, 2018

Vicom Infinity Inc.
400 Broadhollow Road, Suite 1
Farmingdale, NY 11735
jdaly@vicominfinity.com

RE: Department of General Services RFP # 6100044346 Mainframe and Midrange Server

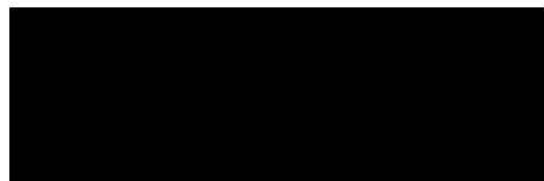
Dear Mr. Daly:

The Department of General Services is performing its technical evaluation of proposals received in response to the Mainframe and Midrange Server and Storage Devices RFP# 6100044346 issued on April 24, 2018. So that the Issuing Office may complete the technical evaluation, we have determined a need for technical clarification of your company's proposal, as follows:

Page 15 of your company's Technical Submittal for Lot 1, under Section VI. I. Service Level Agreements, your company stated: **"Upon a contract award resulting from this RFP; we would need to review the entire terms and conditions surrounding these SLAs."** Section IX, Objections and Additions to Standard Contract Terms and Conditions, however, specifically states that: "[t]he Issuing Office will reject any proposal that is conditioned on the negotiation of the terms and conditions set out in the Terms and Conditions contained in the Buyer Attachment section or to other provisions of the RFP." To that end, the Commonwealth is requesting clarification that your company's proposals in response to the RFP are based upon the acceptance of Standard Contract Terms and Conditions by the removal of **"Upon a contract award resulting from this RFP; we would need to review the entire terms and conditions surrounding these SLAs"** from its response to Section VI. I. Service Level Agreements.

Failure of your company to withdraw the aforementioned language will result in the Commonwealth rejecting your company's proposal and remove them from further consideration.

Please provide a complete response to these concerns no later than **June 12, 2018 at 4:00 PM EDT** via e-mail to thschwartz@pa.gov. Thank you for your assistance.



Sincerely,
Thomas M. Schwartz
Issuing Officer



ADMINISTRATIVE CLARIFICATION

June 1, 2018

Vicom Infinity Inc.
400 Broadhollow Road, Suite 1
Farmingdale, NY 11735
jdaly@vicominfinity.com

RE: Department of General Services RFP # 6100044346 Mainframe and Midrange Server

Dear Mr. Daly:

The Department of General Services is performing its preliminary evaluation of proposals received in response to the Mainframe and Midrange Server and Storage Devices RFP# 6100044346 issued on April 24, 2018. So that the Issuing Office may complete the preliminary evaluation, we have determined a need for administrative clarification of your company's proposal.

- Please clarify the hourly costs associated in the Rate Card of Appendix C, Cost Matrix. The values are to be entered in numerical form as a not to exceed hourly cost. If you choose to, you will be able to quote lower prices at the time a Statement of Work is requested by the Commonwealth.

Please provide a complete response to these concerns no later than **06/05/2018 at 4:00 PM EDT** via e-mail to thschwartz@pa.gov. Thank you for your assistance.

Sincerely,



Thomas M. Schwartz
Issuing Officer



Technical Submittal – Lot 1 Mainframe

- I. Project Description.** The Commonwealth of Pennsylvania (“Commonwealth”) is seeking to establish a mainframe and midrange server and storage devices (“Equipment”) and related services (“Services”) contract, including installation, asset management, service integration, and support services. This RFP does not include x86 server and storage devices.

The Commonwealth is looking to procure Equipment and related Services to include, but not be limited to, IBM z Systems and Power Systems and their associates subsystems (including but not limited to batch scheduling, backup management, hardware monitoring and management, etc.) and operating systems as well as management and hosting options of these systems at designated Commonwealth facilities and/or Selected Offeror facilities as defined in a Statement of Work (“SOW”) utilizing **Appendix B, Statement of Work Template**. This procurement is open to all Equipment manufacturers and Authorized resellers.

The Commonwealth is seeking various procurement options, including purchasing, leasing, X-as-a-Service (XaaS) and consumption based pricing models. The Commonwealth agency will identify the procurement option at time of requesting a quote.

This will be a multiple-award RFP. An award will be made to responsive and responsible Offerors (“Selected Offerors”) that meet the requirements specified in these Specifications. The RFP has been broken down into the following Lots listed below with the award approach for each Lot:

Lot 1: Mainframe, Data Storage & Equipment Storage.

Lot 2: Midrange Server, Data Storage & Equipment Storage.

Offerors can propose on a single lot or both lots in **Appendix C, Cost Matrix**. A Selected Offeror may only submit quotes in response to the lot(s) they are awarded. The Commonwealth retains the right to award both lots, reject both lots or to award only one lot.

The resulting contracts will only be used for storage procurements if the required hardware is not available via the Information Technology Hardware Contract(s) for Storage Hardware, or if the Commonwealth agency can provide a best value justification which may include, but not limited to, lowest cost or most advantageous solution to procure through the resulting contract(s). Storage options purchased from the resulting contract are to be in support of the operating system or maintenance of mainframe or midrange equipment, not standalone storage for other devices or network attached storage solutions.



- II. Statement of the Project.** State in succinct terms your understanding of the project presented or the service required by this RFP.

Offeror Response

Vicom Infinity is confident in our understanding of this RFP from the Commonwealth's Project Description to establish a mainframe and midrange server and storage devices and related services contract including other support services.

We understand the Commonwealth's description of Consumption Based Models. We believe that our proven experience in mainframe environments uniquely positions us to deliver and manage these models, including: Mainframe-as-a-Service (MaaS) in the Cloud (zCloud) as well as other consumption based on-premise, off-premise or hybrid models as options.

These models are wide-ranging in technical design each incorporating different associated costs beyond the equipment at its core. To correctly design and accurately quote the most appropriate Consumption Based Model, we ask the Commonwealth to please provide detailed requirements in future requests for quotes.

For certain Related Services such as Disk Wiping, Asset Tagging, Machine Relocation, Data Transfer, etc., we must consider the total cost of the end-to-end process including: distance, quantities, special skills and tools beyond the hourly cost of personnel. To accurately quote these services, we ask the Commonwealth to please provide those requirements in future requests for quotes.

Vicom Infinity has earned IBM Gold Level Business Partner status by serving many government and private sector clients and achieving many similar goals the Commonwealth describes in this RFP. We are confident that we can deliver the Commonwealth's objectives and goals of this RFP in the mainframe environment.

- III. Qualifications.**

- A. Company Overview.** Offerors shall provide a company overview describing their organization.

Offeror Response

Vicom Infinity, Inc. is an authorized IBM Business Partner and IT consulting company that specializes in assisting customers in projects that exploit their past investments in IBM z Systems and Storage Systems products. Vicom Infinity employs over twenty five (25) personnel with expert level knowledge in all aspects of Mainframe, Storage systems and applications programming.



Vicom Infinity, Inc. was originally named Vicom Information Systems when it was incorporated in 1995 in the State of New York. Vicom Infinity's tax identification number is [REDACTED].

Vicom Infinity is affiliated with Infinity Systems Software, Inc. (ISSI). ISSI is an IT consulting services company that has been in business since 1994 and is incorporated in the State of New York. ISSI specializes in assisting clients with small, medium, and large-scale enterprise projects that exploit their investments in existing IT infrastructure as well as designing and deploying new Enterprise infrastructure and Enterprise application architectures. ISSI employees are senior level IT personnel with expert level knowledge in all aspects of Enterprise Systems Management and Enterprise Applications development. ISSI's tax identification number is [REDACTED].

The following are our mailing and website addresses:

Vicom Infinity, Inc.
400 Broadhollow Road, Suite 1
Farmingdale, NY 11735
www.vicominfinity.com

Infinity Systems Software, Inc.
One Penn Plaza, Suite 2010
New York, NY 10019
www.infinite-blue.com/software.php

- B. Prior Experience.** Include experience in providing mainframe and midrange server and storage devices and related services. Experience shown should be work done by individuals who will be assigned to this project as well as that of your company. Studies or projects referred to must be identified and the name of the customer shown, including the name, address, telephone number, and email address of the responsible official of the customer, company, or agency who may be contacted.

Offeror Response

Vicom Infinity is an IBM Gold Level Business Partner specializing in high-availability solutions based on IBM z Systems mainframe servers and Enterprise Storage with industry-leading expertise and experience in a broad range of related hardware, software, and services.

Widely known and highly respected for our value-added and customized approach to ensuring successful client outcomes, Vicom Infinity is committed to helping our customers navigate the exciting changes that are driving IT innovation today—including storage optimization, cloud computing, mobility, Big Data analytics, server virtualization, desktop virtualization, e-business, security, hybrid computing and many others.



Vicom Infinity has over two decades in the IBM mainframe and high-end storage market and our management and professional teams have experience that goes back even further. Members of our team have developed many of the capacity models, studies and methodologies that are widely used throughout the IBM mainframe and storage community. This depth of experience and our deep technical skills gives our customers a tremendous advantage in deploying mainframe-based solutions to address today's increasingly complex business and IT challenges.

As the IBM mainframe has evolved over the years to embrace open systems and open architectures, our customers are discovering what we have known for a long time - no other computing platform can compare to the mainframe in delivering the levels of performance, high availability, security, scalability and cost efficiency required for many of the mission-critical applications that are driving modern and innovative businesses today.

The solutions and services we offer at Vicom Infinity start with the mainframe platform, but they certainly don't end there. Vicom Infinity is an IBM Specialty Storage Business Partner focusing on Enterprise Storage Solutions including DS8870, XIV, Flash System Storage, TS7700 Mainframe Virtual Tape & LTFS.

Our expertise and solutions include IBM z Systems mainframe servers, associated storage and networking equipment, security, disaster recovery and a broad range of software, including z/OS, z/VM, z/VSE, Linux, CICS, DB2, MQ, IBM Service Suites, Tivoli, WebSphere and many others. We also offer professional services and IT architectural services ranging from pre-sale assessment of legacy environments, expert studies on capacity planning, designing and architecting new solutions, installation and deployment, and ongoing training and optimization.

Our solutions and services include virtualization and consolidation; business resiliency; data deduplication and encryption; performance analysis and tuning; workload/systems management; multi-OS integration; enterprise backup design and implementation; disaster recovery design and implementation; z Systems software health-check services, system tuning; user training, and more. We start at the beginning with our customers, work with them through deployment and stay with them throughout—typically for many years and many upgrades and enhancements to their systems.

Our expertise is so highly regarded and widely acknowledged throughout the IBM community, that we sponsor many user groups including those in New York, Pennsylvania, Washington DC, Chicago and New England. We have been awarded the IBM Beacon Award, the highest honor any business



partner can achieve from IBM and we are co-sponsor with IBM in hosting the IBM Z Customer Council.

- C. Manufacturer Authorization Letter.** If an Offeror is proposing as an Authorized Reseller for an Original Equipment Manufacturer (“OEM”), they must submit a Manufacturer Authorization Letter which clearly states the Offeror is authorized to provide the OEM’s equipment and services to the Commonwealth for this RFP. The Manufacturer Authorization Letter must be signed by an authorized representative for the OEM and must reference Commonwealth RFP 6100044346 for Mainframe and Midrange Server and Storage Devices. An Offeror must submit a Manufacturer Authorization Letter for each OEM for which the Offeror is proposing, unless the Offeror is the OEM.

Personnel.

- (1) **Key Personnel.** For key personnel, such as, the Account Manager and Account Representative; include the employee’s name and, through a resume or similar document, the Project personnel’s education and experience in the role for which they will serve in this project. Indicate the responsibilities each individual will have in this Project and how long each has been with your company. Resumes are not to include personal information that will, or will be likely to, require redaction prior to release of the proposal under the *Right-to-Know Law*. This includes home addresses and phone numbers, Social Security Numbers, Drivers’ License numbers or numbers from state ID cards issued in lieu of a Drivers’ License, financial account numbers, etc. If the Commonwealth requires any of this information for security verification or other purposes, the information will be requested separately and as necessary.



- (2) **Personnel.** Offeror(s) shall describe its capabilities to provide personnel required to perform the services which may be requested through the contract resulting from this RFP, such as warranty, installation, professional, and other related services.

Offeror Response

We are very confident that we are fully capable of delivering and performing the services resulting from this RFP award.

We have a Resource Management Team (RMT) that is solely focused on quickly delivering services to our clients. Our RMT matches our in-house Services Practice personnel with client needs in the areas of mainframe hardware planning, systems programming, capacity and performance management, storage management, 3rd. party software expertise and beyond. When a resource is not available in-house, we have a deep network of resources to fill those needs.

Please see our website for our full range of services capabilities:

www.vicominfinity.com/services_overview.php

The Key Personnel assigned to this project are as follows:

John Daly: Account Manager

John Daly has over 30 years of experience in various elements of the Information Technology field, including Hardware, Software and Financial aspects (pricing and budgeting) predominately around the IBM portfolio. John works in many different roles which include Account Executive to a number of primary clients of both Vicom Infinity, Inc. and Infinity Systems Software, Inc., Mainframe pricing and configurations and primary pricing responsibilities for ALL IBM software pricing. John has a vast knowledge of the IBM Software Portfolio, both Mainframe and Distributed, and assists in coordination of appropriate skills sets to assist our clients in the deployment of the software and hardware solutions. John can also facilitate requests for detailed product information overviews via a “lunch & learn” session at a client site or a more formal briefing session at an IBM facility.



Mark Tansey: Storage Sales Executive

Mark Tansey has 20 years of experience in enterprise storage predominately around the IBM portfolio including Mainframe DASD & Virtual Tape and Open Systems Storage Solutions including Flash Technology & Software Defined Storage. Mark has been employed at Vicom Infinity since 2003 and currently acts as the Storage Solutions Sales Director responsible for all storage sales, pre-sales configurations, client facing activities and managing the IBM Storage Brand relationship.

Marty Deitch: Senior Capacity Planning Engineer

Marty started his professional career working in aerospace where he supported the development of liquid propelled rocket engines. He spent the next 42 years working for IBM, all of that time as technical support for mainframe sales. During that time Marty has held numerous titles including Consulting Systems Engineer and Certified Large Systems Sales Specialist. Marty specialized in mainframe performance management and capacity planning. In addition to presenting at numerous IBM and customer education events, Marty has also authored several Capacity Planning tools. These include the Tivoli Performance Modeler (zTPM) and the Server Utilization Resource Facility (SURF) tool. Marty currently works for Vicom Infinity supporting mainframe sales and new workload sales.

Alex Kim: Systems z Solution Architect

Yongkook (Alex) Kim is a Master Level Certified IT Specialist and Certified System z specialist. He has been in the IT industry for 16 years, since 2001. He started as a VLSI circuit designer for IBM Mainframe in Poughkeepsie, NY specializing in Cryptographic Hardware. He then joined the IBM technical advisor sales role assisting customers in Wall Street financial institutions. He joined Vicom Infinity in 2014 and serves various clients, assisting with choosing the right hardware and software solutions for their business applications. He holds two Masters Degrees (MSEE, MSCompE), a Bachelor's Degree in Electrical Engineering and various technical certifications.



Paul A. Imbriale: IBM Certified Systems z Specialist

Paul has over twenty-two years of systems programming experience, operating systems management, and project leadership. Paul is a self-motivated professional with a keen understanding of business requirements, Paul will demonstrate leadership qualities, and he has proven ability to achieve corporate goals. Extensive knowledge of operating systems base control program and related program products while specializing in the following areas:

- **Operating System Generation, Installation, Testing, Support and Maintenance.**
- **Installation of Mainframes and Tape Systems from inception to culmination.**
- **System Performance and Tuning.**
- **Data Communication Installation and Support.**
- **Disaster Recovery Planning.**

Len Santalucia: CTO and Business Development Manager

Len Santalucia has been in the IT industry since 1973. He is presently the CTO and the Business Development Manager for Vicom Infinity, Inc. Len is also a 30 year IBM veteran. Len was a Senior Consulting Certified Sales Specialist for IBM Americas' Linux Impact Team and a Certified IBM z Systems and IT Specialist. He has vast experience with z/OS, z/VSE, z/VM, Linux on z Systems and their associated subsystems as well as with today's emerging Mobility, Cloud, Big Data and Analytics technologies. He was also the first member of the elite IBM Linux Impact Team formed in 2000. In this role, he specialized in Linux, Open Systems, Large Scale Virtualization, Object Oriented, LAN, and Web 2.0 technologies for the Financial Services and Banking Sector. Len is the Chairman of the Linux Foundation Open Mainframe Project formed at the time of the IBM LinuxONE announcement and is a prominent liaison in providing IBM customer requirements to IBM Systems Group.

- D. Subcontractors.** Provide a subcontracting plan for all subcontractors, including small diverse **business** and small business subcontractors, who will be assigned to the Project. The selected Offeror is prohibited from subcontracting or outsourcing any part of this Project without the express written approval from the Commonwealth. Refer to Section 8 of **Appendix A, Standard Contract Terms and Conditions for IT Supplies and Related Services** regarding removal of a subcontractor from the project. Replacement of a subcontractor shall be handled in the same manner as the replacement of dedicated contacts, please see **Section VII.A(4)(b)**. Upon award of the contract resulting from this RFP, subcontractors



included in the proposal submission are deemed approved. For each position included in your subcontracting plan provide:

- (1) name of subcontractor;
- (2) address of subcontractor;
- (3) number of years worked with the subcontractor;
number of employees by job category to work on this project;
- (4) description of services to be performed;
- (5) what percentage of time the staff will be dedicated to this project;

- (6) geographical location of staff; and

- (7) resumes (if appropriate and available).

Offeror Response

Vicom Infinity is pleased to present PeopleNTech, LLC as a subcontractor with whom we have a longstanding and trusted history with many satisfied clients for Related Services in mainframe and storage technology environments.

PeopleNTech, LLC is a Pennsylvania Small Business and a Certified Virginia Small, Women, and Minority Owned Business and a Women Owned Small Business by the Small Business Administration (SBA).

They will be applying for a Pennsylvania Small Diverse Business certification in July 2018.

We have worked with PeopleNTech for over eight (8) years with very positive results. They have approximately sixteen (16) employees with expertise in mainframe and associated storage technology.

Their staff is geographically located and available throughout the PA, NY, NY and DE areas and wherever needed or able to do remote services as appropriate.

We will gladly supply a description of services and what percentage of time their staff will be dedicated to a particular project in an SOW once the Commonwealth determines the requirements via a request for quote. Once we review the SOW and we submit to the Commonwealth the personnel we and PeopleNtech are recommending, we will gladly supply the resumes of those individuals.



PeopleNTech is located at:

1604 Spring hill Rd, STE 302
Vienna, VA 22182-7510

For further information on PeopleNTech, LLC, please refer to:

www.peoplentech.com/index.php

- IV. **Training.** Upon request, the selected Offeror may be required to provide training and training materials. See **Section VII.B.3.h. Training** for requirements set forth by the Commonwealth. Offeror(s) shall describe its capabilities to provide training, if requested.

Offeror Response

We will provide training as described in the RFP Section VII.B.3.h.: Training:

- (1) Initial Basic Systems Familiarization and Systems Operation;
- (2) Follow-up training within 90 days of initial training at no additional cost if requested by the Commonwealth.

This training will be provided for new equipment (mainframe hardware) and installations procured through Vicom Infinity as a result of this RFP contract award.

We refer the Commonwealth to our website for further information on our portfolio of services for future Related or Professional Services requests for quotes.

www.vicominfinity.com/services_overview.php

- V. **Financial Capability.** Describe your company's financial stability and economic capability to perform the contract requirements. The Commonwealth reserves the right to request additional information to evaluate an Offeror's financial capability.

Offeror Response

Vicom Infinity has been an IBM business partner selling z Systems and peripherals since 2001, and has been profitable every year since inception. Owners are invested in the company at a level that provides sufficient capital to fund operations. In addition, we maintain strong relationships with creditors that allow us to increase our purchasing capacity based on careful review of forecasted transactions.

- VI. **Requirements.**



- A. Software.** All Equipment purchased or leased should be provided without an operating system, unless the operating system software is a part of the Equipment as specified in the Manufacturer's Price List or as requested by the Commonwealth in the SOW. The Selected Offeror may not offer Equipment which requires commercially available software for its use, unless and until the Commonwealth has entered into a software license agreement with the software licensor. The Selected Offeror must inform any such software licensor that it must enter into a software license agreement with the Commonwealth that includes the applicable provisions set forth in **Appendix D, Software License Requirements Agreement** located in the Buyer Attachments section, as a material part of the licensor's software license agreement.
- B. Electrical Requirements.** All Equipment being offered must be UL approved. The Selected Offeror shall identify any special voltage needed beyond the standard 110v as part of Pre-Sales Support. The Commonwealth will furnish suitable electrical current to operate the Equipment.
- C. Hosting Requirements.** Any hosting services being offered must adhere to the non-Commonwealth hosting requirements as described in **Appendix E, Non-Commonwealth Hosting Requirements**. The Selected Offeror must adhere to current Commonwealth policies. Any updates to the Non-Commonwealth Hosting Requirements will be included as part of the SOW when hosting services are requested by the Commonwealth.
- D. As a Service model.** The Commonwealth may request an XaaS model such as Mainframe as a Service or Infrastructure as a Service. These Services will be included as part of the SOW when requested by a Commonwealth agency.
- E. Subcontracting for Services.** Any Services not provided by the OEM must be provided by an OEM Authorized Service Provider that has been approved in advance by the Commonwealth.
- F. Additional Discounts.** Commonwealth agencies are required to obtain quotes from all Selected Offerors, per desired OEM, on orders exceeding \$10,000; however, a Commonwealth agency may request quotes for orders of all sizes. Selected Offerors are encouraged to offer lower prices for all requests for quotes, especially requests for quotes with high quantities. The Commonwealth may negotiate additional price concessions on all orders.
- G. Order Fulfillment.**

 - (1) The Selected Offeror must be capable of accepting orders via the Commonwealth's purchasing credit card (Pcard) in addition to purchase orders generated via the Commonwealth's SAP Supplier Relationship Management (SRM) system, the Commonwealth's standard order type.



- (2) The Selected Offeror shall be responsible for tracking all orders from initial request through receipt of the Equipment or Service.
- (3) The Selected Offeror's delivery methods must adhere to **Section 9, Delivery** and **Section 17, Acceptance of Appendix A, Standard Contract Terms and Conditions for IT Supplies and Related Services**.

Offerors shall describe their order fulfillment process and how it adheres to the above requirements.

Offeror Response

Vicom Infinity, Inc. will comply with the Commonwealth's requirement to accept orders via the purchasing credit card (Pcard) and purchase orders generated via the Commonwealth's SAP Supplier Relationship Management (SRM) system.

In addition, it is standard operating procedure for Vicom Infinity to track all orders from the receipt of the order from the Commonwealth to ultimate delivery to the end user location.

Upon the Commonwealth's agreement to purchase authorized products/services from Vicom Infinity, Vicom Infinity will provide such products/services in accordance with our accepted proposal and subsequent Purchase Order/Authorization generated by the Commonwealth. Vicom Infinity does not manufacture the goods provided; we are an authorized IBM re-seller of the equipment and are authorized to sell such equipment along with services that the Commonwealth specifies. Any requirements for services would be based on discovery of requirements and scope of work. The scope of work will be incorporated into a Statement of Work (SOW) and presented to the Commonwealth for review and approval.

Once a firm order is in place based on receipt of PCard or Purchase Order, final build of the configuration by IBM will be requested by Vicom Infinity and prepared by IBM for shipment based on the Customer Requested Arrival Date and specific instructions contained in the firm order documentation. Unless specified in writing by Vicom Infinity to the contrary, goods in stock shall be shipped immediately (generally within 5 days of firm order placement with IBM). Goods not in stock will be shipped as soon as possible. Vicom Infinity will not be liable for any nonperformance of the Agreement caused by strikes, fire, diseases, riots, acts of God or other causes or conditions beyond our reasonable control.

Vicom Infinity will adhere to Section 9, Delivery and Section 17, Acceptance of Appendix A, Standard Contract Terms and Conditions for IT Supplies and Related Services.

There are many tools (software application and/or website) available to assist Vicom Infinity in monitoring order status. Using these tools, Vicom Infinity has the ability to track order status and delivery from the time of order placement through installation:



IBM Configurator for e-business (e-config)	The IBM Configurator for e-Business (e-config) is a PC-based hardware and software configuration tool that enables Vicom Infinity to configure multiple product lines with just one tool. E-config is used to configure and upgrade IBM Power Systems, IBM z Systems, and IBM Storage. System diagrams are available to review expansion options, explore configuration alternatives, and gain assurance it will all work together for an optimal solution.
PartnerCommerce / Server (PC/S)	PartnerCommerce/Server (PC/S) is a web order tool used to send configured orders to IBM for processing. It also provides access to Customer Numbers Online (CNOL), e-Pricer, product availability information and order tracking.
Order Status OnLine (OSOL)	<p>Order Status OnLine (OSOL) is a strategic eTool providing near real time order, manufacturing and distribution information, from the Integrated Order Status database, for all hardware and software orders, for all product platforms, for all customer types, for all countries around the world, for both IBM and Lenovo products. This includes links to carrier websites for tracking actual delivery of products.</p> <p>OSOL allow vital information about IBM hardware and software orders to be immediately available. This tool:</p> <ul style="list-style-type: none">• Provides support for all hardware and software products regardless of order size.• Offers tools for in-house functions such as asset management, sales, operations, and installation planning.• Delivers automated alerts for key events and critical order status changes.• Provides links to carrier sites for the latest in delivery tracking information.• Automatically updates asset management records with reporting abilities.

Using the above tools, Vicom Infinity will communicate all updates via e-mail and/or telephone directly with the contact designated by the Commonwealth.

Upon delivery of the products/services, the Commonwealth shall immediately inspect and/or test all products and/or services. Products and/or services will be deemed accepted unless the Commonwealth provides Vicom Infinity written notice to the contrary within ten (10) days after receipt of shipment. Such notice shall detail defects in performance or discrepancies in quantities.

H. Quote Requirements.

- (1) The Commonwealth’s contract management team must approve the quote format before any quotes may be issued.
- (2) All quotes, at a minimum, must comply with the following:
 - (a) Include: contract number, manufacturer contract number (if applicable); service period (if applicable); manufacturer product ID; manufacturer product title; line item descriptions; list price so the Commonwealth can verify discounts on quotes; expected delivery



date; and related purchase order number(s) when Stand-alone Services are procured.

(b) No additional terms and conditions may be attached to a quote.

I. Service Level Agreements (SLAs):

(1) The following SLAs and **service** credits apply to the Selected Offeror's performance with each individual Commonwealth agency.

RFP Requirement	Service Level Agreements	Service Credits
Customer Inquiry Response Time (CIRT)	The Selected Offeror must return phone calls or respond to emails regarding initial request, queries, and problems within a maximum of four (4) business hours after a phone call is placed or an email is received.	N/A
Quote Delivery for Standard Catalog Items (QDCI)	The Selected Offeror must provide quotes to the Commonwealth agency within two (2) business days or other date specified in the request for quote for hardware currently in the Selected Offeror's catalog.	N/A
Delivery of Equipment.	Within 30 business days of order acceptance or on the date agreed upon by the Commonwealth or Commonwealth agency and the Selected Offeror.	1% of the cost of the order.
Invoice Receipt	The Selected Offeror must provide invoices for all orders within 60 days from the order date.	1% credit on the purchase order for each late invoice.
Incorrect shipment to the Commonwealth.	<ul style="list-style-type: none"> • Corrected within 10 business days. • Corrected within 10 to 30 business days. • Corrected within 30 to 60 business days. 	<ul style="list-style-type: none"> • 1% of the cost of the order. • 2% of the cost of the order. • 3% of the cost of the order.



Quarterly Reporting.	The reports must be provided to the Commonwealth no later than 15 business days after the end of the quarter.	If the Selected Offeror fails to meet the SLA for two (2) quarters within a calendar year, the Selected Offeror will be ineligible to receive orders from any Commonwealth agency for six (6) months .
Monthly Reporting.	The reports must be provided to the Commonwealth no later than 10 business days after the end of the month.	If the Selected Offeror fails to meet the SLA for two (2) consecutive months or three (3) months within a calendar year , the Selected Offeror may be ineligible to receive orders from any Commonwealth agency for six (6) months .

The Selected Offeror must reimburse the Commonwealth within **45 days** of the missed SLA. The Selected Offeror must pay the service credits by deducting the amount from an invoice or by sending a check addressed to the Commonwealth of Pennsylvania for the amount of the service credits. All checks must be sent to the following address:

Office of Comptroller Operations
Revenue & Cash Management
555 Walnut St., 9th Floor
Harrisburg PA 17101-1925

The Selected Offeror must attach, along with its check, a breakdown of the reimbursement which includes, at a minimum: Commonwealth agency, SRM purchase order number and reimbursement amount.

The Offeror shall describe how it will perform the services in this RFP while meeting the required SLAs.

Offeror Response

We have reviewed the Service Level Agreements (SLAs) as described in the table in Section VI.I. and we will comply with all of them.

Upon a contract award resulting from this RFP; we would need to review the entire terms and conditions surrounding these SLAs.

- (2) The Commonwealth may include additional SLAs as part of the SOW when ordering Equipment or Services.

J. Emergency Preparedness. To support continuity of operations during an emergency, including a pandemic, the Commonwealth needs a strategy for maintaining operations for an extended period of time. One part of this strategy is to ensure that essential contracts that provide critical business services to the Commonwealth have planned for such an emergency and put contingencies in place to provide needed goods and services.

- (1) Describe how you anticipate such a crisis will impact your operations.
- (2) Describe your emergency response continuity of operations plan. Please attach a copy of your plan, or at a minimum, summarize how your plan addresses the following aspects of pandemic preparedness:
 - (a) Employee training (describe your organization's training plan, and how frequently your plan will be shared with employees)
 - (b) Identified essential business functions and key employees (within your organization) necessary to carry them out
 - (c) Contingency plans for:
 - (1) How your organization will handle staffing issues when a portion of key employees are incapacitated due to illness.
 - (2) How employees in your organization will carry out the essential functions if contagion control measures prevent them from coming to the primary workplace.
 - (d) How your organization will communicate with staff and suppliers when primary communications systems are overloaded or otherwise fail, including key contacts, chain of communications (including suppliers), etc.
 - (e) How and when your emergency plan will be tested, and if the plan will be tested by a third-party.

VII. Contract Services. Describe in narrative form your technical plan for accomplishing the work using the task descriptions as your reference point. Modifications of the task descriptions are permitted; however, reasons for changes should be fully explained. Indicate the number of person hours allocated to each task. Include a Program Evaluation and Review Technique (PERT) or similar type display, time related, showing each event. If more than one approach is apparent, comment on why you chose this approach.

A. Required Services. These services are required by the awarded Selected Offerors at no additional cost to the Commonwealth.



- (1) Pre-Sales Support. The Selected Offeror must be capable of providing pre-sales support without additional service fees, including appropriate support personnel (e.g. those with technical design/architecture expertise) to assist Commonwealth agencies in identifying appropriate products based on their needs.

Offeror Response

We will comply with the above description of Pre-Sales Support.

- (2) Supply Chain Management/Managed Logistics. The Selected Offeror must provide staging and storage at no additional cost (unless otherwise defined in the SOW), respond quickly to changing needs and provide an effective order expediting process, if necessary.

Offeror Response

We ship directly from our Supplier (IBM) to the Commonwealth's chosen location upon confirmation of a firm order such as a purchase order, typically within five (5) days. We do not stage or store mainframe equipment.

We are tightly integrated into IBM's mainframe supply chain working very closely and electronically with IBM in advance of an anticipated order on machine configuration and machine availability.

Our longstanding relationship with IBM in the pre-order and firm order process through delivery and installation, allows our customers to choose the most appropriate time to accept equipment.

- (3) Quotes during Term of Contract. Selected Offerors shall provide a quote for Equipment, when requested by the Commonwealth, at any time during the term of the Contract. The Selected Offeror must honor all quotes for at least **ninety (90) days**

Offeror Response

We will provide quotes as described above as requested by the Commonwealth and we will honor those quotes for at least 90 days.

- (4) Contacts.

- (a) **General**. Offerors must identify the following contacts in **Appendix F, Dedicated Contacts** located in the Buyer Attachments section. Information relating to dedicated contacts is as follows:



- (1) **Account Manager.** The Selected Offeror must provide a dedicated Account Manager who will be the main point of contact for the Commonwealth. **The Commonwealth will consider the Account Manager to be the sole point of contact with regard to contractual and purchase order matters.** The Account Manager must be an employee of the Selected Offeror and must be authorized to make binding decisions on behalf of the Selected Offeror. The Account Manager's responsibilities will include, but will not be limited to: providing administrative, supervisory and technical direction to the account representatives; monitoring work performance for accuracy, timeliness, efficiency and adherence to contract requirements; coordinating the resolution of contract problems; and the implementation and completion of problem escalation procedures.
 - (2) **Account Representative(s).** The Account Manager may also serve as an Account Representative. The Selected Offeror must provide an Account Representative to facilitate Commonwealth agency requests, which include, but are not limited to, providing quotes for Equipment and/or Services, reporting, providing recommendations on Equipment and Services, and tracking order fulfillment. Account representative will be the main point of contact for all Commonwealth agency requests. The Account Representatives is expected to have sufficient technical expertise to ensure proper orders are taken.
 - (3) **Service Contact.** A dedicated service phone number should be provided.
- (b) **Replacement of dedicated contacts.** After dedicated contacts are assigned and approved by the Commonwealth, the Selected Offeror may not divert or replace dedicated contacts without written approval of the Commonwealth and in accordance with the following procedures.
- (1) The Selected Offeror shall notify the Commonwealth at least **60 calendar days** in advance of the proposed diversion or replacement of dedicated contacts, and providing the name, qualifications and background check of the person who will replace the diverted or removed staff. **Within 10 calendar days** of receipt of the diversion or replacement notice, the Commonwealth will notify the Selected Offeror whether the



proposed diversion is acceptable or if the replacement is approved.

- (2) Advance notification is not required for changes in dedicated contacts due to resignations, death and disability, dismissal for cause or dismissal as a result of termination of a subcontract or any other cause that is beyond the control of the Selected Offeror. However, the Commonwealth must approve the replacement dedicated contacts. Replacement of dedicated contacts whose availability changes for reasons beyond the control of the Selected Offeror must occur:
 - (i) on a temporary basis, within **one week** of the availability change; and
 - (ii) on a permanent basis, no longer than **30 calendar days** from the availability change.
- (3) The Commonwealth may request that the Selected Offeror remove one or more of its staff persons from the contract at any time, with **30 calendar days'** written notice. If a staff person is removed from the Contract, the Selected Offeror will have **10 days** to fill the vacancy with a staff person acceptable in terms of experience and skills, subject to the Commonwealth approval.

Offeror Response

We will comply with the above descriptions in Replacement of Dedicated Contacts.

- (5) Warranty Service. Costs shall include a **minimum one-year warranty** covering parts and labor against defects in workmanship and materials for all Equipment purchased under this Contract. See **Section 12, Warranties of Appendix A, Standard Contract Terms and Conditions for IT Supplies and Related Services.** The warranty period shall commence upon acceptance of the items by the Commonwealth. See **Section 17, Acceptance of Appendix A, Standard Contract Terms and Conditions for IT Supplies and Related Services.**
 - (a) The Selected Offeror shall honor the warranty specified by the OEM for all Equipment being offered, at no additional cost to the Commonwealth.
 - (b) The Selected Offeror shall include the most recent software and firmware patches, fixes and upgrades, if available from the OEM,



for Equipment during the warranty period, at no additional cost to the Commonwealth.

- (c) The Selected Offeror shall provide a central point of contact to address warranty service issues. The Selected Offeror must make available technical support contacts through the internet and provide a toll-free contact number.
- (d) The Selected Offeror shall be capable of receiving service calls on a **24-hour per day** basis, **365 days** of the year, during a warranty period.
- (e) The Selected Offeror may provide warranty services outside of business hours if agreed upon by the Commonwealth agency and the Selected Offeror.
- (f) The Selected Offeror must be capable, either directly or through the OEM, to perform on-site warranty services. Warranty is defined as the standard provided by the OEM for the period of time indicated in the Contract.

Offeror Response

(5a) IBM will offer the warranty and the terms within it for the warranty period start date for the mainframe equipment we are proposing.

(5b) – (5f) will be provided and/or performed by IBM personnel for the equipment we are proposing under IBM Warranty.

The 24/7/365 toll free contact number is 1-800-IBMSERV

Vicom Infinity will be the Commonwealth's advocate and will escalate your needs to IBM under the terms of the warranty should there be a problem or delay that is within our control to resolve.

The terms of the IBM Warranty can be found in:

ftp://public.dhe.ibm.com/systems/support/warranty/pdfs/v13/Z125-4753-13_en_US.pdf

The warranty period starts:

- (a) for a Machine specified as Customer Set Up (CSU), on the second business day after the standard transit allowance period;**



(b) for a Machine not specified as CSU, on the earlier of (i) the business day after IBM completes its standard installation procedure and (ii) 45 days following shipment from IBM.

- (6) Price List Updates. The Selected Offeror shall provide the Commonwealth with a hyperlink to the OEM's current price list twice per year between June 20 and June 30, and between December 21 and December 31. The Commonwealth may request the OEM's current price list at any time.

Offeror Response

We kindly refer the Commonwealth to the following IBM website for IBM State, Local and Education Contracts on which IBM will publish a price list for z Systems (mainframe) equipment for the State of Pennsylvania upon this RFP contract award

<https://www.ibm.com/industries/sled-contracts>

- (7) Accessibility Needs. The Commonwealth's [Executive Order 2016-03, Establishing "Employment First" Policy and Increasing Competitive Integrated Employment for Pennsylvanians with a Disability](#), states that Commonwealth employees with disabilities may require accommodations of assistive technology in order to perform the functions of their jobs. The Commonwealth will further the objectives of providing appropriate accommodation and support through the contracts resulting from this RFP. Offerors must provide an accessibility plan and assistive technology for the various Lots of this RFP, as applicable. Any additional cost per unit for items with assistive technology must be included as a separate line item on pricing quotes.

Offeror Response

There are no specific Accessibility pricing options available within the IBM mainframe server equipment we proposing.

Per the Commonwealth's answer to this Bidder's Question, if Accessibility options do not apply to the equipment that we are proposing, we are to leave the Accessibility field in the Cost Matrix at 0% discount.

We kindly refer the Commonwealth to the following IBM website detailing their focus on Accessibility in machine design.

www.ibm.com/accessibility/us/en/



B. Related Services.

- (1) Offerors may provide additional related services in conjunction with the Equipment they are offering to supply to the Commonwealth under the Contract resulting from this RFP (“Related Services”). However, any Related Services provided by the Offeror must be: (1) expressly authorized in the original RFP/Contract, (2) directly related to the delivery, installation or normal use of the Equipment referenced in this RFP/Contract, (3) initiated/ordered at the time of product purchase or during the term of the contract for services on Equipment purchased through the contract resulting from this RFP.
- (2) Related Services for mainframes and servers not procured under the contract resulting from this RFP (“Stand-alone Services”), are within the scope of this Contract, so long as not otherwise prohibited by the contract under which the mainframe or midrange server was originally procured.
- (3) The Commonwealth agency will develop a SOW for optional Related Services utilizing **Appendix B, Statement of Work Template** located in the Buyer Attachments section, which will be attached to the associated purchase order. The Selected Offeror shall provide a proposed hourly cost on the Rate Card tab of **Appendix C, Cost Matrix** for all listed Related Services. The Selected Offeror must identify any subcontractors that will be used along with a brief description of the Related Services. All Related Services may be purchased at the Commonwealth’s discretion.

Related Services are as follows:

(a) Maintenance/Extended Warranty Services.

- (1) The Selected Offeror shall provide a written quote for maintenance/extended warranty services, when requested by a Commonwealth agency, at any time during the term of the Contract resulting from this RFP.
- (2) Stand-alone orders for maintenance/extended warranty services made during the term of the Contract may extend up to **four (4) years** past the expiration date of the Contract resulting from this RFP.

(b) Installation.

- (1) The Selected Offeror shall, at a minimum:

- (i) Work with the Commonwealth agency to develop a schedule to deliver the Equipment at the location.
 - (ii) Assign a project manager to every installation;
 - (iii) Install the Equipment within twenty-four (24) hours of delivery, unless otherwise agreed upon by the Selected Offeror and the Commonwealth agency.
 - (iv) Unpack the Equipment and rack mount or install as required.
 - (v) Set up and connect all required data and system cables, power and external devices to the Equipment.
 - (vi) Power on the Equipment.
 - (vii) Perform visual and physical system checks that can be performed with an operating system.
 - (viii) Provide status reports of installations completed, installations outstanding, and issues.
 - (2) As part of the SOW, the Commonwealth agency will specify whether the Selected Offeror must remove all packing materials and boxes from the site within **one (1) week** after the installation has been completed.
 - (3) The Selected Offeror must have the ability to integrate the physical hardware, based on Commonwealth agency requirements, for operational effectiveness.
- (c) Asset Tagging (On-site & Off-site).
- (1) The Selected Offeror shall, at a minimum:
 - (i) Affix an identification tag number and Commonwealth agency inventory asset tag to the Equipment.
 - (ii) Ensure that the identification tag number is readable from WMI (Windows Management Instrumentation), if applicable.
 - (iii) Ensure that the location of the identification tag is easily accessible and readable by the user. Identification numbers will be used as a reference for service calls.
 - (iv) Provide identification numbers, serial numbers, Commonwealth agency inventory asset tag numbers, and other identification information for all installations at a site, when requested by the



Commonwealth in an electronic format, that can be incorporated into existing Equipment databases. The Commonwealth agency will provide database formats to be used by the Selected Offeror.

- (2) As part of the SOW, the Commonwealth agency will specify if the service will be performed on-site or off-site.

(d) Data Transfer.

- (1) The Selected Offeror shall, at a minimum:
 - (i) Migrate/transfer all specified applications and data onto the new system;
 - (ii) Disconnect all systems; and
 - (iii) Not retain any data associated with the data transfer.
- (2) The Selected Offeror may transfer data using the Commonwealth's network, a crossover cable or Commonwealth-owned and provided external hard drive.

(e) Preparation for Shipment.

- (1) The Selected Offeror shall, at a minimum:
 - (i) Verify the functionality and condition of the equipment with the Commonwealth agency;
 - (ii) Disconnect the existing Equipment and remove it from the area; and
 - (iii) Fully prepare and pack the Equipment for delivery. This includes, but is not limited to:
 - (A) Securely boxing and palletizing (if necessary) the Equipment in appropriate, clearly labeled, shipping containers and according to accepted commercial practice, without extra charge for packing materials, cases, or other types of containers.
 - (B) If requested by the Commonwealth, all containers and packaging will become and remain property of the Commonwealth.



(f) Hard Drive Removal.

(1) The Selected Offeror shall, at a minimum:

- (i) Arrive at the Commonwealth designated location at the time scheduled with the Commonwealth agency to uninstall and fully remove the hard drive in question;
- (ii) Verify the functionality and condition of the equipment with the Commonwealth agency.
- (iii) Cleanse the hard drive as detailed in Commonwealth ITP SEC015, *Data Cleansing Policy*, http://www.oa.pa.gov/Policies/Documents/itp_sec015.pdf; and
- (iv) Allow the following disposition of hard drives that are defective or at the end-of-lease at the discretion of each Commonwealth agency with no additional cost to the Commonwealth.
 - (A) The Commonwealth agency may keep the defective or leased hard drive.
 - (B) Selected Offeror must cleanse the hard drive as detailed in Commonwealth ITP SEC-015, *Data Cleansing Policy*, http://www.oa.pa.gov/Policies/Documents/itp_sec015.pdf.

(2) The Commonwealth agency may choose to keep the removed hard drive and provide delivery location of removed hard drive.

(g) Disk Wipe Service.

(1) *On-Premise Disk Wipe.* The Selected Offeror shall, at a minimum:

- (i) Uninstall the equipment from the Commonwealth agency at the scheduled time;
- (ii) Arrive at the Commonwealth-designated location at the scheduled time; and

- (iii) Cleanse the device in the equipment as detailed in Commonwealth ITP SEC015, *Data Cleansing Policy*, http://www.oa.pa.gov/Policies/Documents/itp_sec015.pdf, at its current location and provide proof of the disk wipe to the Commonwealth agency.
 - (2) *Off-Premise Disk Wipe*. The Selected Offeror shall, at a minimum:
 - (i) Uninstall, pack, and pick up the equipment from the Commonwealth agency at the scheduled time;
 - (ii) Cleanse the device as detailed in Commonwealth ITP SEC015, *Data Cleansing Policy*, http://www.oa.pa.gov/Policies/Documents/itp_sec015.pdf, at a location approved by the Commonwealth and provide proof of the disk wipe to the Commonwealth agency; and
 - (iii) Return and reinstall the equipment at the time and location specified by the Commonwealth agency.
- (h) Relocation.
 - (1) The Selected Offeror shall, at a minimum:
 - (i) Provide relocation of equipment:
 - (A) within the same building;
 - (B) within a 25-mile radius;
 - (C) beyond a 25-mile radius.
 - (ii) Verify the functionality and condition of the equipment with the Commonwealth agency;
 - (iii) Unpack and reinstall equipment at the new location designated by the Commonwealth agency; and
 - (iv) If relocation required the Equipment to be repacked, the Selected Offeror must remove the packing material.



(2) Damages resulting from the transfer of equipment during relocation are not the responsibility of the Commonwealth.

(i) Equipment Return to DGS Surplus Warehouse. The Selected Offeror shall, at a minimum, deliver the packed Equipment to the DGS warehouse located at:

DGS Surplus Warehouse
2221 Forster St.
Harrisburg, PA 17125

(j) Training.

(1) The Selected Offeror shall provide training for Commonwealth staff, if requested by the Commonwealth agency. The training shall include, at a minimum, basic system familiarization and system operation.

(2) Training shall be provided at the location where the Equipment will be located. At any time within **90 days** of the initial training the Selected Offeror must provide follow-up training at no additional cost if requested by the Commonwealth. The follow-up training shall include, at a minimum, basic system familiarization and system operation.

(k) Professional Services.

The Selected Offeror must be capable of providing additional professional Services to the Commonwealth upon request. The Selected Offeror shall provide a proposed blended hourly cost on the Rate Card tab of **Appendix C, Cost Matrix** for all available Professional Services. These professional Services may include, but not be limited to, transition assistance, disaster recovery services, or security services. Professional Services may include on site or off-site engagements and take place during business and non-business hours.

If additional professional services are requested, the Commonwealth agency will develop a SOW for each service order which will be attached to the associated purchase order. The Offeror shall provide a price for all listed professional Services. All professional Services may be purchased at the Commonwealth's discretion.



VIII. Reports and Project Control. The selected Offeror shall create, maintain, and execute the following plans, reports, and supporting documentation in a format agreed to by the Commonwealth.

A. Quarterly Business Reviews. The Selected Offeror and the Commonwealth agree to meet quarterly to review current configurations, lifecycles and product roadmaps to determine product viability. All product lifecycle and roadmap information provided by the Selected Offeror will be kept confidential by the Commonwealth. The objective of this meeting is to reach a mutual agreement on product replacement during the life of the Contract. Additionally, any pending changes that will have a material effect on the Commonwealth's purchasing need to be discussed and viable alternatives presented. These quarterly meetings will also serve as an opportunity for the Selected Offeror to identify contract improvement opportunities and cost savings opportunities for the Commonwealth.

B. Reporting.

(1) Monthly Reports.

The Selected Offeror must provide monthly reports to each using Commonwealth agency and a consolidated monthly report to the Department of General Services, Bureau of Procurement. The monthly reports must include all activity by the Commonwealth, as well as for any external procurement activity by other state entities. The Selected Offeror must provide monthly reports to the Commonwealth no later than **10 business days** after the end of the month.

The Selected Offeror must utilize the **Appendix G, Monthly Report Template** located in the Buyer Attachments section. A monthly report must consist of, and include at a minimum:

- (a) Ordering and delivery report of Equipment purchases which includes, at a minimum: Agency Information, Equipment Information, Order Information, Shipment and Delivery Information and Invoice Information.
- (b) Problem and response report which includes, at a minimum: Agency Information, Servers, Equipment Information and Problem/Response Information.
- (c) Service level report which includes, at a minimum: Agency information, Off-the-shelf SLA computation, Custom SLA computation and Incorrect Shipment Correction SLA computation.
- (d) Outstanding issues report which includes, at a minimum: Agency Information and Outstanding Issue Summary.



(2) Quarterly Reports.

The Selected Offeror must provide quarterly reports to the Commonwealth no later than **15 business days** after the end of a quarter. A quarter is defined by the Commonwealth as follows:

- Quarter 1: January through March.
- Quarter 2: April through June.
- Quarter 3: July through September.
- Quarter 4: October through December.

The Selected Offeror must utilize the **Appendix H, Quarterly Report Template** located in the Buyer Attachments section, which includes the following:

- (a) Sales summary report which includes, at a minimum:
 - (1) Agency Information: Identifying information for the Commonwealth agency.
 - (2) Maintenance/Services Information: Detailed description of the maintenance/services being performed.
 - (3) Equipment Information: Detailed information about the Equipment purchased, including the manufacturer; product description/base configuration details; manufacturer part number; any additional upgrades purchased; and quantity.
 - (4) Order Information: Detailed breakout of the total price of the order. This includes the quantity provided; base configuration cost; and cost and quantity of any upgrades purchased. Include the appropriate item cost or list price and associated markup or discount.
 - (5) Invoice Information: Invoice information for the associated order.
- (b) Problem and response report, which includes, at a minimum: Agency Information; Equipment Information; Maintenance/Services Information; and Problem/Response Information.
- (c) Outstanding issues summary report which includes, at a minimum: Agency Information and Outstanding Issue Summary.



- (d) Quarterly summary report—to be delivered in person at Quarterly Business Reviews (QBRs)—of quarterly contract activities; achievements; challenges; and Selected Offeror’s recommendations for the Commonwealth.
 - (e) Detailed SLA metric report. The Selected Offeror will be responsible for tracking and quarterly reporting on the SLA metrics listed in **Section VI.I Service Level Agreements (SLAs)**. The format of the report must be approved by the Commonwealth before ordering can commence.
- (3) Additional Reports. Additional reports may be added, or removed, by the Commonwealth at any time.

IX. Objections and Additions to Standard Contract Terms and Conditions.

The Issuing Office will reject any proposal that is conditioned on the negotiation of the terms and conditions set out in the Terms and Conditions contained in the Buyer Attachment section or to other provisions of the RFP.



11-3312755

RFP 6100044346 COMMONWEALTH OF PA:
MAINFRAME AND MIDRANGE SERVER AND STORAGE
DEVICES

LOT 2 – MIDRANGE

VICOM INFINITY WILL NOT BE BIDDING ON
LOT 2 - MIDRANGE

RFP Questions

Group 1.1: Technical Questions

- 1.1.1 If responding to Lot 1 - Mainframe; please download, complete, and upload the Mainframe Technical Submittal from Buyer Attachments.
File Upload

VICOM INFINITY RFP 6100044346 Lot 1 - Mainframe Technical Submittal (revised 5.17.18) FINAL.docx - ./SupplierAttachments/QuestionAttachments/VICOM INFINITY RFP 6100044346 Lot 1 - Mainframe Technical Submittal (revised 5.17.18) FINAL.docx
- 1.1.2 If responding to Lot 1 - Mainframe; any additional attachments in support of the Mainframe Technical Submittal can be uploaded here. If multiple files are needed combine into a single document or create a .zip file combining the files into a single .zip file.
File Upload

VICOM INFINITY RFP 6100044346 2018 Vicom Infinity Business Continuity Plan v3 (052318).pdf - ./SupplierAttachments/QuestionAttachments/VICOM INFINITY RFP 6100044346 2018 Vicom Infinity Business Continuity Plan v3 (052318).pdf
- 1.1.3 If responding to Lot 1 - Mainframe; I have read and fully understand the performance standards listed in Section VI, I. Service Level Agreements of the Mainframe Technical Submittal.
Yes/No

Yes
- 1.1.4 If responding to Lot 2 - Midrange; please download, complete, and upload the Midrange Technical Submittal from Buyer Attachments.
File Upload

VICOM INFINITY RFP 6100044346 LOT 2 MIDRANGE - NO RESPONSE.pdf - ./SupplierAttachments/QuestionAttachments/VICOM INFINITY RFP 6100044346 LOT 2 MIDRANGE - NO RESPONSE.pdf
- 1.1.5 If responding to Lot 2 - Midrange; any additional attachments in support of the Midrange Technical Submittal can be uploaded here. If multiple files are needed combine into a single document or create a
File Upload

No response.
- 1.1.6 If responding to Lot 2 - Midrange; I have read and fully understand the performance standards listed in Section VI, I. Service Level Agreements of the Midrange Technical Submittal.
Yes/No

No response.
- 1.1.7 Please download, complete, and upload Appendix F, Dedicated Contacts from Buyer Attachments.
File Upload

VICOM INFINITY RFP 6100044346 Appendix F Dedicated Contacts v3 Input (052918).xlsx - ./SupplierAttachments/QuestionAttachments/VICOM INFINITY RFP 6100044346 Appendix F Dedicated Contacts v3 Input (052918).xlsx
- 1.1.8 This RFP is subject to the Information Technology Policies (ITPs) issued by the Office of Administration, Office for Information Technology found at <http://www.oa.pa.gov/Policies/Pages/itp.aspx>. All proposals must be submitted on the basis that all ITPs are applicable to this procurement. It is the responsibility of the Offeror to read and be familiar with the ITPs. Notwithstanding the foregoing, if the Offeror believes that any ITP is not applicable to this procurement, it must list all such ITPs in its technical response, and explain why it believes the ITP is not applicable. The Issuing Office may, in its sole discretion, accept or reject any request that an ITP not be considered to be applicable. The Offeror's failure to list an ITP will result in its waiving its right to do so later, unless the Issuing Office, in its sole discretion, determines that
Text (Multi-Line)

NO COMMENTS

1.1.9 Accessibility Needs. The Commonwealth's Executive Order 2016-03, 2016-03 - Establishing "Employment First" Policy and Increasing Competitive Integrated Employment for Pennsylvanians with a Disability, states that Commonwealth employees with disabilities may require accommodations of assistive technology in order to perform the functions of their jobs. The Commonwealth will further the objectives of providing appropriate accommodation and support through the contracts resulting from this procurement. Contractors must provide an accessibility plan and assistive technology for the products and services of this procurement, as applicable. If applicable, please upload provide an accessibility plan

File Upload

No response.

Group 1.2: Small Diverse Business and Small Business Participation

1.2.1 If responding to Lot 1 - Mainframe; please download, complete, and upload the attached SDB/SB Submittal Form, listing of SDB/SB subcontractors, and Letters of Intent (LOI). If this solicitation includes multiple lots, please include a separate Small Diverse Business and Small Business Participation Submittal for each lot for which you are submitting a proposal or quote. All fields must be completed

File Upload

VICOM INFINITY RFP 6100044346 SDBSB Participation Submittal and LOI - Lot 1 Mainframe v2 (PeopleNTech).xlsx - ../SupplierAttachments/QuestionAttachments/VICOM INFINITY RFP 6100044346 SDBSB Participation Submittal and LOI - Lot 1 Mainframe v2 (PeopleNTech).xlsx

SDBSB Participation Submittal - Lot 1 Mainframe - ../Attachments/QuestionAttachments/SDBSB Participation Submittal - Lot 1 Mainframe.xlsx

1.2.2 If responding to Lot 1 - Mainframe; attached is a Model Form of Small Diverse and Small Business

File Upload

No response.

Model Form of SDSDB Subcontractor Agreement - Lot 1 Mainframe - ../Attachments/QuestionAttachments/Model Form of SDSDB Subcontractor Agreement - Lot 1

1.2.3 If responding to Lot 1 - Mainframe; I have read and fully understand the Small and Small Diverse Business qualifications attached in question 1.2.1 above.

Yes/No

Yes

1.2.4 If responding to Lot 2 - Midrange; please download, complete, and upload the attached SDB/SB Submittal Form, listing of SDB/SB subcontractors, and Letters of Intent (LOI). If this solicitation includes multiple lots, please include a separate Small Diverse Business and Small Business Participation Submittal for each lot for which you are submitting a proposal or quote. All fields must be completed

File Upload

VICOM INFINITY RFP 6100044346 LOT 2 MIDRANGE - NO RESPONSE(1).pdf - ../SupplierAttachments/QuestionAttachments/VICOM INFINITY RFP 6100044346 LOT 2 MIDRANGE - NO RESPONSE(1).pdf

SDBSB Participation Submittal - Lot 2 Midrange - ../Attachments/QuestionAttachments/SDBSB Participation Submittal - Lot 2 Midrange.xlsx

1.2.5 If responding to Lot 2 - Midrange; attached is a Model Form of Small Diverse and Small Business

File Upload

No response.

Model Form of SDSDB Subcontractor Agreement - Lot 2 Midrange - ../Attachments/QuestionAttachments/Model Form of SDSDB Subcontractor Agreement - Lot 2

1.2.6 If responding to Lot 2 - Midrange; I have read and fully understand the Small and Small Diverse Business qualifications attached in question 1.2.4 above.

Yes/No

No response.

Group 1.3: Cost

1.3.1 Please use Appendix C, Cost Matrix to submit your cost proposal for this procurement. As an alternative, Offerors should provide a consumption based pricing model for the equipment procured through this solicitation. Please describe your ability to accommodate this model in the cost matrix. Do not include any assumptions in your submittal. If you do, your proposal may be rejected.

File Upload

VICOM INFINITY RFP 6100044346 Appendix C Cost Matrix (revised 5.17.18) (1) Input v8 (052918) FINAL.xlsx - ./SupplierAttachments/QuestionAttachments/VICOM INFINITY RFP 6100044346 Appendix C Cost Matrix (revised 5.17.18) (1) Input v8 (052918) FINAL.xlsx

Additional Required Documentation

Group 2.1: Standard Forms

2.1.1 Please download and complete the attached Reciprocal Limitations Act form.

File Upload

VICOM INFINITY RFP 6100044346 GSPUR-89 Reciprocal_Limitations_Act_Requirements.doc - ./SupplierAttachments/QuestionAttachments/VICOM INFINITY RFP 6100044346 GSPUR-89 Reciprocal_Limitations_Act_Requirements.doc

Reciprocal Limitations Act - ../Attachments/QuestionAttachments/GSPUR-89

2.1.2 Please download, sign, and attach the Iran Free Procurement Certification and Disclosure Form.

File Upload

VICOM INFINITY RFP 6100044346 Iran Free Procurement Certification Form.pdf - ./SupplierAttachments/QuestionAttachments/VICOM INFINITY RFP 6100044346 Iran Free Procurement Certification Form.pdf

Iran Free Procurement Certification Form - ../Attachments/QuestionAttachments/Iran Free Procurement Certification Form.pdf

2.1.3 If proposing as an Authorized Reseller, please attach a combined file with all Manufacturer Authorization Letters for this procurement. Each letter must be completed as stated in Section III.C. Manufacturer Authorization Letter of both technical submittal documents.

File Upload

VICOM INFINITY RFP 6100044346 MANUFACTURER AUTH LETTER - 2018 Proof of Relationship Vicom Infinity.pdf - ./SupplierAttachments/QuestionAttachments/VICOM INFINITY RFP 6100044346 MANUFACTURER AUTH LETTER - 2018 Proof of Relationship Vicom Infinity.pdf

2.1.4 Please download, complete, and attach the Trade Secret/Confidential Proprietary Information Notice.

File Upload

VICOM INFINITY RFP 6100044346 TradeSecret_ConfidentialPropertyInfoNotice.pdf - ./SupplierAttachments/QuestionAttachments/VICOM INFINITY RFP 6100044346 TradeSecret_ConfidentialPropertyInfoNotice.pdf

Trade Secret/Confidential Proprietary Information Notice - ../Attachments/QuestionAttachments/TradeSecret_ConfidentialPropertyInfoNotice (002).pdf

2.1.5 Any Offeror who determines that it must divulge trade secrets or confidential proprietary information as part of its proposal must submit a redacted version of its proposal, which removes only the confidential proprietary information and trade secrets, for required public disclosure purposes.

File Upload

No response.

2.1.6 Complete and sign the attached Lobbying Certification and Disclosure form (only applicable when federal funds are being used in the amount of \$100,000 or more).

File Upload

VICOM INFINITY RFP 6100044346 BOP-1307 LOBBYING CERTIFICATION FORM (002).pdf - ./SupplierAttachments/QuestionAttachments/VICOM INFINITY RFP 6100044346 BOP-1307 LOBBYING CERTIFICATION FORM (002).pdf

Lobbying Certification and Disclosure Form - ../Attachments/QuestionAttachments/BOP-1307 LOBBYING CERTIFICATION FORM.doc

2.1.7 Offeror shall indicate acceptance of participation in the COSTARS Program by checking yes. Further explanation of the program can be found in the attached file.

Yes/No

Yes

COSTARS Participation Clause - ../Attachments/QuestionAttachments/COSTARS Program Clause for Statewide Contract.doc

2.1.8 The Commonwealth has determined that this contract will be made available to external procurement activities. Further information can be found in the attached file.

File Upload

No response.

External Procurement Activities - ../Attachments/QuestionAttachments/Participating Addendum with an External Procurement Activity.docx

2.1.9 Please download, sign and attach the Domestic Workforce Utilization Certification Form.

File Upload

VICOM INFINITY RFP 6100044346 Domestic Workforce Utilization Certification Form.pdf - ../SupplierAttachments/QuestionAttachments/VICOM INFINITY RFP 6100044346 Domestic Workforce Utilization Certification Form.pdf

Domestic Workforce Utilization Form - ../Attachments/QuestionAttachments/Domestic Workforce Utilization Certification Form.doc

Group 2.2: Terms and Conditions

2.2.1 By submitting a proposal, the Offeror does so on the basis of the contract terms and conditions contained in Buyer Attachments.

Yes/No

Yes

Group 2.3: Offeror's Representation

2.3.1 By submitting a proposal, each Offeror understands, represents, and acknowledges the attached representations and authorizations.

Yes/No

Yes

Offerors Representations and Authorizations - ../Attachments/QuestionAttachments/Offerors Representations and Authorizations.docx

2.3.2 By submitting a proposal, you represent that: (1) you are making a formal submittal in response to a procurement issued by the Commonwealth pursuant to the Procurement Code (62 Pa.C.S. Section 101 et seq.); (2) you are authorized to submit the information on behalf of the person or entity identified; (3) this electronic submittal is deemed signed by you and you are authorized to bind the person or entity identified to the terms of the solicitation and this submittal; and (4) all of the information submitted is true and correct to the best of your knowledge, information, and belief. Any false statements made by you in this submittal are subject to the penalties of 18 Pa.C.S. §4904 (relating to unsworn falsification to

Yes/No

Yes

Dedicated Contacts

Instructions: Fill in the yellow cells below with the appropriate contact information. The Account Manager and Account Representative can be the same person. The phone number is the only information required for the Service Contact.

	Contact Name	Contact Email	Contact Phone
Account Manager:	John Daly	jdaly@vicominfinity.com	Cell: XXXXXXXXXX
Account Representative:	John Daly		
Service Contact:			1-800-IBM-SERV or 1-800-426-7378



Vicom Infinity Business Continuity Plan

May 2018



Emergency notification contacts

Name	Title	Mobile phone
Tom Amodio	President	██████████
Bob Malitz	Director of Services	██████████
Tom Quinn	Director of Sales	██████████
Len Santalucia	CTO	██████████
Linda McGuinness	Operations Manager	██████████
Al Loffredo	Config Center Manager	██████████
Lamont Bull	Internal Support Engineer	██████████

Purpose

The purpose of this business continuity plan is to prepare Vicom Infinity in the event of extended service outages caused by factors beyond our control (e.g., natural disasters, man-made events), and to restore services to the widest extent possible in a minimum time frame. All Vicom Infinity sites are expected to implement preventive measures whenever possible to minimize operational disruptions and to recover as rapidly as possible when an incident occurs.

The plan identifies vulnerabilities and recommends necessary measures to prevent extended voice communications service outages. It is a plan that encompasses all Vicom Infinity system sites and operations facilities.

Scope

The scope of this plan is limited to steps to take in the event of a disaster. This is a business continuity plan, not a daily problem resolution procedures document.

Plan objectives

- Serves as a guide for the Vicom Infinity recovery teams.
- References and points to the location of critical data.
- Provides procedures and resources needed to assist in recovery.
- Identifies vendors and customers that must be notified in the event of a disaster.
- Assists in avoiding confusion experienced during a crisis by documenting, testing and reviewing recovery procedures.
- Identifies alternate sources for supplies, resources and locations.
- Documents storage, safeguarding and retrieval procedures for vital records.

Assumptions

- Key people (team leaders or alternates) will be available following a disaster.
- A national disaster such as nuclear war is beyond the scope of this plan.
- This document and all vital records are stored in a secure off-site location and not only survive the disaster but are accessible immediately following the disaster.
- Each support organization will have its own plan consisting of unique recovery procedures, critical resource information and procedures.

Disaster definition

Any loss of utility service (power, water), connectivity (system sites), or catastrophic event (weather, natural disaster, vandalism) that causes an interruption in the service provided by Vicom Infinity operations. The plan identifies vulnerabilities and recommends measures to prevent extended service outages.

Recovery teams

- Emergency management team (EMT)
- Disaster recovery team (DRT)
- IT Technical Services (IT)



See Appendix A for details on the roles and responsibilities of each team.

Team member responsibilities

- Each team member will designate an alternate
- All of the members should keep an updated calling list of their work team members' work, home, and cell phone numbers both at home and at work.
- All team members should keep this plan for reference at home in case the disaster happens after normal work hours. All team members should familiarize themselves with the contents of this plan.

Instructions for using the business continuity plan

Invoking the plan

This plan becomes effective when a disaster occurs. Normal problem management procedures will initiate the plan, and remain in effect until operations are resumed at the original location or a replacement location and control is returned to the appropriate functional management.

Disaster declaration

The senior management team, with input from the EMT, DRT and IT, is responsible for declaring a disaster and activating the various recovery teams as outlined in this plan.

In a major disaster situation affecting multiple business units, the decision to declare a disaster will be determined by Vicom Infinity senior management. The EMT and DRT will respond based on the directives specified by senior management.

Notification

Regardless of the disaster circumstances, or the identity of the person(s) first made aware of the disaster, the EMT and DRT must be activated immediately in the following cases:

- The primary datacenter is down or unavailable concurrently for more than twelve hours

External communications

Corporate public relations personnel are designated as the principal contacts with the media (radio, television, and print), regulatory agency, government agencies, and other external organizations following a formal disaster declaration.

Emergency management standards

Data backup policy

Full and incremental backups preserve corporate information assets and should be performed on a regular basis for data that is irreplaceable, have a high replacement cost, or are considered critical. Backup media should be stored in a secure, geographically separate location from the original and isolated from environmental hazards.

Department-specific data and document retention policies specify what records must be retained and for how long. All organizations are accountable for carrying out the provisions of the instruction for records in their organization.

IT follows these standards for its data backup:

Backups are stored at locations that are secure, isolated from environmental hazards, and geographically separate from the location housing the system. Veeam Backup & Replication is used to back up the servers and write the data to disk, removable disk targets, and remote disk targets including both One Penn Plaza and Microsoft Azure Cloud Storage.

- The servers should be backed up daily.
- Backups should be encrypted.
- Removable disks, and other suitable media are stored in environmentally secure facilities.
- Removable disk rotation occurs on a regular schedule.
- Access to backup databases and other data is tested annually.
- The system supervisor is responsible for this activity.

Storage Replication Policy

All production servers are stored on Virtual machines which, in turn, are hosted on the IBM storage arrays at the primary site. The individual virtual servers are protected via Veeam Backup & Replication. The Veeam backups should be replicated to the secondary site and to Microsoft Azure Cloud Storage. In the event of the primary site going down, the servers can be brought online at the secondary site. In the event of a regional event affecting both Primary & Secondary Sites, the replicated backups can be brought online using Microsoft Azure Cloud services.



Emergency management procedures

The following procedures are to be followed by system operations personnel and other designated Vicom Infinity personnel in the event of an emergency. Where uncertainty exists, the more reactive action should be followed to provide maximum protection and personnel safety.

Note: Anyone not recognized by the IT staff as normally having business in the area must be challenged by the staff who should then notify security personnel.

These procedures are furnished to Vicom Infinity management personnel to take home for reference. Several pages have been included to supply emergency contacts.

In the event of any situation where access to a building housing a system is denied, personnel should report to alternate locations. Primary and secondary locations are listed below.

Locations

Primary Site: 400 Broadhollow Road, Farmingdale, NY 11735

- Attempt to contact your immediate supervisor or management via telephone. Cell phone numbers are included in this document

Secondary Site: 1 Penn Plaza, Suite 2010, NY, NY

- Attempt to contact your immediate supervisor or management via telephone. Cell phone numbers are included in this document

Alternate Workplace: Work Remotely from Home

- Attempt to contact your immediate supervisor or management via telephone. Cell phone numbers are included in this document

In the event of a natural disaster

In the event of a major catastrophe affecting a Vicom Infinity facility, immediately notify the **VP of Professional Services**.

Procedure

STEP	ACTION
1	Notify EMT and DRT of pending event, if time permits.
2	<p>If the impending natural disaster can be tracked, begin preparation of site within 48 hours as follows:</p> <ul style="list-style-type: none"> • Deploy portable generators with fuel within 100 miles. • Deploy support personnel, tower crews, and engineering within 100 miles. • Deploy tractor trailers with replacement work space, antennas, power, computers and phones. • Facilities department on standby for replacement shelters • Basic necessities are acquired by support personnel when deployed: <ul style="list-style-type: none"> • Cash for one week • Food and water for one week • Gasoline and other fuels • Supplies, including chainsaws, batteries, rope, flashlights, medical supplies, etc.
3	<p>24 hours prior to event:</p> <ul style="list-style-type: none"> • Create an image of the system and files • Back up critical system elements • Verify backup generator fuel status and operation • Create backups of e-mail, file servers, etc. • Fuel vehicles and emergency trailers • Notify senior management

In the event of a fire

If fire or smoke is present in the facility, evaluate the situation, determine the severity, categorize the fire as major or minor and take the appropriate action as defined in this section. Call 9-1-1 as soon as possible if the situation warrants it.

- Personnel are to attempt to extinguish minor fires (e.g., single hardware component or paper fires) using hand-held fire extinguishers located throughout the facility. Any other fire or smoke situation will be handled by qualified building personnel until the local fire department arrives.
- In the event of a major fire, call 9-1-1 and immediately evacuate the area.
- In the event of any emergency situation, system security, site security and personal safety are the major concerns. If possible, the operations supervisor should remain present at the facility until the fire department has arrived.
- In the event of a major catastrophe affecting the facility, immediately notify senior management.

Procedure

STEP	ACTION
1	Dial 9-1-1 to contact the fire department.
2	Immediately notify all other personnel in the facility of the situation and evacuate the area.
3	Alert the EMT and DRT. <i>Note:</i> During non-staffed hours, security personnel will notify the Senior Executive responsible for the location directly.
4	Contact appropriate vendor personnel to aid in the decision regarding the protection of equipment if time and circumstance permit.
5	All personnel evacuating the facilities will meet at their assigned outside location (assembly point) and follow instructions given by the designed authority. Under no circumstances may any personnel leave without the consent of supervision.

In the event of a network services provider outage

In the event of a network service provider outage to any location, the guidelines and procedures in this section are to be followed.

Procedure

STEP	ACTION
1	Notify senior management of outage. Determine cause of outage and timeframe for its recovery.
2	If outage will be greater than one hour, route all calls via alternate services. If it is a major outage and all carriers are down and downtime will be greater than 12 hours, deploy satellite phones, if available.

In the event of a flood or water damage

In the event of a flood or broken water pipe within any computing facilities, the guidelines and procedures in this section are to be followed.

Procedure	STEP	ACTION
	1	Assess the situation and determine if outside assistance is needed; if this is the case, dial 9-1-1 immediately.
	2	Immediately notify all other personnel in the facility of the situation and be prepared to cease voice operations accordingly.
	3	Immediately notify all other personnel in the facility of the situation and be prepared to cease operations accordingly.
	4	Water detected below the raised floor may have different causes: <ul style="list-style-type: none"> • If water is slowly dripping from an air conditioning unit and not endangering equipment, contact repair personnel immediately. • If water is of a major quantity and flooding beneath the floor (water main break), immediately implement power-down procedures. While power-down procedures are in progress, evacuate the area and follow management’s instructions.

Plan review and maintenance

This plan must be reviewed semiannually and exercised on an annual basis. The test may be in the form of a walk-through, mock disaster, or component testing. Additionally, with the dynamic environment present within Vicom Infinity it is important to review the listing of personnel and phone numbers contained within the plan regularly.

The hard-copy version of the plan will be stored in a common location where it can be viewed by site personnel and the EMT and DRT. Electronic versions will be available via Vicom network resources as provided by IT. Each recovery team will have its own directory with change management limited to the recovery plan coordinator.

Notification of incident affecting the site

On-duty personnel responsibilities

If in-hours:

Upon observation or notification of a potentially serious situation during working hours at a system/facility, ensure that personnel on site have enacted standard emergency and evacuation procedures if appropriate and notify the EMT and DRT.

If outside hours:

IT personnel should contact the EMT and DRT.

Provide status to EMT and DRT

Contact EMT and/or DRT and provide the following information when any of the following conditions exist: (See Appendix B for contact list.)

- Two or more facilities are down concurrently for three or more hours.
- Any problem at any system or location that would cause the above condition to be present or there is certain indication that the above condition is about to occur.

The EMT will provide the following information:

- Location of disaster
- Type of disaster (e.g., fire, hurricane, flood)
- Summarize the damage (e.g., minimal, heavy, total destruction)
- Meeting location that is a safe distance from the disaster scene
- An estimated timeframe of when a damage assessment group can enter the facility (if possible)
- The EMT will contact the respective market team leader and report that a disaster involving voice communications has taken place.

The EMT and/or DRT will contact the respective Vicom Infinity team leader and report that a disaster has taken place.

Decide course of action

Based on the information obtained, the EMT and/or DRT need to decide how to respond to the event: mobilize IT, repair/rebuild existing site (s) with location staff, or relocate to a new facility.

Inform team members of decision

If a disaster is not declared, the location response team will continue to address and manage the situation through its resolution and provide periodic status updates to the EMT/DRT.

If a disaster is declared, the EMT and/or DRT will notify IT Tech Services immediately for deployment.

Declare a disaster if the situation is not likely to be resolved within predefined time frames. The person who is authorized to declare a disaster must also have at least one backup person who is also authorized to declare a disaster in the event the primary person is unavailable.

Disaster declared: Mobilize incident response/Technical services teams/Report to alternate (primary or secondary) site

Once a disaster is declared, the DRT is mobilized. This team will initiate and coordinate the appropriate recovery actions. Members assemble at the designated location as quickly as possible.

Conduct detailed damage assessment (This may also be performed prior to declaring a disaster.)

1. Under the direction of local authorities and/or EMT/DRT, assess the damage to the affected location and/or assets. Include vendors/providers of installed equipment to ensure that their expert opinion regarding the condition of the equipment is determined ASAP.
 - A. Participate in a briefing on assessment requirements, reviewing:
 - (1) Assessment procedures
 - (2) Gather requirements
 - (3) Safety and security issues

NOTE: Access to the facility following a fire or potential chemical contamination will likely be denied for 24 hours or longer.

- B. Document assessment results using assessment and evaluation forms contained in Appendix C.

Building access permitting:

- Conduct an on-site inspection of affected areas to assess damage to essential hardcopy records (files, manuals, contracts, documentation, etc.) and electronic data.
 - Obtain information regarding damage to the facility (s) (e.g., environmental conditions, physical structure integrity, furniture, and fixtures) from the DRT.
2. Develop a restoration priority list, identifying facilities, vital records and equipment needed for resumption activities that could be operationally restored and retrieved quickly.
 3. Recommendations for required resources.

Contact DRT: Decide whether to continue to business recovery phase

The EMT and DRT gather information regarding the event; contacts senior management and provides them with detailed information on status.

Based on the information obtained, senior management decides whether to continue to the business recovery phase of this plan. If the situation does not warrant this action, continue to address the situation at the affected site(s).

Business recovery phase (xx hours - full recovery)

This section documents the steps necessary to activate business recovery plans to support full restoration of systems or facility functionality at an alternate/recovery site that would be used for an extended period of time. Coordinate resources to reconstruct business operations at the temporary/permanent system location, and to deactivate recovery teams upon return to normal business operations.

Notify IT staff/Coordinate relocation to new facility

See Appendix A for IT staff associated with a new location being set up as a permanent location (replacement for site).

Secure funding for relocation

Make arrangements in advance with suitable backup location resources. Make arrangements in advance with local banks, credit card companies, hotels, office suppliers, food suppliers and others for emergency support.

Notify EMT and corporate business units of recovery startup

Using the call list in Appendix B, notify the appropriate company personnel. Inform them of any changes to processes or procedures, contact information, hours of operation, etc. (This may be used for media information.)

Operations recovered

Assuming all relevant operations have been recovered to an alternate site, and employees are in place to support operations, the company can declare that it is functioning in a normal manner at the recovery location.

Appendixes

Appendix A: Vicom Infinity recovery teams

Emergency management team (EMT)

Note: See Appendix B for contact list. Suggested members to include: senior management, human resources, corporate public relations, legal, IT services, risk management and operations

Charter:

Responsible for overall coordination of the disaster recovery effort; evaluation and determining disaster declaration; and communications with senior management.

Support activities:

The EMT:

- Evaluate which recovery actions should be invoked and activate the recovery teams
- Evaluate damage assessment findings
- Set restoration priority based on the damage assessment reports
- Provide senior management with ongoing status information
- Act as a communication channel to corporate teams and major customers
- Work with vendors and DRT to develop a rebuild/repair schedule

Disaster recovery team

Note: See Appendix B for contact list

Charter:

Responsible for overall coordination of the disaster recovery effort; establishment of the emergency command area; and communications with senior management and the EMT.

Support activities:

- Coordinate with EMT and senior management
- Determine recovery needs
- Establish secondary site and assembly areas
- Notify all company department heads and advise them to activate their plan(s) if applicable, based upon the disaster situation
- If no disaster is declared, take appropriate action to return to normal operations using regular staff
- Determine if vendors or other teams are needed to assist with detailed damage assessment
- Prepare post-disaster debriefing report
- Coordinate the development of site-specific recovery plans and ensure they are updated semi-annually

IT technical services (IT)

Charter

IT will facilitate technology restoration activities.

Support activities

- Upon notification of disaster declaration, review and provide support as follows:



1. Facilitate technology recovery and restoration activities, providing guidance on replacement equipment and systems, as required
2. Coordinate removal of salvageable equipment at disaster site that may be used for alternate site operations

Appendix B: Recovery team contact lists

Emergency management team (EMT)

Name	Title	Mobile/Cell Phone
Tom Amodio	President	[REDACTED]
Tom Quinn	Director of Sales	[REDACTED]
Linda McGuinness	Operations Manager	[REDACTED]

Disaster recovery team (DRT)

Name	Title	Mobile/Cell Phone
Bob Malitz	Director of Services	[REDACTED]
Len Santalucia	CTO	[REDACTED]
Alex Kim	Systems z Solutions Archt.	[REDACTED]

IT technical services

Name	Title	Mobile/Cell Phone
Al Loffredo	Config Center Manager	[REDACTED]
Lamont Bull	Internal Support Engineer	[REDACTED]
Brent Job	Internal Support Engineer	[REDACTED]
Courtney Gamble	Network Engineer	[REDACTED]

Appendix C: Forms

Incident/disaster form

Upon notification of an incident/disaster situation the on-duty personnel will make the initial entries into this form. It will then be forwarded to the ECC, where it will be continually updated. This document will be the running log until the incident/disaster has ended and "normal business" has resumed.

TIME AND DATE

TYPE OF EVENT

LOCATION

BUILDING ACCESS ISSUES



Critical equipment status form

CRITICAL EQUIPMENT STATUS
ASSESSMENT AND EVALUATION FORM

Recovery team: _____

<u>Equipment</u>	[-----STATUS-----]		<u>Comments</u>
	<u>Condition</u>	<u>Salvage</u>	
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____
7. _____	_____	_____	_____
8. _____	_____	_____	_____
9. _____	_____	_____	_____
10. _____	_____	_____	_____
11. _____	_____	_____	_____
12. _____	_____	_____	_____
13. _____	_____	_____	_____
14. _____	_____	_____	_____
15. _____	_____	_____	_____

Legend

Condition: OK - Undamaged
 DBU - Damaged, but usable
 DS - Damaged, requires salvage before use
 D - Destroyed, requires reconstruction

Appendix D: Test Plan

Test Plan Details

****Please note – this section has been intentionally redacted for security. Vicom Infinity does not make details of our test plan or compute environment available to outside entities****

RECIPROCAL LIMITATIONS ACT REQUIREMENTS

Please Complete Applicable Portion of Pages 3 & 4 and Return with Bid.

NOTE: These Requirements Do Not Apply To Bids Under \$10,000.00

I. REQUIREMENTS

- A.** The Reciprocal Limitations Act requires the Commonwealth to give preference to those bidders offering supplies produced, manufactured, mined or grown in Pennsylvania as against those bidders offering supplies produced, manufactured, mined or grown in any state that gives or requires a preference to supplies produced, manufactured, mined or grown in that state. The amount of the preference shall be equal to the amount of the preference applied by the other state for that particular supply.

The following is a list of states which have been found by the Department of General Services to have applied a preference for in-state supplies and the amount of the preference:

	STATE	PREFERENCE
1.	Alaska	7% (applies only to timber, lumber, and manufactured lumber products originating in the state)
2.	Arizona	5% (construction materials produced or manufactured in the state only)
3.	Hawaii	10%
4.	Illinois	10% for coal only
5.	Iowa	5% for coal only
6.	Louisiana	4% meat and meat products 4% catfish 10% milk & dairy products 10% steel rolled in Louisiana 7% all other products
7.	Montana	5% for residents * 3% for non-residents* *offering in-state goods, supplies, equipment and materials
8.	New Mexico	5%
9.	New York	3% for purchase of food only
10.	Oklahoma	5%
11.	Virginia	4% for coal only
12.	Washington	5% (fuels mined or produced in the state only)
13.	Wyoming	5%

- B.** The Reciprocal Limitations Act requires the Commonwealth to give preference to those bidders offering printing performed in Pennsylvania as against those bidders offering printing performed in any state that gives or requires a preference to printing performed in that state. The amount of the preference shall be equal to the amount of the preference applied by the other state for that particular category of printing.

The following is a list of states which have been found by the Department of General Services to have applied a preference for in-state printing and the amount of the preference:

	STATE	PREFERENCE
1.	Hawaii	15%
2.	Idaho	10%
3.	Louisiana	3%
4.	Montana	8%
5.	New Mexico	5%
6.	Wyoming	10%

- C.** The Reciprocal Limitations Act, also requires the Commonwealth to give resident bidders a preference against a nonresident bidder from any state that gives or requires a preference to bidders from that state or exclude bidders from states that exclude nonresident bidders. The amount of the preference shall be equal to the amount of the preference applied by the state of the nonresident bidder. The following is a list of the states which have been found by the Department of General Services to have applied a preference for in-state bidders and the amount of the preference:

STATE	PREFERENCE
1. Alaska	5% (supplies only)
2. Arizona	5% (construction materials from Arizona resident dealers only)
3. California	5% (for supply contracts only in excess of \$100,000.00)
4. Connecticut	10% (for supplies only)
5. Montana	3%
6. New Mexico	5% (for supplies only)
7. South Carolina	2% (under \$2,500,000.00) 1% (over \$2,500,000.00)
	This preference does not apply to construction contracts nor where the price of a single unit exceeds \$10,000.
8. West Virginia	2.5% (for the construction, repair or improvement of any buildings)
9. Wyoming	5%

STATE	PROHIBITION
1. New Jersey	For supply procurements or construction projects restricted to Department of General Services Certified Small Businesses, New Jersey bidders shall be excluded from award even if they themselves are Department of General Services Certified Small Businesses.

D. The Reciprocal Limitations Act also requires the Commonwealth not to specify, use or purchase supplies which are produced, manufactured, mined or grown in any state that prohibits the specification for, use, or purchase of such items in or on its public buildings or other works, when such items are not produced, manufactured, mined or grown in such state. The following is a list of the states which have been found by the Department of General Services to have prohibited the use of out-of-state supplies:

STATE	PROHIBITION
1. Alabama	Only for printing and binding involving "messages of the Governor to the Legislature", all bills, documents and reports ordered by and for the use of the Legislature or either house thereof while in session; all blanks, circulars, notices and forms used in the office of or ordered by the Governor, or by any state official, board, commission, bureau or department, or by the clerks of the supreme court . . ./and other appellate courts/; and all blanks and forms ordered by and for the use of the Senate and Clerk or the House of Representatives, and binding the original records and opinions of the Supreme Court . . . /and other appellate courts/
2. Georgia	Forest products only
3. Indiana	Coal
4. Michigan	Printing
5. New Mexico	Construction
6. Ohio	Only for House and Senate bills, general and local laws, and joint resolutions; the journals and bulletins of the Senate and house of Representatives and reports, communications, and other documents which form part of the journals; reports, communications, and other documents ordered by the General Assembly, or either House, or by the executive department or elective state officers; blanks, circulars, and other work for the use of the executive departments, and elective state officers; and opinions of the Attorney General.
7. Rhode Island	Only for food for state institutions.

*If the bid discloses that the bidder is offering to supply one of the above-listed products that is manufactured, mined, or grown in the listed state, it shall be rejected. Contractors are prohibited from supplying these items from these states.

II. CALCULATION OF PREFERENCE

In calculating the preference, the amount of a bid submitted by a Pennsylvania bidder shall be reduced by the percentage preference which would be given to a nonresident bidder by its state of residency (as found by the Department of General Services in Paragraph C_{above}). Similarly, the amount of a bid offering Pennsylvania goods, supplies, equipment or materials shall be reduced by the percentage preference which would be given to another bidder by the state where the goods, supplies, equipment or materials are produced, manufactured, mined or grown (as found by the Department of General Services in Paragraphs A and B above).

THIS FORM MUST BE COMPLETED AND RETURNED WITH THE BID

III. STATE OF MANUFACTURE

All bidders must complete the following chart by listing the name of the manufacturer and the state (or foreign country) of manufacture for each item. If the item is domestically produced, the bidder must indicate the state in the United States where the item will be manufactured. **This chart must be completed and submitted with the bid or no later than two (2) business days after notification from the Issuing Office to furnish the information. Failure to complete this chart and provide the required information prior to the expiration of the second business day after notification shall result in the rejection of the bid.**

ITEM NUMBER	NAME OF MANUFACTURER	STATE (OR FOREIGNCOUNTRY) OF MANUFACTURE
2827	IBM	NEW YORK
2828	IBM	NEW YORK
2964	IBM	NEW YORK
2965	IBM	NEW YORK
3907	IBM	NEW YORK

IV. BIDDER'S RESIDENCY

A. In determining whether the bidder is a nonresident bidder from a state that gives or requires a preference to bidders from that state, the address given on the first page of this invitation to bid shall be used by the Commonwealth. If that address is incorrect, or if no address is given, the correct address should be provided in the space below:

Correct Address: Vicom Infinity, Inc.
400 Broadhollow Road
Suite 1
Farmingdale, NY 11735

- B.** In order to claim the preference provided under Section I.B., Pennsylvania resident bidders must complete the following or have such information on file with the Issuing Office:
- 1.** Address of bidder's bona fide establishment in Pennsylvania at which it was transacting business on the date when bids for this contract/requisition were first solicited: _____
 - 2. a.** If the bidder is a corporation:
 - (1)** The corporation is or is not incorporated under the laws of the Commonwealth of Pennsylvania.
 - (a)** If the bidder is incorporated under the laws of the Commonwealth of Pennsylvania, provide date of incorporation: _____
 - (b)** If the bidder is not incorporated under the laws of the Commonwealth of Pennsylvania, it must have a certificate of authority to do business in the Commonwealth of Pennsylvania from the Pennsylvania Department of State as required by the Pennsylvania Business Corporation Law (15 P.S. §2001). Provide date of issuance of certificate of authority: _____
 - (2)** The corporation is or is not conducting business in Pennsylvania under an assumed or fictitious name. If the bidder is conducting business under an assumed or fictitious name, it must register the fictitious name with the Secretary of the Commonwealth and the office of the prothonotary of the county wherein the registered office of such corporation is located as required by the Fictitious Corporate Name Act, as amended 15 P.S. §51 et seq. Corporate bidders conducting business under an assumed or fictitious name must provide date of registry of the assumed or fictitious name: _____
 - b.** If the bidder is a partnership:
 - (1)** The partnership is or is not conducting business in Pennsylvania under an assumed or fictitious name. If the bidder is conducting business under an assumed or fictitious name, it must file with the Secretary of the Commonwealth and the office of the prothonotary the county wherein the principal place of business is located as required by the Fictitious Name Act of May 24, 1945, P.L. 967, as amended 54 P.S. §28.1. Partnerships conducting business under an assumed or fictitious name must provide the date of filing of the assumed or fictitious name with the Secretary of the Commonwealth: _____
 - (2)** The partnership is or is not a limited partnership formed under the laws of any jurisdiction other than the Commonwealth of Pennsylvania. If the bidder is an Out-of-state limited partnership, it must register with the Pennsylvania Department of State as required by the Act of July 10, 1981, P.L. 237, as amended, 59 Pa. C.S.A. §503. Out-of-state limited partnerships must provide the date of registry with the Pennsylvania Department of State: _____
 - c.** If the bidder is an individual:

He or she is or is not conducting business under an assumed or fictitious name. If the bidder is conducting business under an assumed or fictitious name, he or she must file with the Secretary of the Commonwealth and the office of the prothonotary in the county wherein the principal place of business is located as required by the Fictitious Name Act of May 24, 1945, P.L. 967, as amended, 54 P.S. §28.1. Individuals conducting business under an assumed or fictitious name must provide the date of filing of the assumed or fictitious name with the Secretary of the Commonwealth: _____

IRAN FREE PROCUREMENT CERTIFICATION FORM

(Pennsylvania's Procurement Code Sections 3501-3506, 62 Pa.C.S. §§ 3501-3506)

To be eligible for an award of a contract with a Commonwealth entity for goods or services worth at least \$1,000,000 or more, a vendor must either: a) certify it is **not** on the current list of persons engaged in investment activities in Iran created by the Pennsylvania Department of General Services ("DGS") pursuant to Section 3503 of the Procurement Code **and** is eligible to contract with the Commonwealth under Sections 3501-3506 of the Procurement Code; or b) demonstrate it has received an exception from the certification requirement for that solicitation or contract pursuant to Section 3503(e).

To comply with this requirement, please insert your vendor or financial institution name and complete **one** of the options below. Please note: Pennsylvania law establishes penalties for providing false certifications, including civil penalties equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts. (Section 3503 of the Procurement Code.)

OPTION #1 - CERTIFICATION

I, the official named below, certify I am duly authorized to execute this certification on behalf of the vendor/financial institution identified below, and the vendor/financial institution identified below is **not** on the current list of persons engaged in investment activities in Iran created by DGS **and** is eligible to contract with the Commonwealth of Pennsylvania Sections 3501-3506 of the Procurement Code.

<i>Vendor Name/Financial Institution (Printed)</i> VICOM INFINITY, INC.	
<i>By (Authorized Signature)</i>	[REDACTED]
<i>Printed Name and Title of Person Signing</i>	VICTOR V. VEROLA VICE PRESIDENT
<i>Date Executed</i>	5/22/18

OPTION #2 – EXEMPTION

Pursuant to Procurement Code Section 3503(e), DGS may permit a vendor/financial institution engaged in investment activities in Iran, on a case-by-case basis, to enter into a contract for goods and services.

If you have obtained a written exemption from the certification requirement, please fill out the information below, and attach the written documentation demonstrating the exemption approval.

<i>Vendor Name/Financial Institution (Printed)</i>	
<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	<i>Date Executed</i>



May 22, 2018

Thomas Amodio
400 Broadhollow Road
Farmingdale, NY 11735

Dear Mr. Amodio,

This letter is to confirm that, as of the date of this letter, Vicom Infinity is an IBM Business Partner – Solution Provider with attained Partner World Level: Gold, authorized to provide the OEM's equipment and services to the Commonwealth RFP 6100044346 for Mainframe and Midrange Server and Storage Devices, approved to market the IBM Products and Services identified below to End Users.

- 1) Financing
 - Financing
- 2) Global Technology Services
 - Cloud
 - GTS Service-MW (Middleware Service)
 - Network Services
 - Resiliency services
 - Security Services
 - System Services
 - GTS Service-S&D (Storage and Data Services)
 - Technology Support Services
- 3) Power Systems
 - Category P1
- 4) Selected Workstation Software
 - Selected Workstation Software
- 5) Storage
 - Category S1
 - Category S2
 - Category S3
- 6) WebSphere Appliance
 - DataPower
- 7) z Systems & LinuxONE
 - Category z1 LinuxONE
 - Category z2
 - Category z3
 - z/OS OTC Software: Application and Integration Middleware
 - z/OS OTC Software: Information Management
 - z/OS OTC Software: IT Service Management



This letter is to confirm that, as of the date of this letter, Vicom Infinity is an IBM Business Partner - Software Reseller with attained Partner World Level: Gold, approved to market the IBM Products identified below to End Users.

Open Source Analytics
Information Integration & Governance
Data Repositories & Appliances
Telco Network Analytics
IBM XaaS - Entry

Sincerely



Lesli Yenni
IBM Channel Client Representative
cc: Vicom Infinity

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 containing information believed to be exempt from public disclosure, including 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. In addition, in order to protect the safety and security of individuals, infrastructure, and information technology systems, the Commonwealth requires third parties to designate as confidential any information submitted by the third parties that, if disclosed, would be reasonably likely to jeopardize safety or security.

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 Pennsylvania's *Right-to-Know Law*, 65 P.S. §§ 67.101—67.3104, or laws relating to trade secret or confidential proprietary information.

Name of submitting party:

VICOM INFINITY, INC.

Contact information for submitting party:

JOHN DALY
JDALY@VICOMINFINITY.COM
908-397-7558

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

BID PROPOSAL

Please provide a brief explanation of why the materials are being submitted to the Commonwealth (e.g. response to bid, RFP or RFQ #12345, application for grant XYZ being offered by the Department of Health, documents required to be submitted under law ABC):

VICOM INFINITY IS PROVIDING A RESPONSE TO RFP 6100044346 AS WE WISH TO BE CONSIDERED BY THE COMMONWEALTH OF PA FOR FUTURE MAINFRAME SERVER EQUIPMENT/SERVICES PURCHASES

Please indicate if any information has been included that you believe is exempt from public disclosure by checking the appropriate box below: *(Note: Financial information submitted in response to an RFP or IFB to demonstrate economic capability is exempt from public disclosure in accordance with Section 708(b)(26) of the Right-to-Know Law, 65 P.S. 67.708(b)(26)).*

- No information has been included that I believe is exempt from public disclosure.**
- Information has been included that I believe is exempt from public disclosure.**

Please provide a list detailing which portions of the material being submitted you believe are exempt from public disclosure. This includes trade secret, confidential or proprietary information, or information that if disclosed would be reasonably likely to jeopardize the safety or security of an individual, infrastructure, or information technology system. Please provide an explanation of why you think those materials constitute a trade secret, confidential or proprietary information, or why disclosure of those materials would be reasonably likely to jeopardize safety or security. 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: Without substantial justification, the following information will not be considered a trade secret or confidential proprietary information:

- Any information submitted as part of a vendor’s cost response.
- Information submitted as part of a vendor’s technical response or statement of work that does not implicate safety and security, or pertain to specific business practices or product specification.
- Information submitted as part of a vendor’s technical or small diverse business and small 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.

<u>Page Number</u>	<u>Description</u>	<u>Explanation</u>

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, confidential or proprietary information, or information that if disclosed would be reasonably likely to jeopardize the safety or security of an individual, infrastructure or information technology system, where that data or information 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, confidential or proprietary, or would be reasonably likely to result in a safety or security risk if disclosed. The undersigned also agrees to 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 that the information is trade secret, confidential, proprietary or is reasonably likely to result in a safety or security risk if disclosed, if the Commonwealth determines that the undersigned has not met the burden of establishing that the information constitutes a trade secret, confidential, or is otherwise exempt. The undersigned also acknowledges that if only a certain part of the submitted material is found to constitute a trade secret, is confidential or proprietary, or is otherwise exempt, 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

Victor V. Verola, Vice President

Title

5/29/18

Date

LOBBYING CERTIFICATION FORM

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure of Lobbying Activities, which can be found at:

<http://www.whitehouse.gov/sites/default/files/omb/assets/omb/grants/sflllin.pdf>

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed under *Section 1352, Title 31, U. S. Code*. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than **\$100,000** for such failure.

SIGNATURE:



VICTOR V. VEROLA
VICE PRESIDENT

TITLE:

VICOM INFINITY, INC.

DATE:

5/22/18

DOMESTIC WORKFORCE UTILIZATION CERTIFICATION

To the extent permitted by the laws and treaties of the United States, each proposal will be scored for its commitment to use the domestic workforce in the fulfillment of the contract. Maximum consideration will be given to those offerors who will perform the contracted direct labor exclusively within the geographical boundaries of the United States or within the geographical boundaries of a country that is a party to the World Trade Organization Government Procurement Agreement. Those who propose to perform a portion of the direct labor outside of the United States and not within the geographical boundaries of a party to the World Trade Organization Government Procurement Agreement will receive a correspondingly smaller score for this criterion. In order to be eligible for any consideration for this criterion, offerors must complete and sign the following certification. This certification will be included as a contractual obligation when the contract is executed. Failure to complete and sign this certification will result in no consideration being given to the offeror for this criterion.

I, **VICE PRESIDENT [title]** of **VICOM INFINITY, INC. [name of Contractor]** a **NEW YORK STATE [place of incorporation]** corporation or other legal entity, ("Contractor") located at **400 BROADHOLLOW ROAD, SUITE 1, FARMINGDALE, NY 11735 [address]**, having a Social Security or Federal Identification Number of [redacted] do hereby certify and represent to the Commonwealth of Pennsylvania ("Commonwealth") (Check **one** of the boxes below):

All of the direct labor performed within the scope of services under the contract will be performed exclusively within the geographical boundaries of the United States or one of the following countries that is a party to the World Trade Organization Government Procurement Agreement: Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Chinese Taipei, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Liechtenstein, Lithuania, Luxemburg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom

OR

_____ percent (____%) [Contractor must specify the percentage] of the direct labor performed within the scope of services under the contract will be performed within the geographical boundaries of the United States or within the geographical boundaries of one of the countries listed above that is a party to the World Trade Organization Government Procurement Agreement. Please identify the direct labor performed under the contract that will be performed outside the United States and not within the geographical boundaries of a party to the World Trade Organization Government Procurement Agreement and identify the country where the direct labor will be performed: _____

[Use additional sheets if necessary]

The Department of General Services [or other purchasing agency] shall treat any misstatement as fraudulent concealment of the true facts punishable under Section 4904 of the *Pennsylvania Crimes Code*, Title 18, of Pa. Consolidated Statutes.

Attest or Witness:

[redacted] 5/22/18
Signature/Date
Andrea Celetano, Notary
Printed Name/Title
ANDREA T. CELENTANO PUBLIC
NOTARY PUBLIC-STATE OF NEW YORK
No. 01CE6007440
Qualified in Suffolk County
My Commission Expires May, 18, 2022

VICOM INFINITY, INC.
Corporate or legal Entity's Name
[redacted] 5/22/18
Signature/Date
VICTOR V. VEROLA
VICE PRESIDENT
Printed Name/Title