



FULLY EXECUTED - CHANGE 1
Contract Number: 4400025326
Original Contract Effective Date: 06/14/2022
Contract Change Date: 11/21/2023
Valid From: 09/15/2022 To: 09/14/2024

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

Purchasing Agent

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

Your SAP Vendor Number with us: 522168

Supplier Name/Address:
MJM SYSTEMS INC
285 DAVIDSON AVE STE 202
SOMERSET NJ 08873-4153 US

Supplier Phone Number: 7325638441
Supplier Fax Number: 732-748-4050

Please Deliver To:

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

Contract Name:
IT Modular Servers and Related Services

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	Low End Server(DELL)	0.000	Each	0.00	1	0.00
2	High End Server (DELL)	0.000	Each	0.00	1	0.00
3	Options/ Upgrades	0.000	Each	0.00	1	0.00
5	Accessibility Needs	0.000	Each	0.00	1	0.00
7	Services	0.000	Each	0.00	1	0.00

General Requirements for all Items:

Information:

Supplier's Signature _____
Printed Name _____

Title _____
Date _____



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Supplier Name:
MJM SYSTEMS INC

Header Text

This Contract is to procure) Enterprise Modular Server Products and Related Services from MJM Systems, Inc and is a result of RFP 6100051403 Enterprise Modular Servers. This contract has been designated as the BEST VALUE CONTRACT.

The Commodity Specialist for this Contract is Char Riley @ chariley@pa.gov

8.2.2023 - Contract has been renewed for one (1) year; Three - one (1) year renewals remain. ccr

11.21.2023 - Commodity Specialist changed to Valarie Hosler at vhosler@pa.gov. vsh

No further information for this Contract

Information:



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All using Agencies of the Commonwealth, Participating Political
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Purchasing Agent

Name: Riley Char
Phone: 717-346-4868
Fax: 717-783-6241

Your SAP Vendor Number with us: 522168

Supplier Name/Address:
MJM SYSTEMS INC
285 DAVIDSON AVE STE 202
SOMERSET NJ 08873-4153 US

Please Deliver To:

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Supplier's Signature _____
Printed Name _____

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Supplier Name:
MJM SYSTEMS INC

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The Commodity Specialist for this Contract is Char Riley @ chariley@pa.gov

8.2.2023 - Contract has been renewed for one (1) year; Three - one (1) year renewals remain. ccr
No further information for this Contract

Information:

July 31, 2023

MJM SYSTEMS, INC.
285 Davidson Avenue, Suite 202
Somerset, NJ 08873-4153
James Lincoln
jamie@mjmssystems.com

SUBJECT: Renewal of contract 4400025326

Title: Modular Servers and Related Services
Term of Extension: September 15, 2023 through September 14, 2024
Extension Security Required? YES NO

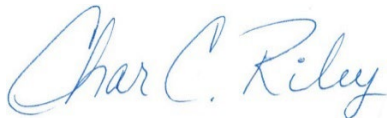
Dear Mr. Lincoln

The Department of General Services, Bureau of Procurement is looking to extend the existing contract for one (1) year with three year additional renewals 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, Friday, August 3, 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

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 CEO & Founder

Date August 1, 2023

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



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Purchasing Agent

Name: Hosler Raeden
Phone: 717-787-4103
Fax:

Your SAP Vendor Number with us: 522168

Supplier Name/Address:
MJM SYSTEMS INC
285 DAVIDSON AVE STE 202
SOMERSET NJ 08873-4153 US

Please Deliver To:

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

Supplier Phone Number: 7325638441
Supplier Fax Number: 732-748-4050

Contract Name:
IT Modular Servers and Related Services

Payment Terms
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Supplier's Signature _____
Printed Name _____

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Date _____



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Supplier Name:
MJM SYSTEMS INC

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This Contract is to procure) Enterprise Modular Server Products and Related Services from MJM Systems, Inc and is a result of RFP 6100051403 Enterprise Modular Servers. This contract has been designated as the BEST VALUE CONTRACT.

The Commodity Specialist for this Contract is Raeden Hosler @ rhosler@pa.gov

No further information for this Contract

Information:



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

Purchasing Agent

Name: Jaime Raymond
Phone: 717-346-3827
Fax: 717-783-6241

Your SAP Vendor Number with us: 522168

Supplier Name/Address:
MJM SYSTEMS INC
285 DAVIDSON AVE STE 202
SOMERSET NJ 08873-4153 US

Please Deliver To:

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the time of the Purchase Order
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Supplier Phone Number: 7325638441
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Supplier Name:
MJM SYSTEMS INC

Header Text

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The Commodity Specialist for this Contract is Raymond A Jaime. email- rjaime@pa.gov

No further information for this Contract

Information:

**CONTRACT 44000025326
FOR
Enterprise Modular Servers**

THIS CONTRACT for the provision of Enterprise Modular Servers ("Contract") is entered into by and between the **Commonwealth of Pennsylvania**, acting through the Department of General Services ("DGS") and MJM Systems, Inc ("**Contractor**").

WHEREAS, DGS issued a Request for Proposals for the Provision of Enterprise Modular Servers for Commonwealth executive agencies, RFP No. 6100051403 ("RFP");

WHEREAS, Contractor submitted a proposal in response to the RFP;

WHEREAS, Contractor's proposal was selected for the Best and Final Offer ("BAFO") phase of the RFP process;

WHEREAS, in response to the DGS BAFO request, Contractor submitted a BAFO Cost Submittal;

WHEREAS, DGS determined that Contractor's proposal, as revised by its BAFO Cost Submittal, was the most advantageous to the Commonwealth 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 Enterprise Modular Servers to the Commonwealth as the **Best Value Contract (OEM-DELL)**.

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 Enterprise Modular Servers as more fully defined in the RFP, to the Commonwealth as the **Best Value Contract (OEM-DELL)**.
2. Commonwealth executive agencies shall procure their requirements for **Enterprise Modular Servers** in accordance with the terms and conditions of this **Best Value Contract (OEM-DELL)**.
3. Contractor agrees to provide the **Enterprise Modular Servers** listed in its BAFO Cost Submittal, which is attached hereto as Exhibit C and made a part hereof, at the prices listed for those items in Exhibit C.
4. The Contractor and the Commonwealth have negotiated aspects of the Contractor's Technical Submittal. The particular items negotiated are the Final Negotiated Technical Proposal Clarifications, which is attached hereto as Exhibit B, and made part of this Contract.

5. 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 Standard Contract Terms and Conditions for IT Supplies and Related Services contained in the RFP, which is attached hereto as Exhibit A and made part of this Contract.
 - c. The Final Negotiated Technical Proposal Clarifications, which is attached hereto as Exhibit B and made a part of this Contract.
 - d. The Contractor's BAFO Cost Submittal, which is attached hereto as Exhibit C and made a part of this Contract.
 - 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 of this Contract.
 - f. The Contractor's Technical Submittal, which is attached hereto as Exhibit E and made a part of this Contract.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have signed this Contract below. Execution by the Commonwealth is described in the Contract Terms and Conditions.

Witness:

By: [Redacted Signature]

(Assistant) Secretary

[Redacted Name/Date]
Printed Name/Date

CONTRACTOR:

By: [Redacted Signature]

(Vice) President

[Redacted Name/Date] / 12/23/21
Printed Name/Date

522168
SAP Vendor Number

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
Comptroller Date

0. TERM OF CONTRACT

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.

1. 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.

2. COMMENCEMENT OF PERFORMANCE

(a) General. The Contractor shall not commence performance and the Commonwealth shall not be liable to pay the Contractor for any supply furnished or work performed or expenses incurred, until both of the following have occurred:

- (i) the Effective Date has occurred; and
- (ii) the Contractor has received a Purchase Order or other written notice to proceed signed by the Contracting Officer.

(b) Prohibition Prior to Effective Date. No Commonwealth employee has the authority to verbally direct the commencement of any Service or delivery of any Supply under this Contract prior to the date performance may commence. The Contractor hereby waives any claim or cause of action for any Service performed or Supply delivered prior to the date performance may commence.

3. ELECTRONIC SIGNATURES

(a) The Contract and/or Purchase Order may be electronically signed by the Commonwealth.

- (i) Contract. “Fully Executed” at the top of the first page of the Contract output indicates that the signatures of all the individuals required to bind the Commonwealth to the terms of the Contract have been obtained. If the Contract output form does not have “Fully Executed” at the top of the first page, the Contract has not been fully executed.

- (ii) Purchase Orders. The electronically-printed name of the Purchasing Agent on the Purchase Order indicates that all approvals required by Commonwealth contracting procedures have been obtained.
- (b) 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.

4. 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: Unless specifically indicated otherwise, days mean calendar days.

Appendix A, Standard Contract Terms and Conditions for IT Supplies and Related Services

- (d) **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 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) **Statement of Work:** A document attached to a purchase order from the Contractor which details the Services which will be provided by the Contractor.
- (i) **Supplies:** All tangible and intangible property including, but not limited to materials and equipment, provided by the Contractor to satisfy the Contract.

5. PURCHASE ORDERS

- (a) The Agency 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.
- (b) 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.
- (c) 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.

6. 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 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.

7. 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 Section 22(c). 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.

8. OTHER CONTRACTORS

The Commonwealth may undertake or award other contracts for additional or related work, and the Contractor shall fully cooperate with other contractors and Commonwealth employees, and coordinate its 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 work 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.

9. DELIVERY

(a) Supplies Delivery: All Supplies 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 30 days after the Effective Date.

- (b) Delivery of Services: 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. PRODUCT CONFORMANCE

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

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

11. 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 which are discovered to be defective or fails 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 30 days after notification. Rejected Supplies left longer than 30 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 with 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.

12. 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 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.

13. 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 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.

14. 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.

15. 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.

16. 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 and 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.

17. 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. All Services shall be performed within the time period(s) specified in the Contract. The Contractor shall be compensated only for work 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.

18. 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:

- (a) Vendor name and “Remit to” address, including SAP Vendor number;
- (b) Bank routing information, if ACH;
- (c) SAP Purchase Order number;
- (d) Delivery Address, including name of Commonwealth agency;
- (e) Description of the Supplies/Services delivered in accordance with SAP Purchase Order (include purchase order line number if possible);
- (f) Quantity provided;
- (g) Unit price;
- (h) Price extension;
- (i) Total price; and
- (j) Delivery date of Supplies or Services.

If an invoice does not contain the minimum information set forth in this section, 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.

19. PAYMENT

- (a) The Commonwealth shall put forth reasonable efforts to make payment by the required payment date. The required payment date is: (a) the date on which payment is due under the terms of the Contract; (b) 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 (c) the payment date specified on the invoice if later than the dates established by (a) and (b) above. 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 No. 266 of 1982, 72 P. S. § 1507, (relating to interest penalties on Commonwealth accounts) and accompanying regulations 4 Pa. Code §§ 2.31—2.40. 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.

- (b) 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.
- (c) 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.

20. 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.

21. 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, 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 subsection (c) of Section 27, DEFAULT, in addition to other remedies available to the non-breaching party.

Appendix A, Standard Contract Terms and Conditions for IT Supplies and Related Services

- (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 an un-redacted version of the appropriate document, and
 - (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, and
 - (iii) Prepare a signed written statement that states:
 - (i) the attached document contains confidential or proprietary information or trade secrets;
 - (ii) the Contractor is submitting the document in both redacted and un-redacted format in accordance with 65 P.S. § 67.707(b); and
 - (iii) the Contractor is requesting that the document be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests.

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

22. 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 state and federal 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 23 survive the expiration or termination of this Contract.

23. DATA BREACH OR LOSS

- (a) Contractor shall comply with all applicable data protection, data security, data privacy and data breach notification laws, including but not limited to the *Breach of Personal Information Notification Act*, 73 P.S. §§ 2301—2329.
- (b) For Data and Confidential Information in the possession, custody and control of the Contractor or its employees, agents, and/or subcontractors:
- (c) The Contractor shall report unauthorized access, use, release, loss, destruction or disclosure of Data or Confidential Information ("Incident") to the Commonwealth within two (2) hours of when the Contractor knows of or reasonably suspects such Incident, and the Contractor must immediately take all reasonable steps to mitigate any potential harm or further access, use, release, loss, destruction or disclosure of such Data or Confidential Information.
- (d) Contractor shall provide timely notice to all individuals that may require notice under any law or regulation as a result of an Incident. The notice must be pre-approved by the Commonwealth. At the Commonwealth's request, Contractor shall, at its sole expense, provide credit monitoring services to all individuals that may be impacted by any Incident requiring notice.

- (e) Contractor shall be solely responsible for any costs, losses, fines, or damages incurred by the Commonwealth due to Incidents.
- (f) As to Data and Confidential Information fully or partially in the possession, custody, or control of the Contractor and the Commonwealth, the Contractor shall diligently perform all of the duties required in this Section 24 in cooperation with the Commonwealth, until the time at which a determination of responsibility for the Incident, and for subsequent action regarding the Incident, is made final.

24. COMMONWEALTH HELD HARMLESS

- (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* (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.

25. 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 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 damages for:
 - (i) bodily injury;
 - (ii) death;
 - (iii) gross negligence or intentional or willful misconduct;
 - (iv) damage to real property or tangible personal property for which the Contractor is legally liable; or

- (v) the Contractor's indemnity of the Commonwealth for patent, copyright, trade secret, or trademark protection as set forth in Section 34, Patent, Copyright, Trademark and Trade Secret Protection.
 - (vi) the Contractor's indemnity for an Incident as set forth in Section 24, Data Breach or Loss.
- (b) Except as set forth in Section 42, Virus, Malicious, Mischievous or Destructive Programming, the Contractor shall not be liable to the Commonwealth for indirect, consequential, special, incidental or punitive damages.

26. 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 work within the time specified in the Contract or Purchase Order or as otherwise specified;
 - (ii) Failure to perform the work 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 as detailed in the specifications referenced in the Contract or a Purchase Order;
 - (iv) Failure to deliver the awarded item(s) within the time specified in the Contract or Purchase Order or as otherwise specified;
 - (v) Improper delivery;
 - (vi) Failure to provide an item(s) which is in conformance with the specifications referenced in the Contract or Purchase Order;
 - (vii) Delivery of a defective item;
 - (viii) Failure or refusal to remove material, or remove and replace any work rejected as defective or unsatisfactory;
 - (ix) Discontinuance of work without approval;
 - (x) Failure to resume work, which has been 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 materials furnished, labor supplied or performed, for equipment rentals, or for utility services rendered;
 - (xiv) Failure to protect, to repair, or to 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 Section 29, Contract Controversies, the Contractor's exclusive remedy shall be to seek damages in the Commonwealth Board of Claims.

27. 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.

28. TERMINATION PROVISIONS

The Commonwealth has the right to terminate this Contract or any Purchase Order for any of the following reasons. Termination shall be effective upon written notice to the Contractor.

- (a) **TERMINATION FOR CONVENIENCE:** The Commonwealth shall have the right to 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 to be in the best interest of the Commonwealth. Any such termination shall be effected 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 Services performed and all Supplies delivered 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 Section 29, Contract Controversies, of this Contract.

- (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, in addition to its other rights under this Contract, shall have the right to terminate the Contract or a Purchase Order issued from the Contract, in whole or in part, by providing written notice of default 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. 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.

- (i) Subject to Section 25, Limitation of Liability, in the event the Commonwealth terminates this Contract in whole or in part as provided in this subsection, the Commonwealth may procure Services or Supplies similar to those so terminated, and the Contractor, in addition to liability for any liquidated damages, shall be liable to the Commonwealth for the difference between the Contract price for the terminated portion of the Services or Supplies and the actual and reasonable cost (but in no event greater than the fair market value) of producing substitute equivalent services for the terminated Services or Supplies, provided that the Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this Section.
- (ii) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises out of causes beyond the control of the Contractor. Such causes may include, but are not limited to, acts of God or of the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, work stoppages, freight embargoes, acts of terrorism and unusually severe weather. The Contractor shall notify the Contracting Officer promptly in writing of its inability to perform because of a cause beyond the control of the Contractor.
- (iii) Nothing in this subsection shall abridge the Commonwealth's right to suspend, debar or take other administrative action against the Contractor.
- (iv) 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).

29. CONTRACT CONTROVERSIES

- (a) In the event of a controversy or claim arising from the Contract, the Contractor must, within six 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.

- (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.

30. 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 work to be performed under this Contract without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.
- (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, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.
- (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.

31. 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.

32. 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.

33. 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 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*, 71 P.S. § 732-10—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 Materials 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 works produced 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 work produced 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.

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- (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.
- (g) The obligations of the Contractor under this Section continue without time limit and survive the termination of this contract.
- (h) 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.
- (i) 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.

34. OWNERSHIP RIGHTS

- (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 Contractor has previously developed software and related processes, instructions, methods, and techniques, and that the same shall remain the sole and exclusive property of Contractor. Contractor retains ownership of all Contractor Intellectual Property that Contractor delivers to the Commonwealth pursuant to this Contract.
- (c) Commonwealth Intellectual Property and Data. The Commonwealth owns all Data and 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. Commonwealth grants Contractor a non-exclusive, royalty-free, license to use, copy, display, and prepare derivative works of the Commonwealth's Intellectual Property and Data only to fulfill the purposes of this Contract. The Commonwealth's license to Contractor is limited by the terms of this Contract.
- (d) Click-Through Terms. The terms and conditions of this Contract shall be the exclusive terms of agreement between the Contractor and the Commonwealth. Other terms and conditions included in click-through agreements or referenced in the Contractor's quotations, invoices, business forms, or other documentation shall not become part of this Contract and shall be disregarded by the parties. Any such terms shall be unenforceable by the Contractor and not binding on the Commonwealth.
- (e) 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.

35. 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) 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, in the provision of services under the contract.
- (d) Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the [Public Employee Relations Act](#), [Pennsylvania Labor Relations Act](#) or [National Labor Relations Act](#), as applicable and to the extent determined by entities charged with such Acts' enforcement, and shall comply with any provision of law establishing organizations as employees' exclusive representatives.
- (e) 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.
- (f) 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.

- (g) 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.
- (h) 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.
- (i) 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.
- (j) 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.

36. 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 procurement process.

- (a) Definitions. For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this section:

Appendix A, Standard Contract Terms and Conditions for IT Supplies and Related Services

- (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 with the Commonwealth.

Appendix A, Standard Contract Terms and Conditions for IT Supplies and Related Services

- (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 Contractor activity with the Commonwealth and Commonwealth employees, and which is distributed and 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 it 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.

37. 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 search the current list of suspended and debarred Commonwealth contractors by visiting the eMarketplace website at <http://www.emarketplace.state.pa.us> and clicking the debarment List tab.

38. 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.

39. 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:
 - (d) 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
 - (e) Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.
- (f) 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.

- (g) 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.
- (h) 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.
- (i) 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.
- (j) 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.
- (k) 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.

40. INFORMATION TECHNOLOGY POLICIES

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: <https://www.oa.pa.gov/Policies/Pages/itp.aspx>), including the accessibility standards set out in IT Bulletin ACC001, *IT Accessibility Policy*. The Contractor shall ensure that Services procured under this Contract comply with the applicable standards. In the event

such standards change during Contractor's performance, and the Commonwealth requests that Contractor comply with the changed standard, then any incremental costs incurred by Contractor to comply with such changes shall be paid for pursuant to a change order to the Contract.

41. 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. It is understood that the Contractor may not install the software on any computing device not being used to provide Services to the Commonwealth, and that all copies of the software will be removed from all devices upon termination of this Contract.
- (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.

42. 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 Request for Criminal Record Check form and procedure found at <https://www.psp.pa.gov/Pages/Criminal-History-Background-Check.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 2, 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.

43. 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.

44. POST-CONSUMER RECYCLED CONTENT

- (a) 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 on the Department of General Services website at <https://www.dgs.pa.gov/> on the date of submission of the bid, proposal or contract offer.
- (b) 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.

45. HAZARDOUS SUBSTANCES

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, known as

the “Worker and Community Right to Know Act” (the “Act”) and the regulations promulgated pursuant thereto at 4 Pa. Code Section 301.1, *et seq.*

- (a) 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 Paragraph (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 substances by volume or those substances consisting of 5.0% or more of the mixture.

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.

Container labels shall provide a warning as to the specific nature of the hazard arising from the substance in the container.

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:

- NFPA 704, Identification of the Fire Hazards of Materials.
- National Paint and Coatings Association: Hazardous Materials Identification System.
- American Society for Testing and Materials, Safety Alert Pictorial Chart.
- American National Standard Institute, Inc., for the Precautionary Labeling of Hazardous Industrial Chemicals.

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.

- (b) 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.

46. 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.

47. 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.

48. 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.

49. 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.

50. 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.

51. 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 Section 29, Contract Controversies.

52. 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.

53. LEASES

To the extent that the Contractor offers the Commonwealth or any purchasing agency ("Lessee") the option to lease any Supplies covered by the Contract, the Leasing Terms and Conditions, attached hereto as Appendix 1, 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 the Leasing Terms and Conditions. Any items covered by a Lease shall be termed "Leased Property" in the Leasing Terms and Conditions. To the extent that there is a conflict between the Leasing Terms and Conditions and the other terms and conditions of the Contract, the Leasing Terms and Conditions shall prevail to the extent that the Lessee has elected a leasing option.

54. INSTALLMENT PURCHASES

- (a) Installment purchase options. 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, Appendix 2, Installment Purchase Terms and Conditions, in addition to the other terms and conditions of the Contract, shall govern the Installment Purchase. If a Purchaser desires to purchase items on an installment basis, the Purchaser shall indicate its Installment Purchase election on the Purchase Order 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.

- (b) Assignments. 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.

55. CONTROLLING TERMS AND CONDITIONS

The terms and conditions of this Contract shall be the exclusive terms of agreement between the Contractor and the Commonwealth. All quotations requested and received from the Contractor are for obtaining firm pricing only. 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.

56. AGENCY-SPECIFIC SENSITIVE AND CONFIDENTIAL COMMONWEALTH DATA (IF APPLICABLE)

- (a) Contractor 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 subject to various state and federal laws and policies that vary from agency to agency, and from program to program within an agency. If applicable, prior to deployment of the Supplies on any Commonwealth agency facilities, the Contractor must receive and sign off on particular instructions and limitations as dictated by that Commonwealth agency, including but not limited to, as necessary, HIPAA Business Associate Agreements, a sample of which is attached hereto as Attachment 2 to this Contract's Appendix E, *Software License Requirements Agreement Template*. This sign-off document (a sample of which is attached hereto as Attachment 3 to this Contract's Appendix E, *Software License Requirements Agreement Template*), will include a description of the nature of the data which may be implicated based on the nature of the Contractor's access, and will incorporate the Business Associate Agreement if it is applicable.

- (b) Contractor 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 Supplies), the Contractor 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 a Commonwealth agency and signed by at least one signatory authorized to bind the Contractor is valid and is hereby integrated and incorporated by reference into this Contract via Purchase Orders issued under this Contract.
- (c) This Section 56 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 Contractor's access, to refer the Contractor 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 56 are in addition to and not in lieu of other requirements of this Contract, its Exhibits, Appendices and Attachments, having to do with data privacy and security, including but not limited to the requirement that the Contractor comply with all applicable Commonwealth ITPs, which can be found at <https://www.oa.pa.gov/Policies/Pages/itp.aspx>.
- (e) Contractor shall conduct additional background checks, in addition to those required in Section 42, Background Checks, as may be required by a Commonwealth agency in its sign-off documents. The Contractor shall educate and hold its agents, employees, contractors and subcontractors to standards at least as stringent as those contained in this Contract. The Contractor shall provide information regarding its agents, employees, contractors and subcontractors to the Commonwealth upon request.

57. FEDERAL REQUIREMENTS

If applicable, the Contractor 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 Supplies and Services. This sign-off document (a sample of which is attached as Attachment 3 to this Contract's Appendix E, *Software License Requirements Agreement Template*, in addition to any applicable requirements of Section 56, Agency-Specific Sensitive and Confidential Commonwealth Data, will include a description of the required federal provisions, along with the applicable forms necessary for the Contractor and/or Software Licensor execute, as necessary. The sign-off document, along with attachments, must be attached to the Purchase Order. The Commonwealth agency will inform the Contractor whether they must execute the sign-off document as required by the federal government.

APPENDIX 1

LEASING TERMS AND CONDITIONS

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 S to the RFP.

If the Contractor delivers the Leased Property in more than one delivery, unless otherwise specified in the specifications for the 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

1. 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.
2. 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:
 - a. The Lessee delivers unencumbered title to the Leased Property to the Contractor or Initial Assignee (if applicable);
 - b. The Lessee returns the Leased Property to the Contractor/Initial Assignee in good condition, reasonable wear and tear excepted; and
 - c. 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

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.

- a. 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.
- b. The Leased Property shall remain personal property and shall not become a fixture or affixed to real property without consent of the Contractor/assignee.
- c. 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.
- d. 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

1. The Lessee shall have the benefit of any and all manufacturer or supplier warranties for the Leased Property during the Lease term.
2. 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 Section J shall have occurred and be continuing.

G. LIABILITY

1. 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.
2. The Lessee shall, during the Lease term, either self-insure or purchase insurance to cover the risks it has assumed under Paragraph 1 of this Subsection, including but not limited to risks of public liability and property damage.

H. ASSIGNMENT

1. 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.
2. 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.

3. 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.
4. After a Lessee executes and the Initial Assignee receives an Acceptance Certificate:
 - a. 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
 - b. 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.
5. 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

1. 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.
2. 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.
3. 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 Section B, 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

1. 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:
 - a. Terminate the applicable Lease.
 - b. 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.

- c. 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 .15 and may be accessed via the Federal Reserve Board's Internet website.
2. In the event of Contractor default under the Default provision of the Contract, the Lessee may pursue one or more of the following remedies:
- a. 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.
 - b. 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.
 - c. 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 Section J, 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.

1. As a matter of policy, the Commonwealth has 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.
2. Except in the event of a total loss of any or all Leased Property as described in Section E., 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.
3. 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

1. 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 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.

2. 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.

APPENDIX 2

INSTALLMENT PURCHASE TERMS AND CONDITIONS

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 S to the RFP.

If the Contractor delivers the Installment Item in more than one delivery, unless otherwise specified in the Installment Purchase PO, the Purchaser will provide separate Acceptance Certificates for each delivery of the Installment Items, and the Purchaser will make periodic payments for the Installment Items corresponding to the amount of the Installment Items delivered and accepted 30 days prior to the payment due date.

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.

B. PAYMENTS

1. Full Term Intention. The Purchaser shall pay the applicable monthly or annual 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.
2. 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 shall release the Purchaser of all further obligations under the Installment Purchase, provided:
 - a. The Purchaser delivers unencumbered title to the Installment Items to the Contractor or Initial Assignee (if applicable);
 - b. The Purchaser returns the Installment Items to the Contractor/Initial Assignee in good condition, reasonable wear and tear excepted; and

- c. 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

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, except as otherwise set forth in the Contract or PO. The Contractor or 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 Section I of this Appendix.

- a. 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.
- b. The Installment Items shall remain personal property and shall not become a fixture or affixed to real property without consent of the Contractor/assignee.
- c. 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.
- d. 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 ITEM

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 Item 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. RISK OF LOSS

1. The Purchaser, after acceptance of the installment Items, shall assume and bear the risk of loss or damage to, 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:

- a. to replace the equipment with like equipment, or
 - b. 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 Installment Purchase PO.
2. 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 1 of Section G, below.
 3. The Purchaser agrees to insure the Installment Items as provided under Paragraph 2 of Subsection G, below.

F. WARRANTIES

1. The Purchaser shall have the benefit of any and all manufacturer or supplier warranties for the Installment Items during the Installment Purchase term.
2. 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 Section J shall have occurred and be continuing.

G. LIABILITY

1. 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.

2. The Purchaser shall, during the Installment Purchase term, either self-insure or purchase insurance to cover the risks it has assumed under Paragraph 1 of this section, including but not limited to risks of public liability and property damage.

H. ASSIGNMENT

1. The Purchaser shall not assign any Installment Purchase PO or other interest in the Installment Item 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 PO and Installment Item 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.
2. The Contractor may assign, without Purchaser consent, any Installment Purchase PO to a third party ("Initial Assignee") who will fund the purchase of the Installment Item. The Initial Assignee may take title to, and assume the right to receive all rental payments for, the Installment Item. 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.
3. 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 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 Item and is not responsible for their selection or installation. After the ordering Purchaser executes, and the Initial Assignee receives, an Acceptance Certificate, if any portion of the Installment Item 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.
4. After a Purchaser executes and the Initial Assignee receives an Acceptance Certificate:
 - a. The Purchaser shall, regardless of whether any portion of the Installment Item is unsatisfactory for any reason, nevertheless, continue to make payments under the

applicable Installment Purchase and shall make any claim relating to the Installment Item against the Contractor or the manufacturer, not against the Initial Assignee or any subsequent assignee; and

- b. 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.

5. 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 ITEM), 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 INSTALLMENT 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

1. If the Contractor is not the supplier of the Installment Item, 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 rental payments under the Installment Purchase to an Initial Assignee, the Purchaser's obligation to make rental payments for the Installment Item 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.
2. 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 rental payments to reflect the requested prepayment and shall advise the Purchaser of the balance to be paid.
3. If the Purchaser purchases Contract items related to 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 Section 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

1. 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 Installment Purchase 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:
 - a. Terminate the applicable Installment Purchase.
 - b. 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, at its option, may, 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.
 - c. Recover from the Purchaser 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 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 at <https://www.federalreserve.gov/>.
2. In the event of Contractor default under the Default provision of the Contract, the Purchaser may pursue one or more of the following remedies:
 - a. If the payments under the Installment Purchase have been assigned to an Initial Assignee, the Purchaser shall continue to make payments for that Installment Item

which has been delivered and for which the Purchaser has provided acceptance certificates to the Contractor/Initial Assignee.

- b. The Purchaser may cancel, without liability for payment, its order for any Installment Item which has 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 amount of Installment Items which was delivered and accepted. If no Installment Items have been delivered and accepted, the Purchaser may terminate the Installment Purchase without liability for any payment.
- c. 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

1. 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 permit, during the Installment Purchase term, the Installment Item to be directly or indirectly used for a private business use within the meaning of Section 141 of the IRC.
2. 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, upon demand, will 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 Installment 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.

EXHIBIT B
TO
CONTRACT NO. 4400025326
Final Negotiated Technical Proposal Clarifications

This document contains aspects of the Contractor's Technical Submittal and the RFP that have been negotiated by the Commonwealth and the Contractor.

1. **Subsection V.P, Data Cleansing**

The Contractor has clarified that relating to its response to Subsection V.P., there are two separate topics being discussed. One aspect is the option to keep your hard drive if it needs to be replaced via Dell under support from the OEM (Dell). If the Commonwealth wishes to keep any hard drives that are deemed to need replacement, the cost would be a specific requested support SKU when the Contractor creates the Dell server configuration. This is what is referred to as the "Dell Keep Your Hard Drive" option. This keep your hard drive option is not tied to the Contractor's data erasure services. The Contractor will perform the data erasure services at the costs indicated in Exhibit C. When the Contractor is performing the data erasure services, there is no additional fee / cost for the Commonwealth to keep their hard drive after this process is completed.

2. **Subsection V.E., Order Fulfillment**

The Contractor has agreed to increase the amount of the Commonwealth Purchasing Card limit proposed in the Technical Submittal from \$5,000 to \$10,000 to be consistent with subsection 5(c) of Appendix A, Standard Contract Terms and Conditions for IT Supplies and Related Services. The Commonwealth explained the shopping cart requirements for all IT-related procurements, regardless of dollar amount and advised the Contractor to contact the Contracting Officer in the event of any seeming irregularities or patterns associated with Commonwealth Purchasing Card transactions.

**BAFO Cost Submittal Summary
 Cost Submittal - RFP #6100051403
 Enterprise Modular Servers**

Offeror Contact Information	
OFFEROR NAME	CONTACT PERSON
MJM Systems	James Lincoln
OFFEROR ADDRESS	EMAIL ADDRESS
285 Davidson Avenue	james.lincoln@mjmssystems.com
Somerset, NJ 08873	PHONE NUMBER
	302-547-7695
	SAP VENDOR NUMBER (IF AVAILABLE)
	FEDERAL TAX ID

Product Catalog Discount off of List	
Minimum Discount off of Catalog List Price - Low End Servers	86%
Minimum Discount off of Catalog List Price - High End Servers	86%

Cost Evaluation	
Year 1	
Low End Server Annual Spend	\$ 93,084.18
High End Server Annual Spend	\$ 1,761,965.82
Estimated Annual Maintenance Spend	\$ 100,000.00
Optional Services Annual Spend	\$ 44,950.00
Base Term Total (1 year)	
Total Cost for Evaluation Purposes for the 1 year Base Contract Term	\$ 2,000,000.00

BAFO COST SUBMITTAL

GENERAL INSTRUCTIONS FOR COMPLETING THIS WORKBOOK (Tab 1)

The Cost Submittal Worksheets contained in this workbook shall constitute the Cost Submittal.

COST SUBMITTAL SUMMARY (Tab 2)

1. Select the Summary Tab at the bottom of this page.
2. Complete the highlighted cells in the top portion of the form (all contact information).
3. All data entered on the Cost Submittal Worksheet will automatically populate into the Summary tab.
4. The Offeror must enter a Discount off of List on the Summary tab. The discount proposed will calculate on each configuration as a part of the evaluation of cost.

COST SUBMITTAL BREAKDOWN

1. Please review every tab in this cost submittal.
2. Cells that are highlighted in yellow must be completed in order to provide the equipment/service requested. The Proposed Model and Proposed Option, Columns (C) must be completed with detail of how the Offerors device meets or exceeds the minimum requirements, an "X" or any other form of confirmation is not acceptable as a response.
3. The Offeror must be able to provide a price in List Price for each configuration. If the price is left blank, a zero dollar amount will be calculated.
4. Optional Services will be evaluated in the total cost summary. The Offeror must provide a cost for each Optional Service. If the price is left blank, a zero dollar amount will be calculated.

**Formulas are embedded within the worksheets, do not attempt to unlock cells. Any estimates provided within this appendix are not a guarantee of equipment/service to be performed and/or payment under the contract resulting from this RFP.

NOTES:

- Do not include any pricing data in any portion of the Technical Submittal. Pricing data is defined as any information related to, directly or indirectly, the Offeror's proposed charges for services and deliverables. Pricing data consists of, but is not limited to, costs, fees, prices, rates, bonuses, discounts, rebates, or the identification of free services, labor or materials.
- The cost submittal must be submitted as presented by the Commonwealth and should not be altered in any way. Do not include any reiteration of the technical proposal in the cost submittal.

Low End Server			List Price	Discount %	Price after Discount	Historical Volume	Annual Cost For Low End Servers
Component	Minimum Requirements	Proposed Model and Capability	\$ 8,635.00	86%	\$ 1,241.12	75	\$ 93,084.18
Manufacturer		Dell					
Model Number		PowerEdge R440					
Processor (CPU) Type	1 x Intel Xeon Bronze 3204 8watt 6core 1.9GHz	Meets - 1 x Intel Xeon Bronze 3204					
Operating System	None Installed	Meets - None installed					
RAM	16 GB Memory	Meets - 16 GB Memory					
Storage	2 x 800GB Entry SAS 12GB Hot Swap SSD	Exceeds - 2 x 960GB SSD SAS RI 12Gbps Hot Swap					
Raid	RAID w/ 2 GB Flash RAID 1 Capable	Meets - H730P LP Adapter RAID Cntrlr, 2Gb NV Cache					
Optical Drive	DVD ROM	Meets - DVD ROM Included					
Network	1 x 10 GbE 2 port BaseT	Meets - Broadcom 57416 Dual Port 10 GbE BaseT					
Redundant Power	Optional	Meets - Not included					
Management Module	Required	Meets - iDRAC9 basic					
Warranty	5 years 24x7x4; Keep Your Hard Drive	queue)					

High End Server			List Price	Discount %	Price after Discount	Historical Volume	Annual Cost For High End Servers
Component	Minimum Requirements	Proposed Model and Capability	\$ 165,210.11	86%	\$ 23,492.88	\$ 75	\$ 1,761,965.82
Manufacturer		Dell					
Model Number		PowerEdge R840					
Processor (CPU) Type	4 x Intel Xeon Platinum 8353 18core 150watt 2.5GHz	24core					
Operating System	None Installed	Meets - None installed					
RAM	1.5 TB RAM	Exceeds - 1.536TB RAM (24 x 64GB RDIMM)					
Storage	2 x 800GB Entry SAS 12GB Hot Swap SSD	Exceeds - 2 x 960GB SSD SAS RI 12Gbps Hot Swap					
Raid	RAID w/ 2 GB Flash RAID 1 Capable	Meets - H730P LP Adapter RAID Cntrlr, 2Gb NV Cache					
Network	2 x 10GbE BaseT	BASET)					
HBA (Host Bus Adapter)	2 x Qlogic 16Gb Dual-port HBA	HBA					
Redundant Power	Required	Meets - Dual, Hot-plug PS, 2400W					
Management Module	Required	Exceeds - iDRAC Express (not basic)					
Warranty	5 years 24x7x4; Keep Your Hard Drive	queue)					
Flash	3 TB Intel Optane DC Persistent Memory Vendor to determine quantity and size of DIMMS to equal the amount requested	Exceeds - 3.072TB Optane (24 x 128GB Intel Optane DC PM)					

Server Options/Upgrades

Instructions for Offerors: Please describe the options/upgrades you have available that are applicable to Servers. Please provide Server-specific options/upgrades available and the corresponding description and cost per service and/or option.

Options / Upgrades	Unit of Measure	Notes, If Any	Cost per Unit (Purchase)
Post Warranty Service - Basic	Per year / per Machine	Per Low End Server, per Q&A	\$54.21
Post Warranty Service - Enhanced	Per year / per Machine	Per Low End Server, per Q&A	\$99.75
Post Warranty Service - Critical	Per year / per Machine	Per Low End Server, per Q&A	\$156
Accidental Damage Protection	Per year / per Machine	Not available	0
RAM Upgrade - Additional 16 GB	Per Unit	Per Low & High End Server	\$226.51
RAM Upgrade - Additional 512 GB	Per Unit	Per Low & High End Server	\$6,355.47
RAM Upgrade - Additional 1 TB	Per Unit	Per Low & High End Server	\$12,023.81
RAM Upgrade - Additional 2 TB	Per Unit	Per High End Server	\$24,050.17
RAM Upgrade - Additional 4 TB	Per Unit	Per High End Server	\$48,100.34
Increased Socket Count for the CPU	Per Unit	Per Low End Server	\$111.86
Network Interface 10 Gig	Per Unit	Per Low & High End Server	\$142.43
HBA Requirement	Per Unit	Per Low End Server, SAS HBA Controller. Fiber channel also available upon request.	\$81.28
Hypervisor Key (Flash)	Per Unit	Per Low & High End Server	\$15.04
Hourly Rate Per Training	Per Hour Rate	Weekly or daily trainings available.	\$136

Server Accessibility Needs

Instructions for Offerors: Please describe the accessibility options you have available that are applicable to Servers. Please provide Server-specific services and options available and the corresponding description and cost per service and/or option.

Accessibility Services / Options	Description	Cost

Optional Services for Servers	Unit of Measure	Historical Annual Volume	Cost per Unit	Estimated Annual Spend
Installation	Per Machine	15	\$ 230.00	\$ 3,450.00
Data Transfer	Per 10 GB	20	\$ 225.00	\$ 4,500.00
Hard Drive Removal	Per Machine	15	\$ 250.00	\$ 3,750.00
On-Premise Disk Wipe	Per Machine	45	\$ 300.00	\$ 13,500.00
Off-Premise Disk Wipe	Per Machine	10	\$ 450.00	\$ 4,500.00
Preparation for Shipment	Per Machine	65	\$ 200.00	\$ 13,000.00
Transport to DGS Warehouse	Per Machine	15	\$ 150.00	\$ 2,250.00

Event Summary - Enterprise Modular Servers

Type	Request for Proposal	Number	RFP 6100051403
Stage Title	-	Organization	CommonwealthPA
Currency	US Dollar	Event Status	Under Evaluation
Work Group	IT	Exported on	12/6/2021
Exported by	Raymond Jaime	Estimated Value	2,000,000.00 USD
Payment Terms	-		

Bid and Evaluation

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

Visibility and Communication

Visible to Public Yes

Enter a short description for this public event

The Commonwealth is looking for Offerors to provide modular server hardware as well as associated installation, service integration, and support services ("Project").

Commodity Codes

Commodity Code	Description
43210000	Computer Equipment and Accessories
81110000	Computer services

Event Dates

Time Zone	EDT/EST - Eastern Standard Time (US/Eastern)
Released	-
Open	7/7/2021 1:00 PM EDT
Close	8/11/2021 1:00 PM EDT
Sealed Until	8/11/2021 1:00 PM
	<input type="checkbox"/> Show Sealed Bid Open Date to Supplier
Q&A Close	8/4/2021 12:00 PM EDT

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. Determination to use Competitive Sealed Proposal Method. As set forth in [Bureau of Procurement Policy Directive 2018-1](#), the Secretary of General Services has determined that the competitive sealed proposals process generally is the most practical and advantageous method for awarding contracts to obtain the best value for the Commonwealth. There are no features of this particular Project that are inconsistent with the rationale set forth in BOP Policy Directive 2018-1 and the justification for the use of competitive sealed proposals set forth in BOP Policy Directive 2018-1 is hereby adopted for this Project.

3. 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 Raymond A Jaime, Bureau of Procurement, Forum Place, 555 Walnut Street, Harrisburg, PA 17101-1944, RA-GSITPROCUREMENT@pa.gov 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.

4. Project Description. The Commonwealth is looking for Offerors to provide Modular Server Hardware as well as associated installation, service integration, and support services (“Project”). Each Offeror shall only propose a single OEM. Only one Offeror will be awarded per OEM. Of the awarded Offerors, the highest scoring Offeror will be chosen as the Best Value Contract. Contracts that were not deemed as the Best Value Contract will be referred to as Secondary Contracts. The contracts will not limit the Commonwealth in seeking competitive pricing for both on-premise infrastructure and cloud infrastructure as required by the OA/OIT technology and support needs.

5. Type of Contract. If the Issuing Office enters into a contract as a result of this RFP, it will be a Fixed Price contract and will contain the **Contract Terms and Conditions** attached to this RFP in the **Buyer Attachments** section.

6. Small Business Reserve. The Commonwealth identified this procurement as fitting the established criteria under the Small Business Procurement Initiative set forth in Executive Order 2011-09. Accordingly, only those bidders who are certified as a Small Business through the Department of General Services’ self-certification process found at www.smallbusiness.pa.gov are eligible to submit a bid and be awarded a contract in response to this RFP. In order to be eligible to receive an award in response to this procurement, the bidder must be certified at the time of bid opening and include a copy of the certification in the bid response.

7. 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.

8. 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.

9. Questions & Answers. Questions must be submitted using the Q&A Board within this event. Questions must be submitted as individual questions. Only one question is to be submitted at a time and no attachments are to be uploaded. 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.

10. Addenda to the RFP. Any revisions to this RFP will be made electronically within this site.

11. 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.

12. 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.

13. Proposal Format: To be considered, the Offeror must respond to all proposal requirements. Each proposal consists of two submittal components: Technical and Cost. 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.

14. Mandatory Responsiveness Requirements. To be eligible for selection, the proposal must be :

A. Timely received from and timely submitted by an Offeror (see Proposal Submission section); and

B. Electronically signed by the Offeror (see Proposal Submission section).

15. 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.

16. 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.

17. Prime Contractor Responsibilities. The selected Offeror must perform **at least 50% of the total contract value**. Nevertheless, 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.

18. 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).

19. 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.

20. 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.

21. Term of Contract. The **initial term** of the contract will commence on the Effective Date and will end **one (1) year after the Effective Date**. 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. The Commonwealth may **renew the contract for a maximum of four (4) additional one (1) year term(s)**, so long as the Commonwealth provides written notice 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 terms(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. The Commonwealth reserves the right, upon written notice, to extend any single term of the Contract for up to **three (3) months** upon the same terms and conditions

22. 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.

23. 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.

24. 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.

25. 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.

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

27. Evaluation Criteria. The Issuing Office has selected a committee of qualified personnel to review and evaluate timely submitted proposals. 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 30% of the total points. Evaluation will be based upon the following: Soundness of Approach, 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: https://www.dgs.pa.gov/Materials-Services-Procurement/Procurement-Resources/Pages/RFP_SCORING_FORMULA.aspx

B. Cost: The Issuing Office has established the weight for the Cost criterion for this RFP as 70% 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: https://www.dgs.pa.gov/Materials-Services-Procurement/Procurement-Resources/Pages/RFP_SCORING_FORMULA.asp

C. Domestic Workforce Utilization: Any points received for the Domestic Workforce Utilization criterion are bonus points in addition to the total points for this RFP. The maximum amount of bonus points available is 3% of the total points for this RFP. To the extent permitted by the laws and treaties of the United States, each proposal will be scored for its commitment to use 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. The Domestic Workforce Utilization Formula is at the following

webpage: https://www.dgs.pa.gov/Materials-Services-Procurement/Procurement-Resources/Pages/RFP_SCORING_FORMULA.aspx

28. 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](#).

29. 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, 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.

30. COSTARS Program. Information related to the COSTARS Program is incorporated in the COSTARS Program Clause contained in the Additional Required Documentation 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 section. If the Offeror is asserting that it is a Department of General Services Certified Small Business, also provide an active Department of General Services Small Business Certificate.

31. External Procurement Activities. The Commonwealth has determined that contracts resulting from this RFP will be made available to external procurement activities. Further information is

incorporated in the **Participating Addendum with an External Procurement Activity Clause** contained in **Additional Required Documentation**.

Stage Description

No description available.

1 ★ **Instructions To Supplier :**

Responsibility to Review.

Certification

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

Supplier Must Also Upload a File:

No

Prerequisite Content:

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.

Buyer Attachments

Technical Submittal v.2 7.13.2021.docx	1. Technical Submittal v.2 7.13.2021.docx	../Attachments/1. Technical Submittal v.2 7.13.2021.docx
Appendix A - Standard Contract Terms And Conditions for IT Supplies and Related Service.docx	Appendix A - Standard Contract Terms And Conditions for IT Supplies and Related Service.docx	../Attachments/Appendix A - Standard Contract Terms And Conditions for IT Supplies and Related Service.docx
Appendix B - Project References.doc	Appendix B - Project References.doc	../Attachments/Appendix B - Project References.doc
Appendix C - Personnel Experience.docx	Appendix C - Personnel Experience.docx	../Attachments/Appendix C - Personnel Experience.docx
Appendix D - Cost Submittal - 7.30.21.xlsx	Appendix D - Cost Submittal - 7.30.21.xlsx	../Attachments/Appendix D - Cost Submittal - 7.30.21.xlsx
Appendix E - Statement of Work Template.docx	Appendix E - Statement of Work Template.docx	../Attachments/Appendix E - Statement of Work Template.docx
Appendix F - Service Level Agreements.xls	Appendix F - Service Level Agreements.xls	../Attachments/Appendix F - Service Level Agreements.xls
Appendix G - Quarterly Report Template.xlsx	Appendix G - Quarterly Report Template.xlsx	../Attachments/Appendix G - Quarterly Report Template.xlsx
Appendix H - Lease Acceptance Certificate.docx	Appendix H - Lease Acceptance Certificate.docx	../Attachments/Appendix H - Lease Acceptance Certificate.docx
Appendix I - Software License Requirements Agreement Template.docx	Appendix I - Software License Requirements Agreement Template.docx	../Attachments/Appendix I - Software License Requirements Agreement Template.docx
Appendix J - PDAA Assessment.docx	Appendix J - PDAA Assessment.docx	../Attachments/Appendix J - PDAA Assessment.docx

Questions

★ Supplier Response Is Required

RFP Questions

Group 1.1: Technical Questions

- 1.1.1 Please download, complete, and upload the attached Technical Submittal from Buyer Attachments. ★
File Upload
- 1.1.2 Any additional attachments in support of the 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 I have read and fully understand the attached Service Level Agreements. ★
Yes/No
- 1.1.4 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 it would be in the best interest of the Commonwealth to waive the pertinent ITP.
Text (Multi-Line)

Group 1.2: Cost

- 1.2.1 Please use the attached Appendix D Cost Submittal to submit your cost proposal for this procurement. 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, sign and attach the Domestic Workforce Utilization Certification Form. ★
File Upload
- 2.1.2 Please download and complete the attached Reciprocal Limitations Act form. ★
File Upload
- 2.1.3 Please download, sign, and attach the Iran Free Procurement Certification and Disclosure Form. ★
File Upload
- 2.1.4 Please download, complete, and attach the Trade Secret/Confidential Proprietary Information Notice. ★
File Upload
- 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
- 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

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

File Upload

Group 2.2: Terms and Conditions

2.2.1 By submitting a proposal, the Offeror does so on the basis of the attached 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

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 authorities). ★

Yes/No

Technical Submittal

- I. Project Description.** The Commonwealth is looking for Offerors to provide modular server hardware as well as associated installation, service integration, and support services (“Project”). Each Offeror shall only propose a single OEM. Only one Offeror will be awarded per OEM. Of the awarded Offerors, the highest scoring Offeror will be chosen as the Best Value Contract. Contracts that were not deemed as the Best Value Contract will be referred to as Secondary Contracts. The contract would not limit the Commonwealth in seeking competitive pricing for both on-premise infrastructure and cloud infrastructure as required by the OA/OIT technology and support needs

Purchasing Scenarios:

Net New Environment: To be defined as new installation that does not include expansions, replacement, or repair. The Best Value Contract is to be used for installations of server hardware in net new environments in the Commonwealth. If the Best Value Contractor is unable to meet the specific technical requirements (to include but not be limited to integration, compatibility, existing staff knowledge, etc.), a waiver must be provided by the Office of Administration through in accordance with ITP-BUS002 and the Department of General Services Chief Procurement Officer in order to procure from a Secondary Contractor.

One for One Replacement/Refresh: No waiver is required. In order to procure a one for one replacement (example: Agency currently has 10 units, needs to replace 2 units, procures 2 units to remain at 10 units total), Agencies are to choose from either of the options below:

1. Procure from the Best Value Contractor, regardless of OEM.
2. Procure from a Secondary Contractor so long as they have been awarded a contract for the OEM hardware being replaced.

Replacement/Refresh with Reduction: No waiver is required. In order to procure a server refresh that involves a reduction of total server units in an environment (example: Agency currently has 10 units, needs to replace 2 units, procures 1 unit with greater capacity to now only have 9 units total), Agencies are to choose from either of the options below:

1. Procure from the Best Value Contractor, regardless of OEM.
2. Procure from a Secondary Contractor so long as they have been awarded a contract for the OEM hardware being replaced.

Definition of 50%

The 50% requirement for the server would be based on the total units or server quantity in the current OEM environment.

a) For Refresh of Server

- For instance, if there are ten servers in the current environment and we need to replace/refresh five servers, we will continue with the OEM we already have.
- If we need six or more servers out of the original ten servers in the current environment, we will bid out for full refresh with best value against only six servers that would be needed for in the current OEM.

b) For Expansion of Server

- If we have ten servers and need five more servers, we can continue to use the current OEM. If we need six or more servers to be added to the original ten, we will bid out for full refresh with best value against only six servers from the current OEM.

Expansion of Existing Environments:

- 1. Less than 50%.** No waiver is required. In order to procure for an expansion of an existing environment that is less than 50% of the current environment, Agencies are to choose from either of the options below:
 - i. Procure from the Best Value Contractor, regardless of OEM.
 - ii. Procure from a Secondary Contractor so long as they have been awarded a contractor for the OEM hardware being replaced.
- 2. Greater than or equal to 50%.** In order to procure for an expansion of an existing environment that is greater than or equal to 50% of the total number of units in the current environment, Agencies must follow the process below:
 - i. Receive a quote from the Best Value Contractor for the additional expansion units if their OEM solution integrates with the Agency's current environment. The Agency must request a quote that includes the devices and all ancillary technology considerations to ensure that the devices operate properly in the current environment. If the Best Value Contractor's OEM solution does not integrate with the current environment, the Best Value Contractor must provide a quote for a net new solution to meet the Agency's needs.
 - ii. Receive a quote from the Secondary Contractor for the additional expansion units if they offer the same OEM solution that is currently makes up the Agency's current environment.
 - iii. The Agency must evaluate responses from (i) and (ii) above and make a decision based on both technical merits and cost. If the Best Value Contractor is unable to meet the specific technical requirements at the time of Agency need, a waiver must be provided by the Office of Administration through in accordance with ITP-BUS002 and the Department of General Services

Chief Procurement Officer in order to procure from a Secondary Contractor.

For all purchasing scenarios. If the Best Value Contractor is unable to meet the specific technical requirements (to include but not be limited to integration, compatibility, existing staff knowledge, floor space, network connectivity, etc.), a waiver must be provided by the Office of Administration through in accordance with ITP-BUS002 in order to procure from a Secondary Contractor. The contract(s) resulting from this RFP would not limit the Commonwealth in seeking competitive pricing for both on-premise infrastructure and cloud infrastructure as required by the OA/OIT technology and support needs.

This contract does not guarantee volume based on past and future purchasing.

Service Level Definitions. The Commonwealth will utilize three (3) separate tiers of service levels as follows:

- (1) **Basic.** 99.9% Availability, **Two (2)-Day** On-site parts and/or labor dispatch—standard response with **48-hour** parts and/or labor on-site support after completion of phone-based troubleshooting.
- (2) **Enhanced.** 99.99% Availability, Next Business Day On-site parts and/or labor dispatch—accelerated response with parts and/or labor on-site support after completion of phone-based troubleshooting.
- (3) **Critical.** 99.999% Availability, Mission-critical response with **four (4)-hour** on-site parts and/or labor on-site support, with a designated point of contact for resolution management, escalation and status updates.

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. Include company name, parent company if applicable, a company overview and why you should be selected for this RFP based on your capabilities. If there is any other information you wish to add that is pertinent to your organization doing business with the Commonwealth, please describe in detail.

Offeror Response

B. Prior Experience. The Offeror must have a minimum of **three (3) years** of experience with projects of a similar size and scope. Include experience in the sale, leasing, and management of server equipment with similar specifications to those

requested including, but not limited to, service, maintenance, and training related to the server equipment.

Experience shown should be work done by individuals who will be assigned to this project as well as that of your company. Projects referred to must be identified and the name of the customer shown, including the name, address, and telephone number of the responsible official of the customer, company, or agency who may be contacted.

- (1) The Offeror must include a least **three (3)** client/project references, with a minimum of **two (2)** references being provided from clients other than the Commonwealth of Pennsylvania, with its proposal. The references must be for installations completed within the past three **(3) years**. Complete **Appendix B, Project References**, for each reference provided.

Offeror Response

- (2) The Offeror must show what work was completed by subcontractors for each of the projects referenced in **Appendix B, Project References**.

Offeror Response

- (3) The Offeror shall provide the following:
 - (i) Details of any industry-recognized quality standard to which it is compliant, as well as any industry certifications or awards, received.

Offeror Response

- (ii) Details on any industry standard (such as ITIL) the Offeror implemented to govern its service delivery.

Offeror Response

- (iii) Include any reseller or services certification levels earned by the Offeror or key personnel (Offeror and subcontractors).

Offeror Response

- (iv) Within the past **three (3) years**, has the firm or venture been a party to any lawsuits or arbitration proceedings with regard to any contracts? If so, please provide details.

Offeror Response

- (v) How long has Offeror(s) provided the Equipment and Services requested in this RFP?

Offeror Response

C. Personnel.

- (1) The Offeror shall identify the number of executive and professional personnel, analysts, auditors, researchers, programmers, consultants, etc., who will be engaged in the work. The Offeror must provide an organization chart clearly identifying the proposed personnel, the role, and the links between managers and staff. Show where these personnel will be physically located during the time they are engaged in the Project. Indicate the responsibilities each individual will have in this Project and how long each has been with your company.

For key personnel (Account Manager, OEM Representative, and Account Representatives) include the employee's name, title, roles and responsibilities, the percent of time committed to this Project, years of experience in position, other relevant experience, the key personnel's education and any other professional qualifications using **Appendix C – Personnel Experience**. Identify if any key personnel are subcontractors.

Offeror Response

- (i) **Account Manager.** The Offeror shall provide a dedicated Account Manager who will be the main point of contact for Commonwealth agency requests. 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 Offeror and must be authorized to make binding decisions on behalf of the Offeror. The Account Manager is expected to have sufficient technical expertise to ensure proper orders are taken. The Account Manager's responsibilities will include, but will not be limited to: providing administrative, supervisory and technical direction to the account representatives; providing quotes for hardware and/or services, reporting, providing recommendations on hardware and services, and tracking order fulfillment; 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.

- (ii) **OEM Representatives.** The selected Offeror must provide a main point of contact for each of the manufacturers for which the selected Offeror is selling products.
 - (iii) **Account Representatives.** The selected Offeror must provide a sufficient number of account representatives to facilitate Commonwealth agency requests, which include, but are not limited to, providing quotes for Hardware and/or Services, reporting, providing recommendations on Hardware and Services, and tracking order fulfillment. Account representatives will be the main point of contact for all Commonwealth agency requests. Additionally, a dedicated service phone number should be provided. These account representatives are expected to have sufficient technical expertise to ensure proper orders are taken.
- (2) **Replacement of Personnel.** Acknowledge review and acceptance of the following procedures: After key personnel are assigned and approved by the Commonwealth, the selected Offeror may not divert or replace key personnel without written approval of the Commonwealth and in accordance with the following procedures. The selected Offeror must provide notice of proposed diversion or replacement to the Commonwealth at least **60 days** in advance and provide the name, qualifications and background check of the person who will replace the diverted or removed staff. The Commonwealth will notify the selected Offeror within **10 days** of the diversion notice whether the proposed diversion is acceptable and if the replacement is approved.
- (i) Advance notification is not required for changes in key personnel 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 key personnel. Replacement of key personnel whose availability changes for reasons beyond the control of the selected Offeror must occur:
 - (a) on a temporary basis, within **one (1) week** of the availability change; and
 - (b) on a permanent basis, no longer than 30 days from the availability change.
 - (ii) The Commonwealth may request that the selected Offeror remove one or more of its staff persons from the contract at any time, with **30 days'** written notice. If a staff person is removed from the Contract, the selected Offeror will have **ten (10) days** to fill the vacancy with a staff person acceptable in terms of experience and skills, subject to the Commonwealth approval.

Offeror Response

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. 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. 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

V. Requirements.

A. Manufacturer Authorization Letter. If an Offeror is proposing as an Authorized Reseller, they must submit a Manufacturer Authorization Letter which clearly states the Offeror is authorized to provide the OEM's equipment to the Commonwealth for this RFP. The Manufacturer Authorization Letter must reference **Commonwealth RFP 6100051403 for Enterprise Modular Servers**

and Services. An Offeror must submit a Manufacturer Authorization Letter for the OEM which the Offeror is proposing, unless the Offeror is the OEM.

B. Offeror Eligibility. To be eligible for this RFP, an Offeror must have a minimum of **three (3) years** of experience working with public sector clients. Additionally, an Offeror must have experience serving at least **one (1)** large state government similar to the Commonwealth. Please refer to **Appendix D, Cost Submittal**, for minimum product requirements/product specifications. Additional eligibility requirements are as follows:

- (i) Offerors must be able to provide the OEM's full server product line.
- (ii) Offerors must provide equipment capable of meeting the Commonwealth's data security needs. Please refer to ITP SEC-015, *Data Cleansing Policy*, https://www.oa.pa.gov/Policies/Documents/itp_sec015.pdf.
- (iii) Standalone maintenance/warranty services, if available, should be proposed in **Appendix D, Cost Submittal**, for up to **five (5) years** past the termination date of the Contract. Maintenance should be available in accordance with the service level tiers listed out in **Section H of the RFP**.
- (iv) Offerors must have the ability to integrate the physical hardware, based on Commonwealth agency requirements, for operational effectiveness.

C. Required Contract Services. These services are required by the awarded contractors at no additional cost to the Commonwealth.

- (1) 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.
- (2) **Supply Chain Management/Managed Logistics.** The selected Offeror must provide staging and storage at no additional cost (unless otherwise defined in **Appendix E, Statement of Work Template**), respond quickly to changing needs and provide an effective order expediting process, if necessary.
- (3) Selected Offerors should provide a quote for hardware, when requested by the Commonwealth, at any time during the term of the Contract.
- (4) Selected Offerors must honor all quotes for at least **90 days**.

D. Optional Services.

- (1) Selected Offerors should provide a quote for warranties and Services, when requested by a Commonwealth agency, at any time during the term of the Contract. Standalone orders for warranties and maintenance made during the term of the Contract may extend up to **five (5) years** past the expiration date of the Contract.
- (2) The Commonwealth agency will develop a statement of work (“SOW”) for each Service order utilizing **Appendix E, Statement of Work Template**, which will be attached to the associated purchase order. The Offeror shall provide a proposed price for all listed Services. All Services may be purchased at the Commonwealth’s discretion.

Optional Services in scope are as follows:

(i) **Installation.**

- (a) The selected Offeror must, at a minimum:
 - 1) Assign a project manager to every installation;
 - 2) Provide status reports of installations completed, installations outstanding, and issues;
 - 3) Unpack equipment;
 - 4) Connect related equipment accessories;
 - 5) Power on the device or system;
 - 6) If pre-imaged system, verify that the system comes up to the login screen and run Commonwealth agency-provided restore script(s) after login; and
 - 7) If non-imaged system, verify that OS boots and network connectivity is successful.
- (b) 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.
- (c) The selected Offeror and the Commonwealth agency will develop a schedule to deliver equipment to a location specified by the Commonwealth agency.

(ii) **Hard Drive Removal.**

- (a) The selected Offeror must, at a minimum:
 - 1) Arrive at the Commonwealth designated location at the time scheduled with the Commonwealth agency to uninstall and fully remove the hard drive in question;
 - 2) Verify the functionality and condition of the equipment with the agency.
 - 3) Cleanse the hard drive as detailed in Commonwealth ITP SEC015, *Data Cleansing Policy*,

http://www.oa.pa.gov/Policies/Documents/itp_sec015.pdf; and

- 4) If a hard drive is removed, the Commonwealth agency may choose to keep the removed hard drive and provide delivery location of removed hard drive.

- (iii) **Equipment Return to DGS Surplus Warehouse.** The selected Offeror must, at a minimum: Deliver the packed equipment to the DGS warehouse located at:

DGS Surplus Warehouse
2221 Forster St.
Harrisburg, PA 17125

E. 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 Hardware or Service.
- (3) The selected Offeror's delivery methods must adhere to **Section 9, Delivery and Section 11, Acceptance of Appendix A, Standard Contract Terms and Conditions for IT Supplies and Related Services.**

F. Quote Requirements. All quotes must comply, at a minimum, with the following and be pre-approved by the Commonwealth at the outset of the Contract.

- (1) Include: contract number, manufacturer contract number (if applicable); service period (if applicable); manufacturer product ID; manufacturer product title; line item descriptions; list price, minimum discount of of list required by contract, discount off of list offered on the order, adjusted price, quantity, extended price; Service Level (SLA) Acceptance Date for delivery of products or services; and related and/or prior PO number(s) when standalone Services are procured. The Commonwealth's contract management team must approve the quote format before any quotes may be issued.
- (2) No additional terms and conditions may be attached to a quote.

G. Volume Orders.

- (1) The selected Offeror must be capable of fulfilling large volume orders including, but not limited to, Commonwealth agency roll-outs and high dollar purchases.
 - (2) The selected Offeror is encouraged to offer higher discounts for large volume purchases.
- H. Service Level Agreements.** The selected Offeror must meet the service level agreements (SLAs) as described in **Appendix F, Service Level Agreements**.
- I. Software.** The selected Offeror shall not sell equipment that requires commercially available software for its use through this contract unless and until the Commonwealth has entered into a software license agreement with such software licensor. Offeror shall inform any such software licensor that the software licensor must enter into a software license agreement with the Commonwealth that is substantially the same form as **Appendix I, Software License Requirements**, which will incorporate, if applicable and as appropriate, the software licensor's software agreement.
- J. Licensing Requirements.** Any click-through terms presented to an individual upon use of any component of the system must be pre-approved in writing by the Commonwealth Contracting Officer. Such terms may not be inconsistent with the final negotiated contract terms and conditions resulting from this RFP. See **Section VI, Objections and Additions to Standard Contract Terms and Conditions**.
- K. 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. In the event of an emergency, DGS reserves the right to assign other duties and tasks to maintain program continuity. Attach a copy of the plan, or at a minimum, summarize how the plan addresses the following aspects of pandemic preparedness:
- (1) Employee training (describe Offeror's training plan, and how frequently it will be shared with employees)
 - (2) Identified essential business functions and key employees (of yours) necessary to carry them out
 - (3) Contingency plans for:
 - (i) How Offeror will handle staffing issues when a portion of key employees are incapacitated due to illness.

- (ii) How Offeror's employees will carry out the essential functions if contagion control measures prevent them from coming to the primary workplace.
 - (iii) Maintaining field or home operations of Program participants, professional staff, and subcontractors employment during adverse conditions.
- (4) How Offeror will communicate with staff and suppliers when primary communications systems are overloaded or otherwise fail. Identify the role of key contacts and the chain of communications (including suppliers), etc.
- (5) How and when Offeror's emergency plan will be tested, and if the plan will be tested by a third-party.

Offeror Response

- L. Just-In-Time Purchasing.** Has your company previously worked with state governments to facilitate a "Just-in-time" approach to hardware purchasing that reduces unnecessary advance purchasing and inventorying of hardware? If so, please describe.

Offeror Response

- M. Emerging Technologies.** How does your company go about incorporating emerging technologies into its product portfolio and rolling them out to customers?

Offeror Response

- N. Asset Flexibility.** If, during the term of the contract new equipment becomes available, the selected Offeror may, with the written approval of the Office of Administration, Office of Information Technology, substitute a new model if it offers features, technologies, or standards that are equal to or greater than the original model. The cost of any new equipment must be less than or equal to the model it is replacing. Please describe how your company will provide the Commonwealth asset flexibility as Information Technology needs change. This can include events such as asset upgrades, expansions, retirement or any other method of updating the existing hardware environment. Please also describe how your company will handle Standard Configuration Reviews and refresh the standard configurations.

Offeror Response

- O. Supply Chain Management/Managed Logistics.** Please describe your company's supply chain network and how it is designed to maximize customer service. The Commonwealth desires a contractor that can, among others things, provide staging and storage, respond quickly to changing needs, and provide an effective expediting process if necessary.

Offeror Response

- P. Data Cleansing.** Referring to Information Technology Policy ITP-SEC015, *Data Cleansing Policy* (https://www.oa.pa.gov/Policies/Documents/itp_sec015.pdf), please describe how your company's data cleansing processes meet these policy requirements and how your company will prevent sensitive information from being released when decommissioning or repairing hardware. Please also describe the OEM's means for providing data cleansing services.

Offeror Response

- Q. Continuous Improvement.** Please describe how you will continuously improve the contract and help drive cost savings over the contract term.

Offeror Response

- R. Accessibility Plan.**

- (1) General. 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 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. Please see https://www.oa.pa.gov/Policies/eo/Documents/2016_03.pdf for additional information.

The Commonwealth of Pennsylvania also has an IT Policy ([ACC001 – Digital Accessibility Policy](#)) that outlines requirements for digital content and services to which the Offeror must adhere. Digital content and services include, but are not limited to:

- Electronic content
- Software

- Hardware
- Support documentation and services

(2) Definitions.

- (i) **Digital Content and Services.** The delivery of information and services to end-users via data, voice, or video technologies, which includes but is not limited to:
- (a) **Electronic content:** Websites and web-based materials (Internet & Intranet), Microsoft Office (Word, Excel, PowerPoint), Adobe InDesign & PDF documents, training materials (e.g., online training materials, tests, online surveys), multimedia (video/audio), digital materials (e.g., documents, templates, forms, reports, surveys), maps and infographics, electronic emergency notifications, and subscription services (e.g., news feeds, alert services, professional journals);
 - (b) **Software:** Web, desktop, server, and mobile client applications, authoring tools, associated infrastructure, and service offerings (Software as a Service (SaaS), Platform as a Service (PaaS), Infrastructure as a Service (IaaS));
 - (c) **Hardware:** Computers & laptops, servers, tablets, printers and copiers, scanners, peripheral equipment (e.g., keyboards, mice), kiosks and mobile phones; and
 - (d) **Support documentation and services:** Training services, help desk or call center, automated self-service & technical support, and product informational materials.
- (ii) **Policy Driven Adoption for Accessibility (PDAA).** PDAA is the integration of digital content and services accessibility governance into Commonwealth policies. The PDAA methodology was created by a work group of the National Association of State CIOs (NASCIO).
- (iii) **Section 508 Standards (Revised).** A final rule, published in January of 2017, updating accessibility requirements for information and communication technology (ICT) covered by Section 508 of the Rehabilitation Act of 1973, 29 U.S.C. § 701 *et seq.*
- (iv) **Voluntary Product Accessibility Template® (VPAT).** A VPAT is an industry accepted tool to measure a supplier's ability to

demonstrate their product's (hardware, software (COTS, SaaS), electronic content and support documentation and services) support for accessibility.

- (v) **Web Content Accessibility Guidelines (WCAG).** WCAG are an industry-recognized standard published by the Web Accessibility Initiative (WAI) of the World Wide Web Consortium (W3C) that addresses digital content. WCAG includes three levels of conformance: A, AA, and AAA.

(3) Specific. The Offeror shall provide the following artifacts requested below. Based on the assessment of these artifacts, additional information may be requested. Furthermore, the Commonwealth reserves the right to verify the accessibility of the solution.

- (i) A completed Voluntary Product Accessibility Template (VPAT) using either the latest Information Technology Industry Council (ITI) Section 508 Standards (Revised) or the Web Content Accessibility Guidelines (WCAG) version for all software, hardware, and websites (as applicable) as proposed in response to the solicitation. The latest version of the VPAT templates can be found at the ITI website: <https://www.itic.org/policy/accessibility/vpat>.
- (ii) A completed Policy Driven Adoption for Accessibility (PDAA) Assessment using the template found in Appendix J.
- (iii) Contractors must provide an accessibility plan that includes accessibility features available within the product and suitable third-party assistive technologies that work best with the product.

Offeror Response

S. **Capacity Planning.** Please confirm and describe your ability to perform analysis to determine and ensure infrastructure is the right size to meet present and future goals. Plan to include flexibility so that infrastructure can meet changing demands.

Offeror Response

T. **Quick Start Services.** Please confirm and describe your ability to rack and stack equipment, initial configuration, installation record and skills transfer for operation and monitoring.

Offeror Response

- U. **Data Migration Services for Enterprise Storage.** Please confirm and describe your ability to migrate the customer's existing operating systems and data to the new system. Describe your ability to develop a migration plan, apply technical resources required, create a schedule, and maintenance window planning.

Offeror Response

- V. **System Performance and Tuning.** Please confirm and describe your ability to measure system performance identify bottlenecks and make modifications for improvement.

Offeror Response

- W. **Value Added Services.** Please provide any additional value added services and options you are capable of providing at no additional cost to the Commonwealth.

Offeror Response

- VI. **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 Report.** The selected Offeror must utilize **Appendix G, Quarterly Reporting Template**, which includes the following:

- (1) Sales report, which includes, at a minimum:
 - (i) Agency Information. Identifying information for the Commonwealth agency;
 - (ii) Maintenance/Services Information. Detailed description of the maintenance/services being performed;
 - (iii) Product and Hardware Information. Detailed information about the product purchased, including the manufacturer; product description/base configuration details; manufacturer part number; any additional upgrades purchased; and quantity;
 - (iv) Order Information and Invoice 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; and
 - (v) Invoice Information. Invoice information for the associated order.

- (2) Problem and response report, which includes, at a minimum: Agency Information; Equipment Information; Maintenance/Services Information; and Problem/Response Information.
- (3) Outstanding issues summary report, which includes, at a minimum: Agency Information; and Outstanding Issue Summary.
- (4) Quarterly summary report, which includes, at a minimum: Quarterly contract activities; achievements; challenges; and the selected Offeror's recommendations for the Commonwealth.
- (5) Detailed SLA metric report. The Contractor will be responsible for tracking and quarterly reporting on the SLA metrics listed in **Appendix F, Service Level Agreements**. The format of the report must be approved by the Commonwealth before ordering can commence.

Offeror Response

B. Standard Configuration Reviews.

- (1) The standard configurations as defined in the cost submittal will be reviewed by the Commonwealth at least annually and any required updates will be made at that time via the change notice process as defined in **Appendix A, Standard Terms and Conditions, Section 51, Changes**. These updates to the standard configurations are to provide the Commonwealth access to the latest in related computer-based technologies.
- (2) If the selected Offeror(s) or the associated OEM discontinues a product, then it must be replaced with a product of equal or better specifications for the originally contracted price.

C. 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 contractor to identify contract improvement opportunities and cost savings opportunities for the Commonwealth.

D. Ad Hoc Reports. The Commonwealth reserves the right to request ad hoc reports from the selected Offeror. These ad hoc reports are to be made available at no

additional charge to the Commonwealth. Reports must be provided within 48 hours of the request if not otherwise specified by the Commonwealth.

- VII. Objections and Additions to Standard Contract Terms and Conditions.** Offeror(s) shall identify which, if any, of the standard contract terms and conditions and service level agreements contained in the **Buyer Attachments** section that it would like to negotiate and what additional terms and conditions the Offeror would like to add to the contract terms and conditions and service level agreements. The Offeror's failure to make a submission will result in its waiving its right to do so later, but the Issuing Office may consider late objections and requests for additions if to do so, in the Issuing Office's sole discretion, would be in the best interest of the Commonwealth. The Issuing Office may, in its sole discretion, accept or reject any requested changes to the standard contract terms and conditions and service level agreements. The Offeror shall not request changes to the other provisions of the RFP, nor shall the Offeror request to completely substitute its own terms and conditions for this RFP. All terms and conditions must appear in one integrated contract. The Issuing Office will not accept references to the Offeror's, or any other, online guides or online terms and conditions contained in any proposal. Offeror(s) shall submit red-lined copies of **Appendix A, Standard Contract Terms and Conditions for IT Supplies and Related Services**, and **Appendix F, Service Level Agreements**.

Regardless of any objections set out in its proposal, Offeror(s) must submit its proposal, including the cost proposal, on the basis of the terms and conditions set out in the **Appendix A, Standard Contract Terms and Conditions for IT Supplies and Related Services** and **Appendix F, Service Level Agreements**, contained in the **Buyer Attachment** section. 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.

Offeror Response

0. TERM OF CONTRACT

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.

1. 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.

2. COMMENCEMENT OF PERFORMANCE

(a) General. The Contractor shall not commence performance and the Commonwealth shall not be liable to pay the Contractor for any supply furnished or work performed or expenses incurred, until both of the following have occurred:

- (i) the Effective Date has occurred; and
- (ii) the Contractor has received a Purchase Order or other written notice to proceed signed by the Contracting Officer.

(b) Prohibition Prior to Effective Date. No Commonwealth employee has the authority to verbally direct the commencement of any Service or delivery of any Supply under this Contract prior to the date performance may commence. The Contractor hereby waives any claim or cause of action for any Service performed or Supply delivered prior to the date performance may commence.

3. ELECTRONIC SIGNATURES

(a) The Contract and/or Purchase Order may be electronically signed by the Commonwealth.

- (i) Contract. “Fully Executed” at the top of the first page of the Contract output indicates that the signatures of all the individuals required to bind the Commonwealth to the terms of the Contract have been obtained. If the Contract output form does not have “Fully Executed” at the top of the first page, the Contract has not been fully executed.

- (ii) Purchase Orders. The electronically-printed name of the Purchasing Agent on the Purchase Order indicates that all approvals required by Commonwealth contracting procedures have been obtained.
- (b) 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.

4. 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: Unless specifically indicated otherwise, days mean calendar days.

Appendix A, Standard Contract Terms and Conditions for IT Supplies and Related Services

- (d) **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 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) **Statement of Work:** A document attached to a purchase order from the Contractor which details the Services which will be provided by the Contractor.
- (i) **Supplies:** All tangible and intangible property including, but not limited to materials and equipment, provided by the Contractor to satisfy the Contract.

5. PURCHASE ORDERS

- (a) The Agency 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.
- (b) 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.
- (c) 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.

6. 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 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.

7. 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 Section 22(c). 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.

8. OTHER CONTRACTORS

The Commonwealth may undertake or award other contracts for additional or related work, and the Contractor shall fully cooperate with other contractors and Commonwealth employees, and coordinate its 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 work 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.

9. DELIVERY

(a) Supplies Delivery: All Supplies 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 30 days after the Effective Date.

- (b) Delivery of Services: 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. PRODUCT CONFORMANCE

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

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

11. 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 which are discovered to be defective or fails 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 30 days after notification. Rejected Supplies left longer than 30 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 with 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.

12. 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 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.

13. 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 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.

14. 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.

15. 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.

16. 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 and 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.

17. 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. All Services shall be performed within the time period(s) specified in the Contract. The Contractor shall be compensated only for work 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.

18. 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:

- (a) Vendor name and “Remit to” address, including SAP Vendor number;
- (b) Bank routing information, if ACH;
- (c) SAP Purchase Order number;
- (d) Delivery Address, including name of Commonwealth agency;
- (e) Description of the Supplies/Services delivered in accordance with SAP Purchase Order (include purchase order line number if possible);
- (f) Quantity provided;
- (g) Unit price;
- (h) Price extension;
- (i) Total price; and
- (j) Delivery date of Supplies or Services.

If an invoice does not contain the minimum information set forth in this section, 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.

19. PAYMENT

- (a) The Commonwealth shall put forth reasonable efforts to make payment by the required payment date. The required payment date is: (a) the date on which payment is due under the terms of the Contract; (b) 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 (c) the payment date specified on the invoice if later than the dates established by (a) and (b) above. 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 No. 266 of 1982, 72 P. S. § 1507, (relating to interest penalties on Commonwealth accounts) and accompanying regulations 4 Pa. Code §§ 2.31—2.40. 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.

- (b) 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.
- (c) 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.

20. 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.

21. 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, 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 subsection (c) of Section 27, DEFAULT, in addition to other remedies available to the non-breaching party.

Appendix A, Standard Contract Terms and Conditions for IT Supplies and Related Services

- (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 an un-redacted version of the appropriate document, and
 - (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, and
 - (iii) Prepare a signed written statement that states:
 - (i) the attached document contains confidential or proprietary information or trade secrets;
 - (ii) the Contractor is submitting the document in both redacted and un-redacted format in accordance with 65 P.S. § 67.707(b); and
 - (iii) the Contractor is requesting that the document be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests.

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

22. 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 state and federal 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 23 survive the expiration or termination of this Contract.

23. DATA BREACH OR LOSS

- (a) Contractor shall comply with all applicable data protection, data security, data privacy and data breach notification laws, including but not limited to the *Breach of Personal Information Notification Act*, 73 P.S. §§ 2301—2329.
- (b) For Data and Confidential Information in the possession, custody and control of the Contractor or its employees, agents, and/or subcontractors:
- (c) The Contractor shall report unauthorized access, use, release, loss, destruction or disclosure of Data or Confidential Information ("Incident") to the Commonwealth within two (2) hours of when the Contractor knows of or reasonably suspects such Incident, and the Contractor must immediately take all reasonable steps to mitigate any potential harm or further access, use, release, loss, destruction or disclosure of such Data or Confidential Information.
- (d) Contractor shall provide timely notice to all individuals that may require notice under any law or regulation as a result of an Incident. The notice must be pre-approved by the Commonwealth. At the Commonwealth's request, Contractor shall, at its sole expense, provide credit monitoring services to all individuals that may be impacted by any Incident requiring notice.

- (e) Contractor shall be solely responsible for any costs, losses, fines, or damages incurred by the Commonwealth due to Incidents.
- (f) As to Data and Confidential Information fully or partially in the possession, custody, or control of the Contractor and the Commonwealth, the Contractor shall diligently perform all of the duties required in this Section 24 in cooperation with the Commonwealth, until the time at which a determination of responsibility for the Incident, and for subsequent action regarding the Incident, is made final.

24. COMMONWEALTH HELD HARMLESS

- (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* (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.

25. 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 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 damages for:
 - (i) bodily injury;
 - (ii) death;
 - (iii) gross negligence or intentional or willful misconduct;
 - (iv) damage to real property or tangible personal property for which the Contractor is legally liable; or

- (v) the Contractor's indemnity of the Commonwealth for patent, copyright, trade secret, or trademark protection as set forth in Section 34, Patent, Copyright, Trademark and Trade Secret Protection.
 - (vi) the Contractor's indemnity for an Incident as set forth in Section 24, Data Breach or Loss.
- (b) Except as set forth in Section 42, Virus, Malicious, Mischievous or Destructive Programming, the Contractor shall not be liable to the Commonwealth for indirect, consequential, special, incidental or punitive damages.

26. 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 work within the time specified in the Contract or Purchase Order or as otherwise specified;
 - (ii) Failure to perform the work 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 as detailed in the specifications referenced in the Contract or a Purchase Order;
 - (iv) Failure to deliver the awarded item(s) within the time specified in the Contract or Purchase Order or as otherwise specified;
 - (v) Improper delivery;
 - (vi) Failure to provide an item(s) which is in conformance with the specifications referenced in the Contract or Purchase Order;
 - (vii) Delivery of a defective item;
 - (viii) Failure or refusal to remove material, or remove and replace any work rejected as defective or unsatisfactory;
 - (ix) Discontinuance of work without approval;
 - (x) Failure to resume work, which has been 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 materials furnished, labor supplied or performed, for equipment rentals, or for utility services rendered;
 - (xiv) Failure to protect, to repair, or to 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 Section 29, Contract Controversies, the Contractor's exclusive remedy shall be to seek damages in the Commonwealth Board of Claims.

27. 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.

28. TERMINATION PROVISIONS

The Commonwealth has the right to terminate this Contract or any Purchase Order for any of the following reasons. Termination shall be effective upon written notice to the Contractor.

- (a) **TERMINATION FOR CONVENIENCE:** The Commonwealth shall have the right to 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 to be in the best interest of the Commonwealth. Any such termination shall be effected 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 Services performed and all Supplies delivered 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 Section 29, Contract Controversies, of this Contract.

- (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, in addition to its other rights under this Contract, shall have the right to terminate the Contract or a Purchase Order issued from the Contract, in whole or in part, by providing written notice of default 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. 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.

- (i) Subject to Section 25, Limitation of Liability, in the event the Commonwealth terminates this Contract in whole or in part as provided in this subsection, the Commonwealth may procure Services or Supplies similar to those so terminated, and the Contractor, in addition to liability for any liquidated damages, shall be liable to the Commonwealth for the difference between the Contract price for the terminated portion of the Services or Supplies and the actual and reasonable cost (but in no event greater than the fair market value) of producing substitute equivalent services for the terminated Services or Supplies, provided that the Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this Section.
- (ii) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises out of causes beyond the control of the Contractor. Such causes may include, but are not limited to, acts of God or of the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, work stoppages, freight embargoes, acts of terrorism and unusually severe weather. The Contractor shall notify the Contracting Officer promptly in writing of its inability to perform because of a cause beyond the control of the Contractor.
- (iii) Nothing in this subsection shall abridge the Commonwealth's right to suspend, debar or take other administrative action against the Contractor.
- (iv) 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).

29. CONTRACT CONTROVERSIES

- (a) In the event of a controversy or claim arising from the Contract, the Contractor must, within six 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.

- (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.

30. 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 work to be performed under this Contract without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.
- (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, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.
- (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.

31. 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.

32. 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.

33. 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 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*, 71 P.S. § 732-10—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 Materials 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 works produced 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 work produced 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.

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- (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.
- (g) The obligations of the Contractor under this Section continue without time limit and survive the termination of this contract.
- (h) 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.
- (i) 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.

34. OWNERSHIP RIGHTS

- (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 Contractor has previously developed software and related processes, instructions, methods, and techniques, and that the same shall remain the sole and exclusive property of Contractor. Contractor retains ownership of all Contractor Intellectual Property that Contractor delivers to the Commonwealth pursuant to this Contract.
- (c) Commonwealth Intellectual Property and Data. The Commonwealth owns all Data and 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. Commonwealth grants Contractor a non-exclusive, royalty-free, license to use, copy, display, and prepare derivative works of the Commonwealth's Intellectual Property and Data only to fulfill the purposes of this Contract. The Commonwealth's license to Contractor is limited by the terms of this Contract.
- (d) Click-Through Terms. The terms and conditions of this Contract shall be the exclusive terms of agreement between the Contractor and the Commonwealth. Other terms and conditions included in click-through agreements or referenced in the Contractor's quotations, invoices, business forms, or other documentation shall not become part of this Contract and shall be disregarded by the parties. Any such terms shall be unenforceable by the Contractor and not binding on the Commonwealth.
- (e) 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.

35. 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) 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, in the provision of services under the contract.
- (d) Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the [Public Employee Relations Act](#), [Pennsylvania Labor Relations Act](#) or [National Labor Relations Act](#), as applicable and to the extent determined by entities charged with such Acts' enforcement, and shall comply with any provision of law establishing organizations as employees' exclusive representatives.
- (e) 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.
- (f) 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.

- (g) 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.
- (h) 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.
- (i) 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.
- (j) 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.

36. 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 procurement process.

- (a) Definitions. For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this section:

Appendix A, Standard Contract Terms and Conditions for IT Supplies and Related Services

- (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 with the Commonwealth.

Appendix A, Standard Contract Terms and Conditions for IT Supplies and Related Services

- (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 Contractor activity with the Commonwealth and Commonwealth employees, and which is distributed and 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.

37. 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.

Appendix A, Standard Contract Terms and Conditions for IT Supplies and Related Services

- (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 search the current list of suspended and debarred Commonwealth contractors by visiting the eMarketplace website at <http://www.emarketplace.state.pa.us> and clicking the debarment List tab.

38. 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.

39. 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:
 - (d) 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
 - (e) Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.
 - (f) 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.

- (g) 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.
- (h) 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.
- (i) 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.
- (j) 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.
- (k) 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.

40. INFORMATION TECHNOLOGY POLICIES

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: <https://www.oa.pa.gov/Policies/Pages/itp.aspx>), including the accessibility standards set out in IT Bulletin ACC001, *IT Accessibility Policy*. The Contractor shall ensure that Services procured under this Contract comply with the applicable standards. In the event

such standards change during Contractor's performance, and the Commonwealth requests that Contractor comply with the changed standard, then any incremental costs incurred by Contractor to comply with such changes shall be paid for pursuant to a change order to the Contract.

41. 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. It is understood that the Contractor may not install the software on any computing device not being used to provide Services to the Commonwealth, and that all copies of the software will be removed from all devices upon termination of this Contract.
- (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.

42. 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 Request for Criminal Record Check form and procedure found at <https://www.psp.pa.gov/Pages/Criminal-History-Background-Check.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 2, 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.

43. 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.

44. POST-CONSUMER RECYCLED CONTENT

- (a) 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 on the Department of General Services website at <https://www.dgs.pa.gov/> on the date of submission of the bid, proposal or contract offer.
- (b) 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.

45. HAZARDOUS SUBSTANCES

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, known as

the “Worker and Community Right to Know Act” (the “Act”) and the regulations promulgated pursuant thereto at 4 Pa. Code Section 301.1, *et seq.*

- (a) 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 Paragraph (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 substances by volume or those substances consisting of 5.0% or more of the mixture.

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.

Container labels shall provide a warning as to the specific nature of the hazard arising from the substance in the container.

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:

- NFPA 704, Identification of the Fire Hazards of Materials.
- National Paint and Coatings Association: Hazardous Materials Identification System.
- American Society for Testing and Materials, Safety Alert Pictorial Chart.
- American National Standard Institute, Inc., for the Precautionary Labeling of Hazardous Industrial Chemicals.

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.

- (b) 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.

46. 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.

47. 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.

48. 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.

49. 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.

50. 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.

51. 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 Section 29, Contract Controversies.

52. 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.

53. LEASES

To the extent that the Contractor offers the Commonwealth or any purchasing agency ("Lessee") the option to lease any Supplies covered by the Contract, the Leasing Terms and Conditions, attached hereto as Appendix 1, 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 the Leasing Terms and Conditions. Any items covered by a Lease shall be termed "Leased Property" in the Leasing Terms and Conditions. To the extent that there is a conflict between the Leasing Terms and Conditions and the other terms and conditions of the Contract, the Leasing Terms and Conditions shall prevail to the extent that the Lessee has elected a leasing option.

54. INSTALLMENT PURCHASES

- (a) Installment purchase options. 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, Appendix 2, Installment Purchase Terms and Conditions, in addition to the other terms and conditions of the Contract, shall govern the Installment Purchase. If a Purchaser desires to purchase items on an installment basis, the Purchaser shall indicate its Installment Purchase election on the Purchase Order 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.

- (b) Assignments. 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.

55. CONTROLLING TERMS AND CONDITIONS

The terms and conditions of this Contract shall be the exclusive terms of agreement between the Contractor and the Commonwealth. All quotations requested and received from the Contractor are for obtaining firm pricing only. 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.

56. AGENCY-SPECIFIC SENSITIVE AND CONFIDENTIAL COMMONWEALTH DATA (IF APPLICABLE)

- (a) Contractor 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 subject to various state and federal laws and policies that vary from agency to agency, and from program to program within an agency. If applicable, prior to deployment of the Supplies on any Commonwealth agency facilities, the Contractor must receive and sign off on particular instructions and limitations as dictated by that Commonwealth agency, including but not limited to, as necessary, HIPAA Business Associate Agreements, a sample of which is attached hereto as Attachment 2 to this Contract's Appendix E, *Software License Requirements Agreement Template*. This sign-off document (a sample of which is attached hereto as Attachment 3 to this Contract's Appendix E, *Software License Requirements Agreement Template*), will include a description of the nature of the data which may be implicated based on the nature of the Contractor's access, and will incorporate the Business Associate Agreement if it is applicable.

- (b) Contractor 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 Supplies), the Contractor 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 a Commonwealth agency and signed by at least one signatory authorized to bind the Contractor is valid and is hereby integrated and incorporated by reference into this Contract via Purchase Orders issued under this Contract.
- (c) This Section 56 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 Contractor's access, to refer the Contractor 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 56 are in addition to and not in lieu of other requirements of this Contract, its Exhibits, Appendices and Attachments, having to do with data privacy and security, including but not limited to the requirement that the Contractor comply with all applicable Commonwealth ITPs, which can be found at <https://www.oa.pa.gov/Policies/Pages/itp.aspx>.
- (e) Contractor shall conduct additional background checks, in addition to those required in Section 42, Background Checks, as may be required by a Commonwealth agency in its sign-off documents. The Contractor shall educate and hold its agents, employees, contractors and subcontractors to standards at least as stringent as those contained in this Contract. The Contractor shall provide information regarding its agents, employees, contractors and subcontractors to the Commonwealth upon request.

57. FEDERAL REQUIREMENTS

If applicable, the Contractor 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 Supplies and Services. This sign-off document (a sample of which is attached as Attachment 3 to this Contract's Appendix E, *Software License Requirements Agreement Template*, in addition to any applicable requirements of Section 56, Agency-Specific Sensitive and Confidential Commonwealth Data, will include a description of the required federal provisions, along with the applicable forms necessary for the Contractor and/or Software Licensor execute, as necessary. The sign-off document, along with attachments, must be attached to the Purchase Order. The Commonwealth agency will inform the Contractor whether they must execute the sign-off document as required by the federal government.

APPENDIX 1

LEASING TERMS AND CONDITIONS

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 S to the RFP.

If the Contractor delivers the Leased Property in more than one delivery, unless otherwise specified in the specifications for the 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

1. 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.
2. 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:
 - a. The Lessee delivers unencumbered title to the Leased Property to the Contractor or Initial Assignee (if applicable);
 - b. The Lessee returns the Leased Property to the Contractor/Initial Assignee in good condition, reasonable wear and tear excepted; and
 - c. 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

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.

- a. 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.
- b. The Leased Property shall remain personal property and shall not become a fixture or affixed to real property without consent of the Contractor/assignee.
- c. 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.
- d. 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

1. The Lessee shall have the benefit of any and all manufacturer or supplier warranties for the Leased Property during the Lease term.
2. 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 Section J shall have occurred and be continuing.

G. LIABILITY

1. 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.
2. The Lessee shall, during the Lease term, either self-insure or purchase insurance to cover the risks it has assumed under Paragraph 1 of this Subsection, including but not limited to risks of public liability and property damage.

H. ASSIGNMENT

1. 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.
2. 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.

3. 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.
4. After a Lessee executes and the Initial Assignee receives an Acceptance Certificate:
 - a. 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
 - b. 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.
5. 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

1. 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.
2. 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.
3. 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 Section B, 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

1. 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:
 - a. Terminate the applicable Lease.
 - b. 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.

- c. 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 .15 and may be accessed via the Federal Reserve Board's Internet website.
2. In the event of Contractor default under the Default provision of the Contract, the Lessee may pursue one or more of the following remedies:
 - a. 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.
 - b. 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.
 - c. 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 Section J, 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.

1. As a matter of policy, the Commonwealth has 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.
2. Except in the event of a total loss of any or all Leased Property as described in Section E., 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.
3. 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

1. 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 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.

2. 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.

APPENDIX 2

INSTALLMENT PURCHASE TERMS AND CONDITIONS

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 S to the RFP.

If the Contractor delivers the Installment Item in more than one delivery, unless otherwise specified in the Installment Purchase PO, the Purchaser will provide separate Acceptance Certificates for each delivery of the Installment Items, and the Purchaser will make periodic payments for the Installment Items corresponding to the amount of the Installment Items delivered and accepted 30 days prior to the payment due date.

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.

B. PAYMENTS

1. Full Term Intention. The Purchaser shall pay the applicable monthly or annual 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.
2. 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 shall release the Purchaser of all further obligations under the Installment Purchase, provided:
 - a. The Purchaser delivers unencumbered title to the Installment Items to the Contractor or Initial Assignee (if applicable);
 - b. The Purchaser returns the Installment Items to the Contractor/Initial Assignee in good condition, reasonable wear and tear excepted; and

- c. 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

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, except as otherwise set forth in the Contract or PO. The Contractor or 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 Section I of this Appendix.

- a. 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.
- b. The Installment Items shall remain personal property and shall not become a fixture or affixed to real property without consent of the Contractor/assignee.
- c. 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.
- d. 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 ITEM

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 Item 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. RISK OF LOSS

1. The Purchaser, after acceptance of the installment Items, shall assume and bear the risk of loss or damage to, 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:

- a. to replace the equipment with like equipment, or
 - b. 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 Installment Purchase PO.
2. 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 1 of Section G, below.
 3. The Purchaser agrees to insure the Installment Items as provided under Paragraph 2 of Subsection G, below.

F. WARRANTIES

1. The Purchaser shall have the benefit of any and all manufacturer or supplier warranties for the Installment Items during the Installment Purchase term.
2. 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 Section J shall have occurred and be continuing.

G. LIABILITY

1. 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.

2. The Purchaser shall, during the Installment Purchase term, either self-insure or purchase insurance to cover the risks it has assumed under Paragraph 1 of this section, including but not limited to risks of public liability and property damage.

H. ASSIGNMENT

1. The Purchaser shall not assign any Installment Purchase PO or other interest in the Installment Item 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 PO and Installment Item 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.
2. The Contractor may assign, without Purchaser consent, any Installment Purchase PO to a third party ("Initial Assignee") who will fund the purchase of the Installment Item. The Initial Assignee may take title to, and assume the right to receive all rental payments for, the Installment Item. 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.
3. 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 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 Item and is not responsible for their selection or installation. After the ordering Purchaser executes, and the Initial Assignee receives, an Acceptance Certificate, if any portion of the Installment Item 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.
4. After a Purchaser executes and the Initial Assignee receives an Acceptance Certificate:
 - a. The Purchaser shall, regardless of whether any portion of the Installment Item is unsatisfactory for any reason, nevertheless, continue to make payments under the

applicable Installment Purchase and shall make any claim relating to the Installment Item against the Contractor or the manufacturer, not against the Initial Assignee or any subsequent assignee; and

- b. 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.

5. 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 ITEM), 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 INSTALLMENT 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

1. If the Contractor is not the supplier of the Installment Item, 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 rental payments under the Installment Purchase to an Initial Assignee, the Purchaser's obligation to make rental payments for the Installment Item 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.
2. 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 rental payments to reflect the requested prepayment and shall advise the Purchaser of the balance to be paid.
3. If the Purchaser purchases Contract items related to 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 Section 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

1. 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 Installment Purchase 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:
 - a. Terminate the applicable Installment Purchase.
 - b. 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, at its option, may, 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.
 - c. Recover from the Purchaser 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 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 at <https://www.federalreserve.gov/>.
2. In the event of Contractor default under the Default provision of the Contract, the Purchaser may pursue one or more of the following remedies:
 - a. If the payments under the Installment Purchase have been assigned to an Initial Assignee, the Purchaser shall continue to make payments for that Installment Item

which has been delivered and for which the Purchaser has provided acceptance certificates to the Contractor/Initial Assignee.

- b. The Purchaser may cancel, without liability for payment, its order for any Installment Item which has 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 amount of Installment Items which was delivered and accepted. If no Installment Items have been delivered and accepted, the Purchaser may terminate the Installment Purchase without liability for any payment.
- c. 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

1. 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 permit, during the Installment Purchase term, the Installment Item to be directly or indirectly used for a private business use within the meaning of Section 141 of the IRC.
2. 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, upon demand, will 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 Installment 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.

Appendix B - Project References.doc

Name of Client & Project Title	Client – Project Title	
Contract Value	[VALUE]	
Nature and Scope of Project:	Describe the project in sufficient detail to explain it is similar to the Commonwealth's project. How does this project compare in size, scope, complexity and/or duration? What is it specifically about this project that makes it a good representative project of the vendor's work? <i>(Reference Section II-4 Prior Experience)</i>	
Project Duration:	Start Date Year: [YEAR]	End Date Year: [YEAR or on-going]
Nature of the Client:	Description of client and organizational unit that project was managed by.	
Nature of Client Audience:	Description of project users and/or client/customer audience.	
Number of Users:	[Number]	
# & Composition of Vendor Employees & Consultants Assigned:	Vendor Project Manager/Key Consultant on Project Team: Describe start-up, peak and ongoing level of vendor efforts	
Client Contact Information:	<p>Provide the name, title, address and telephone number of at least two references or contact persons that the Commonwealth can contact to inquire about the vendor's performance, and indicate the role these individuals had in relation to the assignment or project. The references/contact persons should be individuals who were key stakeholders or project leaders and who can validate the vendor's role and responsibilities and who can comment on the quality of the vendor's performance. 2 contacts required.</p> <p>Reference Contacts:</p> <p>Name: _____ Title: _____</p> <p>Department: _____</p> <p>Full Address: _____</p> <p>Telephone: _____ E-mail: _____</p> <p>Relation/Role to Project: _____</p> <p>Name: _____ Title: _____</p> <p>Department: _____</p> <p>Full Address: _____</p> <p>Telephone: _____ E-mail: _____</p> <p>Relation/Role to Project: _____</p>	

Appendix C - Personnel Experience.docx

POSITION	PERSONNEL NAME	ROLES AND RESPONSIBILITIES	COMMITMENT	PERSONNEL EXPERIENCE			
				YEARS OF EXPERIENCE IN POSITION	OTHER RELEVANT EXPERIENCE	EDUCATION	OTHER PROFESSIONAL QUALIFICATIONS
(Include at least one row for all positions identified as Key Positions in III-C of the RFP, as well as any additional positions you've identified as integral to the work delineated in your proposal.)	(Identify by first/last name the person who will fulfill this position.)	(Identify the main roles and responsibility to be performed on the project).	(Provide the percentage of this person's time to be committed to the proposed project.)	(List the number of years this person has acted in the same role on prior projects similar in nature to the proposed project.)	(Provide a brief narrative of other experience this person has had that may be relevant to his/her role in the proposed project.)	(List all postsecondary degrees completed for this person.)	(List any certifications and/or professional memberships for this person that may be relevant to this position.)

Appendix D- Cost Submittal Instructions

GENERAL INSTRUCTIONS FOR COMPLETING THIS WORKBOOK (Tab 1)

The Cost Submittal Worksheets contained in this workbook shall constitute the Cost Submittal.

COST SUBMITTAL SUMMARY (Tab 2)

1. Select the Summary Tab at the bottom of this page.
2. Complete the highlighted cells in the top portion of the form (all contact information).
3. All data entered on the Cost Submittal Worksheet will automatically populate into the Summary tab.
4. The Offeror must enter a Discount off of List on the Summary tab. The discount proposed will calculate on each configuration as a part of the evaluation of cost.

COST SUBMITTAL BREAKDOWN

1. Please review every tab in this cost submittal.
2. Cells that are highlighted in yellow must be completed in order to provide the equipment/service requested. The Proposed Model and Proposed Option, Columns (C) must be completed with detail of how the Offerors device meets or exceeds the minimum requirements, an "X" or any other form of confirmation is not acceptable as a response.
3. The Offeror must be able to provide a price in List Price for each configuration. If the price is left blank, a zero dollar amount will be calculated.
4. Optional Services will be evaluated in the total cost summary. The Offeror must provide a cost for each Optional Service. If the price is left blank, a zero dollar amount will be calculated.

**Formulas are embedded within the worksheets, do not attempt to unlock cells. Any estimates provided within this appendix are not a guarantee of equipment/service to be performed and/or payment under the contract resulting from this RFP.

NOTES:

- Do not include any pricing data in any portion of the Technical Submittal. Pricing data is defined as any information related to, directly or indirectly, the Offeror's proposed charges for services and deliverables. Pricing data consists of, but is not limited to, costs, fees, prices, rates, bonuses, discounts, rebates, or the identification of free services, labor or materials.
- The cost submittal must be submitted as presented by the Commonwealth and should not be altered in any way. Do not include any reiteration of the technical proposal in the cost submittal.

Cost Submittal Summary
Cost Submittal - RFP #6100051403
Enterprise Modular Servers

Offeror Contact Information	
OFFEROR NAME	CONTACT PERSON
OFFEROR ADDRESS	EMAIL ADDRESS
	PHONE NUMBER
	SAP VENDOR NUMBER (IF AVAILABLE)
	FEDERAL TAX ID

Product Catalog Discount off of List	
Minimum Discount off of Catalog List Price - Low End Servers	0%

Low End Server			List Price	Discount %	Price after Discount	Historical Volume	Annual Cost For Low End Servers
Component	Minimum Requirements	Proposed Model and Capability	\$ -		\$ -	75	\$ -
Manufacturer							
Model Number							
Processor (CPU) Type	1 x Intel Xeon Bronze 3204 8watt 6core 1.9GHz						
Operating System	None Installed						
RAM	16 GB Memory						
Storage	2 x 800GB Entry SAS 12GB Hot Swap SSD						
Raid	RAID w/ 2 GB Flash RAID 1 Capable						
Optical Drive	DVD ROM						
Network	1 x 10 GbE 2 port BaseT						
Redundant Power	Optional						
Management Module	Required						
Warranty	5 years 24x7x4; Keep Your Hard Drive						

High End Server			List Price	Discount %	Price after Discount	Historical Volume	Annual Cost For High End Servers
Component	Minimum Requirements	Proposed Model and Capability	\$ -		\$ -	75	\$ -
Manufacturer							
Model Number							
Processor (CPU) Type	4 x Intel Xeon Platinum 8353 18core 150watt 2.5GHz						
Operating System	None Installed						
RAM	1.5 TB RAM						
Storage	2 x 800GB Entry SAS 12GB Hot Swap SSD						
Raid	RAID w/ 2 GB Flash RAID 1 Capable						
Network	2 x 10GbE BaseT						
HBA (Host Bus Adapter)	2 x Qlogic 16Gb Dual-port HBA						
Redundant Power	Required						
Management Module	Required						
Warranty	5 years 24x7x4; Keep Your Hard Drive						
Flash	3 TB Intel Optane DC Persistent Memory Vendor to determine quantity and size of DIMMS to equal the amount requested						

Optional Services for Servers	Unit of Measure	Historical Annual Volume	Cost per Unit	Estimated Annual Spend
Installation	Per Machine	15	\$ -	\$ -
Data Transfer	Per 10 GB	20	\$ -	\$ -
Hard Drive Removal	Per Machine	15	\$ -	\$ -
On-Premise Disk Wipe	Per Machine	45	\$ -	\$ -
Off-Premise Disk Wipe	Per Machine	10	\$ -	\$ -
Preparation for Shipment	Per Machine	65	\$ -	\$ -
Transport to DGS Warehouse	Per Machine	15	\$ -	\$ -

CONTRACT #
Statement of Work

for

Commonwealth of PA – (Insert Agency Name)

PO Number: _____

AGENCY CONTACT:
AGENCY ADDRESS:

PHONE:
E-MAIL:

APPENDIX E - STATEMENT OF WORK TEMPLATE.DOCX

A. Introduction

This Statement of Work ("SOW") is made ("Effective Date"), by and between the Commonwealth of PA – ("Agency"), with its principal office located at (Address) (hereinafter referred to as "Customer") and Insert full Supplier name, with its principal place of business at Insert Address (hereinafter referred to as "Supplier"). Supplier and Customer 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 access to Agency or third-party software, firmware, data or 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 #XXXXXXXXXX shall govern this SOW.

B. Project Overview and Tasks

Supplier will perform the following tasks (the "Project"):

Supplier to insert exact description of work to be performed

Agency Requirements & Room Preparation:

Any requirements for the agency must be inserted here

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 Customer prior to proposed start date. 5/5/06

The Supplier's required delivery time for the requested services shall be included within this SOW and must be agreed upon by the Parties prior to issuance of the Purchase Order to which this SOW will be attached.

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)

APPENDIX E - STATEMENT OF WORK TEMPLATE.DOCX

E. SOW Acceptance

This SOW is acceptable. The Parties hereby acknowledge and confirm that the scope of work and related terms of this SOW have been read and are accepted and approved. 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 prior to commencing in any work outside the scope of the original SOW.

Please sign and email to **Supplier** at **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. The Parties hereby accept as completed all work indicated in this SOW. The Parties 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

APPENDIX F- SERVICE LEVEL AGREEMENTS

Account Management							
SLA ID	Performance Metric	Description	Performance Threshold Level	Formula	Data Elements for Measurements & Reporting	Report(s)	Credits
AM-01	Customer Inquiry Response Time (CIRT)	The Contractor 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.	95%	<p>Response Times (RT) = Total Number of responses to inquiries that are <= 4 Business hours by</p> <p>Total Inquiries (TI) = Total Number of Inquiries</p> <p>$CIRT = (RT/TI)*100$</p>	<ol style="list-style-type: none"> 1. Response times for all calls by type per reporting period 2. Annual cumulative average response times by type to date 3. Total number of inquiries by type 	Quarterly SLA Dashboard Reports and/or as directed by the OA Contract Administrator	N/A
AM-02	Quote Accuracy Consistency (QAC)	The metric measures the consistent accuracy of the quotes being provided to the customer relative to errors related to line items, quantity, pricing, or wrong equipment items or options.	99%	<p>Quote Errors (QE) = Total Number of Quotes resubmitted or modified due to errors</p> <p>Total Quotes (TQ) = Total Number of Quotes</p> <p>$QAC = \{(TQ - QE)/TQ\}*100$</p>	<ol style="list-style-type: none"> 1. Total number of quotes that were reprocessed, modified, or resubmitted due to errors per reporting period 2. Annual cumulative number of quotes that were reprocessed, modified, or resubmitted due to errors to date 3. Total number of quotes processed per reporting period 	Quarterly SLA Dashboard Reports and/or as directed by the OA Contract Administrator	N/A
AM-03	Quote Delivery for Catalog Items (QDCI)	The Contractor must provide quotes within two (2) business day for Hardware currently in the Contractor's catalog to the requesting agency.	100%	<p>On-Time Catalog Item Quote Delivery (CIQD_{or}) = Total Number of quotes with contractor catalog items that are delivered <= 2 Business day</p> <p>Total Catalog Item Quotes (TCIQ) = Total Number of quotes that consist of contractor catalog items</p> <p>$QDCI = (CIQD_{or}/TCIQ)*100$</p>	<ol style="list-style-type: none"> 1. Total Number of quotes that consist of contractor catalog items 2. Total Number of quotes with contractor catalog items that are delivered on or before one (1) Business day per reporting period 3. Total Number of quotes with contractor catalog items that were not delivered on or before one (1) Business day per reporting period 4. Annual cumulative totals for QDCI that are not delivered on time 	Quarterly SLA Dashboard Reports and/or as directed by the OA Contract Administrator	N/A

Appendix F - Service Level Agreements.xls

<p>AM-04</p>	<p>Standard Order Delivery (OD)</p>	<p>The Contractor must make delivery within 30 days of PO execution.</p>	<p>100%</p>	<p>On-Time Order Delivery (OD_{OT}) = Total Number of orders in which the contractor makes delivery on or within one (1) business day of original promised delivery date</p> <p>Total Orders Processed (TOP) = Total Number of orders processed</p> <p>OD = (OD_{OT}/ TOP)*100</p>	<p>1. Total number of orders processed within the reporting period</p> <p>2. Total number of orders in which the contractor makes delivery on or within one (1) business day of original promised delivery date during the reporting period</p> <p>3. Total number of orders in which the contractor did not make delivery on or within one (1) business day of original promised delivery date during the reporting period</p> <p>4. Annual cumulative total for orders in which the contractor did not make delivery on or within one (1) business day of original promised delivery date</p>	<p>Quarterly SLA Dashboard Reports and/or as directed by the OA Contract Administrator</p>	<p>2% Initial Credit. 1% additional per week. Capped at 10% total.</p>
<p>AM-05</p>	<p>Expedited Order Delivery (OD)</p>	<p>The Contractor must make delivery within one (1) business day of mutually agreed upon delivery date in writing.</p>	<p>100%</p>	<p>On-Time Order Delivery (OD_{OT}) = Total Number of orders in which the contractor makes delivery on or within one (1) business day of original promised delivery date</p> <p>Total Orders Processed (TOP) = Total Number of orders processed</p> <p>OD = (OD_{OT}/ TOP)*100</p>	<p>1. Total number of orders processed within the reporting period</p> <p>2. Total number of orders in which the contractor makes delivery on or within one (1) business day of original promised delivery date during the reporting period</p> <p>3. Total number of orders in which the contractor did not make delivery on or within one (1) business day of original promised delivery date during the reporting period</p> <p>4. Annual cumulative total for orders in which the contractor did not make delivery on or within one (1) business day of original promised delivery date</p>	<p>Quarterly SLA Dashboard Reports and/or as directed by the OA Contract Administrator</p>	<p>2% Initial Credit. 1% additional per week. Capped at 10% total.</p>

Appendix F - Service Level Agreements.xls

AM-06	Invoice Receipt (IR)	The Contractor must provide invoices for all orders within sixty (60) days from the order date.	100%	<p>On-Time Invoice Receipt (OR_{OT}) = Total number of invoices that were provided to the customer on or within sixty (60) days after order date during the reporting period</p> <p>Total Orders Processed (TOP) = Total Number of orders processed</p> <p>IR = (OR_{OT}/ TOP)*100</p>	<ol style="list-style-type: none"> 1. Total number of orders processed within the reporting period 2. Total number of invoices that were provided to the customer on or within sixty (60) days after order date during the reporting period 3. Total number of invoices that were not provided to the customer on or within sixty (60) days after order date during the reporting period 4. Annual cumulative total for the total number of invoices that were not provided to the customer on or within sixty (60) days after order date 	Quarterly SLA Dashboard Reports and/or as directed by the OA Contract Administrator	N/A
AM-07	Defective Hardware Replacement (DHR)	The Contractor must replace any defective or incorrectly delivered hardware at the Contractor's expense by the newly agreed upon delivery date.	100%	<p>Total Hardware Item Replacement Claims (THIRC) = Total number of hardware items for which replacement claims were submitted due to defective or incorrect hardware</p> <p>Total Hardware Items Replaced (THIR) = the total number of hardware items that were replaced due to defective or incorrect hardware, on time</p> <p>DHR = (THIR/THIRC)*100</p>	<ol style="list-style-type: none"> 1. Total number of hardware items for which replacement claims were submitted due to defective or incorrect hardware during the reporting period and annual cumulative totals 2. Total number of hardware items that were replaced due to defective or incorrect hardware during the reporting period and annual cumulative totals 	Quarterly SLA Dashboard Reports and/or as directed by the OA Contract Administrator	2% of the defective order value initially. 1% additional per week. Capped at 10% total.

Appendix F - Service Level Agreements.xls

Service Management							
SLA ID	Performance Metric	Description	Performance Threshold Level	Formula	Data Elements for Measurements & Reporting	Report(s)	Credits

Appendix F - Service Level Agreements.xls

SM-01	Customer Satisfaction Rating (CSR)	The contractor must maintain a score of three (3) or higher on a scale of five (5) for all categories in each lot during an annual customer survey	15	<p>Annual Customer Satisfaction Rating based on survey results for each category greater than or equal to a score of three (3) on a scale of five (5).</p> <p>Scale</p> <p>1 - Poor</p> <p>2 - Fair</p> <p>3 - Good</p> <p>4 - Very Good</p> <p>5 - Excellent</p> <p>CSR = C1(Score) + C2(Score) + C3(Score) + C4(Score) + C5(Score)</p>	<p>Annual Customer Survey administered by OA will consist of the following categories:</p> <p>C1: Staff Professionalism and Courteousness</p> <p>C2: Responsiveness to customer inquiries, requests, and/or problems</p> <p>C3: Timeliness, completeness, and accuracy of quotes, orders, and invoices</p> <p>C4: Contractor is engaged providing end-to-end guidance and support from initial quote to pre and post equipment delivery</p> <p>C5: Demonstrates through actions a commitment to satisfying customer expectations and resolve problems</p>	Annual Report or as directed by the OA Contract Administrator	N/A
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APPENDIX H - LEASE ACCEPTANCE CERTIFICATE.DOCX

LEASE 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 6100051403 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

APPENDIX I - SOFTWARE LICENSE REQUIREMENTS
AGREEMENT TEMPLATE.DOCX

SOFTWARE LICENSE REQUIREMENTS AGREEMENT TEMPLATE

PA Supplier ID Number: _____

AGREEMENT BETWEEN
THE COMMONWEALTH OF PENNSYLVANIA,
ACTING BY AND THROUGH THE GOVERNOR'S OFFICE OF ADMINISTRATION
AND

This Agreement by and between _____ (Licensor) and the Commonwealth of Pennsylvania, acting by and through the Governor's Office of Administration (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.

RECITALS:

WHEREAS, this Agreement sets forth the Commonwealth's Software License Requirements; and,

WHEREAS, Licensor's Software License Agreement is attached hereto as Exhibit A, and made a material part hereof by this reference; and,

WHEREAS, this document, including the Software License Agreement attached as Exhibit A, constitutes the Agreement between the Licensor and the Commonwealth; and

WHEREAS, the terms and conditions set out below in these Software License Requirements, supplement, and to the extent a conflict exists, supersede and take precedence over the terms and conditions of the attached Exhibit A, which is incorporated herein by reference.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and intending to be legally bound hereby, the parties hereto covenant and agree as follows:

1. **Recitals.** The above recitals are hereby incorporated as a material part of these Software License Requirements.
2. **Enterprise Language.** The parties agree that more than one agency of the Commonwealth may license products under this Agreement, provided that any use of products by any agency must be made pursuant to one or more executed purchase orders or purchase documents submitted by each applicable agency seeking to use the Licensed Product.

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Products specified in Attachment 1, along with support and services for said products, shall be referred to as “Licensed Products.”

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 any purchase of Licensed Products made by the Commonwealth, and that the terms and conditions of this Agreement become part of the purchase document without further need for execution. The parties agree that the terms of this Agreement supersede and take precedence over the terms included in any 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, including any products eligible for coverage under this Agreement where a legally executed agreement for the same covered product, regardless of version, was not in effect, even if procured by the Commonwealth prior to the effective date of the Agreement. This does not apply to Commonwealth agency agreements executed pursuant to the *Commonwealth Procurement Code*, 62 Pa. C. S. §§ 101—4102, and the *Commonwealth Attorneys’ Act*, 71 P.S. §§ 732-101—732-506.

3. **Choice of Law/Venue/Immunity.** 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. Except as set forth in Section 23 of this Agreement, 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. No provision in this Agreement shall be construed to limit the sovereign immunity of the Commonwealth.
4. **Indemnification.** 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. This provision shall not be construed to limit the sovereign immunity of the Commonwealth.
5. **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 or trademarks, 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,

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finances, and penalties finally awarded by a court of competent jurisdiction, governmental/administrative body or any settlements reached pursuant to 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 Licensor prompt notice of any such claim of which it learns. Pursuant to the *Commonwealth Attorneys Act*, 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, 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. 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 Licensor is not obligated by this Agreement to pay on behalf of the Commonwealth. If OAG delegates such rights to the Licensor, the Commonwealth will cooperate with all reasonable requests of Licensor made in the defense of and/or settlement of a Claim. 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 OAG does not delegate to Licensor the authority to control the defense and settlement of a Claim, the Licensor's obligation under this Section 5 ceases. The Licensor, at its own expense, shall provide whatever cooperation OAG request 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 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 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.

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- (d) If, in the Licensor's opinion, the Licensed Products 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 Licensor's obligation to satisfy any final award, the Licensor may, at its option and expense:
 - (1) substitute functional equivalents for the alleged infringing Licensed Products; or
 - (2) obtain the rights for the Commonwealth to continue the use of such Licensed Products.
- (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:
 - (1) procure the right to continue use of such infringing products;
 - (2) replace them with non-infringing items; or
 - (3) modify them so that they are no longer infringing.
- (f) If use of the Licensed Products is enjoined and the Licensor is unable to do any of the preceding set forth in Section 5(e) above, the Licensor agrees to, upon return of the Licensed Products, refund to the Commonwealth:
 - (1) the license fee paid for the infringing Licensed Products, less the amount for the period of usage of any software; and
 - (2) 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 5 continue without time limit and survive the termination of this Agreement.
- (h) Notwithstanding the above, the Licensor shall have no obligation under this Section 5 for:
 - (1) modification of any Licensed Products provided by the Commonwealth or a third party acting under the direction of the Commonwealth;
 - (2) any material provided by the Commonwealth to the Licensor and incorporated into, or used to prepare the product;

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- (3) use of the Software after Licensor recommends discontinuation because of possible or actual infringement and has provided one of the remedy's under Section 5(e) or Section 5(f) above;
 - (4) use of the Licensed Products in other than its specified operating environment;
 - (5) 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 product, service, or deliverable, with any products, data, or apparatus that the Licensor did not provide;
 - (6) infringement of a non-Licensor product alone;
 - (7) the Commonwealth's use of the Licensed Product beyond the scope contemplated by the Agreement; or
 - (8) 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 5, shall be the Licensor's sole and exclusive obligation for the infringement or misappropriation of intellectual property.

6. **Virus, Malicious, Mischievous or Destructive Programming.** Licensor warrants that the Licensed Product as delivered by 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.

The Commonwealth's exclusive remedy, and Licensor's sole obligation, for any breach of the foregoing warranty shall be for Licensor to (a) replace the Licensed Products with a copy that does not contain Virus, and (b) if the Commonwealth, has suffered an interruption in the availability of its computer system caused by Virus contained in the Licensed Product, reimburse the Commonwealth for the actual reasonable cost to remove the Virus and restore the Commonwealth's most recent back up copy of data provided that:

- (a) the Licensed Products have been installed and used by the Commonwealth in accordance with the Documentation;
- (b) the Licensed Products has not been modified by any party other than Licensor;
- (c) the Commonwealth has installed and tested, in a test environment which is a mirror image of the production environment, all new releases of the Licensed Products and

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has used a generally accepted antivirus software to screen the Licensed Products prior to installation in its production environment.

Under no circumstances shall Licensor be liable for damages to the Commonwealth for loss of the Commonwealth's data arising from the failure of the Licensed Products to conform to the warranty stated above.

7. **Limitation of Liability.** The Licensor's liability to the Commonwealth under this Agreement shall be limited the total dollar amount of purchase orders issued for Licensed Products and services covered by this Agreement during the during the twelve (12)-month period prior to the event giving rise to the damage claim. This limitation does not apply to damages for:
- (a) bodily injury;
 - (b) death;
 - (c) intentional injury;
 - (d) damage to real property or tangible personal property for which the Licensor is legally liable;
 - (e) Licensor's indemnity of the Commonwealth for patent, copyright, trade secret, or trademark protection as set forth in Section 5; or
 - (f) 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.

In no event will the Licensor be liable for consequential, indirect, special or punitive incidental damages unless otherwise specified in the Agreement.

8. **Payment.** The Commonwealth will make purchase through its software reseller as the Commonwealth's agent by way of a purchase order, which shall control with regard to payment amounts and provisions. The Commonwealth's reseller shall purchase Software and services from Licensor, on behalf of the Commonwealth, pursuant to purchase orders to Licensor. Upon acceptance by Licensor of such purchase orders, such purchase orders shall control as to pricing only; additional terms and conditions on such purchase orders are not applicable as the terms of this Agreement and its Exhibits shall control.

The Commonwealth's obligation is to pay its reseller in accordance with its purchase order with the Commonwealth's reseller and Licensor shall look to the Commonwealth's reseller for payment; however, in the event that the Commonwealth's reseller fails to pay Licensor in accordance with the terms of Exhibit A, the Commonwealth understands and agrees that, other than collection (for which Licensor shall proceed only against the Commonwealth's reseller) Licensor shall notify the Commonwealth of such default and may exercise against

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the Commonwealth such other remedies as Licensor may have for nonpayment under Exhibit A.

9. Termination.

- (a) Licensor may not terminate this Agreement, or an order from any Commonwealth agency issued pursuant to any of the Exhibits to this Agreement, for non-payment; however, as described under Section 8 above, in the event that the Commonwealth's reseller fails to pay Licensor in accordance with the terms of Exhibit A, the Commonwealth understands and agrees that, other than collection (for which Licensor shall proceed only against such reseller) Licensor may exercise against the specific Commonwealth agency that issued a purchase order such other remedies as Licensor may have for nonpayment under Exhibit A solely as it pertains to the specific Commonwealth agency which issued the purchase order.
- (b) The Commonwealth may terminate this Agreement without cause by giving 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).

10. Background Checks:

- (a) Upon prior written request by the Commonwealth, Licensor must, at its expense, arrange for a background check for each of its employees, as well as for the employees of its subcontractors, who will have access to the Commonwealth's IT facilities, either through on site or remote access. Background checks are to be conducted via the Request for Criminal Record Check form and procedure found at <http://www.psp.pa.gov/Pages/Request-a-Criminal-History-Record.aspx>. The background check must be conducted prior to initial access by an IT employee and annually thereafter.
- (b) Before the Commonwealth will permit an employee access to the Commonwealth's facilities, Licensor must provide written confirmation to the office designated by the 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, 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 agency consents, in writing, prior to the access being provided. The agency may withhold its consent at its sole discretion. Failure of Licensor to comply with the terms of this paragraph may result in default of Licensor under its Agreement with the Commonwealth.

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- (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, 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.

11. Confidentiality.

- (a) For purposes of this Agreement, "Confidential Information" of a party shall mean (1) with respect to 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 Commonwealth or pursuant to the terms of any third party agreement to which Commonwealth is a party and (2) with respect to Licensor, all information identified in writing by Licensor as confidential or proprietary to Licensor or its subcontractors.
- (b) 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

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more stringent requirements for data privacy and security. The obligations in this Section 11(b) shall not restrict any disclosure by either party pursuant to any applicable law, or in accordance with the order of any court or government agency of competent jurisdiction (provided that the disclosing party shall give prompt notice to the non-disclosing party of such order in a timeframe to allow the non-disclosing party to resist the disclosure) and, except to the extent provided otherwise by any applicable law, shall not apply with respect to information which:

- (1) is developed by the other party without violating the disclosing party's proprietary rights,
 - (2) is or becomes publicly known (other than through unauthorized disclosure),
 - (3) is disclosed by the owner of such information to a Third Party free of any obligation of confidentiality,
 - (4) 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 Commonwealth and Licensor, or
 - (5) is rightfully received by the disclosing party free of any obligation of confidentiality.
- (c) Each party shall:
- (1) 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.
 - (2) 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.
 - (3) 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.
 - (4) 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) Each party shall bear the cost it incurs as a result of compliance with this Section 11. The obligations in this Section 11 shall not restrict any disclosure by either

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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 order in a timeframe to allow the non-disclosing party to resist the disclosure).

- (e) 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:
 - (1) Prepare an un-redacted version of the appropriate document, and
 - (2) Prepare a redacted version of the document that redacts the information that is asserted to be confidential or proprietary information or a trade secret, and
 - (3) 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 65 P.S. § 67.707(b); and
 - 3. the Licensor is requesting that the document be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests.
 - (4) Submit the two documents with the signed written statement to the Commonwealth.
- (f) When the Agreement expires or terminates, 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 Commonwealth's Confidential Information and/or Data, Licensor will comply with the requirements of Section 11(e), above.
- (g) Additionally, neither the Agreement nor any pricing information related to the Agreement, nor purchase orders issued pursuant to the Agreement, will be deemed confidential.

12. Agency-specific Sensitive and Confidential Commonwealth Data (If applicable).

- (a) 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 subject to various state and federal laws and policies that vary from agency to agency, and from program to program within an agency. If applicable, prior to deployment of

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the Licensed Products on any Commonwealth agency 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, HIPAA Business Associate Agreements, a sample of which is attached hereto as Attachment 2. This sign-off document (a sample of which is attached hereto as Attachment 3), 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 Business Associate Agreement if it is applicable.

- (b) 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 a 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 12 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 12 are in addition to and not in lieu of other requirements of this Agreement, its Exhibits and Attachments, having to do with data privacy and security, including but not limited to the requirement that the Licensor comply with the Commonwealth's *Requirements for Non-Commonwealth Hosting Applications/Services*, and all applicable Commonwealth ITPs, which can be found at <https://www.oa.pa.gov/Policies/Pages/itp.aspx>.
- (e) Licensor shall conduct additional background checks, in addition to those required in Section 10 of this Agreement, 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.

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

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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) 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:
 - (1) Maintaining a valid and up to date registrations and certifications; and
 - (2) Complying with all data protection legislation applicable to cross border data flows of personal data and required security measures for personal data.
 - (d) Additionally, neither the Agreement nor any pricing information related to the Agreement, nor purchase orders issued pursuant to the Agreement, will be deemed confidential.
- 14. Publicity/Advertisement.** The Licensor must obtain written Commonwealth approval prior to mentioning the Commonwealth or a Commonwealth agency in an advertisement, endorsement, or any other type of publicity. This includes the use of any trademark or logo.
- 15. Portability.** The parties agree that a Commonwealth agency may move a Licensed Product from machine to machine, whether physical or virtual, and to other locations, where those machines and locations are internal to the Commonwealth or to a Commonwealth contractor, as long as such relocation and the use being made of the Licensed Product comports with the license grant and restrictions. Notwithstanding the foregoing, a Commonwealth agency may move the machine or appliance provided by the Licensor upon which the Licensed Product is installed.
- 16. Taxes-Federal, State and Local.** 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 16 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

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of tangible personal property or taxable services used or transferred in connection with the performance of a construction contract.

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

Commonwealth will perform a self-audit upon the request of Licensor, which request may not occur more often than annually, and report any change in user count (hereinafter "True up number"). Commonwealth shall notify 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, Commonwealth will make an additional purchase of the Licensed Products through its reseller, which is equivalent to the additional users. This Section 17 sets out the sole software license audit right under this Agreement.

- 18. List of Licensed Products.** Attached hereto and made a part hereof by this reference is Attachment 1, which sets out a list of products that may be licensed under this Agreement. With the consent of Commonwealth, the list of products on Attachment 1 may be updated by Licensor providing Commonwealth with a revised Attachment 1 that adds the new product to the list. In Commonwealth's discretion, its consent may be provided either via written communication directly to the Licensor or by providing a copy of said notice to the Commonwealth's software reseller to update Attachment 1.

No amendment will be required to add a new Licensed Product to the list. If, however, the Licensor desires to add a Licensed Product to the list that requires different license terms, an amendment to this Agreement or a new agreement will be required.

- 19. Right-to-Know Law.**

- (a) The Pennsylvania *Right-to-Know Law*, 65 P.S. §§ 67.101—3104 ("RTKL"), applies to this Agreement. For the purpose of these provisions, the term "the Commonwealth" shall refer to the contracting Commonwealth agency.
- (b) If the Commonwealth needs the Licensor's assistance in any matter arising out of the RTKL related to this Agreement, it shall notify the Licensor using the legal contact information provided in this Agreement. The Licensor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.

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- (c) Upon written notification from the Commonwealth that it requires the Licensor's assistance in responding to a request under the RTKL for information related to this Agreement that may be in the Licensor's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), the Licensor shall:
 - (1) Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Licensor's possession arising out of this Agreement that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
 - (2) Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Agreement.
- (d) If the Licensor 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 Licensor considers exempt from production under the RTKL, the Licensor 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 Licensor explaining why the requested material is exempt from public disclosure under the RTKL.
- (e) The Commonwealth will rely upon the written statement from the Licensor 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 Licensor shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth's determination.
- (f) If the Licensor fails to provide the Requested Information within the time period required by these provisions, the Licensor 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 Licensor's failure, including any statutory damages assessed against the Commonwealth.
- (g) The Commonwealth will reimburse the Licensor 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 Licensor 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 Licensor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall

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hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Licensor's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Licensor 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 Licensor's duties relating to the RTKL are continuing duties that survive the expiration of this Agreement and shall continue as long as the Licensor has Requested Information in its possession.
- 20. Third party software.** If the software 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) In the event of a controversy arising from the Agreement or 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.
 - (b) If the Licensor or the contracting officer requests mediation and the other party agrees, the contracting officer shall promptly make arrangements for mediation. Mediation shall be scheduled so as to not delay the issuance of the final determination beyond the required 120 days after receipt of the claim if mediation is unsuccessful. If mediation is not agreed to or if resolution is not reached through mediation, the contracting officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the contracting officer and the Licensor. The contracting officer shall send 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.

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- (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 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 or Purchase Order.
- 23. Insurance.** Licensor shall procure and maintain at its expense or cause to be maintained by any agents, contractors and subcontractors, as appropriate, the following types of insurance or maintain such self-insurance plans as shall be sufficient to insure against any claims, covering Licensor, its employees, agents, contractors and subcontractors:
- (1) Worker's Compensation Insurance for all of Licensor's employees and those of any subcontractor engaged in performing Services in accordance with the *Worker's Compensation Act* (77 P.S. § 101, *et seq.*).
 - (2) Commercial general liability insurance providing coverage from claims for damages for personal injury, death and property of others. 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 the Commonwealth.
 - (3) 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 activities) in the amount of \$5,000,000, per accident/occurrence/annual aggregate.
 - (4) Technology Products Liability/Professional Liability/Errors & Omissions Insurance in the aggregate amount of not less than \$5,000,000.
 - (5) Comprehensive crime insurance in an amount of not less than \$5,000,000 per claim.
 - (6) 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 \$5,000,000, per occurrence.

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- (b) Prior to the expiration of any then effective insurance policy, Contractor shall furnish to Commonwealth certificates of insurance or other appropriate documentation (including evidence of renewal of insurance) evidencing all coverage referenced in this Section 23, as applicable, and naming Commonwealth as an additional insured to the extent of Licensor's indemnities contained in this Agreement. Licensor shall have included in all policies of insurance required hereunder a waiver by the insurer of all right of subrogation against Commonwealth in connection with any loss or damage thereby insured against. Such certificates or other documentation will include a provision whereby 30 days' notice must be received by Commonwealth prior to coverage cancellation or alteration of the coverage by either Licensor or its Subcontractors or the applicable insurer. Such cancellation or alteration shall not relieve Licensor of its continuing obligation to maintain insurance coverage in accordance with this Section 23.
 - (c) Licensor agrees to maintain such insurance for the life of any applicable purchase order issued pursuant to the Agreement.
 - (d) Upon request to and approval by the Commonwealth, Licensor's self-insurance of the types and amounts of insurance set for above shall satisfy the requirements of this provision, provided the Commonwealth may request of Licensor evidence each year ,during the term of the purchase order issued under the Agreement, that Licensor has sufficient assets to cover such losses.
- 24. Federal Requirements.** If applicable, in addition to the requirements set forth in Section 12 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 3), in addition to any applicable requirements of Section 12 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 shall not contain ink signatures by the Commonwealth. The Licensor understands and agrees that the receipt of an electronically-printed Agreement with the printed name of the Commonwealth purchasing agent constitutes a valid, binding contract with the Commonwealth. The printed name of the purchasing agent represents the signature of that individual who is authorized to bind the Commonwealth to the obligations contained in the Agreement. The printed name also indicates that all approvals required by Commonwealth contracting procedures have been obtained.
- 26. 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.

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**APPENDIX I - SOFTWARE LICENSE REQUIREMENTS
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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 and 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
OFFICE OF ADMINISTRATION**

See paragraph 25

APPROVED:

See paragraph 25
Comptroller

APPROVED AS TO FORM AND LEGALITY:

See paragraph 25
Office of Chief Counsel

See paragraph 25
Office of General Counsel

See paragraph 25
Office of Attorney General

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ATTACHMENT 1**

LIST OF LICENSED PRODUCTS

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

Licensed Product:

The Licensed Product includes (list all titles covered by this agreement):

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Attachment 2

Business Associate Agreements as provided by Agencies may differ:

**COMMONWEALTH OF PENNSYLVANIA
SAMPLE BUSINESS ASSOCIATE AGREEMENT**

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*, [73 P.S. § 2301--2329](#), all as amended, 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.

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- (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 other than as permitted or required by this Addendum, as requested by Covered Entity, or as required by law and agency guidance.

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- (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 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

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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 Section 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 Section 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 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

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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 Section 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 Section 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.
- (p) **Termination by Commonwealth.** Business Associate authorizes termination of this Agreement by the Commonwealth if the Commonwealth determines, in its sole

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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 related regulations, the Privacy Rule or the Security Rule, all as amended, if done by Covered Entity.

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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 3

**Sign-Off Document No. [redacted], under Agreement No. [redacted]
Between
[Licensor [redacted]]. and the Commonwealth of PA, [Agency]
[Licensor [redacted]] Agency-level Deployment**

This document becomes, upon its execution by the signatories named below, a legally valid, binding part of Software License Requirements Agreement No. [redacted] between the Commonwealth and [redacted] (Licensor)., and is subject to the terms of that Agreement.

1. Scope of Deployment (need not be entire agency):
2. Nature of Data implicated or potentially implicated:
3. Agency Policies to which Licensor. is subject (incorporated by reference):
4. Background checks (describe if necessary):
5. Additional requirements (describe with specificity):
6. 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 [redacted]]
Authorized Signatory and Date:** _____

Appendix J - PDAA Assessment.docx

Policy Driven Adoption for Accessibility (PDAA): Vendor Self-Assessment

This assessment allows vendor organizations to describe how they are currently implementing digital accessibility policy and practices within their organizations. Please complete this form by checking a box for each topic that most closely match the current state of your organization.

The assessment is not a substitute for other requested accessibility information such as VPATs. For additional information, contact Raymond Jaime, Issuing Officer @RA-GSITPROCUREMENT@pa.gov.

Section 1: Organization information

Organization Name:

Organization Address:

Responder Contact Information:

Date Assessment Completed

Section 2: Organization Type

My organization is a (choose one or more if applicable):

- Manufacturer: My organization develops and sells its own digital products / services
- Service Provider: My organization sells IT development services
- Integrator: My organization develops customer solutions using a combination of products / services from manufacturers and products / components developed by my organization
- Reseller or Catalogue Supplier: Does not develop or have its own products, but offers COTS third party products

Section 3: PDAA Core Criteria Assessment

For each criterion, please select the one status statement that is most relevant to your organization today.

Develop, implement, and maintain a digital accessibility policy.

- My organization has no plan to have a digital accessibility policy. (If selected, skip to next section, or provide comments at the end of this section)
 - a. *Having a digital accessibility policy.*
 - My organization is developing a digital accessibility policy.
 - My organization is finalizing a digital accessibility policy.
 - My organization has approved a digital accessibility policy.
 - b. *Having appropriate plans in place to implement and maintain the policy.*
 - My organization is developing plans to implement our digital accessibility policy and ensure that it is maintained.
 - My organization has completed planning for initial implementation and maintenance of our accessibility policy.
 - My organization has approved plans for accessibility policy implementation and maintenance.

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- c. Establishing metrics and tracking progress towards achieving compliance to the policy.
- My organization is identifying metrics that can be used to gauge policy compliance.
 - My organization is collecting metrics and has begun designing progress reporting based on them.
 - My organization is tracking progress on policy adoption and continues to refine the metrics.
- d. Comments (Provide any comments or additional information on defining, implementing, and maintaining a digital accessibility policy here.)

Establish and maintain an organizational structure that enables and facilitates progress in digital accessibility.

- My organization has no plan to develop a governance system to support digital accessibility. (If selected, skip to next section, or provide comments at the end of this section.)
- a. Developing an organization wide governance system.
- My organization is investigating opportunities to improve organization wide governance for digital accessibility.
 - My organization is finalizing plans that will result in an organization wide governance system.
 - My organization has approved plans for an organization wide governance system.
- b. Designating one or more individuals responsible for implementation.
- My organization has identified key individuals in the implementation process.
 - My organization has assigned implementation duties and responsibilities to appropriate individuals.
- c. Implementing reporting/decision mechanism and maintain records.
- My organization is developing tools and procedures for tracking digital accessibility issues.
 - My organization is tracking and keeping records of digital accessibility reporting and decisions.
 - My organization uses reports to make organizational changes to improve digital accessibility.
- d. Comments (Provide any comments or additional information on establishing and maintaining an organizational structure here.)

Integrate digital accessibility criteria into key phases of development, procurement, acquisitions, and other relevant business processes.

- **Manufacturers:** Address processes that pertain to your development of digital products.
- **Service providers:** Address processes that pertain to your development of digital services.
- **Integrators:** Address processes that pertain to your integration services and solutions.
- **Catalog Vendor/Reseller:** Address processes that pertain to your reseller or catalogue offerings.

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- My organization has no plan to integrate accessibility criteria into key business processes. (If selected, skip to next section, or provide comments at the end of this section.)
- a. Identifying candidate processes for criteria integration.
- My organization has a plan to identify and evaluate its key business processes for accessibility gaps.
 - My organization has evaluated its key business processes for accessibility gaps and is developing plans to better integrate accessibility criteria into these processes.
 - My organization has approved plans to integrate accessibility criteria into these processes.
- b. Implementing process changes.
- My organization has begun modifying its key business processes to integrate accessibility criteria.
 - My organization has completed accessibility criteria modification for some of its key business processes and has begun using these modified processes.
 - My organization has completed accessibility criteria modification for most of its key business processes and has begun using these modified processes.
- c. Integrate fully into all key processes.
- My organization has fully integrated accessibility criteria into all its key business processes and is using these processes to improve the accessibility of its product / service offerings.
 - My organization has fully integrated accessibility criteria ACROSS its key business processes and is using these integrated processes to improve the accessibility of its product / service offerings.
- d. Comments (Provide any comments or additional information on integrating digital accessibility criteria into processes here.)

Provide processes for addressing inaccessible digital content.

- **Manufacturers:** Address processes that pertain to your development of digital products in a, b, c, and d.
- **Service providers:** Address processes that pertain to your development of digital services in a, b, c, and d.
- **Integrators:** Address processes that pertain to your integration services and solutions in a, b, c, and d.
- **Catalogue Vendor/Reseller:** Address processes that pertain to your reseller or catalogue offerings in e.

- We do not have plans to provide processes for bringing digital content developed and sold by our organization into accessibility compliance. (If selected, skip to next section, or provide comments at the end of this section.)
- a. Creating plans that include dates for compliance of inaccessible digital content.
- We are developing plans to identify, and test digital content developed and sold by our organization.

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- We have begun identifying and testing for accessibility in digital products / services developed and sold by our organization and are developing plans that include dates for bringing inaccessible digital content into compliance.
- We perform accessibility testing on all products / serviced developed and sold by our organization and have plans in place that include dates for bringing inaccessible digital content into compliance.
- b. Providing alternate means of access until the digital content is accessible.
 - We do not have plans for providing alternate means of access for our organization's digital offerings.
 - We are developing plans for providing alternate means of access for our organization's digital offerings.
 - We are implementing methods providing alternate means of access for our organization's digital offerings.
 - We have fully implemented a repeatable process for providing alternate means for our organization's digital offerings.
- c. Implementing a corrective actions process(s) for handling accessibility technical issues and defects
 - We are developing a corrective actions process for handling accessibility technical issues and defects.
 - We are implementing a corrective actions process for handling accessibility technical issues and defects.
 - We have fully implemented an integrated corrective actions process for handling accessibility technical issues and defects.
- d. Maintaining records of identified inaccessible digital content, corrective action, and tracking.
 - We plan to develop a record keeping system for tracking the accessibility status of current and future products / services.
 - We plan to develop a record keeping process for corrective action tracking and handling of accessibility related issues / defects.
 - We have a record keeping system for tracking the accessibility status of current and future products / services.
 - We have a record keeping process for corrective action tracking and handling of accessibility related issues / defects.
 - We have a record keeping system for tracking the accessibility status of current and future products / services and use this system to improve the accessibility of our offerings.
 - We have a record keeping process for corrective action tracking and handling of accessibility related issues / defects and use this system to improve the accessibility of our offerings.
- e. Maintaining records of identified inaccessible digital content, corrective action, and tracking. (Catalogue Vendor/Reseller only)
 - We have a plan to develop a record keeping system for obtaining and tracking accessibility documentation for vendor products and services offered through our organization.

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- We have a record keeping system for obtaining and tracking accessibility documentation for vendor products and services offered through our organization.
- We have a record keeping system for obtaining and tracking accessibility documentation for vendor products and services offered through our organization and use this system to improve the accessibility of our offerings.

f. Section 4 Comments (Provide any comments or additional information on this section here.)

Ensure the availability of relevant digital accessibility skills within (or to) the organization.

- We do not have plans in place to define, identify existing, or acquire digital accessibility skills. (If selected, skip to next section, or provide comments at the end of this section.)
 - a. Defining skills/job descriptions.
 - We have defined general skills and knowledge needs for digital accessibility.
 - We have identified the fields of practice that require at least some level of accessibility knowledge and/or skills (examples include, but are not limited to: product manager, project manager, product/system designer, application architect, application developer, quality assurance tester, and /or training/instructional designer.)
 - We have mapped key accessibility skills and knowledge needs to specific fields of practice.
 - b. Identifying existing resources that match up and address gaps.
 - We have performed a gap analysis correlating accessibility skills and knowledge and current resources.
 - We have organized the gaps in order of priority.
 - c. Managing progress in acquiring skills and allocating qualified resources.
 - We have a high-level management plan in place to acquire accessibility skills and/or allocate those resources.
 - We have developed a training plan for in-house resources and identified external resources for training and/or augmentation.
 - We have developed a process to track resource training and augmentation.
 - All resources have the appropriate skills and continuous monitoring and improvement systems are in place.
 - d. Comments (Provide any comments or additional information on the availability of relevant digital accessibility skills within the organization here.)

Make information regarding digital accessibility policy, plans, and progress available to customers.

- We do not have a plan to make our accessibility policy or other accessibility information publicly available. (If selected, skip to next section, or provide comments at the end of this section.)
 - Our digital accessibility policy is publicly available.
 - Our accessibility policy and documentation (VPATs, etc.) for some products is publicly available or available upon request.

Appendix J - PDAA Assessment.docx

- We are implementing an accessibility support program within our organization to address questions related to our accessibility documentation.
- Our accessibility policy and documentation (VPATs, etc.) for all released products is complete and publicly available or available upon request.
- We are beginning to make other accessibility technical information available such as how accessibility testing is performed.
- We make accessibility information available beyond policy and VPAT information including information on how accessibility testing is performed and other information that demonstrates our organization's capability to produce accessible product / services.
- We have a fully implemented accessibility support program within our organization to provide requested documentation and address questions related to the accessibility of our products.

Comments (Provide any comments or additional information on making digital accessibility policy, plans and progress available to customers here.)

Event Summary - Enterprise Modular Servers

Supplier:	Public Advertising Supplier	Type	Request for Proposal
Number	RFP 6100051403	Stage Title	-
Organization	CommonwealthPA	Currency	US Dollar
Exported on	11/16/2021	Exported by	Complex Procurement
Payment Terms	-	Sealed Bid	Yes
Intend to Bid	No	Bid Total	0.00 USD

Event Dates

Time Zone	EDT/EST - Eastern Standard Time (US/Eastern)
Released	-
Open	7/7/2021 1:00 PM EDT
Close	8/11/2021 1:00 PM EDT
Sealed Bid	8/11/2021 1:00 PM
Question Submission Close	8/4/2021 12:00 PM EDT

Q&A Board

Subject = Award Qualification

Public Thread

Q: Will a WBD, SBD bidder that is headquartered in New Jersey be able to participate in this RFP?

Question added by: Anonymous

8/4/2021 9:17 AM EDT

A: Please review RFP Description Item # . Small Business Reserve. The Commonwealth identified this procurement as fitting the established criteria under the Small Business Procurement Initiative set forth in Executive Order 2011-09. Accordingly, only those bidders who are certified as a Small Business through the Pennsylvania Department of General Services' self-certification process found at www.smallbusiness.pa.gov are eligible to submit a bid and be awarded a contract in response to this RFP In order to be eligible to receive an award in response to this procurement, the bidder must be certified at the time of bid opening and include a copy of the certification in the bid response. There is no in-state requirement for participation in the BDISBO Small Business Program. You can follow this link to the BDISBO Small Business Self Certification webpage which provides instructions on the self-certification process. <https://www.dgs.pa.gov/Small%20Business%20Contracting%20Program/Pages/default.aspx>. You may also reference the Small Business Application Guide (attachment to this email) to assist you in the registration process.

Answered by: Raymond Jaime

8/4/2021 11:24 AM EDT

Subject = Appendix D- Cost Submittal

Public Thread

Q: The Commonwealth has requested 512 GB (4x128GB) of Optane Memory and 2 TB of RAM in its high-end configuration. The specific processor listed in the RFP, i.e., Intel Xeon 8353H, like most of Intel's high-end processors, has very specific memory DIMM rules. The current requested configuration is not allowed by Intel's memory rules. For Optane Memory on a 4-socket system, there is a requirement for 6 Optane Memory DIMMs per CPU, making the minimal configuration 24 x 128GB (3TB) Optane in App Direct Mode, and then 24 RAM modules for system memory - the system memory can be either 768GB (24 x 32GB) or 1.5TB (24 x 64GB). Because of the Intel technology changes in generation 3 of their processors, we wanted to ensure that the configurations presented were what you expected to review and fully meet your needs. We would recommend doing one of the memory configurations above for the RFP comparison effort.

Question added by: Raymond Jaime

7/30/2021 3:16 PM EDT

A: The Commonwealth has updated the Appendix D - Cost Submittal 7.30.2021, Line Item # 15 Flash to 3 TB Intel Optane DC Persistent Memory .Vendor to determine quantity and size of DIMMS to equal the amount requested. Appendix D Cost Submittal 7.30.2021 will be added to the Buyer Attachments Section in JAGGER as an amendment.

Answered by: Raymond Jaime

7/30/2021 3:16 PM EDT

Subject = Manufacturer Authorization Letter - V.A page 8

Public Thread

Q: The question states that the Offeror must submit a Manufacturer Authorization Letter "unless the Offeror is the OEM." Given this is a small business procurement and the size of manufacturers, will OEMs be allowed to bid?

Question added by: Anonymous

7/20/2021 11:44 AM EDT

A: All Offerors must meet the requirements as defined in the JAGGAER Description Section 6, Small Business Reserve.

Answered by: Raymond Jaime

7/22/2021 10:48 AM EDT

Subject = SB Requirement and Subcontracting

Public Thread

Q: Will the State allow for a reseller to respond in conjunction with a small business partner?

Question added by: Anonymous

7/20/2021 10:32 AM EDT

A: DGS self-certified Small Businesses may partner with OEMs or resellers when submitting a response to this RFQ, so long as all of the requirements of the RFQ are met.

Answered by: Raymond Jaime

7/22/2021 12:12 PM EDT

Subject = SB Requirement and Subcontracting

Public Thread

Q: Most States allow resellers to meet local, minority business requirements through subcontracting, and thus allowing for: • Access to resellers with a larger variety of products and options for services at significantly more competitive prices than smaller vendors may have; • Assurance that small businesses don't exceed the revenue cap requirement while enabling them to retain small business classification; • A fair and level playing field of small businesses with a focus on their specialty areas; • More diverse field of small businesses able to participate equitably will the State allow for small businesses to respond as a subcontractor with a non-small business partner?

Question added by: Anonymous

7/20/2021 10:32 AM EDT

A: The Commonwealth has designated this a Small Business Reserve procurement. Therefore, only DGS self-certified Small Businesses are eligible for award. To the extent you are asking whether the Commonwealth will agree to modify this requirement to allow award to non-DGS self-certified Small Businesses, the answer is no. The Commonwealth also runs goal setting programs which calculates contract specific goals for Small Diverse and Veteran Business utilization (which can be met through subcontracting commitments); however, the Commonwealth has determined not to utilize those programs for this particular procurement.

Answered by: Raymond Jaime

7/22/2021 10:52 AM EDT

Subject = Scope

Public Thread

Q: What is the estimated annual value of this contract?
A: This information is not readily available.

Question added by: Anonymous

7/20/2021 10:29 AM EDT

Answered by: Raymond Jaime

7/22/2021 2:05 PM EDT

Subject = Experience Requirement

Public Thread

Q: Can the requirements for "three references and three years of experience" be met by a subcontractor?
A: This requirement must be met by the Offeror.

Question added by: Anonymous

7/20/2021 10:29 AM EDT

Answered by: Raymond Jaime

7/20/2021 11:47 AM EDT

Subject = Qualifications and Finances

Public Thread

Q: Must the Prime Contractor's business and personal revenue equal the total bid amount?
A: The cost submitted must be the total cost of the supplies and services required by the RFP and to be provided to the Commonwealth.

Question added by: Anonymous

7/20/2021 10:28 AM EDT

Answered by: Raymond Jaime

7/20/2021 11:56 AM EDT

Subject = Cost score

Public Thread

Q: Will the cost score be based of discount off list percentage, end cost, or a combination of both?
A: Yes, the cost score will include the discounts supplied in cells B18 and B19 in the Summary tab of Appendix D - Cost Submittal. The cost evaluation will be based on cell B28 of Appendix D - Cost Submittal.

Question added by: Anonymous

7/19/2021 2:49 PM EDT

Answered by: Raymond Jaime

7/22/2021 12:09 PM EDT

Subject = Optional Services Question

Public Thread

Q: Under Optional Services, there is a request for pricing for data transfer of units of 10 GB, with an average of 20 data transfers per year. This is a very small amount of data. What is the average total amount of data that you transfer between hosts or between storage devices per project?
A: This information is not readily available.

Question added by: Anonymous

7/16/2021 4:32 PM EDT

Answered by: Raymond Jaime

7/22/2021 2:04 PM EDT

Subject = Solicitation RFP 6100051403**Public Thread**

Q: If the SB is currently certified at the time of response but goes over the 100 employee and 38.5M and the contract is renewed, will they be eligible for a contract extension?

Question added by: Anonymous

7/15/2021 3:12 PM EDT

A: The prime contractor must be a DGS self-certified Small Business as of the proposal due date and time. If, at the end of the initial contract term, the prime contractor is ineligible for DGS self-certification as a Small Business due to exceeding the employee or revenue limits, they will still be eligible for a contract extension.

Answered by: Raymond Jaime

7/16/2021 3:38 PM EDT

Subject = Appendix D – Server (High) - Memory**Public Thread**

Q: If the configuration is to be updated to allow for Optane DC persistent memory (DCPMM) to be used, please include which DCPMM mode (App Direct vs Memory Mode) and the desired ratio of DRAM:DCPMM that should be provided as standard.

Question added by: Anonymous

7/15/2021 8:09 AM EDT

A: This would be determined at time of purchase. Each specific requirement will be specified on the Appendix E, Statement of Work.

Answered by: Raymond Jaime

7/22/2021 10:44 AM EDT

Subject = Appendix D – Server (High)**Public Thread**

Q: The Skylake processor series does not have support for Optane DC persistent memory. Please advise a replacement processor.

Question added by: Anonymous

7/15/2021 8:08 AM EDT

A: The Commonwealth has replaced the 6138 processor with the Intel Xeon Platinum 8353 processor. The Appendix D Cost Matrix has been updated to reflect this change and will be posted to the Buyer Attachments section in JAGGER as an amendment to the RFP.

Answered by: Raymond Jaime

7/22/2021 10:44 AM EDT

Subject = Appendix D – Server (Low) – Power**Public Thread**

Q: The specification states that redundant power is optional. Does that mean that capability is required for the redundant power, but a second power supply does not need to be included?

Question added by: Anonymous

7/15/2021 7:43 AM EDT

A: This would be determined at time of purchase. Each specific requirement will be specified on the Appendix E, Statement of Work."

Answered by: Raymond Jaime

7/22/2021 12:16 PM EDT

Subject = Appendix D - Server (Low) – Processor**Public Thread**

Q: The Intel Xeon Bronze 3204 processor specified, while capable of running as a single socket, is designed for a two-socket system. Since cost is the important metric in this category, would the Commonwealth prefer to specify a E-2xx processor, which is designed for a single socket system.

Question added by: Anonymous

7/15/2021 7:42 AM EDT

A: The Commonwealth does not prefer to change this processor.

Answered by: Raymond Jaime

7/22/2021 12:15 PM EDT

Subject = Solicitation RFP 6100051403**Public Thread**

Q: 3. In the high performance server build you ask for 1TB of RAM, however this is not a balanced configuration and will suffer some performance loss. In addition this creates challenges with how the Optane Persistent Memory (PMEM) is used. Memory should be utilized in blocks of 24 or 48 for a balanced configuration. Since you are using PMEM would 24x32GB DRAM DIMMs be acceptable? That would give you 768GB of RAM vs 1TB. If not, would you like to specify another balanced or near balanced configuration?

Question added by: Anonymous

7/14/2021 11:36 AM EDT

A: The Commonwealth has replaced the 1TB of RAM , with 2TB of RAM. The Appendix D Cost Matrix has been updated to reflect this change and will be posted to the Buyer Attachments section in JAGGER as an amendment to the RFP.

Answered by: Raymond Jaime

7/22/2021 10:30 AM EDT

Subject = Solicitation RFP 6100051403

Public Thread

Q: 2. Since this is a 4 socket server, is there a reason you are asking for 2x256GB Optane Persistent Memory, vs 4x128GB which would better balance the memory and would come at a cheaper cost?

Question added by: Anonymous

7/14/2021 11:36 AM EDT

A: The Commonwealth has replaced the 2x256GB Optane Persistent Memory, to 4x128GB. The Appendix D Cost Matrix has been updated to reflect this change and will be posted to the Buyer Attachments section in JAGGER as an amendment to the RFP.

Answered by: Raymond Jaime

7/22/2021 10:26 AM EDT

Subject = Solicitation RFP 6100051403

Public Thread

Q: 1. In the high performance server build you ask for 2x256GB Intel Optane DC Persistent Memory, however the CPU (6138T) does not support persistent memory. Should a 6238 processor be substituted? This processor is from the Cascade Lake Family and does support Optane. If not, would you like to suggest another valid processor, or should we not quote the persistent memory in the build?

Question added by: Anonymous

7/14/2021 11:36 AM EDT

A: The Commonwealth has replaced the 6138 processor with the Intel Xeon Platinum 8353 processor. The Appendix D Cost Matrix has been updated to reflect this change and will be posted to the Buyer Attachments section in JAGGER as an amendment to the RFP.

Answered by: Raymond Jaime

7/22/2021 10:25 AM EDT

Subject = Low End vs High End Discounts

Public Thread

Q: Please define how the Offeror or agency will determine what server is high-end or low-end for discount purposes – e.g., 2 socket server will receive the low end or high end discount levels?

Question added by: Anonymous

7/14/2021 7:57 AM EDT

A: 1-2 socket systems with average memory would be low end and 4 socket would be considered high end.

Answered by: Raymond Jaime

7/16/2021 12:27 PM EDT

Subject = Client References – Page 4, III.B.(1)

Public Thread

Q: The RFP requires project references outside the Commonwealth of Pennsylvania. If a Small Business Offeror has significant experience and references with agencies (both Governor's jurisdiction and related agencies) inside the Commonwealth but has not had projects within the last three years outside the Commonwealth, will this preclude the ability to bid on this contract?

Question added by: Anonymous

7/14/2021 7:56 AM EDT

A: The reference requirements of A(1) remain as stated in the RFQ. Please note that "outside the Commonwealth" refers to businesses or entities outside of Commonwealth agencies as defined by the Commonwealth Procurement Code. Such businesses or entities may be both within or outside of the Commonwealth's borders.

Answered by: Raymond Jaime

7/19/2021 2:34 PM EDT

Subject = Asset Flexibility

Public Thread

Q: It is our understanding that the server configurations listed in the cost section are for comparative purposes and that all models of the OEM's server line will be available on this contract at the proposed discount off of list. If this is the case, model substitutions and standard configuration reviews will not be necessary. Is this understanding correct?

Question added by: Anonymous

7/14/2021 7:56 AM EDT

A: Configuration review would still be required to make sure compatibility issues with systems are not encountered. This would continue to be done in cooperation with the awarded suppliers.

Answered by: Raymond Jaime

7/16/2021 12:26 PM EDT

Subject = Small Business**Public Thread**

Q: Are there requirements for the small business to have a specific UNSPSC code or business type as specified by the BDISBO?

Question added by: Anonymous

7/14/2021 7:55 AM EDT

A: No, there are no requirements for the prime offeror to have a specific identified UNSPSC code or business type. Because this is a Small Business Reserve procurement, offerors must be DGS self-certified Small Business in order to be eligible for award.

Answered by: Raymond Jaime

7/16/2021 12:24 PM EDT

Subject = Technical Submittal**Public Thread**

Q: Sections V.A – V.J do not appear to require a response from the Offeror. Please confirm.

Question added by: Anonymous

7/14/2021 7:54 AM EDT

A: That is correct. As outlined in the RFP Description in JAGGER Section 6. Small Business Reserve, (SBR) The Commonwealth identified this procurement as fitting the established criteria under the Small Business Procurement Initiative set forth in Executive Order 2011-09. Accordingly, only those bidders who are certified as a Small Business through the Department of General Services' self-certification process found at www.smallbusiness.pa.gov are eligible to submit a bid and be awarded a contract in response to this RFP. In order to be eligible to receive an award in response to this procurement, the bidder must be certified at the time of bid opening and include a copy of the certification in the bid response.

Answered by: Raymond Jaime

7/16/2021 12:23 PM EDT

Subject = Options – Cost Section**Public Thread**

Q: Is the expectation that the options in Appendix D – Cost Submittal would be installed at the time of order as an addition to the base models?

Question added by: Anonymous

7/14/2021 7:52 AM EDT

A: The application of each option will be specified on Appendix E, Statement of Work which would be attached to the quote and become part of the purchase order.

Answered by: Raymond Jaime

7/16/2021 12:21 PM EDT

Subject = Hyperconverged**Public Thread**

Q: Does this modular server RFP include hyperconverged servers?

Question added by: Anonymous

7/14/2021 7:52 AM EDT

A: No

Answered by: Raymond Jaime

7/16/2021 12:20 PM EDT

Subject = VPAT**Public Thread**

Q: Will the Commonwealth allow the Offeror to provide links to OEM VPATs in order to reduce the volume of the response?

Question added by: Anonymous

7/14/2021 7:52 AM EDT

A: No.

Answered by: Raymond Jaime

7/16/2021 12:36 PM EDT

Subject = PDAA Assessment**Public Thread**

Q: The PDAA is a new concept for this Offeror. Would the Commonwealth consider providing education to the Offerors to allow growth in this area, as well as compliance with the Commonwealth's requirements?

Question added by: Anonymous

7/14/2021 7:51 AM EDT

A: Per Technical Submittal V.R.(3) the Offeror shall provide "A completed Policy Driven Adoption for Accessibility (PDAA) Assessment using the template found in Appendix J – PDAA Assessment." During negotiations the Commonwealth will consider accessibility growth for the selected Offeror.

Answered by: Raymond Jaime

7/16/2021 12:17 PM EDT

Subject = Waiver Approvals**Public Thread**

Q: Technical Submittal – Since all servers use the same rack measurements (1U, 2U, etc.), will the Commonwealth provide an example of when floor space may not allow the purchase of the Best Value solution, but would allow purchasing of a competitive solution?

Question added by: Anonymous

7/14/2021 7:51 AM EDT

A: Per Section C(2) of the revised Technical Submittal, Commonwealth agencies may require storage and staging per each individual procurement. Each specific requirement will be specified on the Appendix E, Statement of Work.

Answered by: Raymond Jaime

7/22/2021 10:23 AM EDT

Subject = Waiver Approvals**Public Thread**

Q: Technical Submittal – Can the Commonwealth provide what staff knowledge area deficiencies that would hinder the purchase of the Best Value product, since Windows, Linux and VMware software are standard across the Commonwealth (page 3)?

Question added by: Anonymous

7/14/2021 7:50 AM EDT

A: An example would be OEM specific controllers and system add-ons that might be unique to an OEM and required to meet an application or business requirement.

Answered by: Raymond Jaime

7/16/2021 12:19 PM EDT

Subject = Environment Definition**Public Thread**

Q: Technical Submittal – Expansion of Existing Environment – Can the Commonwealth define what it considers as an “environment” (page 2)?

Question added by: Anonymous

7/14/2021 7:49 AM EDT

A: An environment consists of a set of systems that support a particular application or business service.

Answered by: Raymond Jaime

7/16/2021 12:36 PM EDT

Subject = 50% Requirement**Public Thread**

Q: Expansion – Technical Submittal – Purchasing Scenarios – In this scenario is the number of servers considered the number for a particular agency, data center, software application (page 2)?

Question added by: Anonymous

7/14/2021 7:47 AM EDT

A: The number of servers considered is for a particular agency

Answered by: Raymond Jaime

7/16/2021 12:35 PM EDT

Subject = 50% Requirement**Public Thread**

Q: Technical Submittal – Purchasing Scenarios – the 50% requirement first referenced on the bottom of page 1 is defined but doesn't seem to be referenced in another place. Can the Commonwealth provide an explanation of when this definition would be needed?

Question added by: Anonymous

7/14/2021 7:46 AM EDT

A: The 50% requirement is defined and identified for refresh and expansion. It covers anything but net new environments.

Answered by: Raymond Jaime

7/16/2021 12:33 PM EDT

Subject = Server Types**Public Thread**

Q: Technical Submittal section 1. Project Description – The Commonwealth specifies modular server hardware. Is this RFP limited to Intel and AMD based server hardware or are mainframe and midrange servers also included?

Question added by: Anonymous

7/14/2021 7:45 AM EDT

A: This RFP is for Intel and AMD based servers only. Mainframe and midrange servers are not included.

Answered by: Raymond Jaime

7/16/2021 12:31 PM EDT

Subject = Past Performance References**Public Thread**

Q: Will COPA accept Federal Past performances as acceptable when it meets the requirements as outlined in the RFQ for COPA?

Question added by: Anonymous

7/9/2021 4:24 PM EDT

A: In reference to section III.B. of the Technical Submittal, the performance can be private or public sector in nature so long as the project was of a similar size and scope.

Answered by: Raymond Jaime

7/16/2021 12:15 PM EDT

Subject = Diversity

Public Thread

Q: Is there a women-owned or minority-owned requirement?

Question added by: Anonymous

7/9/2021 11:51 AM EDT

A: In order to be eligible for contract award, a prime contractor must be a DGS self-certified Small Business. There is no requirement that women-owned or minority-owned businesses be utilized on this contract.

Answered by: Raymond Jaime

7/9/2021 3:48 PM EDT

Subject = SB Qualifications

Public Thread

Q: If the SB responding does not have the required 3 years experience reselling servers, will they be disqualified?

Question added by: Anonymous

7/9/2021 11:50 AM EDT

A: Any Small Business prime offeror responding to this procurement must meet the minimum requirements of the procurement. There are no waivers or exceptions for Small Diverse Businesses for the minimum requirements.

Answered by: Raymond Jaime

7/9/2021 3:48 PM EDT

Subject = SB Qualifications

Public Thread

Q: If the SB responding does not have the required 1 year of experience selling to a large state government, will they be disqualified?

Question added by: Anonymous

7/9/2021 11:48 AM EDT

A: Any Small Business prime offeror responding to this procurement must meet the minimum requirements of the procurement. There are no waivers or exceptions for Small Diverse Businesses for the minimum requirements.

Answered by: Raymond Jaime

7/9/2021 3:49 PM EDT

Subject = SB Qualifications

Public Thread

Q: If the SB responding does not have the required staging and storage space, will they be disqualified?

Question added by: Anonymous

7/9/2021 11:47 AM EDT

A: Per Section C(2) of the revised Technical Submittal, Commonwealth agencies may require storage and staging per each individual procurement. Each specific requirement will be specified on the Appendix E, Statement of Work.

Answered by: Raymond Jaime

7/16/2021 12:30 PM EDT

Q: Section C (11) in the Technical Submittal states: "(11) Supply Chain Management/Managed Logistics. The selected Offeror must provide staging and storage at no additional cost..." Per another answer stating "no warehousing requirements", will storage and staging not be required?

Question added by: Anonymous

7/9/2021 7:22 PM EDT

A: Per Section C (2) of the revised Technical Submittal, Commonwealth agencies may require storage and staging per each individual procurement. Each specific requirement will be specified on the Appendix E, Statement of Work.

Answered by: Raymond Jaime

7/16/2021 12:14 PM EDT

Subject = SB

Public Thread

Q: If the contract value over the year exceeds the maximum revenues for SB certification or puts the SB over the threshold due to their current revenues, will the SB lose their certification?

Question added by: Anonymous

7/9/2021 11:46 AM EDT

A: The revenue thresholds for SB self-certification are based upon a three-year average. Therefore, a company will not necessarily lose their SB self-certification if the contract value exceeds \$38.5 million in one year.

Answered by: Raymond Jaime

7/9/2021 3:51 PM EDT

Subject = Warehousing

Public Thread

Q: What will the warehousing length requirements be?	Question added by: Anonymous	7/8/2021 8:56 PM EDT
A: There will be no warehousing length requirements. Section C(11) in the Technical Submittal states that "The selected Offeror must provide staging and storage at no additional cost." Each specific requirement will be specified on the Appendix E, Statement of Work.	Answered by: Raymond Jaime	7/22/2021 10:20 AM EDT

Subject = Warehouse

Public Thread

Q: How much storage space will be required at no cost?	Question added by: Anonymous	7/8/2021 8:55 PM EDT
A: The commonwealth does not understand the context of the question.	Answered by: Raymond Jaime	7/9/2021 3:51 PM EDT

Subject = Veteran-Owned

Public Thread

Q: Is there a Veteran-Owned requirement?	Question added by: Anonymous	7/8/2021 8:54 PM EDT
A: There are no Veteran Business Enterprise Participation goals set for this procurement, or any requirements to utilize or otherwise subcontract to Veteran Business Enterprises. However, all Veteran Business Enterprises qualify as DGS self-certified Small Businesses and are eligible for award of the Small Business Reserve prime contract.	Answered by: Raymond Jaime	7/9/2021 3:52 PM EDT

Subject = Single OEM

Public Thread

Q: In the Project Description the Commonwealth states that each Offeror shall propose a single OEM. The Commonwealth has a history of contracts that allow an Offeror to provide equipment from multiple OEMs, including the Networking Equipment and Related Services Contract (6100045034). Will the Commonwealth consider allowing a single Offeror to propose multiple OEMs?	Question added by: Anonymous	7/8/2021 2:27 PM EDT
A: No, the Commonwealth will not consider allowing a single offeror to propose multiple OEMS.	Answered by: Raymond Jaime	7/9/2021 3:52 PM EDT

Subject = Budget and Timeline

Public Thread

Q: What is the estimated funding source, or budget for this project? Has funding been secured, or is that expected to take place at a later date? Is there a timeline for when this project must be started or awarded? Thanks in advance!	Question added by: Anonymous	7/8/2021 9:05 AM EDT
A: Offeror submitting questions must submit each individual question in a single question format, failure to do so will result in the question(s) being returned to that offeror to resubmit in a single question format in order to be answered clearly and concisely	Answered by: Raymond Jaime	7/8/2021 10:32 AM EDT



MJMSystems

Enterprise Modular Server Project

Prepared Exclusively for: The Commonwealth of Pennsylvania

Open Date: July 7th, 2021

Close Date: August 11th, 2021

Prepared By: MJM Systems, James Lincoln

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Technical Submittal

- 1. Project Description.** The Commonwealth is looking for Offerors to provide modular server hardware as well as associated installation, service integration, and support services (“Project”). Each Offeror shall only propose a single OEM. Only one Offeror will be awarded per OEM. Of the awarded Offerors, the highest scoring Offeror will be chosen as the Best Value Contract. Contracts that were not deemed as the Best Value Contract will be referred to as Secondary Contracts. The contract would not limit the Commonwealth in seeking competitive pricing for both on-premise infrastructure and cloud infrastructure as required by the OA/OIT technology and support needs

Purchasing Scenarios:

Net New Environment: To be defined as new installation that does not include expansions, replacement, or repair. The Best Value Contract is to be used for installations of server hardware in net new environments in the Commonwealth. If the Best Value Contractor is unable to meet the specific technical requirements (to include but not be limited to integration, compatibility, existing staff knowledge, etc.), a waiver must be provided by the Office of Administration through in accordance with ITP-BUS002 and the Department of General Services Chief Procurement Officer in order to procure from a Secondary Contractor.

One for One Replacement/Refresh: No waiver is required. In order to procure a one for one replacement (example: Agency currently has 10 units, needs to replace 2 units, procures 2 units to remain at 10 units total), Agencies are to choose from either of the options below:

1. Procure from the Best Value Contractor, regardless of OEM.
2. Procure from a Secondary Contractor so long as they have been awarded a contract for the OEM hardware being replaced.

Replacement/Refresh with Reduction: No waiver is required. In order to procure a server refresh that involves a reduction of total server units in an environment (example: Agency currently has 10 units, needs to replace 2 units, procures 1 unit with greater capacity to now only have 9 units total), Agencies are to choose from either of the options below:

1. Procure from the Best Value Contractor, regardless of OEM.
2. Procure from a Secondary Contractor so long as they have been awarded a contract for the OEM hardware being replaced.

Definition of 50%

The 50% requirement for the server would be based on the total units or server quantity in the current OEM environment.

a) For Refresh of Server

- For instance, if there are ten servers in the current environment and we need to replace/refresh five servers, we will continue with the OEM we already have.

- If we need six or more servers out of the original ten servers in the current environment, we will bid out for full refresh with best value against only six servers that would be needed for in the current OEM.

b) For Expansion of Server

- If we have ten servers and need five more servers, we can continue to use the current OEM. If we need six or more servers to be added to the original ten, we will bid out for full refresh with best value against only six servers from the current OEM.

Expansion of Existing Environments:

- 1. Less than 50%.** No waiver is required. In order to procure for an expansion of an existing environment that is less than 50% of the current environment, Agencies are to choose from either of the options below:
 - i. Procure from the Best Value Contractor, regardless of OEM.
 - ii. Procure from a Secondary Contractor so long as they have been awarded a contractor for the OEM hardware being replaced.
- 2. Greater than or equal to 50%.** In order to procure for an expansion of an existing environment that is greater than or equal to 50% of the total number of units in the current environment, Agencies must follow the process below:
 - i. Receive a quote from the Best Value Contractor for the additional expansion units if their OEM solution integrates with the Agency's current environment. The Agency must request a quote that includes the devices and all ancillary technology considerations to ensure that the devices operate properly in the current environment. If the Best Value Contractor's OEM solution does not integrate with the current environment, the Best Value Contractor must provide a quote for a net new solution to meet the Agency's needs.
 - ii. Receive a quote from the Secondary Contractor for the additional expansion units if they offer the same OEM solution that is currently makes up the Agency's current environment.
 - iii. The Agency must evaluate responses from (i) and (ii) above and make a decision based on both technical merits and cost. If the Best Value Contractor is unable to meet the specific technical requirements at the time of Agency need, a waiver must be provided by the Office of Administration through in accordance with ITP-BUS002 and the Department of General Services Chief Procurement Officer in order to procure from a Secondary Contractor.

For all purchasing scenarios. If the Best Value Contractor is unable to meet the specific technical requirements (to include but not be limited to integration, compatibility, existing staff knowledge, floor space, network connectivity, etc.), a waiver must be provided by the Office of Administration through in accordance with ITP-BUS002 in order to procure from a Secondary Contractor. The contract(s) resulting from this RFP would not limit the Commonwealth in seeking competitive pricing for both on-

premise infrastructure and cloud infrastructure as required by the OA/OIT technology and support needs.

This contract does not guarantee volume based on past and future purchasing.

Service Level Definitions. The Commonwealth will utilize three (3) separate tiers of service levels as follows:

- (1) **Basic.** 99.9% Availability, **Two (2)-Day** On-site parts and/or labor dispatch—standard response with **48-hour** parts and/or labor on-site support after completion of phone-based troubleshooting.
- (2) **Enhanced.** 99.99% Availability, Next Business Day On-site parts and/or labor dispatch—accelerated response with parts and/or labor on-site support after completion of phone-based troubleshooting.
- (3) **Critical.** 99.999% Availability, Mission-critical response with **four (4)-hour** on-site parts and/or labor on-site support, with a designated point of contact for resolution management, escalation and status updates.

2. Statement of the Project. State in succinct terms your understanding of the project presented, or the service required by this RFP.

The Commonwealth is looking for a strategic partner to provide modular server hardware as well as associated installation, service integration, and support services. We understand that there we will only represent one manufacturer. There will be a scoring system used to award this contract in which there will be a Best Value choice and a Secondary Choice(s). The Commonwealth is not limited by this contract in seeking competitive pricing for both on-premise infrastructure and cloud infrastructure as required by the OA/OIT technology and support needs. We understand that there are several purchasing scenarios that include a net new environment, on-for-one replacement / refresh, replacement / refresh with reduction and expansion of an existing environment. Rules are in place and clearly stated above around how the expansion situations are handled. Three tiers of service levels will be utilized by the Commonwealth when dealing with this agreement. The first is Basic with a 99.9% availability two (2) day service level agreement (SLA) on-site parts and / or labor dispatch. The second SLA is 99.99% availability, Next Business Day On-site parts and/or labor dispatch—accelerated response with parts and/or labor on-site support after completion of phone-based troubleshooting. The third is Critical with 99.999% Availability, Mission-critical response with four (4)-hour on-site parts and/or labor on-site support, with a designated point of contact for resolution management, escalation and status updates.

3. Qualifications.

- A. Company Overview.** Include company name, parent company if applicable, a company overview and why you should be selected for this RFP based on your capabilities. If there is any other information you wish to add that is pertinent to your organization doing business with the Commonwealth, please describe in detail.

MJM Systems is a woman-owned technology solutions integrator with over 30 years of business and experience providing IT expertise to midsize and enterprise companies. We specialize in infrastructure and data center solutions, IT and business performance management, operations service management, automation, mobility, project and portfolio management, operational intelligence and security solutions.

We are a Dell EMC Titanium Partner, VMware Enterprise Partner and have excellent relationships with a number of IT hardware and software providers, delivering solutions across a wide span of industries. Our industry recognized thought leadership team partners with customers to deploy business and technology solutions that produce cost savings and high return on investment, while mitigating risk and ensuring compliance.

Our business extends from the Northeast Corridor/Mid-Atlantic and extends to the West Coast with offices in Washington D.C., Philadelphia, New York, Boston and our headquarters is in Somerset, New Jersey.

NOTICE OF SMALL DIVERSE BUSINESS VERIFICATION



The Department is pleased to announce that
MJM Systems, Inc

has successfully completed the Pennsylvania Department of General Services' process for self-certification as a small business under the Commonwealth's Small Business Contracting Program, and is verified as a Small Diverse Business with the following designation(s):

BUSINESS TYPE(s):

Information Technology Goods & Services

CERTIFICATION NUMBER: **5221682019105BW**

CERTIFICATION TYPE: **SMALL DIVERSE BUSINESS**

ISSUE DATE: **11/15/2019** EXPIRATION DATE: **10/30/2021**

RECERTIFIED DATE:

A handwritten signature in black ink that reads "Kerry L. Kirkland". The signature is written in a cursive style.

Kerry L. Kirkland, Deputy Secretary
Bureau of Diversity, Inclusion & Small Business Opportunities

NOTICE OF SMALL BUSINESS SELF-CERTIFICATION



The Department is pleased to announce that
MJM Systems, Inc

has successfully completed the Pennsylvania Department of General Services' process for self-certification as a small business under the Commonwealth's Small Business Contracting Program, with the following designation:

BUSINESS TYPE(s):

Information Technology Goods & Services

CERTIFICATION NUMBER: **522168-2019-10-SB**

CERTIFICATION TYPE: **SMALL BUSINESS**

ISSUE DATE: **10/30/2019** EXPIRATION DATE: **10/30/2021**

RECERTIFIED DATE:

A handwritten signature in black ink that reads "Kerry L. Kirkland". The signature is written in a cursive style.

Kerry L. Kirkland, Deputy Secretary
Bureau of Diversity, Inclusion & Small Business Opportunities

- B. Prior Experience.** The Offeror must have a minimum of **three (3) years** of experience with projects of a similar size and scope. Include experience in the sale, leasing, and management of server equipment with similar specifications to those requested including, but not limited to, service, maintenance, and training related to the server equipment.

Experience shown should be work done by individuals who will be assigned to this project as well as that of your company. Projects referred to must be identified and the name of the customer shown, including the name, address, and

telephone number of the responsible official of the customer, company, or agency who may be contacted.

- (1) The Offeror must include a least **three (3)** client/project references, with a minimum of **two (2)** references being provided from clients other than the Commonwealth of Pennsylvania, with its proposal. The references must be for installations completed within the past three **(3) years**. Complete **Appendix B, Project References**, for each reference provided.

Trinity Health
A Duie Pyle
FCB

Please see Appendix B

- (2) The Offeror must show what work was completed by subcontractors for each of the projects referenced in **Appendix B, Project References**.
- (3) The Offeror shall provide the following:
 1. Details of any industry-recognized quality standard to which it is compliant, as well as any industry certifications or awards, received.

MJM Systems Inc. in partnership with Melillo Consulting has the following certifications:

MJM Systems Inc:

- Woman Owned Small Business
- Women's Business Enterprise National Council
- NYC Minority and Woman-Owned Business Enterprise
- NYS Woman Business Enterprise
- WBE Philadelphia
- Department of General Services for self-certification as a small business under the commonwealth's Small Business Contracting Program

MJM Systems In Partnership With Melillo Consulting:

- 2018 CRN Solution Provider 500
- HP Certified High Availability Solution Provider (year unknown)
- 2019 CRN Fast Growth 150
- 2019 CRN Solution Provider 500
- 2020 CRN Triple Crown Winner (Solution Provider 500, Tech Elite 250, Fast Growth 150)

2. Details on any industry standard (such as ITIL) the Offeror implemented to govern its service delivery.

- Dell Titanium Partner
- Dell Tier 1 Service Delivery Partner
- Dell Expert Cloud Architecture
- Dell IT-As-A-Service
- Dell Isilon
- Dell Midrange Storage Systems
- Dell Data Center Portfolio
- Dell Hyperconverged Systems
- Dell Storage Platforms
- Dell Data Protection Platforms
- Dell Server Systems
- VMware Digital Workspace
- VMware Data Center Virtualization Mastery
- VMware Network Virtualization
- Project Management Professional (PMP)
- ServiceNow Implementation and Administration

3. Include any reseller or services certification levels earned by the Offeror or key personnel (Offeror and subcontractors).

- Dell Titanium Partner
- Dell Tier 1 Service Delivery Partner
- Dell Expert Cloud Architecture
- Dell IT-As-A-Service
- Dell Isilon
- Dell Midrange Storage Systems
- Dell Data Center Portfolio
- Dell Hyperconverged Systems
- Dell Storage Platforms
- Dell Data Protection Platforms
- Dell Server Systems
- VMware Digital Workspace
- VMware Data Center Virtualization Mastery
- VMware Network Virtualization
- Project Management Professional (PMP)
- ServiceNow Implementation and Administration

4. Within the past **three (3) years**, has the firm or venture been a party to any lawsuits or arbitration proceedings with regard to any contracts? If so, please provide details.

MJM Systems has not been party to any lawsuits or arbitration proceedings with regard to any contracts within the last three (3) years.

5. How long has Offeror(s) provided the Equipment and Services requested in this RFP?

MJM Systems has been in business for 26 years. We have been a Dell EMC reseller since 2019.

MJM Systems working in conjunction with Melillo Consulting a titanium Dell/EMC Reseller has been offering these types of services and solutions in excess of 30 years.

C. Personnel.

- (1) The Offeror shall identify the number of executive and professional personnel, analysts, auditors, researchers, programmers, consultants, etc., who will be engaged in the work. The Offeror must provide an organization chart clearly identifying the proposed personnel, the role, and the links between managers and staff. Show where these personnel will be physically located during the time they are engaged in the Project. Indicate the responsibilities each individual will have in this Project and how long each has been with your company.

For key personnel (Account Manager, OEM Representative, and Account Representatives) include the employee's name, title, roles and responsibilities, the percent of time committed to this Project, years of experience in position, other relevant experience, the key personnel's education and any other professional qualifications using **Appendix C – Personnel Experience**. Identify if any key personnel are subcontractors.

Please See Appendix C



Karen Melillo
MJMSystems, Inc President & CEO

Since founding MJMSystems, Inc. in 1995, Karen Melillo has served as President and CEO managing travel management services for IT professionals, travel for incentive and leisure groups, placement for IT professionals and Software Support renewals for IT support. MJMSystems is an HPE reseller and provider of information technology products and services. MJM Systems is certified as an official Woman-Owned Small Business by the State of NJ. Headquartered in Somerset, NJ.

Karen has over 30 years of IT industry experience. In 1990 Karen Melillo, joined Melillo Consulting as Vice President of Administration responsible for Human Resources/benefits management, administration, IT acquisition and implementation. Prior to joining Melillo Consulting, Karen spent 9 years as a Senior Systems Engineer at HP, establishing herself as a regional expert in HP's New Wave Environment as well as in office automation, PC integration, multi-platform system integration and providing technical pre-sales support. Providing hardware and software consulting services, the company grew steadily over next several years. She holds a Bachelor of Science in Computer Science from University of Delaware.

She is currently on the Board of Directors as Secretary/Webmaster Hillsborough Raider Touchdown and involved with the University of Delaware family Leadership Council. Previously she served on the Cedar Hill Club 2003-2006, President 2016; Hillsborough HS Hockey Booster Club, Treasurer 2009-2010; Hillsborough HS Lacrosse Booster Club, Secretary 2013-2016; and the Somerset Presbyterian Nursery School Board of Directors, President 2000-2002.

She is an entrepreneur, a wife, a mom of 3 sons and to Riley, a border Collie mix and Dakota, their Sheltie/German Sheppardmix. Karen is also active in her volunteer work at the Franklin Foodbank.

To learn more about MJMSystems visit www.mjmsystems.com or connect with Karen Melillo via LinkedIn at <http://www.linkedin.com/in/karen-melillo-ab21938>



Mark J. Melillo
Chief Executive Officer

Since founding the Somerset, New Jersey-based Company in 1988, Mark has led the firm's rapid expansion throughout the Eastern United States, including locations in Philadelphia, New York, Boston and Florida. Under his leadership, the company has achieved HPE, Dell EMC and Micro Focus Platinum partner status levels, and maintains excellent relationships with many IT hardware and software providers with a strategic investment in Splunk and ServiceNow. By dramatically increasing its vendor partnerships and service offerings both organically and through acquisition, the company has grown from a start-up consultancy to a mid-sized, systems and technology integrator, with annual revenues exceeding \$80 million. Mark's focus on technology leadership has enabled Melillo to receive numerous industry accolades including the Economic Vitality Award and repeat occurrences on both the VARBusiness 500 and Deloitte & Touche's Technology Fast 50. Mark also has served on a variety of industry panels for CRN/VAR Business, HPE, Dell EMC and TechData/Avnet.



Dan Sytsma

Dan is responsible for managing the P&L and optimizing Melillo's overall operation, including management of strategic partnerships and accelerating the value of its Professional Services organization. He has a history of leading organizations with a balanced view of people, process and technology. He has launched, grown, and matured sales and services organizations, achieving growth through investment in strategic relationships, development of new programs and pragmatic planning.

Dan has over 30 years of IT industry experience. Prior to joining Melillo, Dan spent 13 years at Logicalis in various senior sales roles, including Senior Vice President of Sales for over 8 years. Additionally, he led the transformation of sales and services go-to-market models (domestically and internationally), while managing strategic partner relationships and defining services-led solutions aligned with customer emerging needs. He also has extensive experience in HP Sales

Management spanning over 10 years, where he drove a number of key strategic initiatives, including Business Alliances, Partnership Development, New Business Development and Go-to-Market Strategy.



Bob Shoyet
Chief Financial Officer

Bob's focus is on the development of immediate and long-term financial strategies, support of current and future business opportunities, maximization of profitability and enterprise valuations, as well as merger and integration of strategic acquisitions. He also leads implementation and maintenance of internal financial structures and processes and oversees various areas of operations.

Bob's 25+ years of experience includes working as an Auditor for a Big 4 Accounting firm, as well as Chief Financial Officer for an international consulting and IT manufacturing company. His extensive experience involved management of company growth ranging from \$32M to \$350M, including the bidding for and acquisition of competing companies. He also played a critical role in creating new divisions and their financial operations in five international markets. He holds an MBA from Baldwin Wallace University and a BBA in Accounting from Cleveland State University.



Joe Staiber
Vice President of Sales

As Vice President of Sales, Joe will lead Melillo's sales strategy, working closely with our vendor partners to grow their revenues and increase market reach, while building strong client relationships. Joe brings a wealth of experience and knowledge with over 25 years of IT industry experience, Joe has worked as a networking engineer for companies like Electronic Data Systems and GMAC and having spent the last 15 years at EMC as a leader in Sales, Strategy, Organizational excellence and Change managing sales teams and the channel program. Joe has

consistently been a top performer and has rebuilt, created, reorganized, or managed several groups across EMC and throughout North and South America. Joe's experience as both an accomplished Executive Vice President, Sales Manager and Channel Manager will play a key role in driving business growth and strengthening our existing relationships within the Partner Ecosystem. His energy and enthusiasm will provide momentum in expanding our current portfolio and service offerings to best meet our customers' evolving IT needs. Joe is a Drexel University alumni from the College of Information Studies.



Phil Bianco
Chief Technology Officer

As Chief Technology Officer, Phil will provide the technology and thought leadership needed to aid Melillo in growing our overall services and product business. Phil has held CIO, CTO and CISO roles for two nationally chartered banks and rejoins our team with over 20 years of industry experience. Phil provides strategic and technical leadership in evolving technologies and across every aspect of Information Technology. His areas of expertise include strategic leadership/design, traditional data center and cloud strategy/design, information security leadership/design virtualization infrastructure, business intelligence, artificial intelligence, backup, recovery, data archiving and disaster recovery.

Phil's deep range of expertise and customer experience with technology and implementing projects will certainly add value to our customers and business. Phil will launch our Microsoft and Cloud business as critical growth areas for Melillo Consulting.



Jamie Lincoln
Director of Business Development / Account Executive

With over 20 years of account management experience, Jamie is well positioned to help the Commonwealth thrive through a business driven and consultative approach. He has had tremendous success in assisting state / local government entities as well as education and

enterprise organizations of all sizes, spanning the globe. Jamie joined our team after being at EMC and then Dell (via acquisition) for 12 years, so his Dell specific knowledge is exceptional.



Rick Catalano
Sr. Solution Architect

Rick Catalano is a 30-year IT veteran, having worked for both solution providers and manufactures over his career. Most recently, prior to joining our team, Rick was integrally involved in support of critical projects in Pennsylvania while being employed at Dell as a senior solution architect. Rick's primary role is helping organizations reinvent themselves and realize their digital future by designing, implementing, securing and supporting transformative IT infrastructures.

Rick is committed to delivering state of the art IT infrastructures that enable our customers to compete and win in the digital age. His driving goal is to improve business performance of his customer's IT by offering innovative, transformative and secure solutions that deliver measurable business value.

Dell OEM Team



Karen Harford
Account Executive

Percentage of time dedicated to this project: 75%

Offering over 25 years of experience in the IT Industry and based locally in Harrisburg, PA, Karen Harford began her IT career at Penn State University as a consultant at the Microcomputer Order Center. After Penn State University, Karen relocated to Harrisburg and worked 19 years as an Account Executive for ePlus, a national technology company. During this time, Karen Harford focused on account management supporting the Commonwealth of PA, Penn State

University, PASSHE, Higher Education, and K12 locally in Harrisburg. Karen joined the Dell Technologies team in May of 2019 as an Account Executive. In this role, Karen is responsible for all technologies that fall under the Dell Technologies umbrella. Additionally, she has achieved the following technology certifications: A10 Positioning and Selling, A10 Security Solutions, A10 Networks Foundation, A10 Networks Sales Enablement, Gigamon-Giga SALES, and Palo Alto Networks-Accredited Sales Expert (ASE) Training. Her time is dedicated to the Commonwealth of PA and its agencies and the Office of the Chancellor at PASSHE. In her personal life, she volunteers with her husband in prison ministry, enjoys boating, and is a proud fur parent to Lacie and Remi. Karen will support this contract as the local sales expert.



Andrew Maurer
Data Center Sales Executive

Percentage of time dedicated to this project: 75%

Offering over 14 years of experience in the IT Industry and based locally in Harrisburg, PA, Andrew Maurer began his IT career as a Technical Support Specialist at the PA Public School Employees' Retirement System. After earning his bachelor's from Edinboro University of PA, he spent almost 8 years working at Mid-Atlantic Corporate Federal Credit Union, now Vizo Corporate CU, as a Network Administrator specializing in Business Continuity, Disaster Recovery, and Risk Management. During his now 8 years of tenure at Dell Technologies, Andrew has held roles in sales and engineering. He began his time at Dell Technologies as an Associate Systems Engineer before he was quickly promoted to Senior Systems Engineer. In this role, he designed complex data center and storage solutions for many departments and agencies of the Commonwealth of PA as well as other Central PA customers like PASSHE, Unisys, The Hershey Company, Rite Aid, TE Connectivity, and Harsco. In his latest role as Data Center Sales Executive, Andrew is dedicated to the Commonwealth of PA and its agencies for all data center related needs. His industry certifications include Cloud Architect, Virtualized Infrastructure Specialist, EMC Proven Professional VMware Certified Professional (VCP), and VMware Certified Associate – Data Center Virtualization (VCA-DCV). As a Linglestown native, Andrew is proud to raise his growing family in the town where he was born and raised; he is a proud dad to Alivia and Drew and loving husband to Ashley. Before receiving the "Daddy" title, you would have caught Andrew on the slopes at Ski Round Top. Andrew will support this contract as a local technical sales expert.



Doris Roberts
Inside Sales Executive

Percentage of time dedicated to this project: 75%

Joining Dell Technologies in 2013, Doris Roberts has been with the company for nearly 9 years. Based in Dell's HQ state of Texas, Doris has been promoted for her excellent work in her role of Inside Sales Executive. This role supports quote creation, service requests, order placement, and any other request of the customer. She serves as a trainer and mentor to new hires and developing team members. She plays a huge role as an advocate, mentor, and Community Impact Lead with Women in Action (Employee Resource Group within Dell), helping to support other women across the globe. Outside of Dell Technologies, Doris and her husband are huge boardgame geeks, working with boardgame publishers, designers, and retail companies to put together an organization to help bring boardgames back into lives of families. Doris's role in supporting this contract will be as an inside sales expert.

1. **Account Manager.** The Offeror shall provide a dedicated Account Manager who will be the main point of contact for Commonwealth agency requests. 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 Offeror and must be authorized to make binding decisions on behalf of the Offeror. The Account Manager is expected to have sufficient technical expertise to ensure proper orders are taken. The Account Manager's responsibilities will include, but will not be limited to: providing administrative, supervisory and technical direction to the account representatives; providing quotes for hardware and/or services, reporting, providing recommendations on hardware and services, and tracking order fulfillment; 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. **OEM Representatives.** The selected Offeror must provide a main point of contact for each of the manufacturers for which the selected Offeror is selling products.

3. **Account Representatives.** The selected Offeror must provide a sufficient number of account representatives to facilitate Commonwealth agency requests, which include, but are not limited to, providing quotes for Hardware and/or Services, reporting, providing recommendations on Hardware and Services, and tracking order fulfillment. Account representatives will be the main point of contact for all Commonwealth agency requests. Additionally, a dedicated service phone number should be provided. These account representatives are expected to have sufficient technical expertise to ensure proper orders are taken.
- (2) **Replacement of Personnel.** Acknowledge review and acceptance of the following procedures: After key personnel are assigned and approved by the Commonwealth, the selected Offeror may not divert or replace key personnel without written approval of the Commonwealth and in accordance with the following procedures. The selected Offeror must provide notice of proposed diversion or replacement to the Commonwealth at least **60 days** in advance and provide the name, qualifications and background check of the person who will replace the diverted or removed staff. The Commonwealth will notify the selected Offeror within **10 days** of the diversion notice whether the proposed diversion is acceptable and if the replacement is approved.
 - (i) Advance notification is not required for changes in key personnel 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 key personnel. Replacement of key personnel whose availability changes for reasons beyond the control of the selected Offeror must occur:
 - (a) on a temporary basis, within **one (1) week** of the availability change; and
 - (b) on a permanent basis, no longer than 30 days from the availability change.
 - (ii) The Commonwealth may request that the selected Offeror remove one or more of its staff persons from the contract at any time, with **30 days'** written notice. If a staff person is removed from the Contract, the selected Offeror will have **ten (10) days** to fill the vacancy with a staff person acceptable in terms of experience and skills, subject to the Commonwealth approval.

MJM Systems acknowledges and accepts these terms.

- 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. 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:

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

Melillo Consulting
285 Davidson Avenue, Suite 202
Somerset, NJ 08873

The MJM Systems relationship with Melillo Consulting helps to provide the Commonwealth with the highest quality Dell solution partnership available. The MJM Systems and Melillo Consulting partnership has been in place and running successfully for more than 20 years. The Commonwealth will reap the benefit of this partnership in a seamless and greatly beneficial fashion.

MJM Systems will use as few as 1 and as many as 5 or more subcontracted employees as deemed necessary by projects put forth via the Commonwealth. These employees will perform tasks such as installation, expansion, configuration, project management, data erasure as well as other pertinent of the RFP response work.

The primary account team will have a 50% or greater time allotment to work with the Commonwealth.

All included account team members, engineers and subcontractors will be within 4-hour access of the Commonwealth's locations.

- 4. 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.

MJM Systems has been in business since December of 1995. It is teamed with Melillo Consulting, an IT solution provider in business for over 30 years. Melillo Consulting employs nearly one hundred employees. and have set record growth for the past five

years. With expanding profitability and a very healthy balance sheet, they are reviewed by an independent accounting firm on yearly basis. Their co-working structure gives MJM Systems access to high level financial expertise that oversee their financial integrity. This includes a Chief Financial Officer, Controller, Accounts Payable and Billing staff. Both companies have contractual agreements with vendors to supply an unlimited breadth of required products, with which it retains a line of credit that's expandable and/or able to be structured to any deal size.

MJM Systems, in conjunction with Melillo Consulting, has normal operation purchasing capacity in excess of \$30 million via sources such as Tech Data, Synnex, Ingram Micro, MicroFocus and PNC Bank. In large, bulk order capacity, we have access to vendor programs that would allow us to process orders to as much as \$60 million and beyond.

5. Requirements.

- A. **Manufacturer Authorization Letter.** If an Offeror is proposing as an Authorized Reseller, they must submit a Manufacturer Authorization Letter which clearly states the Offeror is authorized to provide the OEM's equipment to the Commonwealth for this RFP. The Manufacturer Authorization Letter must reference **Commonwealth RFP 6100051403 for Enterprise Modular Servers and Services**. An Offeror must submit a Manufacturer Authorization Letter for the OEM which the Offeror is proposing, unless the Offeror is the OEM.

Dell Manufacturer Authorization Letter Shown Below



July 22, 2021

MJM
285 Davidson Ave Suite 202
Somerset, NJ, 08873-4153

RE: Dell Technologies Partner Program - Authorized Reseller
Reseller: **MJM**
RFP: **Commonwealth RFP 6100051403 for Enterprise Modular Servers and Services**

This letter confirms that as of the date written above, Reseller identified above is currently an authorized reseller participating in the Dell Technologies Partner Program. This relationship authorizes the Reseller to resell Dell and Dell EMC products and services¹ in accordance with the Reseller Terms of Sale at www.dell.com/resellerterms, Special Purpose Addendum to Dell's Reseller Terms of Sale or the EMC Channel Partner Reseller Agreement as applicable, and the Dell Technologies Partner Program Agreement.

Please feel free to contact your sales representative if you have any questions regarding this letter. We look forward to doing business with you.

Regards,

Signature: *T. Aaron Morris*

Email: Aaron_Morris1@Dell.com

Aaron Morris
Managing Director – Legal
Dell Technologies

¹ This letter is not an authorization to resell Dell or Dell EMC products to Federal end-users or to end-users prohibited by the Dell Technologies Partner Program Agreement, the Dell Technologies Reseller Terms of Sale, Partner's existing EMC Channel Partner Reseller Agreement or any reseller terms applicable to products from a Dell Technologies Strategically Aligned Business. Federal end-user means the United States Government or other entities as authorized in GSA Order ADM 4800.2 as amended or utilizing Dell IT assets in support of USG contracts and/or for internal use as a normal course of business.

Internal Use - Confidential

- B. Offeror Eligibility.** To be eligible for this RFP, an Offeror must have a minimum of **three (3) years** of experience working with public sector clients. Additionally, an Offeror must have experience serving at least **one (1)** large state government similar to the Commonwealth. Please refer to **Appendix D, Cost Submittal**, for minimum product requirements/product specifications. Additional eligibility requirements are as follows:

MJM Systems, in partnership with Melillo Consulting, has serviced the following public sector and state clients (partial list):

- New York Department of Information Technology and Telecommunications
- New York State Public Benefits Corporation
- Georgia Department of Human Services
- Ohio State Teachers Retirement System
- Ohio State Defense Information Systems
- Beaver County Behavioral Health
- California University of Pennsylvania
- City of Virginia Beach
- Lycoming County Pennsylvania
- Connecticut Department of Children and Families
- Fayetteville, North Carolina Public Works Commission
- First Judicial District of Pennsylvania
- Philadelphia Family Court
- Rutgers University
- Township of Abington
- University of South Carolina
- US Mint
- Virginia Department of Motor Vehicles

- (i) Offerors must be able to provide the OEM's full server product line.

MJM Systems in partnership with Melillo Consulting is able to provide the full Dell server line.

- (ii) Offerors must provide equipment capable of meeting the Commonwealth's data security needs. Please refer to ITP SEC-015, *Data Cleansing Policy*, https://www.oa.pa.gov/Policies/Documents/itp_sec015.pdf.

All equipment provided by MJM Systems via Dell Technologies will meet the Commonwealth's data security needs and be ITP SEC-105 compliant.

- (iii) Standalone maintenance/warranty services, if available, should be proposed in **Appendix D, Cost Submittal**, for up to **five (5) years** past the termination date of the Contract. Maintenance should be available in accordance with the service level tiers listed out in **Section H of the RFP**.

Dell Technologies will support enterprise assets (including server systems) for 5 years past the termination date of the contract.

- (iv) Offerors must have the ability to integrate the physical hardware, based on Commonwealth agency requirements, for operational effectiveness.

MJM Systems has the full ability to integrate the physical hardware proposed in this agreement and Commonwealth agency requirements.

C. Required Contract Services. These services are required by the awarded contractors at no additional cost to the Commonwealth.

- (10) 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.

MJM. Systems will provide complete presales support at no charge as part of this agreement with the Commonwealth.

- (11) **Supply Chain Management/Managed Logistics.** The selected Offeror must provide staging and storage at no additional cost (unless otherwise defined in **Appendix E, Statement of Work Template**), respond quickly to changing needs and provide an effective order expediting process, if necessary.

MJM Systems is able to provide secure staging and storage space for the Commonwealth's server needs. This will be addressed on a per order or project basis. Reasonable space and timeframe expectations are requested.

MJM systems, leveraging a robust internal order processing solution and constant communication with Dell upper management, is able to deliver product solutions with the greatest speed possible. Expediting orders is an everyday experience for us and we would use all available tools, processes, contacts and skills to ensure the Commonwealth receives what is needed in an immediate fashion.

- (12) Selected Offerors should provide a quote for hardware, when requested by the Commonwealth, at any time during the term of the Contract.

MJM Systems will be able to provide a quote for hardware in an extremely quick fashion anytime the Commonwealth makes a request. With multiple, redundant team members able to fulfill quoting requests, MJM Systems is more than capable of meeting the Commonwealth's needs.

- (13) Selected Offerors must honor all quotes for at least **90 days**.

MJM Systems agrees to these terms.

D. Optional Services.

- (14) Selected Offerors should provide a quote for warranties and Services, when requested by a Commonwealth agency, at any time during the term of the Contract. Standalone orders for warranties and maintenance made during the term of the Contract may extend up to **five (5) years** past the expiration date of the Contract.
- (15) The Commonwealth agency will develop a statement of work (“SOW”) for each Service order utilizing **Appendix E, Statement of Work Template**, which will be attached to the associated purchase order. The Offeror shall provide a proposed price for all listed Services. All Services may be purchased at the Commonwealth’s discretion.

Optional Services in scope are as follows:

(i) **Installation.**

- (a) The selected Offeror must, at a minimum:
 - 1) Assign a project manager to every installation;
 - 2) Provide status reports of installations completed, installations outstanding, and issues;
 - 3) Unpack equipment;
 - 4) Connect related equipment accessories;
 - 5) Power on the device or system;
 - 6) If pre-imaged system, verify that the system comes up to the login screen and run Commonwealth agency-provided restore script(s) after login; and
 - 7) If non-imaged system, verify that OS boots and network connectivity is successful.
- (b) 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.
- (c) The selected Offeror and the Commonwealth agency will develop a schedule to deliver equipment to a location specified by the Commonwealth agency.

(ii) **Hard Drive Removal.**

- (a) The selected Offeror must, at a minimum:
 - 1) Arrive at the Commonwealth designated location at the time scheduled with the Commonwealth agency to uninstall and fully remove the hard drive in question;
 - 2) Verify the functionality and condition of the equipment with the agency.
 - 3) Cleanse the hard drive as detailed in Commonwealth ITP SEC015, *Data Cleansing Policy*, http://www.oa.pa.gov/Policies/Documents/itp_sec015.pdf; and

- 4) If a hard drive is removed, the Commonwealth agency may choose to keep the removed hard drive and provide delivery location of removed hard drive.

- (iii) **Equipment Return to DGS Surplus Warehouse.** The selected Offeror must, at a minimum: Deliver the packed equipment to the DGS warehouse located at:

DGS Surplus Warehouse
2221 Forster St.
Harrisburg, PA 17125

E. Order Fulfillment.

- (16) 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.

MJM Systems is able to take credit card orders up to \$5,000 per transaction as well as orders generated via the Commonwealth's SAP Supplier Relationship Management (SRM) system.

- (17) The selected Offeror shall be responsible for tracking all orders from initial request through receipt of the Hardware or Service.

MJM Systems agrees to these terms. In conjunction with Dell (the OEM) we will provide all necessary tracking, at any stage in transit, for any Commonwealth orders.

- (18) The selected Offeror's delivery methods must adhere to **Section 9, Delivery and Section 11, Acceptance of Appendix A, Standard Contract Terms and Conditions for IT Supplies and Related Services.**

MJM Systems delivery methods will adhere to the Commonwealth's Standard Contract Terms and Conditions for IT Supplies and Related Services.

With regard to Appendix 1 within Standard Contract Terms and Conditions for IT Supplies and Related Services, Dell Financial Services (DFS) has provided Leasing and Installment Purchase financing to the Commonwealth of Pennsylvania for over 20 years using the Commonwealth's contractual terms for both the Leasing Terms and Conditions (Appendix 1) and the Installment Purchase Terms and Conditions (Appendix 2). DFS accepts the Commonwealth's terms and conditions without exception and follows the process detailed in the contract. When partnering with a Contractor, DFS will work with both the Contractor as well as the Commonwealth agency, utilizing the Commonwealth's Payment Assignment Form (Notice and

Acknowledgement of Assignment of Payment), to properly transfer the lease or financing payments from the Contractor to DFS; at which point DFS will fully fund the transaction with the Contractor and then collect the payments from the Commonwealth.

A typical transaction is completed in the following manner:

1. The Contractor provides DFS with an equipment quote as well as the Agency's preferred lease or financing term (3, 4, or 5 years).
2. DFS prepares a lease or installment purchase quote to be submitted to the Agency along with the Contractor's equipment quote.
3. The Commonwealth issues a PO to the Contractor that shows the specific payments as detailed in the DFS quote.
4. DFS prepares and submits the Notice and Acknowledgement of Assignment of Payment form to the Contractor for submittal to the Commonwealth.
5. Once the Commonwealth acknowledges (typically via email) that the Assignment of Payment has been completed, DFS provides the Contractor with a Letter of Intent signifying that the equipment should be ordered and DFS will pay the Contractor for the full purchase price upon delivery and acceptance by the Commonwealth.
6. Upon equipment delivery, an Acceptance Certificate is sent to the Agency for execution and returned to DFS.
7. Once the equipment is accepted, the Contractor sends DFS an invoice for the purchase price and DFS pays the Contractor.
8. DFS then invoices the Commonwealth for the lease or installment purchase payments.

The DFS point of contact for all Commonwealth lease or installment purchase projects is Art Gehly (art.gehly@dell.com 540-671-3140).

F. Quote Requirements. All quotes must comply, at a minimum, with the following and be pre-approved by the Commonwealth at the outset of the Contract.

- (19) Include: contract number, manufacturer contract number (if applicable); service period (if applicable); manufacturer product ID; manufacturer product title; line item descriptions; list price, minimum discount of list required by contract, discount off of list offered on the order, adjusted price, quantity, extended price; Service Level (SLA) Acceptance Date for delivery of products or services; and related and/or prior PO number(s) when standalone Services are procured. The Commonwealth's contract management team must approve the quote format before any quotes may be issued.

All quotes provided by MJM Systems will follow the above requirements. MJM Systems quotes will include the above headers where applicable. Approval of the quote format by the Commonwealth's contract team prior to issuance is acceptable.

- (20) No additional terms and conditions may be attached to a quote.

MJM Systems agrees to this requirement.

G. Volume Orders.

- (21) The selected Offeror must be capable of fulfilling large volume orders including, but not limited to, Commonwealth agency roll-outs and high dollar purchases.

MJM Systems is capable of fulfilling large volume orders in excess of \$60 million.

- (22) The selected Offeror is encouraged to offer higher discounts for large volume purchases.

MJM systems can provide discounting based on large volume purchases. Individual circumstances will vary.

H. Service Level Agreements. The selected Offeror must meet the service level agreements (SLAs) as described in **Appendix F, Service Level Agreements.**

MJM Systems agrees to these terms.

I. Software. The selected Offeror shall not sell equipment that requires commercially available software for its use through this contract unless and until the Commonwealth has entered into a software license agreement with such software licensor. Offeror shall inform any such software licensor that the software licensor must enter into a software license agreement with the Commonwealth that is substantially the same form as **Appendix I, Software License Requirements**, which will incorporate, if applicable and as appropriate, the software licensor's software agreement.

MJM Systems agrees to these terms.

J. Licensing Requirements. Any click-through terms presented to an individual upon use of any component of the system must be pre-approved in writing by the Commonwealth Contracting Officer. Such terms may not be inconsistent with the final negotiated contract terms and conditions resulting from this RFP. See **Section VI, Objections and Additions to Standard Contract Terms and Conditions.**

MJM Systems agrees to these terms.

K. 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. In the event of an emergency, DGS reserves the right to assign other duties and tasks to maintain program continuity. Attach a copy of the plan, or at a minimum, summarize how the plan addresses the following aspects of pandemic preparedness:

- (23) Employee training (describe Offeror's training plan, and how frequently it will be shared with employees)
- (24) Identified essential business functions and key employees (of yours) necessary to carry them out
- (25) Contingency plans for:
 - (i) How Offeror will handle staffing issues when a portion of key employees are incapacitated due to illness.
 - (ii) How Offeror's employees will carry out the essential functions if contagion control measures prevent them from coming to the primary workplace.
 - (iii) Maintaining field or home operations of Program participants, professional staff, and subcontractors employment during adverse conditions.
- (26) How Offeror will communicate with staff and suppliers when primary communications systems are overloaded or otherwise fail. Identify the role of key contacts and the chain of communications (including suppliers), etc.
- (27) How and when Offeror's emergency plan will be tested, and if the plan will be tested by a third-party.

In order to provide uninterrupted service to our customers, MJM Systems conducts frequent reviews of our business operations plan and implements adjustments and/or corrections to our processes where required to address any potential shortfalls or respond to new requirements. Any changes to our business operations model are communicated directly to our team during regular, recurring staff meetings.

MJM Systems has identified the following critical business operations and functions:

- Accounting – Payables and Receivables
 - Bob Shoyhet - Chief Financial Officer
 - Barbara Grossman - Comptroller
- Quoting
 - Maria LoCicero – Director of Presales and Quoting
 - Lucille Cannizzaro – Director of Billing and Collections
- Technical Services
 - Dave Smull – Director of Professional Services

- Phil Bianco – Chief Technology Officer
- Project Management
 - Carolyn Borelly – Director of Project Management
 - Angela Sutton – Senior Project Manager
- Customer Account Management
 - Joe Staiber – Vice president of Sales
 - Dan Sytsma - President
- Internal IT / Information Security
 - Andrew Melillo – Director of IT
 - Lance Ecklesdafer – Senior Engineer

Contingency Plan for Staffing issues:

- All MJM Systems staff in critical business roles are backed up by employees that are cross trained in other business functions and operations.
- Critical business functions and processes are well documented, and that documentation is readily available for reference from any Internet connected device.
- MJM Systems and Melillo Consulting are a 100% remote-capable workforce. All employees can perform all aspects of their respective job functions from any Internet connected device, regardless of location.
- MJM Systems and Melillo Consulting have technical resources geographically dispersed across the Northeast
- MJM Systems has multiple staff augmentation partners that we can leverage if additional resources are required on short notice.

- L. Just-In-Time Purchasing.** Has your company previously worked with state governments to facilitate a “Just-in-time” approach to hardware purchasing that reduces unnecessary advance purchasing and inventorying of hardware? If so, please describe.

An example of the capability MJM Systems / Melillo Consulting has via a partnership with Tech Data Distribution is with UCLA Health. Tech Data has provided Just-In-Time Purchasing as well as integration work for hundreds of desktops and workstations over several years. Upon arrival in the warehouse system, delivery to the customer is typically 1-3 business days. This ensures the customer is able to order and take delivery of standardized systems in an extremely quick fashion.

- M. Emerging Technologies.** How does your company go about incorporating emerging technologies into its product portfolio and rolling them out to customers?

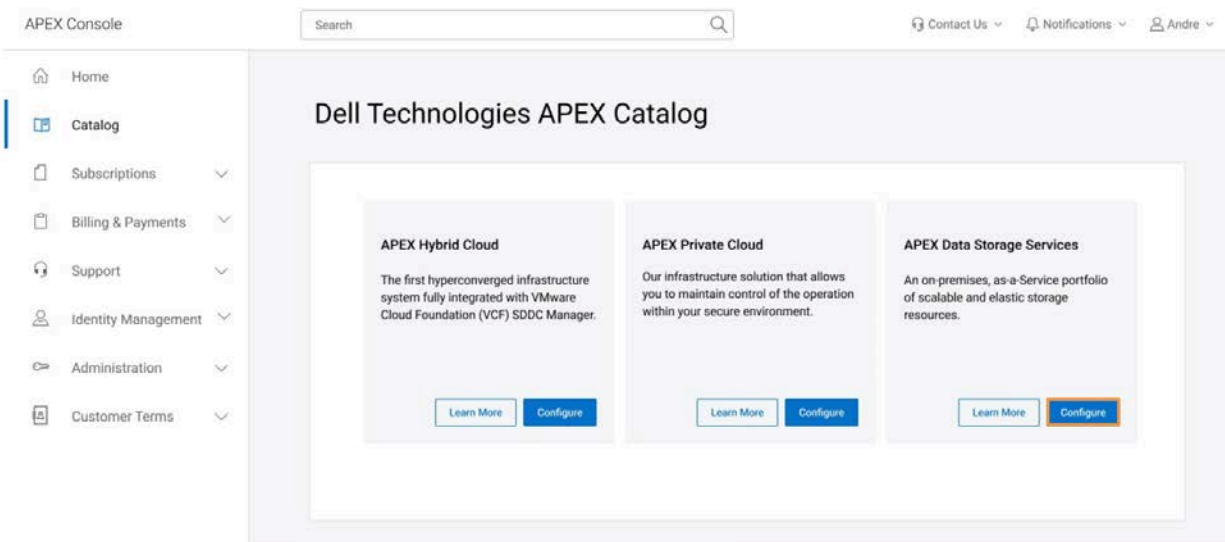
In the 2021 financial year, Dell spent about 5.28 billion U.S. dollars on research and development, bringing emerging technologies to our customers at a more rapid pace versus our competitors. Dell innovation focuses on the following primary technologies:

- Data Management
 - With such a tremendous and overwhelming influx of data, it is vital for organizations to collect, store, and use data securely, efficiently, and cost-effectively. It is critical to be business-ready faster, accelerating data movement across the hybrid, multi-cloud landscape - turning insights into actions and driving speedy outcomes.

Today we have zettabytes of data at our fingertips every second, but also intelligent compute infrastructure, software and algorithms to rapidly turn that data into meaningful insights. Organizations need to seize the opportunity, with timely access to high-quality, trusted data to fuel the individualized experiences for their customers, innovate smarter products and develop entirely new data-driven business models that will be the foundation of their success.

- Artificial Intelligence
 - AI isn't coming – it's here and everywhere. The overwhelming volumes of data from the virtual world blends seamlessly with the physical world as we shift to more frequent digital interactions. With the volume, variety and velocity of data shifting, AI represents an important step to extracting insights from the data and advancing other emerging technologies.
 - Algorithms and models are creating new efficiencies, improving processes and enabling more intelligent, real-time outcomes at scale. AI is fundamentally changing how businesses operate, redefining the way people work and transforming industries globally. Organizations need to capitalize on the opportunity with intelligent infrastructure, compute, software and algorithms and a data-first approach to realize its full potential.
- 5G
 - 5G is set to be the next generation of network connectivity and will transform the way we live, work and play. 5G will power a world of connectivity, enabling mixed reality experiences where the physical and digital worlds converge.
 - As the very first mobile infrastructure built in the cloud era, 5G will be an indispensable part of our data-driven future. It has the ability to unlock the value of data in unprecedented ways.
- Intrinsic Security
 - While the innovation taking place within the security industry is good, in truth there is simply too much complexity in the modern security stack to possibly be secure. This is due to the inordinate amount of niche vendors seeking to solve just one piece of the security puzzle.

- As organizations embrace the many advantages of emerging technologies, the volatile, hyperconnected nature of digital business amplifies the threats, vulnerabilities, and consequences. Security doesn't need new product; it needs a new approach. One that is resilient, intelligent, and automated with security built in everywhere your applications go, from your endpoints to your infrastructure to your cloud deployments.
- Edge Computing
 - Mobile computing. Point-of-sale terminals. Intelligent robots. Self-driving cars. Virtual reality. Chatbots. The evidence of new and emerging Edge use cases — driven by customer demands and business applications — is all around us. Digital businesses must be able to define, build and protect their Edge — all without adding complexity or sacrificing consistency.
- Cloud
 - Organizations struggle to implement cloud infrastructure because existing public and private cloud options often force organizations to make trade-offs with their cloud strategy. With APEX Cloud Services from Dell Technologies, you can now combine the power and speed of public cloud with the control and security of your data center.
 - Dell APEX
 - APEX delivers complete IT infrastructure solutions for a range of data and workload requirements, enabling you to accelerate innovation, adapt to evolving requirements and stay in control of IT operations.
 - APEX Offerings:
 - APEX Infrastructure Services - Benefit from resources that are owned and maintained by Dell Technologies, so you can focus on high-value priorities. Get the technology you need in a fraction of the time and scale resources on demand.
 - APEX Cloud Services - Subscribe to cloud infrastructure for hybrid and private cloud environments. Enable secure and consistent operations and accelerate time to value, wherever resources are deployed.
 - APEX Custom Services - Create your own on-demand environment with infrastructure and services you customize to order. Deploy a pay-per-use consumption model or an enterprise-scale managed utility.



MJM Systems offers regularly scheduled, emerging technology updates to our customers.

- N. Asset Flexibility.** If, during the term of the contract new equipment becomes available, the selected Offeror may, with the written approval of the Office of Administration, Office of Information Technology, substitute a new model if it offers features, technologies, or standards that are equal to or greater than the original model. The cost of any new equipment must be less than or equal to the model it is replacing. Please describe how your company will provide the Commonwealth asset flexibility as Information Technology needs change. This can include events such as asset upgrades, expansions, retirement or any other method of updating the existing hardware environment. Please also describe how your company will handle Standard Configuration Reviews and refresh the standard configurations.

MJM Systems, as part of our ongoing partnership with the Commonwealth, will provide guidance based on our deep integration with Dell around their server technologies. Current and future configurations will be reviewed on a quarterly basis at a minimum to ensure that they make sense and align with the goals of the Commonwealth as well as take into account industry standards / best practices. Dell prides itself on keeping customer in the newest technology as needed but also maintains support lifecycles for systems that enable customers to not be in a position of a constant state of flux for infrastructure. A business and technology driven approach to a mix of refreshing, maintaining and expanding / upgrading systems is our ultimate goal. Our team will be working side-by-side with the Commonwealth and Dell to follow the best path through this journey.

- O. Supply Chain Management/Managed Logistics.** Please describe your company's supply chain network and how it is designed to maximize customer service. The Commonwealth desires a contractor that can, among other things, provide staging and storage, respond quickly to changing needs, and provide an effective expediting process if necessary.

Orders are shipped directly from the manufacturer however MJM Systems can accommodate staging and storage on an exception basis if required.

- P. Data Cleansing.** Referring to Information Technology Policy ITP-SEC015, *Data Cleansing Policy* (https://www.oa.pa.gov/Policies/Documents/itp_sec015.pdf), please describe how your company's data cleansing processes meet these policy requirements and how your company will prevent sensitive information from being released when decommissioning or repairing hardware. Please also describe the OEM's means for providing data cleansing services.

All Dell hardware sold under this contract that includes hard disk drives will include the Dell Keep Your Hard Drive option to allow the Commonwealth to retain all drives if they are defective and replaced. All fair market value leases will specify that the agency will keep drives when the equipment is returned at the end of lease. The Dell Keep Your Hard Drive option includes internal Dell processes to notify the support center when a support call is placed on equipment with keep your drive option, so that Commonwealth personnel do not need to track the status of replaced hardware. Additional costs for this option may apply.

For projects and/or agencies that require detailed labeling or tracking, MJM Systems will provide appropriate labeling or other markings prior to removal of sensitive hardware. MJM Systems will provide written documentation to the agency indicating any hardware removed, its destination and final disposition.

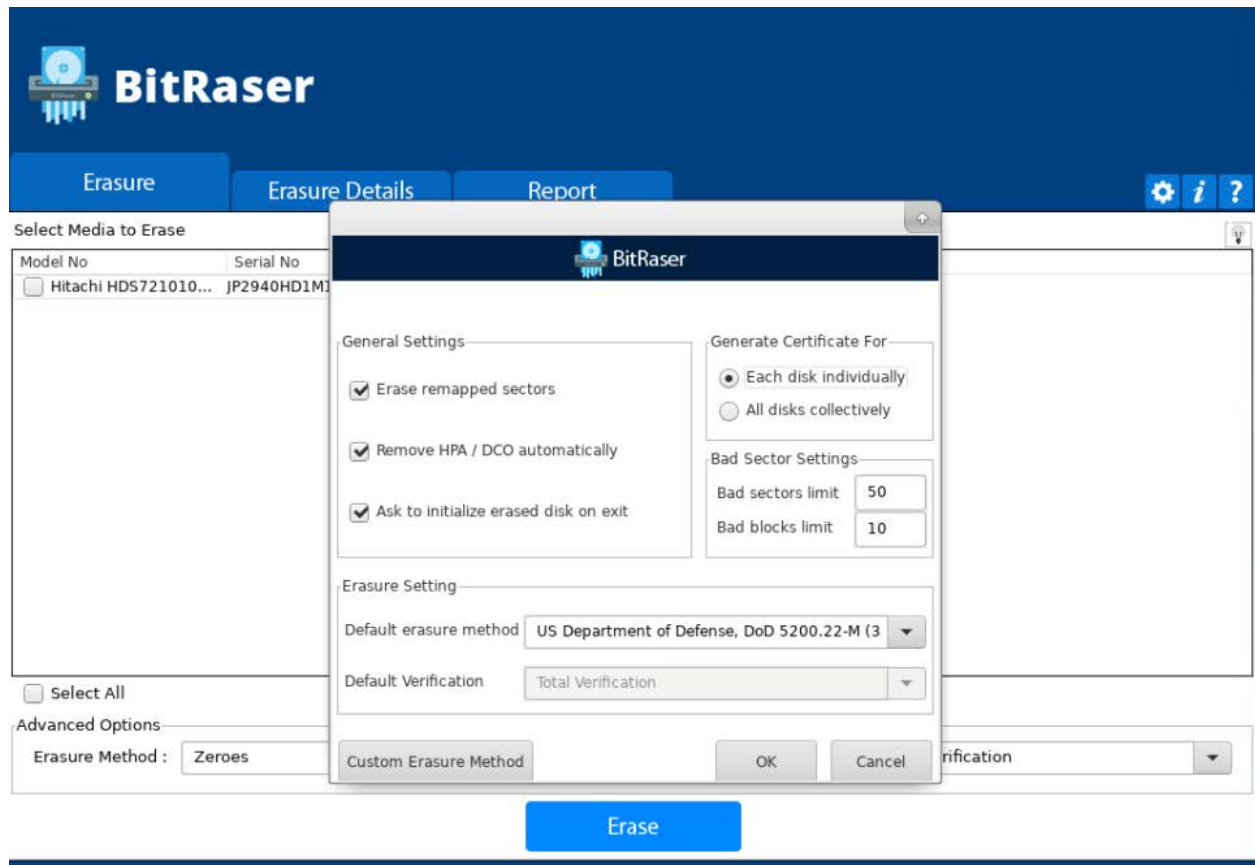
Where necessary and/or required by the Commonwealth or agency, MJM Systems will provide DoD 5220.22M Standard of Erasure to ensure compliance with the Commonwealth's Information Technology Policy ITP-SEC015 – Data Erasure.

Working with Dell Technologies, as well as, other trusted partners, MJM Systems uses BitRaser software to complete DoD compliant data erasures. BitRaser is a comprehensive, certified solution that can assure permanent data erasure when disposing or returning leased IT assets. It can securely wipe data beyond recovery from all kinds of storage devices & generates tamper free audit trails. BitRaser's trusted automated reporting will help the Commonwealth meet internal & external data security audit requirements and comply with global data privacy laws or regulations like – EU GDPR, GLB, SOX, HIPAA, ISO27001, PCI DSS etc.

Product Features:

- Secure Erasure
 - Securely erases sensitive data beyond the scope of recovery from HDDs & SSDs across PC, Mac & server.
- International Standards Compliance
 - Supports 24 International erasure standards including NIST 800-88, DoD 3 & 7 Passes, HMG, etc.
- Certified Erasure
 - 100% tamper-proof certificates that ensure compliance with various national & international data protection regulations.
- Reports for Audit Trails

- Generates erasure reports for audit trails with option to customize & save report in formats like PDF, CSV, XML.



Certificate of Erasure

Erasure Status: **Completed**

Report ID: **3**

Customer Details

Customer Name: **Smith**

Customer Address: **USA**

Media Information

Media Source: **MS-01**
Model Name: **TOSHIBA MQ01ABF050**
Serial Number: **X5E3SMECS**
Manufacturer: **TOSHIBA**
Media Asset Tag: **HD-001**

Media Destination: **MS-02**
Size: **465.76 GB**
Media Type: **SATA**
SMART Status: **PASSED**

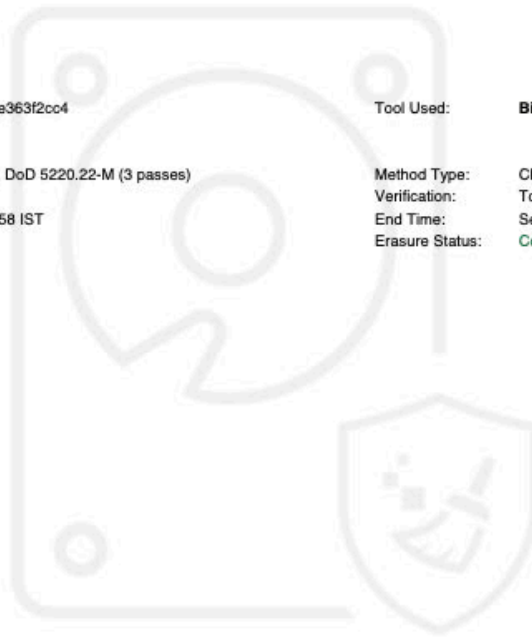
Erasure Information

Digital Identifier: **d3b44c295c02fcb96f753ee363f2cc4**

Tool Used: **BitRaser Drive Eraser 3.0.0.1**

Erasure Method: **US Department of Defense, DoD 5220.22-M (3 passes)**
Write Passes: **3 Write passes**
Start Time: **September 18, 2020 10:44:58 IST**
Duration: **02:40:16**

Method Type: **Clear**
Verification: **Total Verification**
End Time: **September 18, 2020 13:25:19 IST**
Erasure Status: **Completed**



Erasure & Validation Details

Technician Name: **John**
Validator Name: **Watson**

Organization: **BitRaser**
Organization: **Stellar**

I hereby state that the data erasure process has been carried out in accordance with given specifications.

Date: September 18, 2020 13:39:46 IST

Sample Signature

Data Erasure Technician

Sample Signature

Validator

Non-functioning drives will shipped/tracked to Dell Technologies for secure erasure and/or destruction using the degaussing method for data erasure. After degaussing, drives can either be returned to the Commonwealth/Agency or retained by Dell and be physically destroyed by shredding and disposed of in an environmentally responsible fashion.

Dell Data Erasure Support Procedures

Customers should call Dell hardware warranty support in accordance with Customer's applicable service agreement when Customer experiences a problem or suspects a HDD failure. Customers will receive troubleshooting and telephone-based support in accordance with their service agreement. If the Dell technician determines that the HDD has experienced a problem that is covered by Dell's Limited Hardware Warranty, Dell will ship a replacement HDD to the Customer pursuant to Customer's applicable service agreement (for example, 4-hour or next-business-day delivery). This Service permits Customer to return the failed HDD for Certified Data Destruction and disposal of the failed HDD. Once the failed HDD arrives at the regionally based recovery lab, the process for destruction is initiated and the registration details of the customer's job are populated into the Dell Data Protection status portal. During the process for data destruction, customers may log on to the portal to view the status of their return, data wipe and HDD disposal. Upon data destruction through degaussing of the HDD, the status is updated on the portal to reflect completion. A certificate of erasure that confirms data destruction can be downloaded by the customer from the portal. The failed and degaussed HDD is then disposed of in a Dell-approved environmental manner.

- Q. Continuous Improvement.** Please describe how you will continuously improve the contract and help drive cost savings over the contract term.

With over 25 years of success in the IT solution provider universe, MJM Systems will work continuously to be the best partner to the Commonwealth from a people, process and technology perspective. All of this will be done while maintaining maximum cost effectiveness and value.

As a private company, we are not beholden to shareholders or the market.... Our focus is the customer. We have the financial as well as technical capability of a large organization with the agility and flexibility of a small business. We leverage that flexibility and agility to make well thought out but quick changes in our business that to our customer's needs.

- R. Accessibility Plan.**

- (28) General. 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 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. Please see https://www.oa.pa.gov/Policies/eo/Documents/2016_03.pdf for additional information.

The Commonwealth of Pennsylvania also has an IT Policy (ACC001 – Digital Accessibility Policy) that outlines requirements for digital content and services to which the Offeror must adhere. Digital content and services include, but are not limited to:

- Electronic content
- Software
- Hardware
- Support documentation and services

Dell is committed to providing accessible products in support of our goal of full compliance to the legal and industry standards applicable in the countries where Dell products are sold.

Dell's purpose is to deliver technology solutions that enable people everywhere to grow and thrive. This purpose includes making technology available that promotes accessibility by people with disabilities.

To further this purpose, Dell has established the following principles to navigate the changing environment of technological solutions while staying true to our core values and to provide accessible technology.

- Develop and maintain accessibility guidelines for our products and services
- Be accountable for responsibly implementing these guidelines
- Consult with people having disabilities and leading assistive technology and solution providers, to include their feedback in Dell's accessibility guidelines
- Document the accessibility features of our products and services and make such information available
- Participate in the development of industry standards and guidelines for accessibility

Improving Accessibility of Dell Products

Dell strives to improve usability of our products through a variety of methods. Dell assists users of our products who have auditory impairments with the use of light and listening devices. Dell also assists users who have physical disabilities with adjustable hardware and gross/fine motor-skills hardware.

Dell PC's laptops and servers running version of the Microsoft Windows software include many built-in accessibility features for users.

Accessibility features for Windows software products are classified as follows:

- Vision
- Hearing
- Neurodiversity
- Learning
- Mobility
- Mental Health

Microsoft has created an Accessibility Evolution Model to track their performance in meeting accessibility needs and requirements of their customers. Details of that program are on the next page.



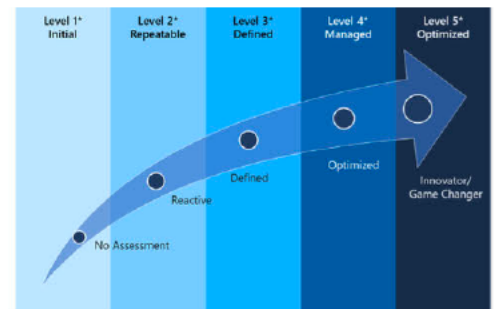
Accessibility starts with culture in the workplace

With more than 1 billion people with disabilities in the world, Microsoft believes that accessibility is essential to delivering on our mission to “empower every person and every organization on the planet to achieve more.” However, our mission doesn’t begin and end with the products we create and the services we offer. It extends to the culture of our workplace and weaving accessibility into the fabric of our company—from hiring people with disabilities, to creating inclusive marketing, and awarding our Accessibility in Action digital badge.

Technology can unlock solutions that empower people with disabilities and lead to greater innovations for everyone. To enable transformative change accessibility needs to be a priority. We aim to build it into what we design for every team, organization, classroom, and home.

Manage accessibility like a business

While our journey is by no means complete, since we started prioritizing accessibility, one of our most impactful decisions has been to manage accessibility like a business. In 2016, we rebuilt our company-wide accessibility program with a more systematic way to measure progress and set targets. To do this, our Accessibility Leadership Team studied best practices in maturity models—the [Carnegie Mellon Capability Model](#) and the [Level Access Digital Accessibility Maturity Model](#). The learnings framed our initial approach and then we customized it for Microsoft. This led to the development of our Accessibility Evolution Model, which we have been using and improving for four years. It has enabled us to track progress, understand year-over-year growth by division and function and has powered our maturity.



We are now sharing this model so that other organizations can accelerate their accessibility journey and explore how to grow it in a sustainable way. Whether you are defining your strategy or already have systems in place, we invite you to join us to improve inclusion of people with disabilities worldwide for years to come.

Accessibility evolution model – example dimensions

Getting started	Building momentum	Innovators in accessibility
<p>People and culture Increase representation of people with disabilities</p> <p>Vision, strategy, and engagement Establish and implement an accessibility strategy</p> <p>Investments Get the right people, tools, and processes in place</p>	<p>Standards Build towards and test against accessibility standards</p> <p>Training, support, and tools Put systems in place to scale accessibility</p> <p>Procurement Partner with suppliers to improve ecosystem accessibility</p>	<p>Product development lifecycle Embed accessibility into planning, building, and deploying</p> <p>Sales, marketing, and communications Effectively tell the accessibility story</p>

As part of our ongoing effort to develop cultures of accessibility outside the walls of Microsoft, below are some of the resources available to help with your accessibility journey.

	<p><u>Accessibility at a Glance</u> Training series on how to create accessible products and services</p>		<p><u>Disability Answer Desk Playbook</u> How to build a support team for your customers with disabilities</p>
	<p><u>Autism Hiring Playbook</u> Guidance on inclusive hiring for people on the autism spectrum</p>		<p><u>Inclusive Design Toolkit</u> Designing great products for the greatest number of people</p>
	<p><u>Supported Employment Program Toolkit</u> Create opportunities for individuals with intellectual and developmental disabilities</p>		<p><u>Accessibility Insights</u> Guidance for Developers on how to embed accessibility into their design process—for Web, Android, and Windows</p>

Enable greater digital inclusion with Windows & Microsoft 365

Here are some native accessibility features available today to help the millions of people who use our tools stay connected and get work done.

<p>Microsoft Teams Screen reader Live captions & translation Blur background 'Pin'</p>	<p>Built-in Subtitles Real-time subtitles and translations of text, websites, and voice</p>	<p>Ease of Access settings Makes accessibility easier to discover, learn, and use</p>	<p>Accessibility Checker Checks that Word, PowerPoint, Excel documents are accessible</p>	<p>Microsoft Stream Auto-caption audio or video recordings</p>

Accessibility is a responsibility
More than 1 billion people worldwide experience some form of disability. But only 1 in 10 have access to the assistive technology they need, which means many can't fully participate in our economies and societies. The unemployment rate for people with disabilities is typically twice that of people without. And disability—whether temporary, situational, or permanent—can affect any of us at any time.

Accessibility is an opportunity
Inclusive organizations that embrace best practices for employing and supporting persons with disabilities in the workplace outperform their peers. They also attract and keep top talent. Millennials, who will be 75% of the global workforce by 2020, choose employers who reflect their values. Diversity and inclusion top the list.

Become an innovator in accessibility. Start your journey!

For more information, visit microsoft.com/accessibility.



AI can help amplify human capability
AI can unlock solutions to some of the biggest challenges faced by people with disabilities. Real-time speech-to-text and visual recognition services are just some of the ways AI is rapidly changing how we work, learn, and live. That's why in 2018 we launched AI for Accessibility, a \$25 million, 5-year program aimed at leveraging the power of AI to create new assistive technology that will amplify the capabilities of people with disabilities.

(29) Definitions.

- (i) **Digital Content and Services.** The delivery of information and services to end-users via data, voice, or video technologies, which includes but is not limited to:
 - (a) **Electronic content:** Websites and web-based materials (Internet & Intranet), Microsoft Office (Word, Excel, PowerPoint), Adobe InDesign & PDF documents, training materials (e.g., online training materials, tests, online surveys), multimedia (video/audio), digital materials (e.g., documents, templates, forms, reports, surveys), maps and infographics, electronic emergency notifications, and subscription services (e.g., news feeds, alert services, professional journals);
 - (b) **Software:** Web, desktop, server, and mobile client applications, authoring tools, associated infrastructure, and service offerings (Software as a Service (SaaS), Platform as a Service (PaaS), Infrastructure as a Service (IaaS));
 - (c) **Hardware:** Computers & laptops, servers, tablets, printers and copiers, scanners, peripheral equipment (e.g., keyboards, mice), kiosks and mobile phones; and
 - (d) **Support documentation and services:** Training services, help desk or call center, automated self-service & technical support, and product informational materials.
- (ii) **Policy Driven Adoption for Accessibility (PDAA).** PDAA is the integration of digital content and services accessibility governance into Commonwealth policies. The PDAA methodology was created by a work group of the National Association of State CIOs (NASCIO).
- (iii) **Section 508 Standards (Revised).** A final rule, published in January of 2017, updating accessibility requirements for information and communication technology (ICT) covered by Section 508 of the Rehabilitation Act of 1973, 29 U.S.C. § 701 *et seq.*
- (iv) **Voluntary Product Accessibility Template® (VPAT).** A VPAT is an industry accepted tool to measure a supplier's ability to demonstrate their product's (hardware, software (COTS, SaaS), electronic content and support documentation and services) support for accessibility.
- (v) **Web Content Accessibility Guidelines (WCAG).** WCAG are an industry-recognized standard published by the Web Accessibility

Initiative (WAI) of the World Wide Web Consortium (W3C) that addresses digital content. WCAG includes three levels of conformance: A, AA, and AAA.

- (30) Specific. The Offeror shall provide the following artifacts requested below. Based on the assessment of these artifacts, additional information may be requested. Furthermore, the Commonwealth reserves the right to verify the accessibility of the solution.
- (i) A completed Voluntary Product Accessibility Template (VPAT) using either the latest Information Technology Industry Council (ITI) Section 508 Standards (Revised) or the Web Content Accessibility Guidelines (WCAG) version for all software, hardware, and websites (as applicable) as proposed in response to the solicitation. The latest version of the VPAT templates can be found at the ITI website: <https://www.itic.org/policy/accessibility/vpat>.
 - (ii) A completed Policy Driven Adoption for Accessibility (PDAA) Assessment using the template found in Appendix J.
 - (iii) Contractors must provide an accessibility plan that includes accessibility features available within the product and suitable third-party assistive technologies that work best with the product.

Dell VPAT – PowerEdge R440

Dell Accessibility Conformance Report

VPAT® Version 2.1 – March 2018

Name of Product/Version: Dell EMC PowerEdge R440

Product Description: Server

Contact information: Susan Samok / susan_samok@federal.dell.com

Notes: This is a HW VPAT . Dell.com/support has a standalone VPAT, IDRAC has a standalone VPAT. Third party HW/SW is deferred to the Third party.

Evaluation Methods Used: This hardware product was evaluated for accessibility standards conformance using established best practices and manual inspection tools
Applicable Standards/Guidelines

Applicable Standards/Guidelines

This report covers the degree of conformance for the following accessibility standard/guidelines:

Standard/Guideline	Included In Report
Web Content Accessibility Guidelines 2.0, at http://www.w3.org/TR/2008/REC-WCAG20-20081211/	Level A (No) Level AA (No) Level AAA (No)

“Voluntary Product Accessibility Template” and “VPAT” are registered service marks of the Information Technology Industry Council (ITI)

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Revised Section 508 standards as published by the U.S. Access Board in the Federal Register on January 18, 2017 Corrections to the ICT Final Rule as published by the US Access Board in the Federal Register on January 22, 2018	(Yes)
EN 301 549 Accessibility requirements suitable for public procurement of ICT products and services in Europe, - V1.1.2 (2015-04) at http://mandate376.standards.eu/standard	(No)

Terms

The terms used in the Conformance Level information are defined as follows:

- **Supports:** The functionality of the product has at least one method that meets the criterion without known defects or meets with equivalent facilitation.
- **Supports with Exceptions:** Some functionality of the product does not meet the criterion.
- **Does Not Support:** The majority of product functionality does not meet the criterion.
- **Not Applicable:** The criterion is not relevant to the product.
- **Not Evaluated:** The product has not been evaluated against the criterion. This can be used only in WCAG 2.0 Level AAA.

WCAG 2.0 Report

Tables 1 and 2 also document conformance with:

- EN 301 549: Chapter 9 - Web, Chapter 10 - Non-Web documents, Section 11.2.1- Non-Web Software (excluding closed functionality), and Section 11.2.2 - Non-Web Software (closed functionality).
- Revised Section 508: Chapter 5 – 501.1 Scope, 504.2 Content Creation or Editing, and Chapter 6 – 602.3 Electronic Support Documentation.

Note: When reporting on conformance with the WCAG 2.0 Success Criteria, they are scoped for full pages, complete processes, and accessibility-supported ways of using technology as documented in the [WCAG 2.0 Conformance Requirements](#).

Table 1: Success Criteria, Level A

Notes: This is HW and not an application, therefore the WCAG table has been removed

Table 2: Success Criteria, Level AA

Notes: This is HW and not an application, therefore the WCAG table has been removed

Table 3: Success Criteria, Level AAA

Notes: This is HW and not an application, therefore the WCAG table has been removed

2017 Section 508 Report

Notes: Note Chapter 5 SW has been removed

Chapter 3: Functional Performance Criteria (FPC)

Notes:

Criteria	Conformance Level	Remarks and Explanations
302.1 Without Vision	Supports with exceptions	User does not need vision to turn this product on or off, the unit is designed to be set up and remain on, however status associated to the HW is done so with either a display status/menu or colored LED. There is iDRAC for remote access but this application has some issues with

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Criteria	Conformance Level	Remarks and Explanations
		accessibility associated to screen readers, therefore the supports with exceptions
302.2 With Limited Vision	Supports with exceptions	User does not need vision to turn this product on or off, however status associated to the HW is done so with either a display status/menu or colored LED. The status may prove a challenge depending on the degree of the limited site There is IDRAC for remote access but this application has some issues with accessibility associated to screen readers, therefore the supports with exceptions
302.3 Without Perception of Color	Supports with exceptions	If the server uses a menu display, there is text equivalent. For LED status, color is the only means of status on the server, however IDRAC can be used remotely to view the status of the unit, where color is not the only means of communicating status
302.4 Without Hearing	Supports	User hearing is not required
302.5 With Limited Hearing	Supports	User hearing is not required
302.6 Without Speech	Supports	User speech is not required to operate the product
302.7 With Limited Manipulation	Supports	Product provides at least one mode of operation that does not require fine motor control or simultaneous manual operations. Note if there is a display menu, usage of the up and down, next option may be deemed as needing fine motor skills for the button usage. IDRAC is an alternative to this status.
302.8 With Limited Reach and Strength	Supports	Placement of the product is up to the end user, this product is intended to sit in a

Criteria	Conformance Level	Remarks and Explanations
		server racking cabinet
302.9 With Limited Language, Cognitive, and Learning Abilities	Supports with exceptions	Usage of this type of equipment can be used with limited language . This equipment is intended to be used by a trained IT professional, therefore not a product designed for persons with cognitive and learning abilities

Chapter 4: Hardware

Notes:

Criteria	Conformance Level	Remarks and Explanations
402 Closed Functionality	Heading cell – no response required	Heading cell – no response required
402.1 General	Heading cell – no response required	Heading cell – no response required
402.2 Speech-Output Enabled	Heading cell – no response required	Heading cell – no response required
402.2.1 Information Displayed On-Screen	Not Applicable	This product is not defined as closed functionality
402.2.2 Transactional Outputs	Not Applicable	This product is not defined as closed functionality
402.2.3 Speech Delivery Type and Coordination	Not Applicable	This product is not defined as closed functionality
402.2.4 User Control	Not Applicable	This product is not defined as closed functionality
402.2.5 Braille Instructions	Not Applicable	This product is not defined as closed functionality
402.3 Volume	Heading cell – no response required	Heading cell – no response required
402.3.1 Private Listening	Not Applicable	This product is not defined as closed functionality
402.3.2 Non-private Listening	Not Applicable	This product is not defined as closed functionality
402.4 Characters on Display Screens	Not Applicable	This product is not defined as closed functionality

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Criteria	Conformance Level	Remarks and Explanations
402.5 Characters on Variable Message Signs	Not Applicable	This product is not defined as closed functionality
403 Biometrics	Heading cell – no response required	Heading cell – no response required
403.1 General	Not Applicable	The product reviewed did not have Biometrics in the HW
404 Preservation of Information Provided for Accessibility	Heading cell – no response required	Heading cell – no response required
404.1 General	Supports	This product does not remove non-proprietary information provided for accessibility or will restore it upon delivery.
405 Privacy	Heading cell – no response required	Heading cell – no response required
405.1 General	Supports	The product provides the same degree of privacy of input and output to all individuals
406 Standard Connections	Heading cell – no response required	Heading cell – no response required
406.1 General	Supports	Industry Standard ports are used
407 Operable Parts	Heading cell – no response required	Heading cell – no response required
407.2 Contrast	Supports	Keys and controls are light on dark
407.3 Input Controls	Heading cell – no response required	Heading cell – no response required
407.3.1 Tactilely Discernible	Supports	Controls are tactilely discernible
407.3.2 Alphabetic Keys	Not Applicable	This product does not have a keyboard, it will support an external keyboard
407.3.3 Numeric Keys	Not Applicable	This product does not have a keyboard, it will support an external keyboard
407.4 Key Repeat	Not Applicable	This product does not have key repeat
407.5 Timed Response	Not Applicable	This HW does not have a timed response.
407.6 Operation	Supports with exceptions	The product can be used with one hand and may not require tight grasping, pinching, or twisting of the wrist, for daily operation. If the enduser needs to pull from rack, or replace drives as part of their role, may result in some grasping, or pinching. The force required to activate

Criteria	Conformance Level	Remarks and Explanations
		operable parts is less than 5 pounds (22.2 N),
407.7 Tickets, Fare Cards, and Keycards	Not Applicable	The unit reviewed did not have tickerts, fare cards or key cards
407.8 Reach Height and Depth	Heading cell – no response required	Heading cell – no response required
407.8.1 Vertical Reference Plane	Supports	The end user set up will determine this compliance
407.8.1.1 Vertical Plane for Side Reach	Supports	The end user set up will determine this compliance
407.8.1.2 Vertical Plane for Forward Reach	Supports	The end user set up will determine this compliance
407.8.2 Side Reach	Supports	The end user set up will determine this compliance
407.8.2.1 Unobstructed Side Reach	Supports	The end user set up will determine this compliance
407.8.2.2 Obstructed Side Reach	Supports	The end user set up will determine this compliance
407.8.3 Forward Reach	Supports	The end user set up will determine this compliance
407.8.3.1 Unobstructed Forward Reach	Supports	The end user set up will determine this compliance
407.8.3.2 Obstructed Forward Reach	Supports	The end user set up will determine this compliance
407.8.3.2.1 Operable Part Height for ICT with Obstructed Forward Reach	Supports	The end user set up will determine this compliance
407.8.3.2.2 Knee and Toe Space under ICT with Obstructed Forward Reach	Supports	The end user set up will determine this compliance
408 Display Screens	Heading cell – no response required	Heading cell – no response required
408.2 Visibility	Supports	If this product includes a menu display, the display will be visible depending on the placement of the product.
408.3 Flashing	Supports	This product does not have a flashing

Criteria	Conformance Level	Remarks and Explanations
		display. LEDs do not flash more than 3 flashes in any one second
409 Status Indicators	Heading cell – no response required	Heading cell – no response required
409.1 General	Does not support	Status indicators on the hardware are discernible visually, on the hardware they are not discernible with touch or sound. IDrac can be used as alternate form of status with assistive technology for sound, via a screen reader, however IDrac has some issues with ATs
410 Color Coding	Heading cell – no response required	Heading cell – no response required
410.1 General	Supports with exceptions	If the product comes with a display menu there is a text equivalent that is not dependent on color, however color is the primary means of conveying drive status, with green, red, amber lights. On /Off blue or white light.
411 Audible Signals	Heading cell – no response required	Heading cell – no response required
411.1 General	Supports	Audible signals or cues are not used as the only means of conveying information, indicating an action, or prompting a response.
412 ICT with Two-Way Voice Communication	Heading cell – no response required	Heading cell – no response required
412.2 Volume Gain	Heading cell – no response required	Heading cell – no response required
412.2.1 Volume Gain for Wireline Telephones	Not Applicable	This product does not provide two way communication
412.2.2 Volume Gain for Non-Wireline ICT	Not Applicable	This product does not provide two way communication
412.3 Interference Reduction and Magnetic Coupling	Heading cell – no response required	Heading cell – no response required
412.3.1 Wireless Handsets	Not Applicable	This product does not provide two way communication
412.3.2 Wireline Handsets	Not Applicable	This product does not provide two way

Criteria	Conformance Level	Remarks and Explanations
		communication
412.4 Digital Encoding of Speech	Not Applicable	This product does not provide two way communication
412.5 Real-Time Text Functionality	Reserved for future	Reserved for future
412.6 Caller ID	Not Applicable	This product does not provide two way communication
412.7 Video Communication	Not Applicable	This product does not provide two way communication
412.8 Legacy TTY Support	Heading cell – no response required	Heading cell – no response required
412.8.1 TTY Connectability	Not Applicable	This product does not provide two way communication
412.8.2 Voice and Hearing Carry Over	Not Applicable	This product does not provide two way communication
412.8.3 Signal Compatibility	Not Applicable	This product does not provide two way communication
412.8.4 Voice Mail and Other Messaging Systems	Not Applicable	This product does not provide two way communication
413 Closed Caption Processing Technologies	Heading cell – no response required	Heading cell – no response required
413.1.1 Decoding and Display of Closed Captions	Not Applicable	This product does not have closed captioning decoding capability it will stream video with closed captioning capability
413.1.2 Pass-Through of Closed Caption Data	Supports	This product can pass through closed caption video, but does not have any closed caption decoding
414 Audio Description Processing Technologies	Heading cell – no response required	Heading cell – no response required
414.1.1 Digital Television Tuners	Not Applicable	This product does not have a TV Tuner
414.1.2 Other ICT	Not Applicable	This product does not have audio description controls
415 User Controls for Captions and Audio Descriptions	Heading cell – no response required	Heading cell – no response required
415.1.1 Caption Controls	Not Applicable	This product does not provide operable parts for volume control, therefore does

Criteria	Conformance Level	Remarks and Explanations
		not provide operable parts for caption selection. If the product has a Microsoft OS installed. The Microsoft windows OS has some settings for Closed Captioning, Dell defers to Microsoft.com
415.1.2 Audio Description Controls	Not Applicable	This product does not provide operable parts for program selection, therefore does not provide operable parts for the selection of audio description. If the product has a Microsoft windows OS installed, it does have audio description controls in ease of access Dell defers to Microsoft.com.

Chapter 5: Software

Notes: This product is HW and not SW, therefore Chapter 5 table has been removed

Chapter 6: Support Documentation and Services

Notes:

Criteria	Conformance Level	Remarks and Explanations
601.1 Scope	Heading cell – no response required	Heading cell – no response required
602 Support Documentation	Heading cell – no response required	Heading cell – no response required
602.2 Accessibility and Compatibility Features	Does not support	Documentation does not list and explain how to use the accessibility and compatibility features
602.3 Electronic Support Documentation	See WCAG 2.0 section	See information in WCAG section
602.4 Alternate Formats for Non-Electronic Support Documentation	Supports with exceptions	It has been stated that Dell will supply documentation in alternate formats however these may not be readily available

Criteria	Conformance Level	Remarks and Explanations
603 Support Services	Heading cell – no response required	Heading cell – no response required
603.2 Information on Accessibility and Compatibility Features	Does not support	ICT support services does not include information on the accessibility and compatibility features
603.3 Accommodation of Communication Needs	Supports	Dell provides a TTY line, chat line, phone line and email to customers to assist with communication needs

EN 301 549 Report

Notes: EN 301 549 is not in scope for Section 508, and the tables have been removed

Legal Disclaimer (Company)

This VPAT[®] is for information purposes only. The information contained in this VPAT[®] represents Dell Technologies view regarding matters discussed herein as of the date of publication. Because of changing market conditions, this VPAT[®] is not a commitment on the part of Dell, and Dell cannot guarantee the accuracy of any information presented after the date of publication. Dell makes no warranties, express or implied.

E202.2 Legacy ICT. Any component or portion of existing ICT that complies with an earlier standard issued pursuant to Section 508 of the Rehabilitation Act of 1973, as amended (as republished in Appendix D), and that has not been altered on or after January 18, 2018, shall not be required to be modified to conform to the Revised 508 Standards.

Dell defers to www.microsoft.com for Windows[®] and Windows[®] application VPATS[®]. Dell defers third party applications that could be placed on this product to the third party supplier.

Dell Accessibility Conformance Report

VPAT® Version 2.1 – March 2018

Name of Product/Version: Dell EMC PowerEdge R840

Product Description: Server

Contact information: Susan Samok / susan_samok@federal.dell.com

Notes: This is a HW VPAT . Dell.com/support has a standalone VPAT, IDRAC has a standalone VPAT. Third party HW/SW is deferred to the Third party.

Evaluation Methods Used: This hardware product was evaluated for accessibility standards conformance using established best practices and manual inspection tools
Applicable Standards/Guidelines

Applicable Standards/Guidelines

This report covers the degree of conformance for the following accessibility standard/guidelines:

Standard/Guideline	Included In Report
Web Content Accessibility Guidelines 2.0, at http://www.w3.org/TR/2008/REC-WCAG20-20081211/	Level A (No) Level AA (No) Level AAA (No)

“Voluntary Product Accessibility Template” and “VPAT” are registered service marks of the Information Technology Industry Council (ITI)

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Revised Section 508 standards as published by the U.S. Access Board in the Federal Register on January 18, 2017 Corrections to the ICT Final Rule as published by the US Access Board in the Federal Register on January 22, 2018	(Yes)
EN 301 549 Accessibility requirements suitable for public procurement of ICT products and services in Europe, - V1.1.2 (2015-04) at http://mandate376.standards.eu/standard	(No)

Terms

The terms used in the Conformance Level information are defined as follows:

- **Supports:** The functionality of the product has at least one method that meets the criterion without known defects or meets with equivalent facilitation.
- **Supports with Exceptions:** Some functionality of the product does not meet the criterion.
- **Does Not Support:** The majority of product functionality does not meet the criterion.
- **Not Applicable:** The criterion is not relevant to the product.
- **Not Evaluated:** The product has not been evaluated against the criterion. This can be used only in WCAG 2.0 Level AAA.

WCAG 2.0 Report

Tables 1 and 2 also document conformance with:

- EN 301 549: Chapter 9 - Web, Chapter 10 - Non-Web documents, Section 11.2.1- Non-Web Software (excluding closed functionality), and Section 11.2.2 - Non-Web Software (closed functionality).
- Revised Section 508: Chapter 5 – 501.1 Scope, 504.2 Content Creation or Editing, and Chapter 6 – 602.3 Electronic Support Documentation.

Note: When reporting on conformance with the WCAG 2.0 Success Criteria, they are scoped for full pages, complete processes, and accessibility-supported ways of using technology as documented in the [WCAG 2.0 Conformance Requirements](#).

Table 1: Success Criteria, Level A

Notes: This is HW and not an application, therefore the WCAG table has been removed

Table 2: Success Criteria, Level AA

Notes: This is HW and not an application, therefore the WCAG table has been removed

Table 3: Success Criteria, Level AAA

Notes: This is HW and not an application, therefore the WCAG table has been removed

2017 Section 508 Report

Notes: Note Chapter 5 SW has been removed

Chapter 3: Functional Performance Criteria (FPC)

Notes:

Criteria	Conformance Level	Remarks and Explanations
302.1 Without Vision	Supports with exceptions	User does not need vision to turn this product on or off, the unit is designed to be set up and remain on, however status associated to the HW is done so with either a display status/menu or colored LED. There is iDRAC for remote access but this application has some issues with

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Criteria	Conformance Level	Remarks and Explanations
		accessibility associated to screen readers, therefore the supports with exceptions
302.2 With Limited Vision	Supports with exceptions	User does not need vision to turn this product on or off, however status associated to the HW is done so with either a display status/menu or colored LED. The status may prove a challenge depending on the degree of the limited site There is IDrac for remote access but this application has some issues with accessibility associated to screen readers, therefore the supports with exceptions
302.3 Without Perception of Color	Supports with exceptions	If the server uses a menu display, there is text equivalent. For LED status, color is the only means of status on the server, however IDrac can be used remotely to view the status of the unit, where color is not the only means of communicating status
302.4 Without Hearing	Supports	User hearing is not required
302.5 With Limited Hearing	Supports	User hearing is not required
302.6 Without Speech	Supports	User speech is not required to operate the product
302.7 With Limited Manipulation	Supports	Product provides at least one mode of operation that does not require fine motor control or simultaneous manual operations. Note if there is a display menu, usage of the up and down, next option may be deemed as needing fine motor skills for the button usage. IDrac is an alternative to this status.
302.8 With Limited Reach and Strength	Supports	Placement of the product is up to the end user, this product is intended to sit in a

Criteria	Conformance Level	Remarks and Explanations
		server racking cabinet
302.9 With Limited Language, Cognitive, and Learning Abilities	Supports with exceptions	Usage of this type of equipment can be used with limited language. This equipment is intended to be used by a trained IT professional, therefore not a product designed for persons with cognitive and learning abilities

Chapter 4: Hardware

Notes:

Criteria	Conformance Level	Remarks and Explanations
402 Closed Functionality	Heading cell – no response required	Heading cell – no response required
402.1 General	Heading cell – no response required	Heading cell – no response required
402.2 Speech-Output Enabled	Heading cell – no response required	Heading cell – no response required
402.2.1 Information Displayed On-Screen	Not Applicable	This product is not defined as closed functionality
402.2.2 Transactional Outputs	Not Applicable	This product is not defined as closed functionality
402.2.3 Speech Delivery Type and Coordination	Not Applicable	This product is not defined as closed functionality
402.2.4 User Control	Not Applicable	This product is not defined as closed functionality
402.2.5 Braille Instructions	Not Applicable	This product is not defined as closed functionality
402.3 Volume	Heading cell – no response required	Heading cell – no response required
402.3.1 Private Listening	Not Applicable	This product is not defined as closed functionality
402.3.2 Non-private Listening	Not Applicable	This product is not defined as closed functionality
402.4 Characters on Display Screens	Not Applicable	This product is not defined as closed functionality

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Criteria	Conformance Level	Remarks and Explanations
402.5 Characters on Variable Message Signs	Not Applicable	This product is not defined as closed functionality
403 Biometrics	Heading cell – no response required	Heading cell – no response required
403.1 General	Not Applicable	The product reviewed did not have Biometrics in the HW
404 Preservation of Information Provided for Accessibility	Heading cell – no response required	Heading cell – no response required
404.1 General	Supports	This product does not remove non-proprietary information provided for accessibility or will restore it upon delivery.
405 Privacy	Heading cell – no response required	Heading cell – no response required
405.1 General	Supports	The product provides the same degree of privacy of input and output to all individuals
406 Standard Connections	Heading cell – no response required	Heading cell – no response required
406.1 General	Supports	Industry Standard ports are used
407 Operable Parts	Heading cell – no response required	Heading cell – no response required
407.2 Contrast	Supports	Keys and controls are light on dark
407.3 Input Controls	Heading cell – no response required	Heading cell – no response required
407.3.1 Tactilely Discernible	Supports	Controls are tactilely discernible
407.3.2 Alphabetic Keys	Not Applicable	This product does not have a keyboard, it will support an external keyboard
407.3.3 Numeric Keys	Not Applicable	This product does not have a keyboard, it will support an external keyboard
407.4 Key Repeat	Not Applicable	This product does not have key repeat
407.5 Timed Response	Not Applicable	This HW does not have a timed response.
407.6 Operation	Supports with exceptions	The product can be used with one hand and may not require tight grasping, pinching, or twisting of the wrist, for daily operation. If the enduser needs to pull from rack, or replace drives as part of their role, may result in some grasping, or pinching. The force required to activate

Criteria	Conformance Level	Remarks and Explanations
		operable parts is less than 5 pounds (22.2 N),
407.7 Tickets, Fare Cards, and Keycards	Not Applicable	The unit reviewed did not have tickerts, fare cards or key cards
407.8 Reach Height and Depth	Heading cell – no response required	Heading cell – no response required
407.8.1 Vertical Reference Plane	Supports	The end user set up will determine this compliance
407.8.1.1 Vertical Plane for Side Reach	Supports	The end user set up will determine this compliance
407.8.1.2 Vertical Plane for Forward Reach	Supports	The end user set up will determine this compliance
407.8.2 Side Reach	Supports	The end user set up will determine this compliance
407.8.2.1 Unobstructed Side Reach	Supports	The end user set up will determine this compliance
407.8.2.2 Obstructed Side Reach	Supports	The end user set up will determine this compliance
407.8.3 Forward Reach	Supports	The end user set up will determine this compliance
407.8.3.1 Unobstructed Forward Reach	Supports	The end user set up will determine this compliance
407.8.3.2 Obstructed Forward Reach	Supports	The end user set up will determine this compliance
407.8.3.2.1 Operable Part Height for ICT with Obstructed Forward Reach	Supports	The end user set up will determine this compliance
407.8.3.2.2 Knee and Toe Space under ICT with Obstructed Forward Reach	Supports	The end user set up will determine this compliance
408 Display Screens	Heading cell – no response required	Heading cell – no response required
408.2 Visibility	Supports	If this product includes a menu display, the display will be visible depending on the placement of the product.
408.3 Flashing	Supports	This product does not have a flashing

Criteria	Conformance Level	Remarks and Explanations
		display. LEDs do not flash more than 3 flashes in any one second
409 Status Indicators	Heading cell – no response required	Heading cell – no response required
409.1 General	Does not support	Status indicators on the hardware are discernible visually, on the hardware they are not discernible with touch or sound. IDrac can be used as alternate form of status with assistive technology for sound, via a screen reader, however IDrac has some issues with ATs
410 Color Coding	Heading cell – no response required	Heading cell – no response required
410.1 General	Supports with exceptions	If the product comes with a display menu there is a text equivalent that is not dependent on color, however color is the primary means of conveying drive status, with green, red, amber lights. On /Off blue or white light.
411 Audible Signals	Heading cell – no response required	Heading cell – no response required
411.1 General	Supports	Audible signals or cues are not used as the only means of conveying information, indicating an action, or prompting a response.
412 ICT with Two-Way Voice Communication	Heading cell – no response required	Heading cell – no response required
412.2 Volume Gain	Heading cell – no response required	Heading cell – no response required
412.2.1 Volume Gain for Wireline Telephones	Not Applicable	This product does not provide two way communication
412.2.2 Volume Gain for Non-Wireline ICT	Not Applicable	This product does not provide two way communication
412.3 Interference Reduction and Magnetic Coupling	Heading cell – no response required	Heading cell – no response required
412.3.1 Wireless Handsets	Not Applicable	This product does not provide two way communication
412.3.2 Wireline Handsets	Not Applicable	This product does not provide two way

Criteria	Conformance Level	Remarks and Explanations
		communication
412.4 Digital Encoding of Speech	Not Applicable	This product does not provide two way communication
412.5 Real-Time Text Functionality	Reserved for future	Reserved for future
412.6 Caller ID	Not Applicable	This product does not provide two way communication
412.7 Video Communication	Not Applicable	This product does not provide two way communication
412.8 Legacy TTY Support	Heading cell – no response required	Heading cell – no response required
412.8.1 TTY Connectability	Not Applicable	This product does not provide two way communication
412.8.2 Voice and Hearing Carry Over	Not Applicable	This product does not provide two way communication
412.8.3 Signal Compatibility	Not Applicable	This product does not provide two way communication
412.8.4 Voice Mail and Other Messaging Systems	Not Applicable	This product does not provide two way communication
413 Closed Caption Processing Technologies	Heading cell – no response required	Heading cell – no response required
413.1.1 Decoding and Display of Closed Captions	Not Applicable	This product does not have closed captioning decoding capability it will stream video with closed captioning capability
413.1.2 Pass-Through of Closed Caption Data	Supports	This product can pass through closed caption video, but does not have any closed caption decoding
414 Audio Description Processing Technologies	Heading cell – no response required	Heading cell – no response required
414.1.1 Digital Television Tuners	Not Applicable	This product does not have a TV Tuner
414.1.2 Other ICT	Not Applicable	This product does not have audio description controls
415 User Controls for Captions and Audio Descriptions	Heading cell – no response required	Heading cell – no response required
415.1.1 Caption Controls	Not Applicable	This product does not provide operable parts for volume control, therefore does

Criteria	Conformance Level	Remarks and Explanations
		not provide operable parts for caption selection. If the product has a Microsoft OS installed. The Microsoft windows OS has some settings for Closed Captioning, Dell defers to Microsoft.com
415.1.2 Audio Description Controls	Not Applicable	This product does not provide operable parts for program selection, therefore does not provide operable parts for the selection of audio description. If the product has a Microsoft windows OS installed, it does have audio description controls in ease of access Dell defers to Microsoft.com.

Chapter 5: Software

Notes: This product is HW and not SW, therefore Chapter 5 table has been removed

Chapter 6: Support Documentation and Services

Notes:

Criteria	Conformance Level	Remarks and Explanations
601.1 Scope	Heading cell – no response required	Heading cell – no response required
602 Support Documentation	Heading cell – no response required	Heading cell – no response required
602.2 Accessibility and Compatibility Features	Does not support	Documentation does not list and explain how to use the accessibility and compatibility features
602.3 Electronic Support Documentation	See WCAG 2.0 section	See information in WCAG section
602.4 Alternate Formats for Non-Electronic Support Documentation	Supports with exceptions	It has been stated that Dell will supply documentation in alternate formats however these may not be readily available

Criteria	Conformance Level	Remarks and Explanations
603 Support Services	Heading cell – no response required	Heading cell – no response required
603.2 Information on Accessibility and Compatibility Features	Does not support	ICT support services does not include information on the accessibility and compatibility features
603.3 Accommodation of Communication Needs	Supports	Dell provides a TTY line, chat line, phone line and email to customers to assist with communication needs

EN 301 549 Report

Notes: EN 301 549 is not in scope for Section 508, and the tables have been removed

Legal Disclaimer (Company)

This VPAT[®] is for information purposes only. The information contained in this VPAT[®] represents Dell Technologies view regarding matters discussed herein as of the date of publication. Because of changing market conditions, this VPAT[®] is not a commitment on the part of Dell, and Dell cannot guarantee the accuracy of any information presented after the date of publication. Dell makes no warranties, express or implied.

E202.2 Legacy ICT. Any component or portion of existing ICT that complies with an earlier standard issued pursuant to Section 508 of the Rehabilitation Act of 1973, as amended (as republished in Appendix D), and that has not been altered on or after January 18, 2018, shall not be required to be modified to conform to the Revised 508 Standards.

Dell defers to www.microsoft.com for Windows[®] and Windows[®] application VPATS[®]. Dell defers third party applications that could be placed on this product to the third party supplier.

Appendix J - PDAA Assessment

Policy Driven Adoption for Accessibility (PDAA): Vendor Self-Assessment

This assessment allows vendor organizations to describe how they are currently implementing digital accessibility policy and practices within their organizations. Please complete this form by checking a box for each topic that most closely match the current state of your organization.

The assessment is not a substitute for other requested accessibility information such as VPATs. For additional information, contact Raymond Jaime, Issuing Officer @RA-GSITPROCUREMENT@pa.gov.

Section 1: Organization information

Organization Name: MJM Systems
Organization Address: 285 Davidson Avenue
Suite 202
Somerset, NJ 08873
Responder Contact Information: James Lincoln
james.lincoln@mjmssystems.com
302-547-7695
Date Assessment Completed August 1st, 2021

Section 2: Organization Type

My organization is a (choose one or more if applicable):

- Manufacturer: My organization develops and sells its own digital products / services
- Service Provider: My organization sells IT development services
- Integrator: My organization develops customer solutions using a combination of products / services from manufacturers and products / components developed by my organization
- Reseller or Catalogue Supplier: Does not develop or have its own products, but offers COTS third party products

Section 3: PDAA Core Criteria Assessment

For each criterion, please select the one status statement that is most relevant to your organization today.

Develop, implement, and maintain a digital accessibility policy.

- My organization has no plan to have a digital accessibility policy. (If selected, skip to next section, or provide comments at the end of this section)
 - a. Having a digital accessibility policy.
 - My organization is developing a digital accessibility policy.
 - My organization is finalizing a digital accessibility policy.
 - My organization has approved a digital accessibility policy.

Appendix J - PDAA Assessment

- b. Having appropriate plans in place to implement and maintain the policy.
- My organization is developing plans to implement our digital accessibility policy and ensure that it is maintained.
 - My organization has completed planning for initial implementation and maintenance of our accessibility policy.
 - My organization has approved plans for accessibility policy implementation and maintenance.
- c. Establishing metrics and tracking progress towards achieving compliance to the policy.
- My organization is identifying metrics that can be used to gauge policy compliance.
 - My organization is collecting metrics and has begun designing progress reporting based on them.
 - My organization is tracking progress on policy adoption and continues to refine the metrics.
- d. Comments (Provide any comments or additional information on defining, implementing, and maintaining a digital accessibility policy here.)
-

Establish and maintain an organizational structure that enables and facilitates progress in digital accessibility.

- My organization has no plan to develop a governance system to support digital accessibility. (If selected, skip to next section, or provide comments at the end of this section.)
- a. Developing an organization wide governance system.
- My organization is investigating opportunities to improve organization wide governance for digital accessibility.
 - My organization is finalizing plans that will result in an organization wide governance system.
 - My organization has approved plans for an organization wide governance system.
- b. Designating one or more individuals responsible for implementation.
- My organization has identified key individuals in the implementation process.
 - My organization has assigned implementation duties and responsibilities to appropriate individuals.
- c. Implementing reporting/decision mechanism and maintain records.
- My organization is developing tools and procedures for tracking digital accessibility issues.
 - My organization is tracking and keeping records of digital accessibility reporting and decisions.
 - My organization uses reports to make organizational changes to improve digital accessibility.
- d. Comments (Provide any comments or additional information on establishing and maintaining an organizational structure here.)
-

Appendix J - PDAA Assessment

Integrate digital accessibility criteria into key phases of development, procurement, acquisitions, and other relevant business processes.

- **Manufacturers:** Address processes that pertain to your development of digital products.
 - **Service providers:** Address processes that pertain to your development of digital services.
 - **Integrators:** Address processes that pertain to your integration services and solutions.
 - **Catalog Vendor/Reseller:** Address processes that pertain to your reseller or catalogue offerings.
- My organization has no plan to integrate accessibility criteria into key business processes. (If selected, skip to next section, or provide comments at the end of this section.)

a. Identifying candidate processes for criteria integration.

- My organization has a plan to identify and evaluate its key business processes for accessibility gaps.
- My organization has evaluated its key business processes for accessibility gaps and is developing plans to better integrate accessibility criteria into these processes.
- My organization has approved plans to integrate accessibility criteria into these processes.

b. Implementing process changes.

- My organization has begun modifying its key business processes to integrate accessibility criteria.
- My organization has completed accessibility criteria modification for some of its key business processes and has begun using these modified processes.
- My organization has completed accessibility criteria modification for most of its key business processes and has begun using these modified processes.

c. Integrate fully into all key processes.

- My organization has fully integrated accessibility criteria into all its key business processes and is using these processes to improve the accessibility of its product / service offerings.
- My organization has fully integrated accessibility criteria ACROSS its key business processes and is using these integrated processes to improve the accessibility of its product / service offerings.

d. Comments (Provide any comments or additional information on integrating digital accessibility criteria into processes here.)

Provide processes for addressing inaccessible digital content.

- **Manufacturers:** Address processes that pertain to your development of digital products in a, b, c, and d.
- **Service providers:** Address processes that pertain to your development of digital services in a, b, c, and d.
- **Integrators:** Address processes that pertain to your integration services and solutions in a, b, c, and d.
- **Catalogue Vendor/Reseller:** Address processes that pertain to your reseller or catalogue offerings in e.

Appendix J - PDAA Assessment

- We do not have plans to provide processes for bringing digital content developed and sold by our organization into accessibility compliance. (If selected, skip to next section, or provide comments at the end of this section.)
- a. Creating plans that include dates for compliance of inaccessible digital content.
- We are developing plans to identify, and test digital content developed and sold by our organization.
 - We have begun identifying and testing for accessibility in digital products / services developed and sold by our organization and are developing plans that include dates for bringing inaccessible digital content into compliance.
 - We perform accessibility testing on all products / serviced developed and sold by our organization and have plans in place that include dates for bringing inaccessible digital content into compliance.
- b. Providing alternate means of access until the digital content is accessible.
- We do not have plans for providing alternate means of access for our organization's digital offerings.
 - We are developing plans for providing alternate means of access for our organization's digital offerings.
 - We are implementing methods providing alternate means of access for our organization's digital offerings.
 - We have fully implemented a repeatable process for providing alternate means for our organization's digital offerings.
- c. Implementing a corrective actions process(s) for handling accessibility technical issues and defects
- We are developing a corrective actions process for handling accessibility technical issues and defects.
 - We are implementing a corrective actions process for handling accessibility technical issues and defects.
 - We have fully implemented an integrated corrective actions process for handling accessibility technical issues and defects.
- d. Maintaining records of identified inaccessible digital content, corrective action, and tracking.
- We plan to develop a record keeping system for tracking the accessibility status of current and future products / services.
 - We plan to develop a record keeping process for corrective action tracking and handling of accessibility related issues / defects.
 - We have a record keeping system for tracking the accessibility status of current and future products / services.
 - We have a record keeping process for corrective action tracking and handling of accessibility related issues / defects.
 - We have a record keeping system for tracking the accessibility status of current and future products / services and use this system to improve the accessibility of our offerings.

Appendix J - PDAA Assessment

- We have a record keeping process for corrective action tracking and handling of accessibility related issues / defects and use this system to improve the accessibility of our offerings.
- e. Maintaining records of identified inaccessible digital content, corrective action, and tracking. (Catalogue Vendor/Reseller only)
 - We have a plan to develop a record keeping system for obtaining and tracking accessibility documentation for vendor products and services offered through our organization.
 - We have a record keeping system for obtaining and tracking accessibility documentation for vendor products and services offered through our organization.
 - We have a record keeping system for obtaining and tracking accessibility documentation for vendor products and services offered through our organization and use this system to improve the accessibility of our offerings.
- f. Section 4 Comments (Provide any comments or additional information on this section here.)

Ensure the availability of relevant digital accessibility skills within (or to) the organization.

- We do not have plans in place to define, identify existing, or acquire digital accessibility skills. (If selected, skip to next section, or provide comments at the end of this section.)
 - a. Defining skills/job descriptions.
 - We have defined general skills and knowledge needs for digital accessibility.
 - We have identified the fields of practice that require at least some level of accessibility knowledge and/or skills (examples include, but are not limited to: product manager, project manager, product/system designer, application architect, application developer, quality assurance tester, and /or training/instructional designer.)
 - We have mapped key accessibility skills and knowledge needs to specific fields of practice.
 - b. Identifying existing resources that match up and address gaps.
 - We have performed a gap analysis correlating accessibility skills and knowledge and current resources.
 - We have organized the gaps in order of priority.
 - c. Managing progress in acquiring skills and allocating qualified resources.
 - We have a high-level management plan in place to acquire accessibility skills and/or allocate those resources.
 - We have developed a training plan for in-house resources and identified external resources for training and/or augmentation.
 - We have developed a process to track resource training and augmentation.
 - All resources have the appropriate skills and continuous monitoring and improvement systems are in place.
 - d. Comments (Provide any comments or additional information on the availability of relevant digital accessibility skills within the organization here.)

Appendix J - PDAA Assessment

Make information regarding digital accessibility policy, plans, and progress available to customers.

- We do not have a plan to make our accessibility policy or other accessibility information publicly available. (If selected, skip to next section, or provide comments at the end of this section.)
 - Our digital accessibility policy is publicly available.
 - Our accessibility policy and documentation (VPATs, etc.) for some products is publicly available or available upon request.
 - We are implementing an accessibility support program within our organization to address questions related to our accessibility documentation.
 - Our accessibility policy and documentation (VPATs, etc.) for all released products is complete and publicly available or available upon request.
 - We are beginning to make other accessibility technical information available such as how accessibility testing is performed.
 - We make accessibility information available beyond policy and VPAT information including information on how accessibility testing is performed and other information that demonstrates our organization's capability to produce accessible product / services.
 - We have a fully implemented accessibility support program within our organization to provide requested documentation and address questions related to the accessibility of our products.

Comments (Provide any comments or additional information on making digital accessibility policy, plans and progress available to customers here.)

- S. Capacity Planning.** Please confirm and describe your ability to perform analysis to determine and ensure infrastructure is the right size to meet present and future goals. Plan to include flexibility so that infrastructure can meet changing demands.

MJM Systems uses multiple tools for infrastructure planning and analysis. The primary tool used for data collection and analysis is Live Optics. Live Optics is a simple, remote and agentless software tool for collecting data about your IT environment. It streams workload data from your storage, data protection, server and file systems to an online analytics engine, then measures, analyzes and blends workload characteristics. The Live Optics dashboard shows your results as a summary of individual performance across all systems and workloads, so you can identify areas where the entire system can operate more efficiently as a whole — at potentially lower cost. Get a clear view of your workload data in just 24 hours. If you choose, you can securely share data characteristics with your team, trusted advisors, hardware or software vendors, or anonymously with the entire Live Optics user community.

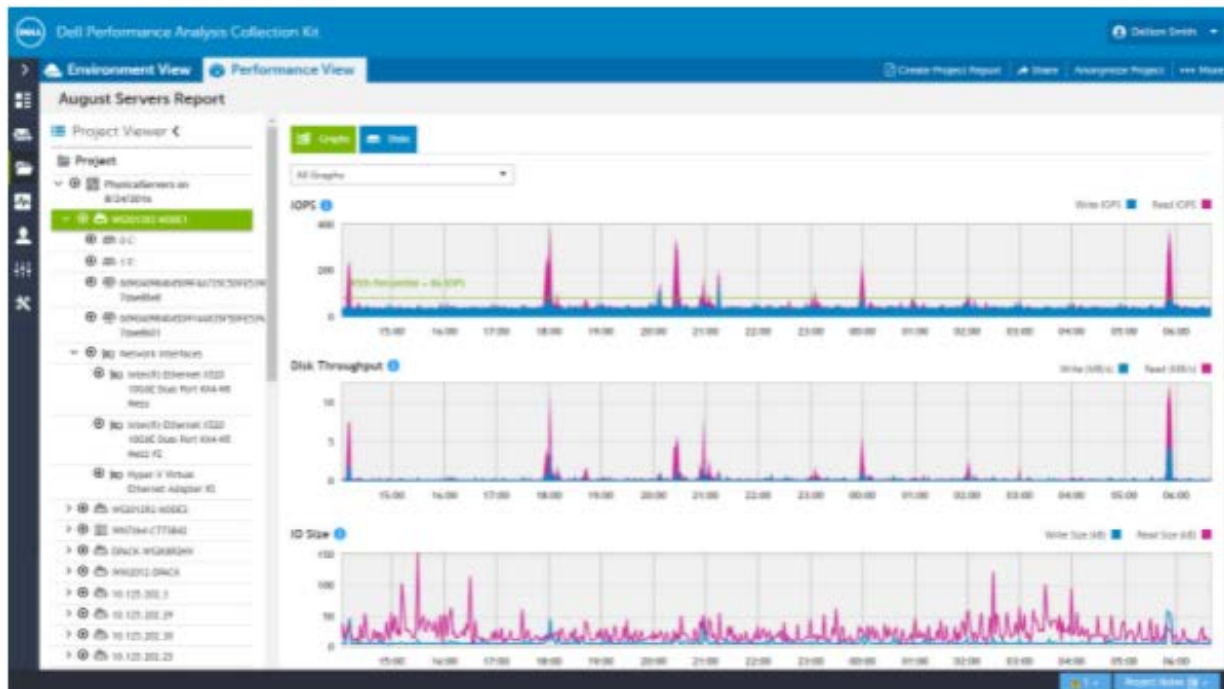
Live Optics gives you direct access to the data and resources you need with three core features:

- **Collect** — Capture performance, software, OS distribution and VM data for time frames ranging from a few hours to one week. Live Optics runs only in memory, making no modifications to servers while it gathers data with near zero overhead. It uses common protocols that generally require no “change control” or firewall modifications.
- **Visualize** — See your IT environment in near real-time and eliminate guesswork. With Live Optics, you can even model project requirements to gain a deeper knowledge of your workloads. The Viewer console gives you quick access to graphs and calculations from the Live Optics analytics engine, so you can clearly see resource requirements for all workloads.
- **Share** — Consult with IT pros worldwide, or just the people you choose. Using a feature similar to social media, Live Optics lets you share IT performance and workload data characteristics securely and anonymously. You can collaborate with peers, vendors or channel partners without compromising security.

Live Optics helps optimize workloads with instant cloud pricing, taking the guesswork out of IT spend with instant cloud pricing across platforms, including the cost of repatriation from public cloud back on-premises. Live Optics helps to make data-driven IT purchasing decisions. As enterprise resources and related costs continue to grow, businesses need to invest strategically. But examining IT infrastructure and critical workload performance in silos can lead to overspending. In addition, lengthy purchase cycles often prompt lines of business to procure their own IT resources. Live Optics helps you overcome those challenges with quick, easy access to IT environment and workload data. Make smarter investment decisions with instant cloud pricing, which lets you compare costs on-premises or across cloud vendors. Live Optics offers workload profiling that is agnostic to vendor, hardware and platform. It also collects and analyzes data from industry-leading operating systems, hardware and virtual environments.

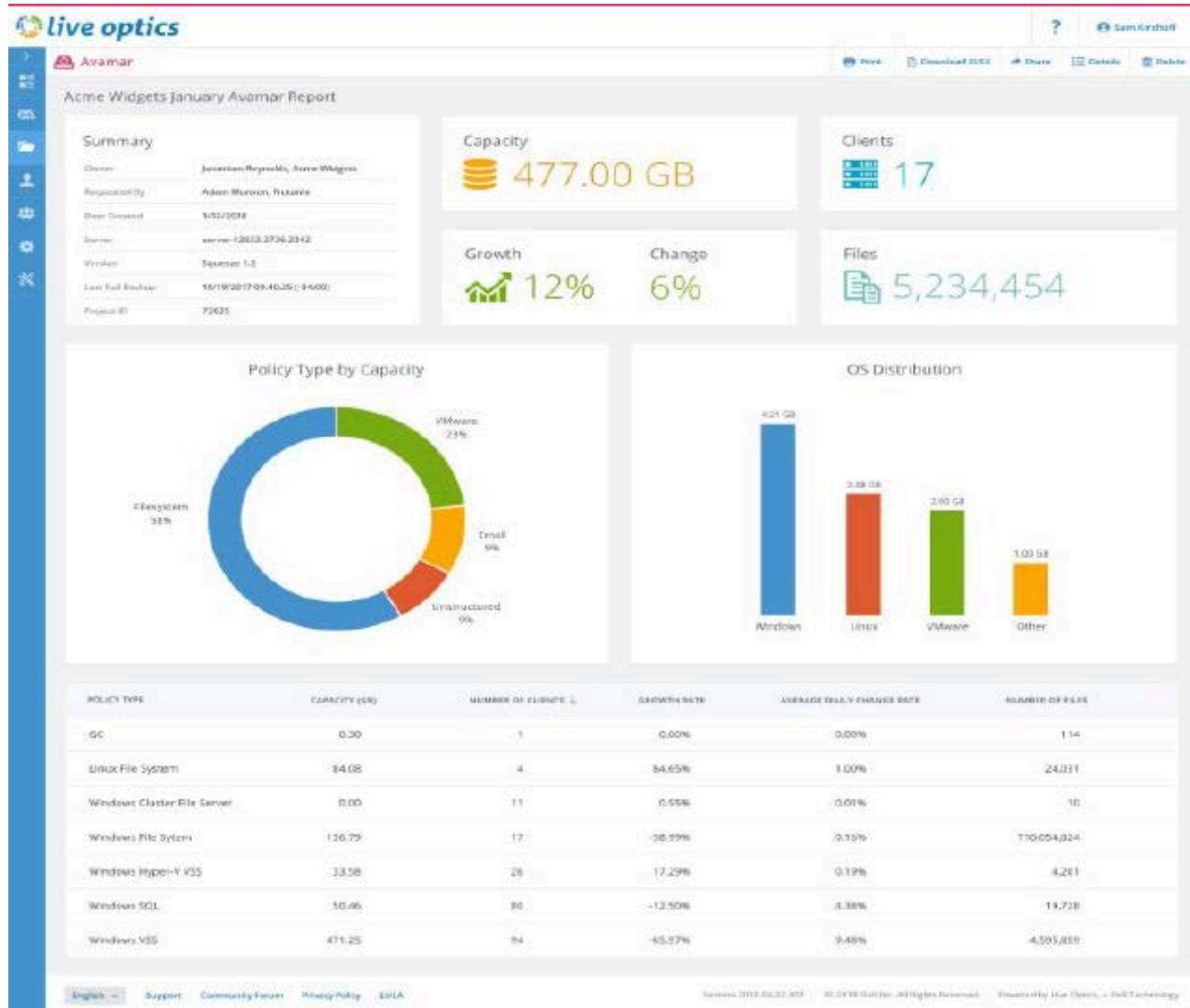
Understand Your Environment:

Live Optics runs remotely and agentlessly to gather core requirements such as disk IO, throughput, capacity, memory and CPU utilization and produces an in-depth view of server workload and capacity requirements. With Live Optics, you can get a true sense of your current IT environment and identify areas for further optimization.



Reporting Capabilities:

Live Optics has the ability to generate two different views: an Aggregate and Individual. The Aggregate will show the combined effect of workloads and their demand on shared resources. This is perfect for understanding the impact of consolidation efforts or migration of workloads to the cloud. The Individual report will show in-depth characteristics of an individual server.



Live Optics Data Security

The integrity of the Live Optics collector, security of the customer environment, and protection of customer data are issues of paramount concern in all elements of design of the Live Optics application. Security overrides all other concerns.

Live Optics security areas are divided into the following categories:

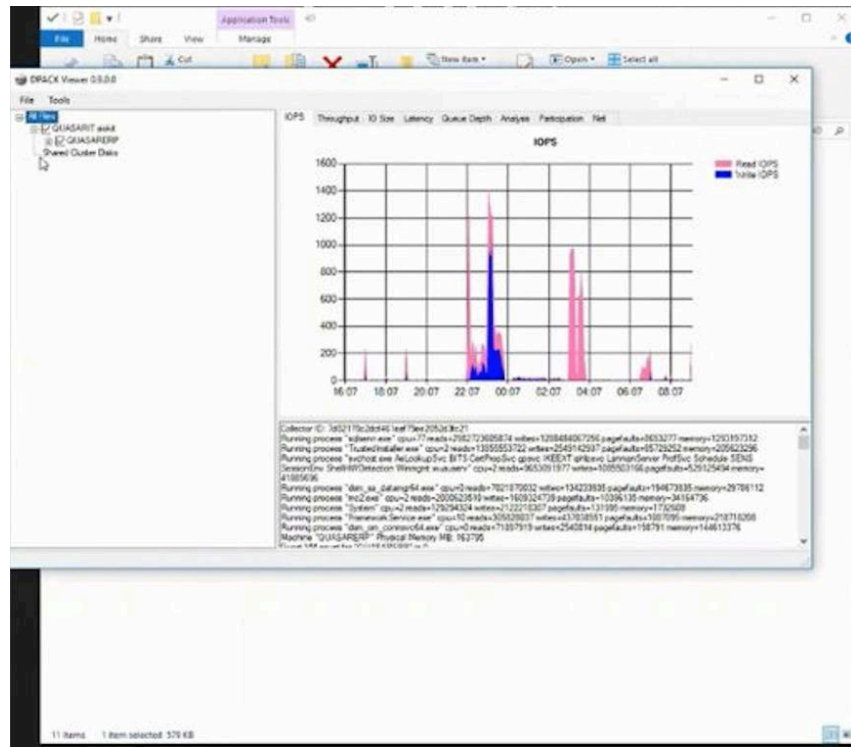
- Collector Integrity
- Collector Information-Gathering Protocols
- Collector Live Optics Web Service Security
- SIOKIT file security
- Live Optics Web Application Security
- Collector Security

Live Optics Offline Collector

In the event that Live Optics information cannot be sent back to the online analytics engine, there is an option to run an offline collector. This Live Optics Offline Collector generates an encrypted file and Dell support can provide a one

time use tool for that specific file. Once you have that tool, you can produce the offline report.

Here is an example of the Offline Tool output:



Full details and specifications of Live Optics Data Security can be located here: https://app.liveoptics.com/library/download/register/LiveOptics_Security_Tech_Brief.pdf

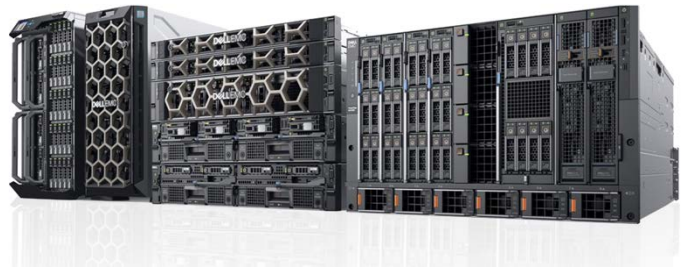
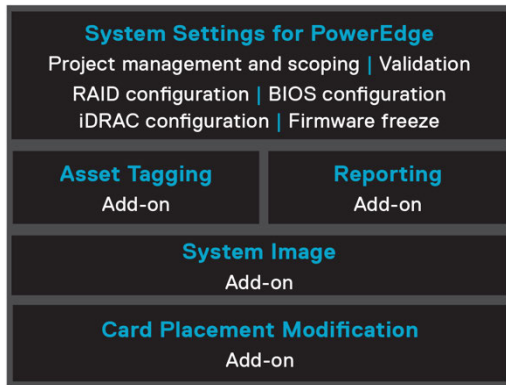
- T. Quick Start Services.** Please confirm and describe your ability to rack and stack equipment, initial configuration, installation record and skills transfer for operation and monitoring.

MJM Systems and Dell Technologies provide multiple options for technology deployments, product configuration and knowledge transfer.

Factory Configuration Services:

- PowerEdge Configuration Services can help you deploy new servers quickly and efficiently. We configure them for you before shipping, right the first time and every time you order. From system settings for PowerEdge to services like custom asset tagging, reporting, system image, and card placement - we deliver your new PowerEdge servers with expert care, precision to your specifications, ready to deploy. Save time and money when you receive PowerEdge servers ready to deploy.
- This base service delivers your new PowerEdge Servers directly from the factory with RAID configuration, your choice of over 200 BIOS settings configuration, iDRAC configuration and firmware freeze to your custom specifications.

- Additional Factory Configuration Services:
 - Asset Tagging Add-on – Easy and affordable tracking and managing of your systems.
 - Reporting Add-on – Keep an accurate record of technology from factory to retirement.
 - System Image Add-on – Supported image types: Windows Server 2016, Windows Server 2019, Red Hat, SUSE Linux or Ubuntu Server.
 - Card Placement Modification Add-on – Save time by letting Dell Technologies custom configure card locations before shipment from the factory.



SKU-based Services: ProDeploy Plus:

- ProDeploy Plus is a comprehensive service providing seamless deployment of new technology. You get a single point of contact for project management including upfront planning, configuration, data migration and knowledge transfer. You will even be able to use system management software such as Microsoft SCCM or MDT to control configuration of new systems. Once we complete the installation, we enable you to perform a data sanitization on legacy systems to prevent data excursions.
- Our best practices ensure a reliable deployment which helps reduces postemployment spikes in help desk calls. But to make sure your help desk is not impacted; we also provide 30-day post-deployment support. All of which saves your IT staff time and improves employee satisfaction.



○ Experts

- Deployment engineer develops implementation plan
- Single point of contact for project management
- Training credits help your IT staff and end-users keep skills up to date.



○ Insights

- Project documentation with knowledge transfer
- Factory distribution point for imaging and configuration of system management software such as SCCM or MDT

- Imaging prior to shipping, WIM, Ghost, ISO, or ImageAssist
- Provisioning for VMware Workspace ONE



○ Ease

- TechDirect self-service portal for configuration and status updates
- 24x7 onsite installation plus data and settings migration
- 30-day post-deployment configuration assistance
- Secure data sanitization for legacy system

Custom Services:

For complex projects or multi-phase projects, MJM Systems and Dell Technologies can develop and deliver a custom professional services delivery model to meet the Commonwealth's needs.

Melillo employs a comprehensive methodology incorporating technical knowledge and know how along with best practices throughout all phases of solution development, design, implementation, deployment, support and documentation. We have a strong and persistent yet flexible project management methodology to ensure quality results at every step of the project lifecycle.

Our team is comprised of highly experienced Project Managers, Solution Architects, and Technical Consultants who rely on our Proven Project Management Methodology:

- Comprehensive SOWs
- Kickoff Meeting Weekly Status Report
- Deliverables Acceptance
- Use of Collaborative Tools
- Executive Sponsorship

We have dedicated Practice Managers Infrastructure, Digital Transformation, Mobility & Testing, Project & Portfolio Management, IT Operations Management & DevOps, and IT Service Management and are uniquely positioned to deliver infrastructure, applications, and professional services solutions to help you transform your business, including:

- Software Defined Data Center
- Converged / Hyper-Converged Infrastructure
- Hybrid IT Cloud Solutions
- Data Center Solutions
- Operations Service Management
- Disaster Recovery
- Backup Recovery
- Quality Assurance
- Project and Portfolio Management
- IT Business Analytics

- Performance Testing
- Data Management
- IT Operations Management
- Operational Intelligence
- Security Solutions
- Big Data Analytics
- Mobility

- U. **Data Migration Services for Enterprise Storage.** Please confirm and describe your ability to migrate the customer's existing operating systems and data to the new system. Describe your ability to develop a migration plan, apply technical resources required, create a schedule, and maintenance window planning.

As massive data growth requires organizations to constantly acquire new storage infrastructure, IT teams are struggling with the inevitable consequences: data migration. Traditional migrations have been time-consuming, tedious, complex and disruptive, sometimes even to the point of preventing organizations from deploying new storage arrays.

MJM Systems and Dell Technologies provides a data migration service – Intelligent Data Mobility – that solves these challenges and enables organizations to achieve accelerated time-to-value on new equipment, along with flexibility and simplicity to move data and workloads seamlessly on an ongoing basis.

Data Migration Challenges:

The Intelligent Data Mobility services enables organizations to easily overcome the traditional obstacles to seamless and successful data migration. These include:

- **Disruption.** Traditional data migration techniques lead to unacceptable disruption in users' ability to access data during migration process.
- **Time-intensive.** Traditional migration requires careful planning and execution of data migration blueprints, coordinating efforts across multiple teams and slowing the pace at which companies can migrate to new storage arrays.
- **Cost.** The expense of traditional data migration can be so high that organizations may delay the acquisition of technology that are required to manage growth in data.

Simplify Data Migration:

- The Intelligent Data Mobility services enable organizations to reduce the time, cost and complexity of data migration. With a proven and repeatable methodology, Intelligent Data Mobility uses technology, automation and MJM Systems expertise to execute seamless data migration and to minimize the time and expense of onboarding new storage.

The Intelligent Data Mobility Service provides:

- A proven platform and vendor-agnostic methodology.
- Standardized data migration blueprints that adapt to your business and technical needs.
- The ability to move data with minimal disruption, time and cost, achieving up to a 40% reduction in time for file migrations, a 33% reduction in time to map environments, and a 60% reduction in server remediation.
- The industry’s most extensive interoperability testing and validation engine.

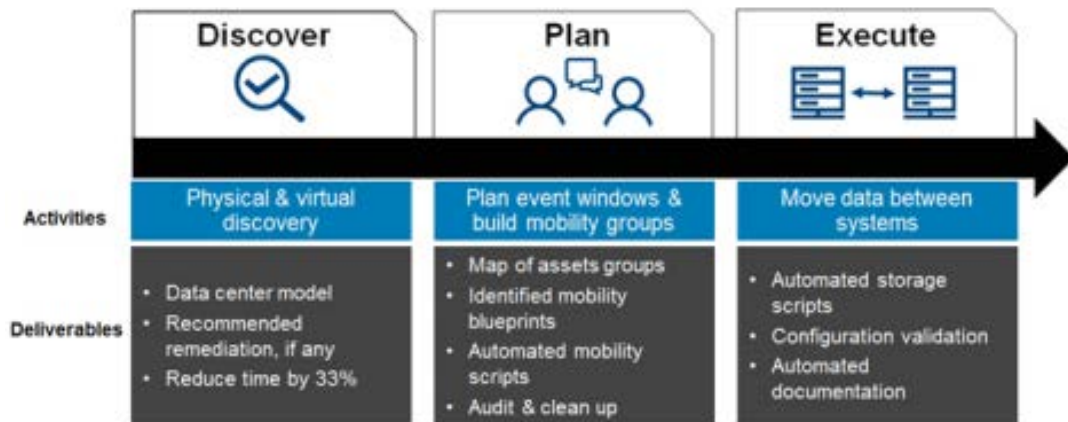
With the Intelligent Data Mobility services, you can focus on your business while MJM Systems and Dell Technologies experts manage data migration, ensuring continuous availability of applications and data throughout the process.

The MJM Systems data migration team is comprised of highly experienced Project Managers, Solution Architects, and Technical Consultants who rely on our Proven Project Management Methodology:

- Comprehensive SOWs and migration plans
- Kickoff Meeting
- Detailed project planning and tracking
- Qualified resource assignment
- Weekly Status Report
- Deliverables Acceptance
- Use of Collaborative Tools
- Executive Sponsorship

Intelligent Data Mobility Methodology:

The IDM methodology is centered on a three-phase approach that delivers flexibility, reduces time and saves cost through standardization and automation



Phase 1: Discover - The discovery suite shortens the time required to map your physical and virtual environments by more than 30% and integration with the E-Lab allows you to radically reduce, or even eliminate, server remediation.

Phase 2: Plan – The planning phase adapts the engagement to your specific business and technical requirements, while maintaining availability and minimizing cost and disruption.

Phase 3: Execute – Lastly, a team of data mobility experts will reconfigure your network and put your new servers and/or storage into production, all the while monitoring and verifying the cutover to ensure a seamless transition.

The standardized and regimented approach to data mobility is at the heart of how MJM Systems and Dell are able to help customers achieve a faster time-to-value at lower cost. Throughout the entire process, we are focused on minimizing disruptions to applications and data

MJM Systems and Dell have many years of data migration experience and delivers a customer experience second to none. Our methodology is immersed in practical knowledge and technical expertise to produce enormous customer benefit by consistently delivering successful data migrations.

V. System Performance and Tuning. Please confirm and describe your ability to measure system performance identify bottlenecks and make modifications for improvement.

Along with Live Optics, previously presented and discussed under Section S: Capacity Planning, MJM Systems utilizes many additional Dell tools to evaluate system performance, identify bottlenecks, complete proactive health checks, identify configuration errors, initiate and complete diagnostic testing, initiate automated support case creation and automatically create system process documentation for common tasks. The most commonly used tools are listed below:

Diagnostic Tools for Dell Laptops and Desktops

Enhanced Pre-Boot System Assessment (ePSA)

Pre-boot diagnostics test your hardware without using the operating system.

SupportAssist for Laptops and Desktops

SupportAssist pro-actively checks the health of your system's hardware and software.

Dell EMC Data Center Tools

SupportAssist for enterprise systems (servers, storage and networking)

SupportAssist provides remote monitoring, automated data collection, automatic case creation, and proactive contact from technical support for enterprise systems.

SupportAssist Collection via iDRAC 7 & 8 for systems based on PowerEdge 12th & 13th generation servers

This article explains how to export a hardware diagnostic file from a Dell PowerEdge Server through the integrated Dell Remote Access Controller iDRAC7 or 8.

SupportAssist Collection via iDRAC 9 for systems based on PowerEdge 14th generation servers

This article and accompanying video, provide information about exporting the SupportAssist Collection.

E-Lab Advisor

Dell EMC services tools information.

E-lab Navigator

Home of the Dell EMC support matrix.

Solve

Generate procedures for common tasks

Dell Enterprise Configuration Planning Tool

This Tool helps IT professionals plan and tune their computer and infrastructure equipment for maximum efficiency.

Security Advisories

View this year's security advisories for all products.

Security Configuration Guides

Learn to deploy and use Dell EMC products securely.

Dell EMC Systems Management

Dell EMC OpenManage Server Administrator (OMSA)

OMSA provides management of your entire server network locally and remotely and one-to-one systems management.

Integrated Dell Remote Access Controller (iDRAC)

iDRAC facilitates remote server management, including deploying, updating, monitoring, and maintaining Dell servers.

Live Optics Performance Tuning

Live Optics Optical Prime is used to collect data from multiple operating systems in IT environments and stores the results in a uniform format called a Collector Run to be then analyzed in the Live Optics Portal with the Live Optics Viewer.

An Optical Prime collector run is a point in time performance capture technology that can remotely collect from hundreds of operating systems at once with unnoticeable impact on the environment.

Optical Prime supports the many-to-one monitoring of the most popular operating systems in the market. The unique logic provided in the program gives you the ability to look at performance at the individual drive level, simulate the effect of combining workloads, or even evaluate cloud candidacy.

The Collector runs only in system memory, does not install, and makes no modifications to your system or the system from which it collects. This is purposeful design to allow most major corporations to be able to record performance and avoid change control entries required for server state alterations.

However, this does make the collector session sensitive. So logouts or reboots will terminate the collection process.

The most popular collector is the Windows based collector. The Windows based collector can remotely collect from Windows, Linux, Solaris, VMware, HP-UX, and other popular Operating Systems.

Data Analyzed by Optical Prime:

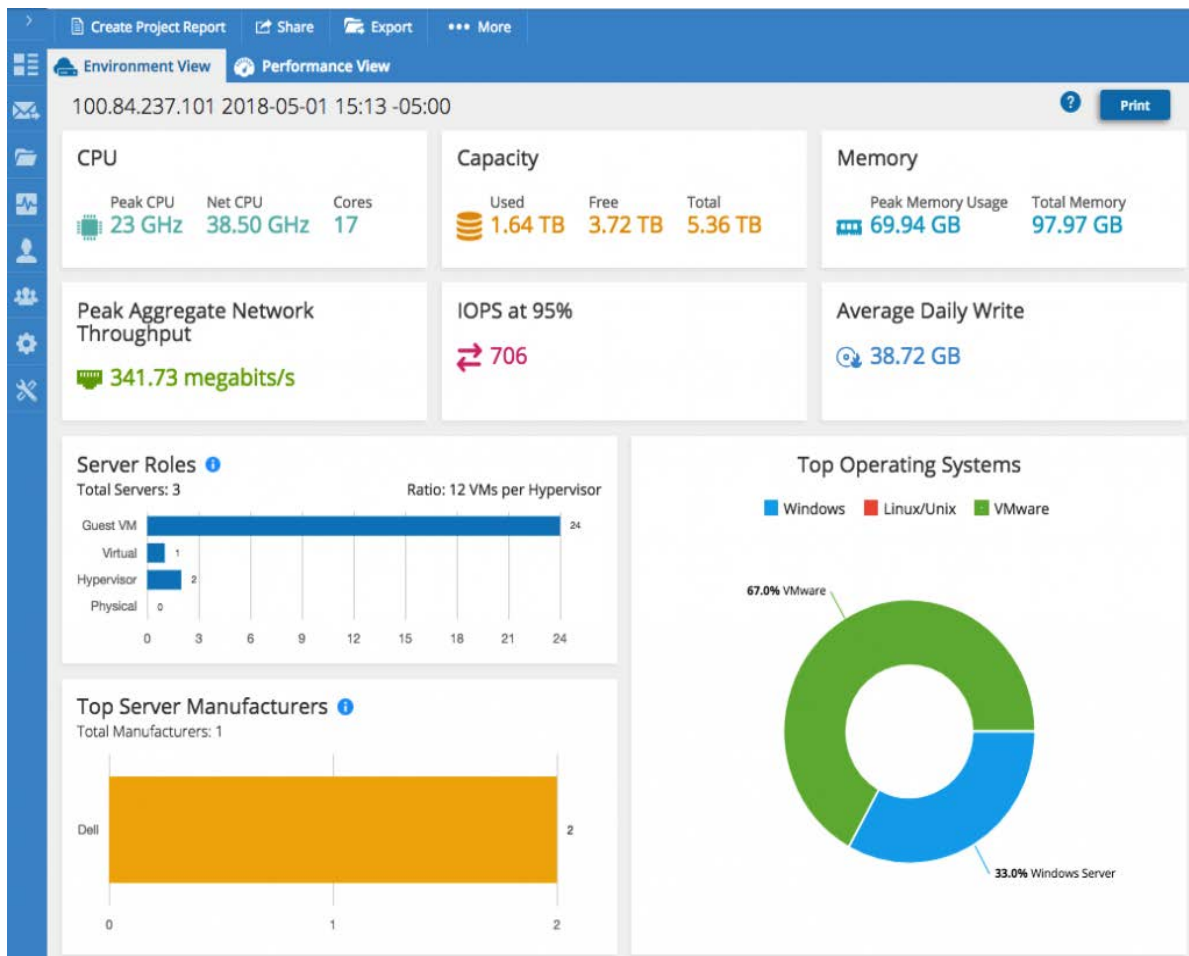
All collector versions record the same data outlined here:

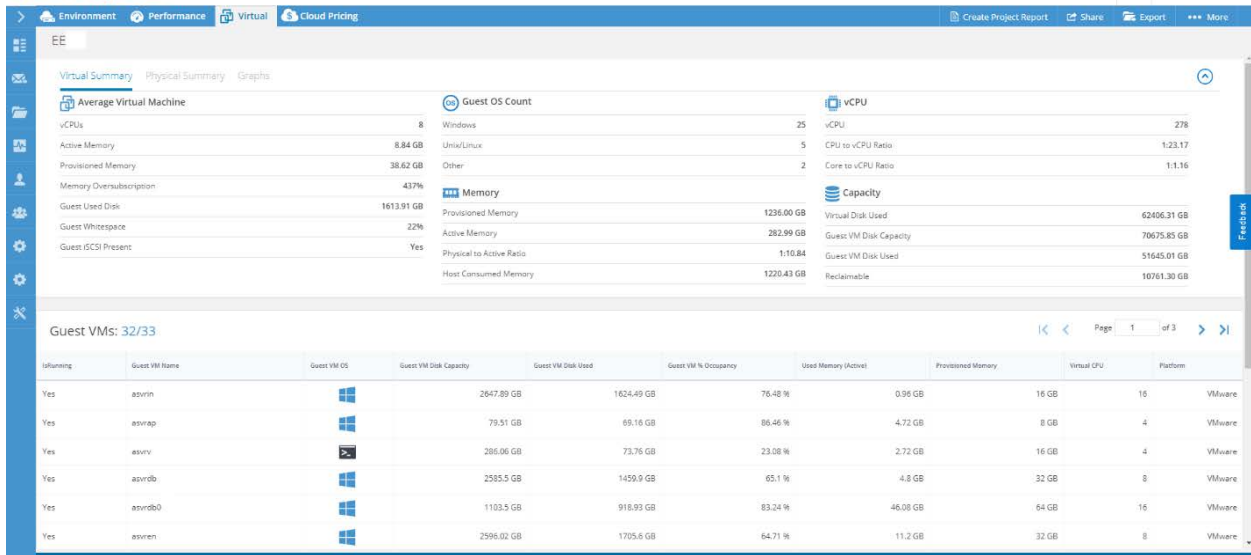
- Server Names (can be manually overridden by the user to mask real name)
- Server Operating System (Publisher, Version, and Patch level)
- Date and time when collection started and when collection ended
- Collector Type and Version
- Protocol Used to collect data
- Physical Disk drive name or number
- Logical Drive names (letters) mounted on Physical disks
- Capacity of Physical Disks
- Capacity Used on Physical Disks
- Capacity Free on Physical Disks
- Physical Disk Block Size
- Total Memory
- Total Memory Used
- Total Memory Free
- Server CPU Description
- Server CPU Usage rates
- Read IOPS**
- Write IOPS**
- Read KB/sec**
- Write KB/sec**
- Avg. Read Size**
- Avg. Write Size**
- Read Latency**
- Write Latency**
- Queue Depth**
- VMware Virtual Memory Settings
- Number of 10 Gb, 1 Gb, and 100 Mb Ethernet ports.
- List of installed applications.

- Flag if the server is virtual or physical
- Flag if the server is hosting virtual machines

** Tracked per Physical Disk

All collectors can run from 4 hours to 7 days increments and can run in offline or online modes to create a local file of the results or stream the data securely to the associated online Viewer profile.





W. Value Added Services. Please provide any additional value added services and options you are capable of providing at no additional cost to the Commonwealth.

MJM Systems offers several Value-Added Services to our customers:

- Access to our Pre-Sales engineering team
 - Subject matter experts for many technology disciplines are available to provide technical expertise and guidance, architecture design, product introductions and services planning. Technical pre-sales resources are available MJM Systems, Dell and our distribution partners.
- Budgetary Quoting Services
 - Our product experts are available to assist in providing content for budget cycles
- Expedited, advanced solution engineering and support assistance
 - We can reach higher-level support resources in a quicker fashion, leading to faster problem resolution.
- Exposure to emerging technology
 - Regularly scheduled technology presentations and webinars to keep you informed of what's new.
- Maintenance renewal tracking and budgeting
- Supply chain management and logistics as related to business conducted with the Commonwealth.

6. 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 Report. The selected Offeror must utilize **Appendix G, Quarterly Reporting Template**, which includes the following:

- (31) Sales report, which includes, at a minimum:
 - (i) Agency Information. Identifying information for the Commonwealth agency;
 - (ii) Maintenance/Services Information. Detailed description of the maintenance/services being performed;
 - (iii) Product and Hardware Information. Detailed information about the product purchased, including the manufacturer; product description/base configuration details; manufacturer part number; any additional upgrades purchased; and quantity;
 - (iv) Order Information and Invoice 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; and
 - (v) Invoice Information. Invoice information for the associated order.
- (32) Problem and response report, which includes, at a minimum: Agency Information; Equipment Information; Maintenance/Services Information; and Problem/Response Information.
- (33) Outstanding issues summary report, which includes, at a minimum: Agency Information; and Outstanding Issue Summary.
- (34) Quarterly summary report, which includes, at a minimum: Quarterly contract activities; achievements; challenges; and the selected Offeror's recommendations for the Commonwealth.
- (35) Detailed SLA metric report. The Contractor will be responsible for tracking and quarterly reporting on the SLA metrics listed in **Appendix F, Service Level Agreements**. The format of the report must be approved by the Commonwealth before ordering can commence.

MJM Systems shall create, maintain, and execute sales reports, problem and response reports, outstanding issues summary reports, quarterly summary reports and detailed SLA metric reports as well as supporting documentation in a format agreed to by the Commonwealth.

B. Standard Configuration Reviews.

- (36) The standard configurations as defined in the cost submittal will be reviewed by the Commonwealth at least annually and any required updates will be made at that time via the change notice process as defined in **Appendix A, Standard Terms and Conditions, Section 51, Changes**. These updates to the standard configurations are to provide the Commonwealth access to the latest in related computer-based technologies.
- (37) If the selected Offeror(s) or the associated OEM discontinues a product, then it must be replaced with a product of equal or better specifications for the originally contracted price.

- C. **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 contractor to identify contract improvement opportunities and cost savings opportunities for the Commonwealth.
- D. **Ad Hoc Reports.** The Commonwealth reserves the right to request ad hoc reports from the selected Offeror. These ad hoc reports are to be made available at no additional charge to the Commonwealth. Reports must be provided within 48 hours of the request if not otherwise specified by the Commonwealth.

7. Objections and Additions to Standard Contract Terms and Conditions. Offeror(s) shall identify which, if any, of the standard contract terms and conditions and service level agreements contained in the **Buyer Attachments** section that it would like to negotiate and what additional terms and conditions the Offeror would like to add to the contract terms and conditions and service level agreements. The Offeror's failure to make a submission will result in its waiving its right to do so later, but the Issuing Office may consider late objections and requests for additions if to do so, in the Issuing Office's sole discretion, would be in the best interest of the Commonwealth. The Issuing Office may, in its sole discretion, accept or reject any requested changes to the standard contract terms and conditions and service level agreements. The Offeror shall not request changes to the other provisions of the RFP, nor shall the Offeror request to completely substitute its own terms and conditions for this RFP. All terms and conditions must appear in one integrated contract. The Issuing Office will not accept references to the Offeror's, or any other, online guides or online terms and conditions contained in any proposal. Offeror(s) shall submit red-lined copies of **Appendix A, Standard Contract Terms and Conditions for IT Supplies and Related Services**, and **Appendix F, Service Level Agreements**.

Regardless of any objections set out in its proposal, Offeror(s) must submit its proposal, including the cost proposal, on the basis of the terms and conditions set out in the **Appendix A, Standard Contract Terms and Conditions for IT Supplies and Related Services** and **Appendix F, Service Level Agreements**, contained in the **Buyer Attachment** section. 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.

MJM Systems is a systems integrator and does not typically provide Independent Software Vendor (ISV) type services and therefore will not be the direct licensor of software. MJM Systems also understands that some of the equipment, such as backup and recovery hardware, may require commercially available software to be included as a component of the overall solution and in such situations the MJM Systems team will utilize an existing agreement with the identified ISV and/or assist with the negotiations of a new agreement utilizing Appendix I as the foundation of the agreement.

245	All	Appendix E	<p>The Commonwealth includes a Software License Agreement as Appendix E. How does the Commonwealth envision resellers to respond to this document?</p> <p>Please consider that resellers are not the publisher of the software and have no authority to amend their terms of use?</p>	<p>The reseller needs to be aware there must be an agreement between the commonwealth and the software publisher prior to a third party software being provided though this contract.</p>
254		APPENDIX E	<p>As a reseller, our company does not own or have the ability to negotiate software license terms, those must be negotiated with the licensor itself. How will the Commonwealth handle this situation?</p>	<p>Please refer to the answer to Question #245.</p>

0. TERM OF CONTRACT

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.

1. 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.

2. COMMENCEMENT OF PERFORMANCE

(a) General. The Contractor shall not commence performance and the Commonwealth shall not be liable to pay the Contractor for any supply furnished or work performed or expenses incurred, until both of the following have occurred:

- (i) the Effective Date has occurred; and
- (ii) the Contractor has received a Purchase Order or other written notice to proceed signed by the Contracting Officer.

(b) Prohibition Prior to Effective Date. No Commonwealth employee has the authority to verbally direct the commencement of any Service or delivery of any Supply under this Contract prior to the date performance may commence. The Contractor hereby waives any claim or cause of action for any Service performed or Supply delivered prior to the date performance may commence.

3. ELECTRONIC SIGNATURES

(a) The Contract and/or Purchase Order may be electronically signed by the Commonwealth.

- (i) Contract. “Fully Executed” at the top of the first page of the Contract output indicates that the signatures of all the individuals required to bind the Commonwealth to the terms of the Contract have been obtained. If the Contract output form does not have “Fully Executed” at the top of the first page, the Contract has not been fully executed.

- (ii) Purchase Orders. The electronically-printed name of the Purchasing Agent on the Purchase Order indicates that all approvals required by Commonwealth contracting procedures have been obtained.
- (b) 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 acknowledgement 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.

4. 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: Unless specifically indicated otherwise, days mean calendar days.

Appendix A, Standard Contract Terms and Conditions for IT Supplies and Related Services

- (d) **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 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) **Statement of Work:** A document attached to a purchase order from the Contractor which details the Services which will be provided by the Contractor.
- (i) **Supplies:** All tangible and intangible property including, but not limited to materials and equipment, provided by the Contractor to satisfy the Contract.

5. PURCHASE ORDERS

- (a) The Agency 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.
- (b) 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.
- (c) 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.

6. 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 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.

7. 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 Section 22(c). 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.

8. OTHER CONTRACTORS

The Commonwealth may undertake or award other contracts for additional or related work, and the Contractor shall fully cooperate with other contractors and Commonwealth employees, and coordinate its 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 work 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.

9. DELIVERY

- (a) Supplies Delivery: All Supplies 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 30 days after the Effective Date.

- (b) Delivery of Services: 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. PRODUCT CONFORMANCE

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

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

11. 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 which are discovered to be defective or fails 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 30 days after notification. Rejected Supplies left longer than 30 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 with 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.

12. 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 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.

13. 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 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.

14. 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.

15. 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.

16. 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 and 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.

17. 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. All Services shall be performed within the time period(s) specified in the Contract. The Contractor shall be compensated only for work 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.

18. 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:

- (a) Vendor name and “Remit to” address, including SAP Vendor number;
- (b) Bank routing information, if ACH;
- (c) SAP Purchase Order number;
- (d) Delivery Address, including name of Commonwealth agency;
- (e) Description of the Supplies/Services delivered in accordance with SAP Purchase Order (include purchase order line number if possible);
- (f) Quantity provided;
- (g) Unit price;
- (h) Price extension;
- (i) Total price; and
- (j) Delivery date of Supplies or Services.

If an invoice does not contain the minimum information set forth in this section, 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.

19. PAYMENT

- (a) The Commonwealth shall put forth reasonable efforts to make payment by the required payment date. The required payment date is: (a) the date on which payment is due under the terms of the Contract; (b) 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 (c) the payment date specified on the invoice if later than the dates established by (a) and (b) above. 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 No. 266 of 1982, 72 P. S. § 1507, (relating to interest penalties on Commonwealth accounts) and accompanying regulations 4 Pa. Code §§ 2.31—2.40. 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.

- (b) 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.
- (c) 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.

20. 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.

21. 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, 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 subsection (c) of Section 27, DEFAULT, in addition to other remedies available to the non-breaching party.

Appendix A, Standard Contract Terms and Conditions for IT Supplies and Related Services

- (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 an un-redacted version of the appropriate document, and
 - (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, and
 - (iii) Prepare a signed written statement that states:
 - (i) the attached document contains confidential or proprietary information or trade secrets;
 - (ii) the Contractor is submitting the document in both redacted and un-redacted format in accordance with 65 P.S. § 67.707(b); and
 - (iii) the Contractor is requesting that the document be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests.

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

22. 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 state and federal 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 23 survive the expiration or termination of this Contract.

23. DATA BREACH OR LOSS

- (a) Contractor shall comply with all applicable data protection, data security, data privacy and data breach notification laws, including but not limited to the *Breach of Personal Information Notification Act*, 73 P.S. §§ 2301—2329.
- (b) For Data and Confidential Information in the possession, custody and control of the Contractor or its employees, agents, and/or subcontractors:
- (c) The Contractor shall report unauthorized access, use, release, loss, destruction or disclosure of Data or Confidential Information ("Incident") to the Commonwealth within two (2) hours of when the Contractor knows of or reasonably suspects such Incident, and the Contractor must immediately take all reasonable steps to mitigate any potential harm or further access, use, release, loss, destruction or disclosure of such Data or Confidential Information.
- (d) Contractor shall provide timely notice to all individuals that may require notice under any law or regulation as a result of an Incident. The notice must be pre-approved by the Commonwealth. At the Commonwealth's request, Contractor shall, at its sole expense, provide credit monitoring services to all individuals that may be impacted by any Incident requiring notice.

- (e) Contractor shall be solely responsible for any costs, losses, fines, or damages incurred by the Commonwealth due to Incidents.
- (f) As to Data and Confidential Information fully or partially in the possession, custody, or control of the Contractor and the Commonwealth, the Contractor shall diligently perform all of the duties required in this Section 24 in cooperation with the Commonwealth, until the time at which a determination of responsibility for the Incident, and for subsequent action regarding the Incident, is made final.

24. COMMONWEALTH HELD HARMLESS

- (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* (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.

25. 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 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 damages for:
 - (i) bodily injury;
 - (ii) death;
 - (iii) gross negligence or intentional or willful misconduct;
 - (iv) damage to real property or tangible personal property for which the Contractor is legally liable; or

- (v) the Contractor's indemnity of the Commonwealth for patent, copyright, trade secret, or trademark protection as set forth in Section 34, Patent, Copyright, Trademark and Trade Secret Protection.
 - (vi) the Contractor's indemnity for an Incident as set forth in Section 24, Data Breach or Loss.
- (b) Except as set forth in Section 42, Virus, Malicious, Mischievous or Destructive Programming, the Contractor shall not be liable to the Commonwealth for indirect, consequential, special, incidental or punitive damages.

26. 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 work within the time specified in the Contract or Purchase Order or as otherwise specified;
 - (ii) Failure to perform the work 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 as detailed in the specifications referenced in the Contract or a Purchase Order;
 - (iv) Failure to deliver the awarded item(s) within the time specified in the Contract or Purchase Order or as otherwise specified;
 - (v) Improper delivery;
 - (vi) Failure to provide an item(s) which is in conformance with the specifications referenced in the Contract or Purchase Order;
 - (vii) Delivery of a defective item;
 - (viii) Failure or refusal to remove material, or remove and replace any work rejected as defective or unsatisfactory;
 - (ix) Discontinuance of work without approval;
 - (x) Failure to resume work, which has been 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 materials furnished, labor supplied or performed, for equipment rentals, or for utility services rendered;
 - (xiv) Failure to protect, to repair, or to 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 Section 29, Contract Controversies, the Contractor's exclusive remedy shall be to seek damages in the Commonwealth Board of Claims.

27. 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.

28. TERMINATION PROVISIONS

The Commonwealth has the right to terminate this Contract or any Purchase Order for any of the following reasons. Termination shall be effective upon written notice to the Contractor.

- (a) **TERMINATION FOR CONVENIENCE:** The Commonwealth shall have the right to 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 to be in the best interest of the Commonwealth. Any such termination shall be effected 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 Services performed and all Supplies delivered 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 Section 29, Contract Controversies, of this Contract.

- (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, in addition to its other rights under this Contract, shall have the right to terminate the Contract or a Purchase Order issued from the Contract, in whole or in part, by providing written notice of default 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. 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.

- (i) Subject to Section 25, Limitation of Liability, in the event the Commonwealth terminates this Contract in whole or in part as provided in this subsection, the Commonwealth may procure Services or Supplies similar to those so terminated, and the Contractor, in addition to liability for any liquidated damages, shall be liable to the Commonwealth for the difference between the Contract price for the terminated portion of the Services or Supplies and the actual and reasonable cost (but in no event greater than the fair market value) of producing substitute equivalent services for the terminated Services or Supplies, provided that the Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this Section.
- (ii) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises out of causes beyond the control of the Contractor. Such causes may include, but are not limited to, acts of God or of the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, work stoppages, freight embargoes, acts of terrorism and unusually severe weather. The Contractor shall notify the Contracting Officer promptly in writing of its inability to perform because of a cause beyond the control of the Contractor.
- (iii) Nothing in this subsection shall abridge the Commonwealth's right to suspend, debar or take other administrative action against the Contractor.
- (iv) 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).

29. CONTRACT CONTROVERSIES

- (a) In the event of a controversy or claim arising from the Contract, the Contractor must, within six 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.

- (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.

30. 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 work to be performed under this Contract without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.
- (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, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.
- (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.

31. 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.

32. 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.

33. 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 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*, 71 P.S. § 732-10—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 Materials 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 works produced 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 work produced 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.

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- (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.
- (g) The obligations of the Contractor under this Section continue without time limit and survive the termination of this contract.
- (h) 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.
- (i) 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.

34. OWNERSHIP RIGHTS

- (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 Contractor has previously developed software and related processes, instructions, methods, and techniques, and that the same shall remain the sole and exclusive property of Contractor. Contractor retains ownership of all Contractor Intellectual Property that Contractor delivers to the Commonwealth pursuant to this Contract.
- (c) Commonwealth Intellectual Property and Data. The Commonwealth owns all Data and 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. Commonwealth grants Contractor a non-exclusive, royalty-free, license to use, copy, display, and prepare derivative works of the Commonwealth's Intellectual Property and Data only to fulfill the purposes of this Contract. The Commonwealth's license to Contractor is limited by the terms of this Contract.
- (d) Click-Through Terms. The terms and conditions of this Contract shall be the exclusive terms of agreement between the Contractor and the Commonwealth. Other terms and conditions included in click-through agreements or referenced in the Contractor's quotations, invoices, business forms, or other documentation shall not become part of this Contract and shall be disregarded by the parties. Any such terms shall be unenforceable by the Contractor and not binding on the Commonwealth.
- (e) 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.

35. 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) 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, in the provision of services under the contract.
- (d) Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the [Public Employee Relations Act](#), [Pennsylvania Labor Relations Act](#) or [National Labor Relations Act](#), as applicable and to the extent determined by entities charged with such Acts' enforcement, and shall comply with any provision of law establishing organizations as employees' exclusive representatives.
- (e) 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.
- (f) 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.

- (g) 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.
- (h) 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.
- (i) 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.
- (j) 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.

36. 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 procurement process.

- (a) Definitions. For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this section:

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- (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 with the Commonwealth.

Appendix A, Standard Contract Terms and Conditions for IT Supplies and Related Services

- (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 Contractor activity with the Commonwealth and Commonwealth employees, and which is distributed and 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.

37. 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.

Appendix A, Standard Contract Terms and Conditions for IT Supplies and Related Services

- (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 search the current list of suspended and debarred Commonwealth contractors by visiting the eMarketplace website at <http://www.emarketplace.state.pa.us> and clicking the debarment List tab.

38. 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.

39. 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:
 - (d) 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
 - (e) Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.
- (f) 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.

- (g) 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.
- (h) 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.
- (i) 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.
- (j) 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.
- (k) 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.

40. INFORMATION TECHNOLOGY POLICIES

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: <https://www.oa.pa.gov/Policies/Pages/itp.aspx>), including the accessibility standards set out in IT Bulletin ACC001, *IT Accessibility Policy*. The Contractor shall ensure that Services procured under this Contract comply with the applicable standards. In the event

such standards change during Contractor's performance, and the Commonwealth requests that Contractor comply with the changed standard, then any incremental costs incurred by Contractor to comply with such changes shall be paid for pursuant to a change order to the Contract.

41. 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. It is understood that the Contractor may not install the software on any computing device not being used to provide Services to the Commonwealth, and that all copies of the software will be removed from all devices upon termination of this Contract.
- (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.

42. 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 Request for Criminal Record Check form and procedure found at <https://www.psp.pa.gov/Pages/Criminal-History-Background-Check.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 2, 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.

43. 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.

44. POST-CONSUMER RECYCLED CONTENT

- (a) 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 on the Department of General Services website at <https://www.dgs.pa.gov/> on the date of submission of the bid, proposal or contract offer.
- (b) 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.

45. HAZARDOUS SUBSTANCES

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, known as

the “Worker and Community Right to Know Act” (the “Act”) and the regulations promulgated pursuant thereto at 4 Pa. Code Section 301.1, *et seq.*

- (a) 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 Paragraph (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 substances by volume or those substances consisting of 5.0% or more of the mixture.

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.

Container labels shall provide a warning as to the specific nature of the hazard arising from the substance in the container.

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:

- NFPA 704, Identification of the Fire Hazards of Materials.
- National Paint and Coatings Association: Hazardous Materials Identification System.
- American Society for Testing and Materials, Safety Alert Pictorial Chart.
- American National Standard Institute, Inc., for the Precautionary Labeling of Hazardous Industrial Chemicals.

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.

- (b) 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.

46. 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.

47. 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.

48. 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.

49. 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.

50. 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.

51. 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 Section 29, Contract Controversies.

52. 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.

53. LEASES

To the extent that the Contractor offers the Commonwealth or any purchasing agency ("Lessee") the option to lease any Supplies covered by the Contract, the Leasing Terms and Conditions, attached hereto as Appendix 1, 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 the Leasing Terms and Conditions. Any items covered by a Lease shall be termed "Leased Property" in the Leasing Terms and Conditions. To the extent that there is a conflict between the Leasing Terms and Conditions and the other terms and conditions of the Contract, the Leasing Terms and Conditions shall prevail to the extent that the Lessee has elected a leasing option.

54. INSTALLMENT PURCHASES

- (a) Installment purchase options. 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, Appendix 2, Installment Purchase Terms and Conditions, in addition to the other terms and conditions of the Contract, shall govern the Installment Purchase. If a Purchaser desires to purchase items on an installment basis, the Purchaser shall indicate its Installment Purchase election on the Purchase Order 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.

- (b) Assignments. 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.

55. CONTROLLING TERMS AND CONDITIONS

The terms and conditions of this Contract shall be the exclusive terms of agreement between the Contractor and the Commonwealth. All quotations requested and received from the Contractor are for obtaining firm pricing only. 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.

56. AGENCY-SPECIFIC SENSITIVE AND CONFIDENTIAL COMMONWEALTH DATA (IF APPLICABLE)

- (a) Contractor 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 subject to various state and federal laws and policies that vary from agency to agency, and from program to program within an agency. If applicable, prior to deployment of the Supplies on any Commonwealth agency facilities, the Contractor must receive and sign off on particular instructions and limitations as dictated by that Commonwealth agency, including but not limited to, as necessary, HIPAA Business Associate Agreements, a sample of which is attached hereto as Attachment 2 to this Contract's Appendix E, *Software License Requirements Agreement Template*. This sign-off document (a sample of which is attached hereto as Attachment 3 to this Contract's Appendix E, *Software License Requirements Agreement Template*), will include a description of the nature of the data which may be implicated based on the nature of the Contractor's access, and will incorporate the Business Associate Agreement if it is applicable.

- (b) Contractor 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 Supplies), the Contractor 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 a Commonwealth agency and signed by at least one signatory authorized to bind the Contractor is valid and is hereby integrated and incorporated by reference into this Contract via Purchase Orders issued under this Contract.
- (c) This Section 56 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 Contractor's access, to refer the Contractor 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 56 are in addition to and not in lieu of other requirements of this Contract, its Exhibits, Appendices and Attachments, having to do with data privacy and security, including but not limited to the requirement that the Contractor comply with all applicable Commonwealth ITPs, which can be found at <https://www.oa.pa.gov/Policies/Pages/itp.aspx>.
- (e) Contractor shall conduct additional background checks, in addition to those required in Section 42, Background Checks, as may be required by a Commonwealth agency in its sign-off documents. The Contractor shall educate and hold its agents, employees, contractors and subcontractors to standards at least as stringent as those contained in this Contract. The Contractor shall provide information regarding its agents, employees, contractors and subcontractors to the Commonwealth upon request.

57. FEDERAL REQUIREMENTS

If applicable, the Contractor 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 Supplies and Services. This sign-off document (a sample of which is attached as Attachment 3 to this Contract's Appendix E, *Software License Requirements Agreement Template*, in addition to any applicable requirements of Section 56, Agency-Specific Sensitive and Confidential Commonwealth Data, will include a description of the required federal provisions, along with the applicable forms necessary for the Contractor and/or Software Licensor execute, as necessary. The sign-off document, along with attachments, must be attached to the Purchase Order. The Commonwealth agency will inform the Contractor whether they must execute the sign-off document as required by the federal government.

APPENDIX 1

LEASING TERMS AND CONDITIONS

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 S to the RFP.

If the Contractor delivers the Leased Property in more than one delivery, unless otherwise specified in the specifications for the 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

1. 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.
2. 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:
 - a. The Lessee delivers unencumbered title to the Leased Property to the Contractor or Initial Assignee (if applicable);
 - b. The Lessee returns the Leased Property to the Contractor/Initial Assignee in good condition, reasonable wear and tear excepted; and
 - c. 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

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.

- a. 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.
- b. The Leased Property shall remain personal property and shall not become a fixture or affixed to real property without consent of the Contractor/assignee.
- c. 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.
- d. 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

1. The Lessee shall have the benefit of any and all manufacturer or supplier warranties for the Leased Property during the Lease term.
2. 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 Section J shall have occurred and be continuing.

G. LIABILITY

1. 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.
2. The Lessee shall, during the Lease term, either self-insure or purchase insurance to cover the risks it has assumed under Paragraph 1 of this Subsection, including but not limited to risks of public liability and property damage.

H. ASSIGNMENT

1. 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.
2. 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.

3. 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.
4. After a Lessee executes and the Initial Assignee receives an Acceptance Certificate:
 - a. 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
 - b. 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.
5. 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

1. 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.
2. 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.
3. 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 Section B, 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

1. 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:
 - a. Terminate the applicable Lease.
 - b. 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.

- c. 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 .15 and may be accessed via the Federal Reserve Board's Internet website.
2. In the event of Contractor default under the Default provision of the Contract, the Lessee may pursue one or more of the following remedies:
 - a. 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.
 - b. 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.
 - c. 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 Section J, 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.

1. As a matter of policy, the Commonwealth has 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.
2. Except in the event of a total loss of any or all Leased Property as described in Section E., 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.
3. 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

1. 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 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.

2. 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.

APPENDIX 2

INSTALLMENT PURCHASE TERMS AND CONDITIONS

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 S to the RFP.

If the Contractor delivers the Installment Item in more than one delivery, unless otherwise specified in the Installment Purchase PO, the Purchaser will provide separate Acceptance Certificates for each delivery of the Installment Items, and the Purchaser will make periodic payments for the Installment Items corresponding to the amount of the Installment Items delivered and accepted 30 days prior to the payment due date.

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.

B. PAYMENTS

1. Full Term Intention. The Purchaser shall pay the applicable monthly or annual 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.
2. 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 shall release the Purchaser of all further obligations under the Installment Purchase, provided:
 - a. The Purchaser delivers unencumbered title to the Installment Items to the Contractor or Initial Assignee (if applicable);
 - b. The Purchaser returns the Installment Items to the Contractor/Initial Assignee in good condition, reasonable wear and tear excepted; and

- c. 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

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, except as otherwise set forth in the Contract or PO. The Contractor or 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 Section I of this Appendix.

- a. 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.
- b. The Installment Items shall remain personal property and shall not become a fixture or affixed to real property without consent of the Contractor/assignee.
- c. 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.
- d. 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 ITEM

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 Item 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. RISK OF LOSS

1. The Purchaser, after acceptance of the installment Items, shall assume and bear the risk of loss or damage to, 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:

- a. to replace the equipment with like equipment, or
 - b. 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 Installment Purchase PO.
2. 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 1 of Section G, below.
 3. The Purchaser agrees to insure the Installment Items as provided under Paragraph 2 of Subsection G, below.

F. WARRANTIES

1. The Purchaser shall have the benefit of any and all manufacturer or supplier warranties for the Installment Items during the Installment Purchase term.
2. 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 Section J shall have occurred and be continuing.

G. LIABILITY

1. 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.

2. The Purchaser shall, during the Installment Purchase term, either self-insure or purchase insurance to cover the risks it has assumed under Paragraph 1 of this section, including but not limited to risks of public liability and property damage.

H. ASSIGNMENT

1. The Purchaser shall not assign any Installment Purchase PO or other interest in the Installment Item 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 PO and Installment Item 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.
2. The Contractor may assign, without Purchaser consent, any Installment Purchase PO to a third party ("Initial Assignee") who will fund the purchase of the Installment Item. The Initial Assignee may take title to, and assume the right to receive all rental payments for, the Installment Item. 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.
3. 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 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 Item and is not responsible for their selection or installation. After the ordering Purchaser executes, and the Initial Assignee receives, an Acceptance Certificate, if any portion of the Installment Item 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.
4. After a Purchaser executes and the Initial Assignee receives an Acceptance Certificate:
 - a. The Purchaser shall, regardless of whether any portion of the Installment Item is unsatisfactory for any reason, nevertheless, continue to make payments under the

applicable Installment Purchase and shall make any claim relating to the Installment Item against the Contractor or the manufacturer, not against the Initial Assignee or any subsequent assignee; and

- b. 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.

5. 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 ITEM), 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 INSTALLMENT 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

1. If the Contractor is not the supplier of the Installment Item, 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 rental payments under the Installment Purchase to an Initial Assignee, the Purchaser's obligation to make rental payments for the Installment Item 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.
2. 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 rental payments to reflect the requested prepayment and shall advise the Purchaser of the balance to be paid.
3. If the Purchaser purchases Contract items related to 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 Section 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

1. 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 Installment Purchase 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:
 - a. Terminate the applicable Installment Purchase.
 - b. 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, at its option, may, 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.
 - c. Recover from the Purchaser 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 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 at <https://www.federalreserve.gov/>.
2. In the event of Contractor default under the Default provision of the Contract, the Purchaser may pursue one or more of the following remedies:
 - a. If the payments under the Installment Purchase have been assigned to an Initial Assignee, the Purchaser shall continue to make payments for that Installment Item

which has been delivered and for which the Purchaser has provided acceptance certificates to the Contractor/Initial Assignee.

- b. The Purchaser may cancel, without liability for payment, its order for any Installment Item which has 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 amount of Installment Items which was delivered and accepted. If no Installment Items have been delivered and accepted, the Purchaser may terminate the Installment Purchase without liability for any payment.
- c. 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

1. 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 permit, during the Installment Purchase term, the Installment Item to be directly or indirectly used for a private business use within the meaning of Section 141 of the IRC.
2. 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, upon demand, will 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 Installment 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.

Appendix B - Project References - A Duie Pyle.docx

Name of Client & Project Title	A Duie Pyle – Data Center Infrastructure Project	
Contract Value	\$4,00,000.00	
Nature and Scope of Project:	Hardware and services for a data center infrastructure refresh project and virtual desktop rollout. All aspects of infrastructure architecture were designed by MJM Systems / Melillo Consulting in conjunction with the OEM and end user compute solution vendor. We managed the entire shipping and delivery process which included multiple data centers and this was done on time and on budget. We also provided professional services and project management to implement the entire solution as well as extensive knowledge transfer to the customer. Disaster recover runbooks and deep knowledge services were completed for BCDR in this project as well. Ultimately, we were responsible for deploying a complete active / active data center environment. Scope was approximately a half a petabyte of storage and connectivity to 350 virtual server systems.	
Project Duration:	Start Date Year: September 2020	End Date Year: March 2021
Nature of the Client:	Executive sponsor was the CEO, COO of the organization as well as the Sr. VP / CIO. Client audience was the entire company user base. In response to COVID there was a mandate for remote access capabilities that required significant changes to IT infrastructure, software and procedures.	
Nature of Client Audience:	Logistics	
Number of Users:	1500 users across more than 35 locations	
# & Composition of Vendor Employees & Consultants Assigned:	<p>Overall, more than two dozen people were involved from the OEM and MJM Systems / Melillo Consulting were involved. When you include customer resources, there were over 50 individuals involved.</p> <ul style="list-style-type: none"> Account Management Team Architect Subject Matter Experts Analysts Enc User Compute Resources Application Specialists Data Base Administrators Technical Implementation Staff Project Management Team Executive Leadership 	

Appendix B - Project References - FCB.doc

Name of Client & Project Title	First Citizens Bank – Data Center Project	
Contract Value	\$14,500,000.00	
Nature and Scope of Project:	Hardware for a merger and a data center refresh. We designed the architecture and then pre-built the servers and storage. We managed the entire shipping and delivery process which included multiple data centers and this was done on time and on budget. We also provided professional services to implement the entire solution as well as extensive knowledge transfer to the customer. Scope was approximately 4 petabytes of storage and over 200 servers.	
Project Duration:	Start Date Year: January 2021	End Date Year: December 2021
Nature of the Client:	Large regional bank with over 700 branches in 30 states done for the IT operations group responsible for all non-desktop related IT.	
Nature of Client Audience:	Executive sponsor was Sr. VP of Operations. Client audience is the entire server and storage and virtual server personnel.	
Number of Users:	This infrastructure services 100 percent of the bank’s employees and 100 percent of the bank’s customers.	
# & Composition of Vendor Employees & Consultants Assigned:	<p>Vendor Project Manager/Key Consultant on Project Team: Chris Bolton was the Vendor Client Manager for FCB along with Cheshire May as one of the Key Consultants.</p> <p>Start-up included all strategic planning, design and architecture in parallel. Peak efforts include management of delivery of all products, wiring the data center, rack and stack, loading operating system so the environment is ready for application migration.</p> <p>On-going efforts will continue until all infrastructure is implemented with the bank’s customer team working with Melillo Consulting. It will end with a week-long knowledge transfer workshop.</p>	
Client Contact Information:	<p>Provide the name, title, address and telephone number of at least two references or contact persons that the Commonwealth can contact to inquire about the vendor’s performance and indicate the role these individuals had in relation to the assignment or project. The references/contact persons should be individuals who were key stakeholders or project leaders and who can validate the vendor’s role and responsibilities and who can comment on the quality of the vendor’s performance. 2 contacts required.</p> <p>Reference Contacts: Name: Kojo Inkumsah Title: Director Server Engineering Department: IT Operations Full Address: 100 E Tryon Rd, Raleigh NC 27603, United States Telephone: 919-716-7833 E-mail: kojo.inkumsah@firstcitizens.com Relation/Role to Project: Manager of the server teams who run all of the servers as part of the Project. Also leads the team that designed the entire solution.</p> <p>Name: Darren Walston</p>	

Appendix B - Project References - FCB.doc

	<p>Title: Sr Director of IT Operations & Engineering Department: IT Operations Full Address: 100 E Tryon Rd, Raleigh NC 27603, United States Telephone: (919) 716-4128 E-mail: darren.wallston@firstcitizens.com Relation/Role to Project: Executive sponsor ultimately responsible for the success of the project.</p>
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Appendix B - Project References - Trinity Health.docx

Name of Client & Project Title	Trinity Health – Together Care EPIC Project	
Contract Value	\$8,000,000.00	
Nature and Scope of Project:	Hardware and services for an Electronic Medical Records project. All aspects of infrastructure architecture were designed by MJM Systems / Melillo Consulting in conjunction with the OEM and application vendor. We managed the entire shipping and delivery process which included multiple data centers and this was done on time and on budget. We also provided professional services and project management to implement the entire solution as well as extensive knowledge transfer to the customer. Disaster recover runbooks and deep knowledge services were completed for BCDR in this project as well. Scope was approximately a petabyte of storage and connectivity to 500 server systems.	
Project Duration:	Start Date Year: June 2019	End Date Year: January 2020
Nature of the Client:	Healthcare	
Nature of Client Audience:	Executive sponsor was the CEO of the organization as well as the Sr. VP / CIO. Client audience were all doctors, nurses, administrative staff, IT, ambulatory care.... Virtually every single aspect of the entire organization.	
Number of Users:	140,000 users across 89 health care systems nationwide	
# & Composition of Vendor Employees & Consultants Assigned:	<p>Overall, more than 25 people were involved from the OEM and MJM Systems / Melillo Consulting were involved. When you include customer resources, there were over 600 individuals involved.</p> <ul style="list-style-type: none"> Account Management Team Architect Subject Matter Experts Analysts Application Specialists Data Base Administrators Technical Implementation Staff Project Management Team Executive Leadership 	

1014526-1099283058Appendix C - Personnel Experience.docx

POSITION	PERSONNEL NAME	ROLES AND RESPONSIBILITIES	COMMITMENT	PERSONNEL EXPERIENCE			
				YEARS OF EXPERIENCE IN POSITION	OTHER RELEVANT EXPERIENCE	EDUCATION	OTHER PROFESSIONAL QUALIFICATIONS
(Include at least one row for all positions identified as Key Positions in III-C of the RFP, as well as any additional positions you've identified as integral to the work delineated in your proposal.)	(Identify by first/last name the person who will fulfill this position.)	(Identify the main roles and responsibility to be performed on the project).	(Provide the percentage of this person's time to be committed to the proposed project.)	(List the number of years this person has acted in the same role on prior projects similar in nature to the proposed project.)	(Provide a brief narrative of other experience this person has had that may be relevant to his/her role in the proposed project.)	(List all postsecondary degrees completed for this person.)	(List any certifications and/or professional memberships for this person that may be relevant to this position.)
Account Executive	James Lincoln	Overall responsibility for the relationship, accountability and complete customer satisfaction	75%	23 Years	Over 23 years of account management experience. Extensive execution of successful projects that are equal to or greater in scale and complexity to the proposed project.	BA Economics from The University of Delaware	Dell Certified Sales Professional Extensive internal Dell training over the past 12 years
Sr Solution Architect	Rick Catalano	Primary technical contact for all things dealing with the Commonwealth including this server project.	75%	32 Years	Over 30 years of experience architecting technical solutions helping customer's reach their desired business outcomes. Committed to designing state of the art IT infrastructures that enable customers to compete and win in the digital age. The driving goal is to improve business performance of client's IT by offering innovative, transformative, and secure	Electronics Engineering and Robotics Training from Delaware Technical College	Technical Solutions Architect Certifications across a multitude of Dell and VMware products that would all pertain to the server project at hand

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					solutions that deliver measurable business value.		
Sales Support Specialist	Mario Brunker	Inside sales support and quoting	25%	2 Years	8 years of sales experience with 4 in sales support. Diligence in maintaining organization, communication, accuracy and punctuality among multiple projects and platforms.	Grossmont College AD Saginaw Valley State University Business Management Studies	
Project Manager	Angela Sutton	Project management for all aspects dealing with the Commonwealth	25%	20 years	PMP-certified Project Manager with experience providing full-service management on IT infrastructure and software implementation engagements. Proficient in comprehensive project planning utilizing framework based on the Project Management Institute's PMBOK and Software Development Lifecycle processes. I have a solid background in process development, problem solving and communicating with executive level management teams. As a team player with strong analytical abilities I work well independently and adapt quickly to new environments, and thrive when performing and managing multiple tasks.	New Jersey Institute of Technology BS Management Information Systems and Services University of Phoenix Master's degree Organizational Leadership	PMP
Director of Project Management	Carolyn Borelly	Complete oversight of all aspects regarding project management	15%	37 Years	With over 35 years in the computing industry, Carolyn provides PMO oversight and project management consulting services. Her areas of focus include Disaster Recovery, Data Protection, Data Migration, and Data	B. A. Economics, Cum Laude, Duke University	Project Management Certification Program from Penn State University including: Project Initiation and Planning, Project Scheduling, Project Costing and Control

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					Center Relocation. She has managed the company's largest and most important IT projects within budget, on schedule, and which exceed customer satisfaction.		Project Risk and Change Management
Project Manager & Solution Architect	Kristen Falcone	Project management for all aspects dealing with the Commonwealth	25%	20 Years	Over 20 years in the IT industry, serving in a variety capacities and roles including IT Strategy and Leadership, Program/Project Management, Process Development, and Application Development and Support	B.A. in Psychology from Boston College	ServiceNow Certified System Administrator ServiceNow Certified Implementation Specialist – ITSM
Director Professional Services	David Smull	Director of Professional Services, supporting the engineers and architects delivering services on this project and providing a point of escalation for the Commonwealth if ever needed. I am responsible for ensuring that the project is properly staffed and executed and that customer satisfaction is excellent.	10%	40 Years	As a Captain in the United States Army, I developed leadership skills that have continued to grow throughout a career as a Software Developer and Technical Manager at Bell Laboratories, a Senior Manager at Lucent Technologies, and Director level roles at various other companies. I have built and led teams that have implemented projects spanning multiple continents and hundreds of thousands of users.	Bachelor's degree, Computer Science, Pennsylvania State University Master's degree, Industrial Engineering, University of Texas, El Paso Post Graduate course work, Artificial Intelligence, Rutgers University	ITIL 3.0
Solution Architect / Technical Architect	Cheshire May	Detailed design and implementation of servers and storage	25%	18 Years	Over 18 years of experience in the tech industry ranging from technical pre-sales to product development. Extensive	BS and MS in Computer Engineering from Carnegie Mellon,	Dell Expert Cloud Architecture

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					execution of successful projects that are equal to or greater in scale and complexity to the proposed project.	MBA from Boston College Carroll School of Management	Dell Proven Professional (many areas) VMware Certified Advanced Professional
Technical Architect	Greg Vaidman	Detailed design and implementation of servers and storage	25%	27 Years	IT Professional with over 20 years of experience, mostly in the consulting arena. Involved in all aspects of service delivery, including solution design and implementation. Works well alone, or as part of a team, including lead architect role. Has been involved in areas such as mission critical infrastructure, enterprise management and software development. Consistently delivers exceptional quality work to his customers.	New Jersey Institute of Technology Computer and Information Science	Dell Unstructured Data Solutions Specialist
Technical Architect	Chris Ayotte	Detailed design and implementation of servers and storage	25%	26 Years	26 years of IT experience with servers, storage, networks. Built out datacenters for large customers in healthcare, financial, defense sectors, including large server deployments of hundreds of servers in a single project	University of Delaware Math and Computer Science	Dell Midrange Storage Solutions Specialist Server Solution Specialist
Sr Delivery Consultant	Jeremy Rupczyk	Detailed design and implementation of servers and storage	25%	20 Years	As a Senior Delivery Engineer on the Infrastructure and Hybrid Cloud team, Jeremy is responsible for ensuring customer satisfaction in every project he undertakes. It falls on him to deliver project outcomes in which all objectives and conditions are met and, should	Associates Degree Program for Data Processing, Community College of Philadelphia	VMware Digital Workspace Advanced VMware Data Center Virtualization Master Advanced VMware Network Virtualization Advanced

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					an issue arise, he is entrusted to successfully navigate it.		
OEM Account Executive	Karen Harford	Overall responsibility for the OEM relationship, accountability and complete customer satisfaction	75%	25 Years	Over 25 years of top-level account management. Focused on account management supporting the Commonwealth of PA, Penn State University, PASSHE, Higher Education, and K12 locally in Harrisburg.	Penn State DuBois Business College Accounting	A10 Positioning and Selling, A10 Security Solutions, A10 Networks Foundation, A10 Networks Sales Enablement, Gigamon-Giga SALES, and Palo Alto Networks-Accredited Sales Expert (ASE) Training.
OEM Data Center Sales Executive	Andrew Maurer	Responsible for all OEM data center solutions within the Commonwealth	75%	14 years	14-year IT career as a Technical Support Specialist at the PA Public School Employees' Retirement System. 8 years working at a large Federal Credit Union as a Network Administrator specializing in Business Continuity, Disaster Recovery, and Risk Management. During his now 8 years of tenure at Dell Technologies, Andrew has held roles in sales and engineering. He began his time at Dell Technologies as an Associate Systems Engineer before he was quickly promoted to Senior Systems Engineer. In this role, he designed complex data center and storage solutions for many departments and agencies of the Commonwealth of PA as well as other Central PA customers like PASSHE, Unisys, The Hershey Company, Rite Aid, TE Connectivity, and Harsco. Andrew is now charged with account	Edinboro University of Pennsylvania BS Business Administration	Cloud Architect, Virtualized Infrastructure Specialist, EMC Proven Professional VMware Certified Professional (VCP), and VMware Certified Associate – Data Center Virtualization (VCA-DCV).

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					management responsibilities around data center needs for the entire Commonwealth.		
OEM Inside Sales Executive	Doris Roberts	OEM Inside sales support and quoting	75%	9 Years	This role supports quote creation, service requests, order placement, and any other request of the customer. She serves as a trainer and mentor to new hires and developing team members. She plays a huge role as an advocate, mentor, and Community Impact Lead with Women in Action (Employee Resource Group within Dell), helping to support other women across the globe. Outside of Dell Technologies, Doris and her husband are huge boardgame geeks, working with boardgame publishers, designers, and retail companies to put together an organization to help bring boardgames back into lives of families. Doris's role in supporting this contract will be as an inside sales expert.		

CONTRACT #
Statement of Work

for

Commonwealth of PA – (Insert Agency Name)

PO Number: _____

AGENCY CONTACT:
AGENCY ADDRESS:

PHONE:
E-MAIL:

APPENDIX E - STATEMENT OF WORK TEMPLATE.DOCX

A. Introduction

This Statement of Work ("SOW") is made ("Effective Date"), by and between the Commonwealth of PA – ("Agency"), with its principal office located at (Address) (hereinafter referred to as "Customer") and Insert full Supplier name, with its principal place of business at Insert Address (hereinafter referred to as "Supplier"). Supplier and Customer 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 access to Agency or third-party software, firmware, data or 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 #XXXXXXXXXX shall govern this SOW.

B. Project Overview and Tasks

Supplier will perform the following tasks (the "Project"):

Supplier to insert exact description of work to be performed

Agency Requirements & Room Preparation:

Any requirements for the agency must be inserted here

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 Customer prior to proposed start date. 5/5/06

The Supplier's required delivery time for the requested services shall be included within this SOW and must be agreed upon by the Parties prior to issuance of the Purchase Order to which this SOW will be attached.

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)

APPENDIX E - STATEMENT OF WORK TEMPLATE.DOCX

E. SOW Acceptance

This SOW is acceptable. The Parties hereby acknowledge and confirm that the scope of work and related terms of this SOW have been read and are accepted and approved. 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 prior to commencing in any work outside the scope of the original SOW.

Please sign and email to **Supplier** at **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. The Parties hereby accept as completed all work indicated in this SOW. The Parties 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

Appendix F - Service Level Agreements.xls

Account Management							
SLA ID	Performance Metric	Description	Performance Threshold Level	Formula	Data Elements for Measurements & Reporting	Report(s)	Credits
AM-01	Customer Inquiry Response Time (CIRT)	The Contractor 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.	95%	Response Times (RT) = Total Number of responses to inquiries that are <= 4 Business hours by Total Inquiries (TI) = Total Number of Inquiries $CIRT = (RT/TI)*100$	1. Response times for all calls by type per reporting period 2. Annual cumulative average response times by type to date 3. Total number of inquiries by type	Quarterly SLA Dashboard Reports and/or as directed by the OA Contract Administrator	N/A
AM-02	Quote Accuracy Consistency (QAC)	The metric measures the consistent accuracy of the quotes being provided to the customer relative to errors related to line items, quantity, pricing, or wrong equipment items or options.	99%	Quote Errors (QE) = Total Number of Quotes resubmitted or modified due to errors Total Quotes (TQ) = Total Number of Quotes $QAC = ((TQ - QE)/TQ)*100$	1. Total number of quotes that were reprocessed, modified, or resubmitted due to errors per reporting period 2. Annual cumulative number of quotes that were reprocessed, modified, or resubmitted due to errors to date 3. Total number of quotes processed per reporting period	Quarterly SLA Dashboard Reports and/or as directed by the OA Contract Administrator	N/A
AM-03	Quote Delivery for Catalog Items (QDCI)	The Contractor must provide quotes within two (2) business day for Hardware currently in the Contractor's catalog to the requesting agency.	100%	On-Time Catalog Item Quote Delivery (CIQD _{on}) = Total Number of quotes with contractor catalog items that are delivered <= 2 Business day Total Catalog Item Quotes (TCIQ) = Total Number of quotes that consist of contractor catalog items $QDCI = (CIQD_{on}/TCIQ)*100$	1. Total Number of quotes that consist of contractor catalog items 2. Total Number of quotes with contractor catalog items that are delivered on or before one (1) Business day per reporting period 3. Total Number of quotes with contractor catalog items that were not delivered on or before one (1) Business day per reporting period 4. Annual cumulative totals for QDCI that are not delivered on time	Quarterly SLA Dashboard Reports and/or as directed by the OA Contract Administrator	N/A
AM-04	Standard Order Delivery (OD)	The Contractor must make delivery within 30 days of PO execution.	100%	On-Time Order Delivery (OD _{on}) = Total Number of orders in which the contractor makes delivery on or within one (1) business day of original promised delivery date Total Orders Processed (TOP) = Total Number of orders processed $OD = (OD_{on}/TOP)*100$	1. Total number of orders processed within the reporting period 2. Total number of orders in which the contractor makes delivery on or within one (1) business day of original promised delivery date during the reporting period 3. Total number of orders in which the contractor did not make delivery on or within one (1) business day of original promised delivery date during the reporting period	Quarterly SLA Dashboard Reports and/or as directed by the OA Contract Administrator	2% Initial Credit. 1% additional per week. Capped at 10% total.

Appendix F - Service Level Agreements.xls

					4. Annual cumulative total for orders in which the contractor did not make delivery on or within one (1) business day of original promised delivery date		
AM-05	Expedited Order Delivery (OD)	The Contractor must make delivery within one (1) business day of mutually agreed upon delivery date in writing.	100%	<p>On-Time Order Delivery (OD_{OT}) = Total Number of orders in which the contractor makes delivery on or within one (1) business day of original promised delivery date</p> <p>Total Orders Processed (TOP) = Total Number of orders processed</p> <p>OD = (OD_{OT}/ TOP)*100</p>	<p>1. Total number of orders processed within the reporting period</p> <p>2. Total number of orders in which the contractor makes delivery on or within one (1) business day of original promised delivery date during the reporting period</p> <p>3. Total number of orders in which the contractor did not make delivery on or within one (1) business day of original promised delivery date during the reporting period</p> <p>4. Annual cumulative total for orders in which the contractor did not make delivery on or within one (1) business day of original promised delivery date</p>	<p>Quarterly SLA Dashboard Reports and/or as directed by the OA Contract Administrator</p>	<p>2% Initial Credit. 1% additional per week. Capped at 10% total.</p>

Appendix F - Service Level Agreements.xls

AM-06	Invoice Receipt (IR)	The Contractor must provide invoices for all orders within sixty (60) days from the order date.	100%	<p>On-Time Invoice Receipt (OR_{OT}) = Total number of invoices that were provided to the customer on or within sixty (60) days after order date during the reporting period</p> <p>Total Orders Processed (TOP) = Total Number of orders processed</p> <p>$IR = (OR_{OT} / TOP) * 100$</p>	<ol style="list-style-type: none"> 1. Total number of orders processed within the reporting period 2. Total number of invoices that were provided to the customer on or within sixty (60) days after order date during the reporting period 3. Total number of invoices that were not provided to the customer on or within sixty (60) days after order date during the reporting period 4. Annual cumulative total for the total number of invoices that were not provided to the customer on or within sixty (60) days after order date 	Quarterly SLA Dashboard Reports and/or as directed by the OA Contract Administrator	N/A
AM-07	Defective Hardware Replacement (DHR)	The Contractor must replace any defective or incorrectly delivered hardware at the Contractor's expense by the newly agreed upon delivery date.	100%	<p>Total Hardware Item Replacement Claims (THIRC) = Total number of hardware items for which replacement claims were submitted due to defective or incorrect hardware</p> <p>Total Hardware Items Replaced (THIR) = the total number of hardware items that were replaced due to defective or incorrect hardware, on time</p> <p>$DHR = (THIR / THIRC) * 100$</p>	<ol style="list-style-type: none"> 1. Total number of hardware items for which replacement claims were submitted due to defective or incorrect hardware during the reporting period and annual cumulative totals 2. Total number of hardware items that were replaced due to defective or incorrect hardware during the reporting period and annual cumulative totals 	Quarterly SLA Dashboard Reports and/or as directed by the OA Contract Administrator	2% of the defective order value initially. 1% additional per week. Capped at 10% total.

Appendix F - Service Level Agreements.xls

Service Management							
SLA ID	Performance Metric	Description	Performance Threshold Level	Formula	Data Elements for Measurements & Reporting	Report(s)	Credits

Appendix F - Service Level Agreements.xls

SM-01	Customer Satisfaction Rating (CSR)	The contractor must maintain a score of three (3) or higher on a scale of five (5) for all categories in each lot during an annual customer survey	15	<p>Annual Customer Satisfaction Rating based on survey results for each category greater than or equal to a score of three (3) on a scale of five (5).</p> <p><u>Scale</u></p> <p>1 - Poor</p> <p>2 - Fair</p> <p>3 - Good</p> <p>4 - Very Good</p> <p>5 - Excellent</p> <p>CSR = C1(Score) + C2(Score) + C3(Score) + C4(Score) + C5(Score)</p>	<p>Annual Customer Survey administered by OA will consist of the following categories:</p> <p>C1: Staff Professionalism and Courteousness</p> <p>C2: Responsiveness to customer inquiries, requests, and/or problems</p> <p>C3: Timeliness, completeness, and accuracy of quotes, orders, and invoices</p> <p>C4: Contractor is engaged providing end-to-end guidance and support from initial quote to pre and post equipment delivery</p> <p>C5: Demonstrates through actions a commitment to satisfying customer expectations and resolve problems</p>	Annual Report or as directed by the OA Contract Administrator	N/A
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APPENDIX H - LEASE ACCEPTANCE CERTIFICATE.DOCX

LEASE 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 6100051403 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

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SOFTWARE LICENSE REQUIREMENTS AGREEMENT TEMPLATE

PA Supplier ID Number: _____

AGREEMENT BETWEEN
THE COMMONWEALTH OF PENNSYLVANIA,
ACTING BY AND THROUGH THE GOVERNOR'S OFFICE OF ADMINISTRATION
AND

This Agreement by and between _____ (Licensor) and the Commonwealth of Pennsylvania, acting by and through the Governor's Office of Administration (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.

RECITALS:

WHEREAS, this Agreement sets forth the Commonwealth's Software License Requirements; and,

WHEREAS, Licensor's Software License Agreement is attached hereto as Exhibit A, and made a material part hereof by this reference; and,

WHEREAS, this document, including the Software License Agreement attached as Exhibit A, constitutes the Agreement between the Licensor and the Commonwealth; and

WHEREAS, the terms and conditions set out below in these Software License Requirements, supplement, and to the extent a conflict exists, supersede and take precedence over the terms and conditions of the attached Exhibit A, which is incorporated herein by reference.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and intending to be legally bound hereby, the parties hereto covenant and agree as follows:

- 1. Recitals.** The above recitals are hereby incorporated as a material part of these Software License Requirements.
- 2. Enterprise Language.** The parties agree that more than one agency of the Commonwealth may license products under this Agreement, provided that any use of products by any agency must be made pursuant to one or more executed purchase orders or purchase documents submitted by each applicable agency seeking to use the Licensed Product.

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Products specified in Attachment 1, along with support and services for said products, shall be referred to as “Licensed Products.”

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 any purchase of Licensed Products made by the Commonwealth, and that the terms and conditions of this Agreement become part of the purchase document without further need for execution. The parties agree that the terms of this Agreement supersede and take precedence over the terms included in any 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, including any products eligible for coverage under this Agreement where a legally executed agreement for the same covered product, regardless of version, was not in effect, even if procured by the Commonwealth prior to the effective date of the Agreement. This does not apply to Commonwealth agency agreements executed pursuant to the *Commonwealth Procurement Code*, 62 Pa. C. S. §§ 101—4102, and the *Commonwealth Attorneys’ Act*, 71 P.S. §§ 732-101—732-506.

3. **Choice of Law/Venue/Immunity.** 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. Except as set forth in Section 23 of this Agreement, 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. No provision in this Agreement shall be construed to limit the sovereign immunity of the Commonwealth.
4. **Indemnification.** 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. This provision shall not be construed to limit the sovereign immunity of the Commonwealth.
5. **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 or trademarks, 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,

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finances, and penalties finally awarded by a court of competent jurisdiction, governmental/administrative body or any settlements reached pursuant to 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 Licensor prompt notice of any such claim of which it learns. Pursuant to the *Commonwealth Attorneys Act*, 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, 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. 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 Licensor is not obligated by this Agreement to pay on behalf of the Commonwealth. If OAG delegates such rights to the Licensor, the Commonwealth will cooperate with all reasonable requests of Licensor made in the defense of and/or settlement of a Claim. 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 OAG does not delegate to Licensor the authority to control the defense and settlement of a Claim, the Licensor's obligation under this Section 5 ceases. The Licensor, at its own expense, shall provide whatever cooperation OAG request 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 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 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.

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- (d) If, in the Licensor's opinion, the Licensed Products 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 Licensor's obligation to satisfy any final award, the Licensor may, at its option and expense:
 - (1) substitute functional equivalents for the alleged infringing Licensed Products; or
 - (2) obtain the rights for the Commonwealth to continue the use of such Licensed Products.
- (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:
 - (1) procure the right to continue use of such infringing products;
 - (2) replace them with non-infringing items; or
 - (3) modify them so that they are no longer infringing.
- (f) If use of the Licensed Products is enjoined and the Licensor is unable to do any of the preceding set forth in Section 5(e) above, the Licensor agrees to, upon return of the Licensed Products, refund to the Commonwealth:
 - (1) the license fee paid for the infringing Licensed Products, less the amount for the period of usage of any software; and
 - (2) 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 5 continue without time limit and survive the termination of this Agreement.
- (h) Notwithstanding the above, the Licensor shall have no obligation under this Section 5 for:
 - (1) modification of any Licensed Products provided by the Commonwealth or a third party acting under the direction of the Commonwealth;
 - (2) any material provided by the Commonwealth to the Licensor and incorporated into, or used to prepare the product;

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- (3) use of the Software after Licensor recommends discontinuation because of possible or actual infringement and has provided one of the remedy's under Section 5(e) or Section 5(f) above;
 - (4) use of the Licensed Products in other than its specified operating environment;
 - (5) 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 product, service, or deliverable, with any products, data, or apparatus that the Licensor did not provide;
 - (6) infringement of a non-Licensor product alone;
 - (7) the Commonwealth's use of the Licensed Product beyond the scope contemplated by the Agreement; or
 - (8) 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 5, shall be the Licensor's sole and exclusive obligation for the infringement or misappropriation of intellectual property.

6. **Virus, Malicious, Mischievous or Destructive Programming.** Licensor warrants that the Licensed Product as delivered by 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.

The Commonwealth's exclusive remedy, and Licensor's sole obligation, for any breach of the foregoing warranty shall be for Licensor to (a) replace the Licensed Products with a copy that does not contain Virus, and (b) if the Commonwealth, has suffered an interruption in the availability of its computer system caused by Virus contained in the Licensed Product, reimburse the Commonwealth for the actual reasonable cost to remove the Virus and restore the Commonwealth's most recent back up copy of data provided that:

- (a) the Licensed Products have been installed and used by the Commonwealth in accordance with the Documentation;
- (b) the Licensed Products has not been modified by any party other than Licensor;
- (c) the Commonwealth has installed and tested, in a test environment which is a mirror image of the production environment, all new releases of the Licensed Products and

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has used a generally accepted antivirus software to screen the Licensed Products prior to installation in its production environment.

Under no circumstances shall Licensor be liable for damages to the Commonwealth for loss of the Commonwealth's data arising from the failure of the Licensed Products to conform to the warranty stated above.

7. **Limitation of Liability.** The Licensor's liability to the Commonwealth under this Agreement shall be limited the total dollar amount of purchase orders issued for Licensed Products and services covered by this Agreement during the during the twelve (12)-month period prior to the event giving rise to the damage claim. This limitation does not apply to damages for:
- (a) bodily injury;
 - (b) death;
 - (c) intentional injury;
 - (d) damage to real property or tangible personal property for which the Licensor is legally liable;
 - (e) Licensor's indemnity of the Commonwealth for patent, copyright, trade secret, or trademark protection as set forth in Section 5; or
 - (f) 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.

In no event will the Licensor be liable for consequential, indirect, special or punitive incidental damages unless otherwise specified in the Agreement.

8. **Payment.** The Commonwealth will make purchase through its software reseller as the Commonwealth's agent by way of a purchase order, which shall control with regard to payment amounts and provisions. The Commonwealth's reseller shall purchase Software and services from Licensor, on behalf of the Commonwealth, pursuant to purchase orders to Licensor. Upon acceptance by Licensor of such purchase orders, such purchase orders shall control as to pricing only; additional terms and conditions on such purchase orders are not applicable as the terms of this Agreement and its Exhibits shall control.

The Commonwealth's obligation is to pay its reseller in accordance with its purchase order with the Commonwealth's reseller and Licensor shall look to the Commonwealth's reseller for payment; however, in the event that the Commonwealth's reseller fails to pay Licensor in accordance with the terms of Exhibit A, the Commonwealth understands and agrees that, other than collection (for which Licensor shall proceed only against the Commonwealth's reseller) Licensor shall notify the Commonwealth of such default and may exercise against

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the Commonwealth such other remedies as Licensor may have for nonpayment under Exhibit A.

9. Termination.

- (a) Licensor may not terminate this Agreement, or an order from any Commonwealth agency issued pursuant to any of the Exhibits to this Agreement, for non-payment; however, as described under Section 8 above, in the event that the Commonwealth's reseller fails to pay Licensor in accordance with the terms of Exhibit A, the Commonwealth understands and agrees that, other than collection (for which Licensor shall proceed only against such reseller) Licensor may exercise against the specific Commonwealth agency that issued a purchase order such other remedies as Licensor may have for nonpayment under Exhibit A solely as it pertains to the specific Commonwealth agency which issued the purchase order.
- (b) The Commonwealth may terminate this Agreement without cause by giving 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).

10. Background Checks:

- (a) Upon prior written request by the Commonwealth, Licensor must, at its expense, arrange for a background check for each of its employees, as well as for the employees of its subcontractors, who will have access to the Commonwealth's IT facilities, either through on site or remote access. Background checks are to be conducted via the Request for Criminal Record Check form and procedure found at <http://www.psp.pa.gov/Pages/Request-a-Criminal-History-Record.aspx>. The background check must be conducted prior to initial access by an IT employee and annually thereafter.
- (b) Before the Commonwealth will permit an employee access to the Commonwealth's facilities, Licensor must provide written confirmation to the office designated by the 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, 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 agency consents, in writing, prior to the access being provided. The agency may withhold its consent at its sole discretion. Failure of Licensor to comply with the terms of this paragraph may result in default of Licensor under its Agreement with the Commonwealth.

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- (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, 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.

11. Confidentiality.

- (a) For purposes of this Agreement, "Confidential Information" of a party shall mean (1) with respect to 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 Commonwealth or pursuant to the terms of any third party agreement to which Commonwealth is a party and (2) with respect to Licensor, all information identified in writing by Licensor as confidential or proprietary to Licensor or its subcontractors.
- (b) 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

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more stringent requirements for data privacy and security. The obligations in this Section 11(b) shall not restrict any disclosure by either party pursuant to any applicable law, or in accordance with the order of any court or government agency of competent jurisdiction (provided that the disclosing party shall give prompt notice to the non-disclosing party of such order in a timeframe to allow the non-disclosing party to resist the disclosure) and, except to the extent provided otherwise by any applicable law, shall not apply with respect to information which:

- (1) is developed by the other party without violating the disclosing party's proprietary rights,
 - (2) is or becomes publicly known (other than through unauthorized disclosure),
 - (3) is disclosed by the owner of such information to a Third Party free of any obligation of confidentiality,
 - (4) 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 Commonwealth and Licensor, or
 - (5) is rightfully received by the disclosing party free of any obligation of confidentiality.
- (c) Each party shall:
- (1) 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.
 - (2) 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.
 - (3) 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.
 - (4) 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) Each party shall bear the cost it incurs as a result of compliance with this Section 11. The obligations in this Section 11 shall not restrict any disclosure by either

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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 order in a timeframe to allow the non-disclosing party to resist the disclosure).

- (e) 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:
- (1) Prepare an un-redacted version of the appropriate document, and
 - (2) Prepare a redacted version of the document that redacts the information that is asserted to be confidential or proprietary information or a trade secret, and
 - (3) 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 65 P.S. § 67.707(b); and
 3. the Licensor is requesting that the document be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests.
 - (4) Submit the two documents with the signed written statement to the Commonwealth.
- (f) When the Agreement expires or terminates, 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 Commonwealth's Confidential Information and/or Data, Licensor will comply with the requirements of Section 11(e), above.
- (g) Additionally, neither the Agreement nor any pricing information related to the Agreement, nor purchase orders issued pursuant to the Agreement, will be deemed confidential.

12. Agency-specific Sensitive and Confidential Commonwealth Data (If applicable).

- (a) 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 subject to various state and federal laws and policies that vary from agency to agency, and from program to program within an agency. If applicable, prior to deployment of

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the Licensed Products on any Commonwealth agency 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, HIPAA Business Associate Agreements, a sample of which is attached hereto as Attachment 2. This sign-off document (a sample of which is attached hereto as Attachment 3), 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 Business Associate Agreement if it is applicable.

- (b) 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 a 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 12 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 12 are in addition to and not in lieu of other requirements of this Agreement, its Exhibits and Attachments, having to do with data privacy and security, including but not limited to the requirement that the Licensor comply with the Commonwealth's *Requirements for Non-Commonwealth Hosting Applications/Services*, and all applicable Commonwealth ITPs, which can be found at <https://www.oa.pa.gov/Policies/Pages/itp.aspx>.
- (e) Licensor shall conduct additional background checks, in addition to those required in Section 10 of this Agreement, 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.

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

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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) 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:
 - (1) Maintaining a valid and up to date registrations and certifications; and
 - (2) Complying with all data protection legislation applicable to cross border data flows of personal data and required security measures for personal data.
 - (d) Additionally, neither the Agreement nor any pricing information related to the Agreement, nor purchase orders issued pursuant to the Agreement, will be deemed confidential.
- 14. Publicity/Advertisement.** The Licensor must obtain written Commonwealth approval prior to mentioning the Commonwealth or a Commonwealth agency in an advertisement, endorsement, or any other type of publicity. This includes the use of any trademark or logo.
- 15. Portability.** The parties agree that a Commonwealth agency may move a Licensed Product from machine to machine, whether physical or virtual, and to other locations, where those machines and locations are internal to the Commonwealth or to a Commonwealth contractor, as long as such relocation and the use being made of the Licensed Product comports with the license grant and restrictions. Notwithstanding the foregoing, a Commonwealth agency may move the machine or appliance provided by the Licensor upon which the Licensed Product is installed.
- 16. Taxes-Federal, State and Local.** 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 16 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

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of tangible personal property or taxable services used or transferred in connection with the performance of a construction contract.

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

Commonwealth will perform a self-audit upon the request of Licensor, which request may not occur more often than annually, and report any change in user count (hereinafter "True up number"). Commonwealth shall notify 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, Commonwealth will make an additional purchase of the Licensed Products through its reseller, which is equivalent to the additional users. This Section 17 sets out the sole software license audit right under this Agreement.

- 18. List of Licensed Products.** Attached hereto and made a part hereof by this reference is Attachment 1, which sets out a list of products that may be licensed under this Agreement. With the consent of Commonwealth, the list of products on Attachment 1 may be updated by Licensor providing Commonwealth with a revised Attachment 1 that adds the new product to the list. In Commonwealth's discretion, its consent may be provided either via written communication directly to the Licensor or by providing a copy of said notice to the Commonwealth's software reseller to update Attachment 1.

No amendment will be required to add a new Licensed Product to the list. If, however, the Licensor desires to add a Licensed Product to the list that requires different license terms, an amendment to this Agreement or a new agreement will be required.

- 19. Right-to-Know Law.**

- (a) The Pennsylvania *Right-to-Know Law*, 65 P.S. §§ 67.101—3104 ("RTKL"), applies to this Agreement. For the purpose of these provisions, the term "the Commonwealth" shall refer to the contracting Commonwealth agency.
- (b) If the Commonwealth needs the Licensor's assistance in any matter arising out of the RTKL related to this Agreement, it shall notify the Licensor using the legal contact information provided in this Agreement. The Licensor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.

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- (c) Upon written notification from the Commonwealth that it requires the Licensor's assistance in responding to a request under the RTKL for information related to this Agreement that may be in the Licensor's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), the Licensor shall:
 - (1) Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Licensor's possession arising out of this Agreement that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
 - (2) Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Agreement.
- (d) If the Licensor 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 Licensor considers exempt from production under the RTKL, the Licensor 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 Licensor explaining why the requested material is exempt from public disclosure under the RTKL.
- (e) The Commonwealth will rely upon the written statement from the Licensor 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 Licensor shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth's determination.
- (f) If the Licensor fails to provide the Requested Information within the time period required by these provisions, the Licensor 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 Licensor's failure, including any statutory damages assessed against the Commonwealth.
- (g) The Commonwealth will reimburse the Licensor 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 Licensor 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 Licensor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall

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hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Licensor's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Licensor 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 Licensor's duties relating to the RTKL are continuing duties that survive the expiration of this Agreement and shall continue as long as the Licensor has Requested Information in its possession.
- 20. Third party software.** If the software 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) In the event of a controversy arising from the Agreement or 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.
 - (b) If the Licensor or the contracting officer requests mediation and the other party agrees, the contracting officer shall promptly make arrangements for mediation. Mediation shall be scheduled so as to not delay the issuance of the final determination beyond the required 120 days after receipt of the claim if mediation is unsuccessful. If mediation is not agreed to or if resolution is not reached through mediation, the contracting officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the contracting officer and the Licensor. The contracting officer shall send 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.

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- (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 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 or Purchase Order.
- 23. Insurance.** Licensor shall procure and maintain at its expense or cause to be maintained by any agents, contractors and subcontractors, as appropriate, the following types of insurance or maintain such self-insurance plans as shall be sufficient to insure against any claims, covering Licensor, its employees, agents, contractors and subcontractors:
- (1) Worker's Compensation Insurance for all of Licensor's employees and those of any subcontractor engaged in performing Services in accordance with the *Worker's Compensation Act* (77 P.S. § 101, *et seq.*).
 - (2) Commercial general liability insurance providing coverage from claims for damages for personal injury, death and property of others. 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 the Commonwealth.
 - (3) 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 activities) in the amount of \$5,000,000, per accident/occurrence/annual aggregate.
 - (4) Technology Products Liability/Professional Liability/Errors & Omissions Insurance in the aggregate amount of not less than \$5,000,000.
 - (5) Comprehensive crime insurance in an amount of not less than \$5,000,000 per claim.
 - (6) 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 \$5,000,000, per occurrence.

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- (b) Prior to the expiration of any then effective insurance policy, Contractor shall furnish to Commonwealth certificates of insurance or other appropriate documentation (including evidence of renewal of insurance) evidencing all coverage referenced in this Section 23, as applicable, and naming Commonwealth as an additional insured to the extent of Licensor's indemnities contained in this Agreement. Licensor shall have included in all policies of insurance required hereunder a waiver by the insurer of all right of subrogation against Commonwealth in connection with any loss or damage thereby insured against. Such certificates or other documentation will include a provision whereby 30 days' notice must be received by Commonwealth prior to coverage cancellation or alteration of the coverage by either Licensor or its Subcontractors or the applicable insurer. Such cancellation or alteration shall not relieve Licensor of its continuing obligation to maintain insurance coverage in accordance with this Section 23.
 - (c) Licensor agrees to maintain such insurance for the life of any applicable purchase order issued pursuant to the Agreement.
 - (d) Upon request to and approval by the Commonwealth, Licensor's self-insurance of the types and amounts of insurance set for above shall satisfy the requirements of this provision, provided the Commonwealth may request of Licensor evidence each year ,during the term of the purchase order issued under the Agreement, that Licensor has sufficient assets to cover such losses.
- 24. Federal Requirements.** If applicable, in addition to the requirements set forth in Section 12 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 3), in addition to any applicable requirements of Section 12 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 shall not contain ink signatures by the Commonwealth. The Licensor understands and agrees that the receipt of an electronically-printed Agreement with the printed name of the Commonwealth purchasing agent constitutes a valid, binding contract with the Commonwealth. The printed name of the purchasing agent represents the signature of that individual who is authorized to bind the Commonwealth to the obligations contained in the Agreement. The printed name also indicates that all approvals required by Commonwealth contracting procedures have been obtained.
- 26. 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.

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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 and 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 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
OFFICE OF ADMINISTRATION**

See paragraph 25

APPROVED:

See paragraph 25
Comptroller

APPROVED AS TO FORM AND LEGALITY:

See paragraph 25
Office of Chief Counsel

See paragraph 25
Office of General Counsel

See paragraph 25
Office of Attorney General

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ATTACHMENT 1

LIST OF LICENSED PRODUCTS

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

Licensed Product:

The Licensed Product includes (list all titles covered by this agreement):

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Attachment 2

Business Associate Agreements as provided by Agencies may differ:

**COMMONWEALTH OF PENNSYLVANIA
SAMPLE BUSINESS ASSOCIATE AGREEMENT**

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*, [73 P.S. § 2301--2329](#), all as amended, 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.

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- (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 other than as permitted or required by this Addendum, as requested by Covered Entity, or as required by law and agency guidance.

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- (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 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

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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 Section 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 Section 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 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

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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 Section 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 Section 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.
- (p) **Termination by Commonwealth.** Business Associate authorizes termination of this Agreement by the Commonwealth if the Commonwealth determines, in its sole

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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 related regulations, the Privacy Rule or the Security Rule, all as amended, if done by Covered Entity.

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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 3

**Sign-Off Document No. [redacted], under Agreement No. [redacted]
Between
[Licensor [redacted]]. and the Commonwealth of PA, [Agency]
[Licensor [redacted]] Agency-level Deployment**

This document becomes, upon its execution by the signatories named below, a legally valid, binding part of Software License Requirements Agreement No. [redacted] between the Commonwealth and [redacted] (Licensor)., and is subject to the terms of that Agreement.

1. Scope of Deployment (need not be entire agency):

2. Nature of Data implicated or potentially implicated:

3. Agency Policies to which Licensor. is subject (incorporated by reference):

4. Background checks (describe if necessary):

5. Additional requirements (describe with specificity):

6. 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 [redacted]]
Authorized Signatory and Date:** _____

Policy Driven Adoption for Accessibility (PDAA): Vendor Self-Assessment

This assessment allows vendor organizations to describe how they are currently implementing digital accessibility policy and practices within their organizations. Please complete this form by checking a box for each topic that most closely match the current state of your organization.

The assessment is not a substitute for other requested accessibility information such as VPATs. For additional information, contact Raymond Jaime, Issuing Officer @RA-GSITPROCUREMENT@pa.gov.

Section 1: Organization information

Organization Name: MJM Systems
Organization Address: 285 Davidson Avenue
Suite 202
Somerset, NJ 08873
Responder Contact Information: James Lincoln
james.lincoln@mjmssystems.com
302-547-7695
Date Assessment Completed August 1st, 2021

Section 2: Organization Type

My organization is a (choose one or more if applicable):

- Manufacturer: My organization develops and sells its own digital products / services
- Service Provider: My organization sells IT development services
- Integrator: My organization develops customer solutions using a combination of products / services from manufacturers and products / components developed by my organization
- Reseller or Catalogue Supplier: Does not develop or have its own products, but offers COTS third party products

Section 3: PDAA Core Criteria Assessment

For each criterion, please select the one status statement that is most relevant to your organization today.

Develop, implement, and maintain a digital accessibility policy.

- My organization has no plan to have a digital accessibility policy. (If selected, skip to next section, or provide comments at the end of this section)
 - a. Having a digital accessibility policy.
 - My organization is developing a digital accessibility policy.
 - My organization is finalizing a digital accessibility policy.
 - My organization has approved a digital accessibility policy.

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- b. Having appropriate plans in place to implement and maintain the policy.
- My organization is developing plans to implement our digital accessibility policy and ensure that it is maintained.
 - My organization has completed planning for initial implementation and maintenance of our accessibility policy.
 - My organization has approved plans for accessibility policy implementation and maintenance.
- c. Establishing metrics and tracking progress towards achieving compliance to the policy.
- My organization is identifying metrics that can be used to gauge policy compliance.
 - My organization is collecting metrics and has begun designing progress reporting based on them.
 - My organization is tracking progress on policy adoption and continues to refine the metrics.
- d. Comments (Provide any comments or additional information on defining, implementing, and maintaining a digital accessibility policy here.)

Establish and maintain an organizational structure that enables and facilitates progress in digital accessibility.

- My organization has no plan to develop a governance system to support digital accessibility. (If selected, skip to next section, or provide comments at the end of this section.)
- a. Developing an organization wide governance system.
- My organization is investigating opportunities to improve organization wide governance for digital accessibility.
 - My organization is finalizing plans that will result in an organization wide governance system.
 - My organization has approved plans for an organization wide governance system.
- b. Designating one or more individuals responsible for implementation.
- My organization has identified key individuals in the implementation process.
 - My organization has assigned implementation duties and responsibilities to appropriate individuals.
- c. Implementing reporting/decision mechanism and maintain records.
- My organization is developing tools and procedures for tracking digital accessibility issues.
 - My organization is tracking and keeping records of digital accessibility reporting and decisions.
 - My organization uses reports to make organizational changes to improve digital accessibility.
- d. Comments (Provide any comments or additional information on establishing and maintaining an organizational structure here.)

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Integrate digital accessibility criteria into key phases of development, procurement, acquisitions, and other relevant business processes.

- **Manufacturers:** Address processes that pertain to your development of digital products.
- **Service providers:** Address processes that pertain to your development of digital services.
- **Integrators:** Address processes that pertain to your integration services and solutions.
- **Catalog Vendor/Reseller:** Address processes that pertain to your reseller or catalogue offerings.

My organization has no plan to integrate accessibility criteria into key business processes. (If selected, skip to next section, or provide comments at the end of this section.)

a. Identifying candidate processes for criteria integration.

- My organization has a plan to identify and evaluate its key business processes for accessibility gaps.
- My organization has evaluated its key business processes for accessibility gaps and is developing plans to better integrate accessibility criteria into these processes.
- My organization has approved plans to integrate accessibility criteria into these processes.

b. Implementing process changes.

- My organization has begun modifying its key business processes to integrate accessibility criteria.
- My organization has completed accessibility criteria modification for some of its key business processes and has begun using these modified processes.
- My organization has completed accessibility criteria modification for most of its key business processes and has begun using these modified processes.

c. Integrate fully into all key processes.

- My organization has fully integrated accessibility criteria into all its key business processes and is using these processes to improve the accessibility of its product / service offerings.
- My organization has fully integrated accessibility criteria ACROSS its key business processes and is using these integrated processes to improve the accessibility of its product / service offerings.

d. Comments (Provide any comments or additional information on integrating digital accessibility criteria into processes here.)

Provide processes for addressing inaccessible digital content.

- **Manufacturers:** Address processes that pertain to your development of digital products in a, b, c, and d.
- **Service providers:** Address processes that pertain to your development of digital services in a, b, c, and d.
- **Integrators:** Address processes that pertain to your integration services and solutions in a, b, c, and d.
- **Catalogue Vendor/Reseller:** Address processes that pertain to your reseller or catalogue offerings in e.

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- We do not have plans to provide processes for bringing digital content developed and sold by our organization into accessibility compliance. (If selected, skip to next section, or provide comments at the end of this section.)
- a. Creating plans that include dates for compliance of inaccessible digital content.
- We are developing plans to identify, and test digital content developed and sold by our organization.
 - We have begun identifying and testing for accessibility in digital products / services developed and sold by our organization and are developing plans that include dates for bringing inaccessible digital content into compliance.
 - We perform accessibility testing on all products / serviced developed and sold by our organization and have plans in place that include dates for bringing inaccessible digital content into compliance.
- b. Providing alternate means of access until the digital content is accessible.
- We do not have plans for providing alternate means of access for our organization's digital offerings.
 - We are developing plans for providing alternate means of access for our organization's digital offerings.
 - We are implementing methods providing alternate means of access for our organization's digital offerings.
 - We have fully implemented a repeatable process for providing alternate means for our organization's digital offerings.
- c. Implementing a corrective actions process(s) for handling accessibility technical issues and defects
- We are developing a corrective actions process for handling accessibility technical issues and defects.
 - We are implementing a corrective actions process for handling accessibility technical issues and defects.
 - We have fully implemented an integrated corrective actions process for handling accessibility technical issues and defects.
- d. Maintaining records of identified inaccessible digital content, corrective action, and tracking.
- We plan to develop a record keeping system for tracking the accessibility status of current and future products / services.
 - We plan to develop a record keeping process for corrective action tracking and handling of accessibility related issues / defects.
 - We have a record keeping system for tracking the accessibility status of current and future products / services.
 - We have a record keeping process for corrective action tracking and handling of accessibility related issues / defects.
 - We have a record keeping system for tracking the accessibility status of current and future products / services and use this system to improve the accessibility of our offerings.

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- We have a record keeping process for corrective action tracking and handling of accessibility related issues / defects and use this system to improve the accessibility of our offerings.
- e. Maintaining records of identified inaccessible digital content, corrective action, and tracking. (Catalogue Vendor/Reseller only)
 - We have a plan to develop a record keeping system for obtaining and tracking accessibility documentation for vendor products and services offered through our organization.
 - We have a record keeping system for obtaining and tracking accessibility documentation for vendor products and services offered through our organization.
 - We have a record keeping system for obtaining and tracking accessibility documentation for vendor products and services offered through our organization and use this system to improve the accessibility of our offerings.
- f. Section 4 Comments (Provide any comments or additional information on this section here.)

Ensure the availability of relevant digital accessibility skills within (or to) the organization.

- We do not have plans in place to define, identify existing, or acquire digital accessibility skills. (If selected, skip to next section, or provide comments at the end of this section.)
 - a. Defining skills/job descriptions.
 - We have defined general skills and knowledge needs for digital accessibility.
 - We have identified the fields of practice that require at least some level of accessibility knowledge and/or skills (examples include, but are not limited to: product manager, project manager, product/system designer, application architect, application developer, quality assurance tester, and /or training/instructional designer.)
 - We have mapped key accessibility skills and knowledge needs to specific fields of practice.
 - b. Identifying existing resources that match up and address gaps.
 - We have performed a gap analysis correlating accessibility skills and knowledge and current resources.
 - We have organized the gaps in order of priority.
 - c. Managing progress in acquiring skills and allocating qualified resources.
 - We have a high-level management plan in place to acquire accessibility skills and/or allocate those resources.
 - We have developed a training plan for in-house resources and identified external resources for training and/or augmentation.
 - We have developed a process to track resource training and augmentation.
 - All resources have the appropriate skills and continuous monitoring and improvement systems are in place.
 - d. Comments (Provide any comments or additional information on the availability of relevant digital accessibility skills within the organization here.)

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Make information regarding digital accessibility policy, plans, and progress available to customers.

- We do not have a plan to make our accessibility policy or other accessibility information publicly available. (If selected, skip to next section, or provide comments at the end of this section.)
 - Our digital accessibility policy is publicly available.
 - Our accessibility policy and documentation (VPATs, etc.) for some products is publicly available or available upon request.
 - We are implementing an accessibility support program within our organization to address questions related to our accessibility documentation.
 - Our accessibility policy and documentation (VPATs, etc.) for all released products is complete and publicly available or available upon request.
 - We are beginning to make other accessibility technical information available such as how accessibility testing is performed.
 - We make accessibility information available beyond policy and VPAT information including information on how accessibility testing is performed and other information that demonstrates our organization's capability to produce accessible product / services.
 - We have a fully implemented accessibility support program within our organization to provide requested documentation and address questions related to the accessibility of our products.

Comments (Provide any comments or additional information on making digital accessibility policy, plans and progress available to customers here.)

Dell Accessibility Conformance Report

VPAT® Version 2.1 – March 2018

Name of Product/Version: Dell EMC PowerEdge R440

Product Description: Server

Contact information: Susan Samok / susan_samok@federal.dell.com

Notes: This is a HW VPAT . Dell.com/support has a standalone VPAT, IDRAC has a standalone VPAT. Third party HW/SW is deferred to the Third party.

Evaluation Methods Used: This hardware product was evaluated for accessibility standards conformance using established best practices and manual inspection tools
Applicable Standards/Guidelines

Applicable Standards/Guidelines

This report covers the degree of conformance for the following accessibility standard/guidelines:

Standard/Guideline	Included In Report
Web Content Accessibility Guidelines 2.0, at http://www.w3.org/TR/2008/REC-WCAG20-20081211/	Level A (No) Level AA (No) Level AAA (No)

<p>Revised Section 508 standards as published by the U.S. Access Board in the Federal Register on January 18, 2017</p> <p>Corrections to the ICT Final Rule as published by the US Access Board in the Federal Register on January 22, 2018</p>	<p>(Yes)</p>
<p>EN 301 549 Accessibility requirements suitable for public procurement of ICT products and services in Europe, - V1.1.2 (2015-04) at http://mandate376.standards.eu/standard</p>	<p>(No)</p>

Terms

The terms used in the Conformance Level information are defined as follows:

- **Supports:** The functionality of the product has at least one method that meets the criterion without known defects or meets with equivalent facilitation.
- **Supports with Exceptions:** Some functionality of the product does not meet the criterion.
- **Does Not Support:** The majority of product functionality does not meet the criterion.
- **Not Applicable:** The criterion is not relevant to the product.
- **Not Evaluated:** The product has not been evaluated against the criterion. This can be used only in WCAG 2.0 Level AAA.

WCAG 2.0 Report

Tables 1 and 2 also document conformance with:

- EN 301 549: Chapter 9 - Web, Chapter 10 - Non-Web documents, Section 11.2.1- Non-Web Software (excluding closed functionality), and Section 11.2.2 - Non-Web Software (closed functionality).
- Revised Section 508: Chapter 5 – 501.1 Scope, 504.2 Content Creation or Editing, and Chapter 6 – 602.3 Electronic Support Documentation.

Note: When reporting on conformance with the WCAG 2.0 Success Criteria, they are scoped for full pages, complete processes, and accessibility-supported ways of using technology as documented in the [WCAG 2.0 Conformance Requirements](#).

Table 1: Success Criteria, Level A

Notes: This is HW and not an application, therefore the WCAG table has been removed

Table 2: Success Criteria, Level AA

Notes: This is HW and not an application, therefore the WCAG table has been removed

Table 3: Success Criteria, Level AAA

Notes: This is HW and not an application, therefore the WCAG table has been removed

2017 Section 508 Report

Notes: Note Chapter 5 SW has been removed

Chapter 3: Functional Performance Criteria (FPC)

Notes:

Criteria	Conformance Level	Remarks and Explanations
302.1 Without Vision	Supports with exceptions	User does not need vision to turn this product on or off, the unit is designed to be set up and remain on, however status associated to the HW is done so with either a display status/menu or colored LED. There is IDRAC for remote access but this application has some issues with

Criteria	Conformance Level	Remarks and Explanations
		accessibility associated to screen readers, therefore the supports with exceptions
302.2 With Limited Vision	Supports with exceptions	User does not need vision to turn this product on or off, however status associated to the HW is done so with either a display status/menu or colored LED. The status may prove a challenge depending on the degree of the limited site There is IDRAC for remote access but this application has some issues with accessibility associated to screen readers, therefore the supports with exceptions
302.3 Without Perception of Color	Supports with exceptions	If the server uses a menu display, there is text equivalent. For LED status, color is the only means of status on the server, however IDRAC can be used remotely to view the status of the unit, where color is not the only means of communicating status
302.4 Without Hearing	Supports	User hearing is not required
302.5 With Limited Hearing	Supports	User hearing is not required
302.6 Without Speech	Supports	User speech is not required to operate the product
302.7 With Limited Manipulation	Supports	Product provides at least one mode of operation that does not require fine motor control or simultaneous manual operations. Note if there is a display menu, usage of the up and down, next option may be deemed as needing fine motor skills for the button usage. IDRAC is an alternative to this status.
302.8 With Limited Reach and Strength	Supports	Placement of the product is up to the end user, this product is intended to sit in a

Criteria	Conformance Level	Remarks and Explanations
		server racking cabinet
302.9 With Limited Language, Cognitive, and Learning Abilities	Supports with exceptions	Usage of this type of equipment can be used with limited language . This equipment is intended to be used by a trained IT professional, therefore not a product designed for persons with cognitive and learning abilities

Chapter 4: Hardware

Notes:

Criteria	Conformance Level	Remarks and Explanations
402 Closed Functionality	Heading cell – no response required	Heading cell – no response required
402.1 General	Heading cell – no response required	Heading cell – no response required
402.2 Speech-Output Enabled	Heading cell – no response required	Heading cell – no response required
402.2.1 Information Displayed On-Screen	Not Applicable	This product is not defined as closed functionality
402.2.2 Transactional Outputs	Not Applicable	This product is not defined as closed functionality
402.2.3 Speech Delivery Type and Coordination	Not Applicable	This product is not defined as closed functionality
402.2.4 User Control	Not Applicable	This product is not defined as closed functionality
402.2.5 Braille Instructions	Not Applicable	This product is not defined as closed functionality
402.3 Volume	Heading cell – no response required	Heading cell – no response required
402.3.1 Private Listening	Not Applicable	This product is not defined as closed functionality
402.3.2 Non-private Listening	Not Applicable	This product is not defined as closed functionality
402.4 Characters on Display Screens	Not Applicable	This product is not defined as closed functionality

Criteria	Conformance Level	Remarks and Explanations
402.5 Characters on Variable Message Signs	Not Applicable	This product is not defined as closed functionality
403 Biometrics	Heading cell – no response required	Heading cell – no response required
403.1 General	Not Applicable	The product reviewed did not have Biometrics in the HW
404 Preservation of Information Provided for Accessibility	Heading cell – no response required	Heading cell – no response required
404.1 General	Supports	This product does not remove non-proprietary information provided for accessibility or will restore it upon delivery.
405 Privacy	Heading cell – no response required	Heading cell – no response required
405.1 General	Supports	The product provides the same degree of privacy of input and output to all individuals
406 Standard Connections	Heading cell – no response required	Heading cell – no response required
406.1 General	Supports	Industry Standard ports are used
407 Operable Parts	Heading cell – no response required	Heading cell – no response required
407.2 Contrast	Supports	Keys and controls are light on dark
407.3 Input Controls	Heading cell – no response required	Heading cell – no response required
407.3.1 Tactilely Discernible	Supports	Controls are tactilely discernible
407.3.2 Alphabetic Keys	Not Applicable	This product does not have a keyboard, it will support an external keyboard
407.3.3 Numeric Keys	Not Applicable	This product does not have a keyboard, it will support an external keyboard
407.4 Key Repeat	Not Applicable	This product does not have key repeat
407.5 Timed Response	Not Applicable	This HW does not have a timed response.
407.6 Operation	Supports with exceptions	The product can be used with one hand and may not require tight grasping, pinching, or twisting of the wrist, for daily operation. If the enduser needs to pull from rack, or replace drives as part of their role, may result in some grasping, or pinching. The force required to activate

Criteria	Conformance Level	Remarks and Explanations
		operable parts is less than 5 pounds (22.2 N),
407.7 Tickets, Fare Cards, and Keycards	Not Applicable	The unit reviewed did not have tickerts, fare cards or key cards
407.8 Reach Height and Depth	Heading cell – no response required	Heading cell – no response required
407.8.1 Vertical Reference Plane	Supports	The end user set up will determine this compliance
407.8.1.1 Vertical Plane for Side Reach	Supports	The end user set up will determine this compliance
407.8.1.2 Vertical Plane for Forward Reach	Supports	The end user set up will determine this compliance
407.8.2 Side Reach	Supports	The end user set up will determine this compliance
407.8.2.1 Unobstructed Side Reach	Supports	The end user set up will determine this compliance
407.8.2.2 Obstructed Side Reach	Supports	The end user set up will determine this compliance
407.8.3 Forward Reach	Supports	The end user set up will determine this compliance
407.8.3.1 Unobstructed Forward Reach	Supports	The end user set up will determine this compliance
407.8.3.2 Obstructed Forward Reach	Supports	The end user set up will determine this compliance
407.8.3.2.1 Operable Part Height for ICT with Obstructed Forward Reach	Supports	The end user set up will determine this compliance
407.8.3.2.2 Knee and Toe Space under ICT with Obstructed Forward Reach	Supports	The end user set up will determine this compliance
408 Display Screens	Heading cell – no response required	Heading cell – no response required
408.2 Visibility	Supports	If this product includes a menu display, the display will be visible depending on the placement of the product.
408.3 Flashing	Supports	This product does not have a flashing

Criteria	Conformance Level	Remarks and Explanations
		display. LEDs do not flash more than 3 flashes in any one second
409 Status Indicators	Heading cell – no response required	Heading cell – no response required
409.1 General	Does not support	Status indicators on the hardware are discernible visually, on the hardware they are not discernible with touch or sound. IDrac can be used as alternate form of status with assistive technology for sound, via a screen reader, however IDrac has some issues with ATs
410 Color Coding	Heading cell – no response required	Heading cell – no response required
410.1 General	Supports with exceptions	If the product comes with a display menu there is a text equivalent that is not dependent on color, however color is the primary means of conveying drive status, with green, red, amber lights. On /Off blue or white light.
411 Audible Signals	Heading cell – no response required	Heading cell – no response required
411.1 General	Supports	Audible signals or cues are not used as the only means of conveying information, indicating an action, or prompting a response.
412 ICT with Two-Way Voice Communication	Heading cell – no response required	Heading cell – no response required
412.2 Volume Gain	Heading cell – no response required	Heading cell – no response required
412.2.1 Volume Gain for Wireline Telephones	Not Applicable	This product does not provide two way communication
412.2.2 Volume Gain for Non-Wireline ICT	Not Applicable	This product does not provide two way communication
412.3 Interference Reduction and Magnetic Coupling	Heading cell – no response required	Heading cell – no response required
412.3.1 Wireless Handsets	Not Applicable	This product does not provide two way communication
412.3.2 Wireline Handsets	Not Applicable	This product does not provide two way

Criteria	Conformance Level	Remarks and Explanations
		communication
412.4 Digital Encoding of Speech	Not Applicable	This product does not provide two way communication
412.5 Real-Time Text Functionality	Reserved for future	Reserved for future
412.6 Caller ID	Not Applicable	This product does not provide two way communication
412.7 Video Communication	Not Applicable	This product does not provide two way communication
412.8 Legacy TTY Support	Heading cell – no response required	Heading cell – no response required
412.8.1 TTY Connectability	Not Applicable	This product does not provide two way communication
412.8.2 Voice and Hearing Carry Over	Not Applicable	This product does not provide two way communication
412.8.3 Signal Compatibility	Not Applicable	This product does not provide two way communication
412.8.4 Voice Mail and Other Messaging Systems	Not Applicable	This product does not provide two way communication
413 Closed Caption Processing Technologies	Heading cell – no response required	Heading cell – no response required
413.1.1 Decoding and Display of Closed Captions	Not Applicable	This product does not have closed captioning decoding capability it will stream video with closed captioning capability
413.1.2 Pass-Through of Closed Caption Data	Supports	This product can pass through closed caption video, but does not have any closed caption decoding
414 Audio Description Processing Technologies	Heading cell – no response required	Heading cell – no response required
414.1.1 Digital Television Tuners	Not Applicable	This product does not have a TV Tuner
414.1.2 Other ICT	Not Applicable	This product does not have audio description controls
415 User Controls for Captions and Audio Descriptions	Heading cell – no response required	Heading cell – no response required
415.1.1 Caption Controls	Not Applicable	This product does not provide operable parts for volume control, therefore does

Criteria	Conformance Level	Remarks and Explanations
		not provide operable parts for caption selection. If the product has a Microsoft OS installed. The Microsoft windows OS has some settings for Closed Captioning, Dell defers to Microsoft.com
415.1.2 Audio Description Controls	Not Applicable	This product does not provide operable parts for program selection, therefore does not provide operable parts for the selection of audio description. If the product has a Microsoft windows OS installed, it does have audio description controls in ease of access Dell defers to Microsoft.com.

Chapter 5: Software

Notes: This product is HW and not SW, therefore Chapter 5 table has been removed

Chapter 6: Support Documentation and Services

Notes:

Criteria	Conformance Level	Remarks and Explanations
<i>601.1 Scope</i>	Heading cell – no response required	Heading cell – no response required
<i>602 Support Documentation</i>	Heading cell – no response required	Heading cell – no response required
602.2 Accessibility and Compatibility Features	Does not support	Documentation does not list and explain how to use the accessibility and compatibility features
602.3 Electronic Support Documentation	See WCAG 2.0 section	See information in WCAG section
602.4 Alternate Formats for Non-Electronic Support Documentation	Supports with exceptions	It has been stated that Dell will supply documentation in alternate formats however these may not be readily available

Criteria	Conformance Level	Remarks and Explanations
603 Support Services	Heading cell – no response required	Heading cell – no response required
603.2 Information on Accessibility and Compatibility Features	Does not support	ICT support services does not include information on the accessibility and compatibility features
603.3 Accommodation of Communication Needs	Supports	Dell provides a TTY line, chat line, phone line and email to customers to assist with communication needs

EN 301 549 Report

Notes: EN 301 549 is not in scope for Section 508, and the tables have been removed

Legal Disclaimer (Company)

This VPAT[®] is for information purposes only. The information contained in this VPAT[®] represents Dell Technologies view regarding matters discussed herein as of the date of publication. Because of changing market conditions, this VPAT[®] is not a commitment on the part of Dell, and Dell cannot guarantee the accuracy of any information presented after the date of publication. Dell makes no warranties, express or implied.

E202.2 Legacy ICT. Any component or portion of existing ICT that complies with an earlier standard issued pursuant to Section 508 of the Rehabilitation Act of 1973, as amended (as republished in Appendix D), and that has not been altered on or after January 18, 2018, shall not be required to be modified to conform to the Revised 508 Standards.

Dell defers to www.microsoft.com for Windows[®] and Windows[®] application VPATS[®]. Dell defers third party applications that could be placed on this product to the third party supplier.

Dell Accessibility Conformance Report

VPAT® Version 2.1 – March 2018

Name of Product/Version: Dell EMC PowerEdge R840

Product Description: Server

Contact information: Susan Samok / susan_samok@federal.dell.com

Notes: This is a HW VPAT . Dell.com/support has a standalone VPAT, IDRAC has a standalone VPAT. Third party HW/SW is deferred to the Third party.

Evaluation Methods Used: This hardware product was evaluated for accessibility standards conformance using established best practices and manual inspection tools
Applicable Standards/Guidelines

Applicable Standards/Guidelines

This report covers the degree of conformance for the following accessibility standard/guidelines:

Standard/Guideline	Included In Report
Web Content Accessibility Guidelines 2.0, at http://www.w3.org/TR/2008/REC-WCAG20-20081211/	Level A (No) Level AA (No) Level AAA (No)

Revised Section 508 standards as published by the U.S. Access Board in the Federal Register on January 18, 2017 Corrections to the ICT Final Rule as published by the US Access Board in the Federal Register on January 22, 2018	(Yes)
EN 301 549 Accessibility requirements suitable for public procurement of ICT products and services in Europe, - V1.1.2 (2015-04) at http://mandate376.standards.eu/standard	(No)

Terms

The terms used in the Conformance Level information are defined as follows:

- **Supports:** The functionality of the product has at least one method that meets the criterion without known defects or meets with equivalent facilitation.
- **Supports with Exceptions:** Some functionality of the product does not meet the criterion.
- **Does Not Support:** The majority of product functionality does not meet the criterion.
- **Not Applicable:** The criterion is not relevant to the product.
- **Not Evaluated:** The product has not been evaluated against the criterion. This can be used only in WCAG 2.0 Level AAA.

WCAG 2.0 Report

Tables 1 and 2 also document conformance with:

- EN 301 549: Chapter 9 - Web, Chapter 10 - Non-Web documents, Section 11.2.1- Non-Web Software (excluding closed functionality), and Section 11.2.2 - Non-Web Software (closed functionality).
- Revised Section 508: Chapter 5 – 501.1 Scope, 504.2 Content Creation or Editing, and Chapter 6 – 602.3 Electronic Support Documentation.

Note: When reporting on conformance with the WCAG 2.0 Success Criteria, they are scoped for full pages, complete processes, and accessibility-supported ways of using technology as documented in the [WCAG 2.0 Conformance Requirements](#).

Table 1: Success Criteria, Level A

Notes: This is HW and not an application, therefore the WCAG table has been removed

Table 2: Success Criteria, Level AA

Notes: This is HW and not an application, therefore the WCAG table has been removed

Table 3: Success Criteria, Level AAA

Notes: This is HW and not an application, therefore the WCAG table has been removed

2017 Section 508 Report

Notes: Note Chapter 5 SW has been removed

Chapter 3: Functional Performance Criteria (FPC)

Notes:

Criteria	Conformance Level	Remarks and Explanations
302.1 Without Vision	Supports with exceptions	User does not need vision to turn this product on or off, the unit is designed to be set up and remain on, however status associated to the HW is done so with either a display status/menu or colored LED. There is IDRAC for remote access but this application has some issues with

Criteria	Conformance Level	Remarks and Explanations
		accessibility associated to screen readers, therefore the supports with exceptions
302.2 With Limited Vision	Supports with exceptions	User does not need vision to turn this product on or off, however status associated to the HW is done so with either a display status/menu or colored LED. The status may prove a challenge depending on the degree of the limited site There is IDRAC for remote access but this application has some issues with accessibility associated to screen readers, therefore the supports with exceptions
302.3 Without Perception of Color	Supports with exceptions	If the server uses a menu display, there is text equivalent. For LED status, color is the only means of status on the server, however IDRAC can be used remotely to view the status of the unit, where color is not the only means of communicating status
302.4 Without Hearing	Supports	User hearing is not required
302.5 With Limited Hearing	Supports	User hearing is not required
302.6 Without Speech	Supports	User speech is not required to operate the product
302.7 With Limited Manipulation	Supports	Product provides at least one mode of operation that does not require fine motor control or simultaneous manual operations. Note if there is a display menu, usage of the up and down, next option may be deemed as needing fine motor skills for the button usage. IDRAC is an alternative to this status.
302.8 With Limited Reach and Strength	Supports	Placement of the product is up to the end user, this product is intended to sit in a

Criteria	Conformance Level	Remarks and Explanations
		server racking cabinet
302.9 With Limited Language, Cognitive, and Learning Abilities	Supports with exceptions	Usage of this type of equipment can be used with limited language . This equipment is intended to be used by a trained IT professional, therefore not a product designed for persons with cognitive and learning abilities

Chapter 4: Hardware

Notes:

Criteria	Conformance Level	Remarks and Explanations
402 Closed Functionality	Heading cell – no response required	Heading cell – no response required
402.1 General	Heading cell – no response required	Heading cell – no response required
402.2 Speech-Output Enabled	Heading cell – no response required	Heading cell – no response required
402.2.1 Information Displayed On-Screen	Not Applicable	This product is not defined as closed functionality
402.2.2 Transactional Outputs	Not Applicable	This product is not defined as closed functionality
402.2.3 Speech Delivery Type and Coordination	Not Applicable	This product is not defined as closed functionality
402.2.4 User Control	Not Applicable	This product is not defined as closed functionality
402.2.5 Braille Instructions	Not Applicable	This product is not defined as closed functionality
402.3 Volume	Heading cell – no response required	Heading cell – no response required
402.3.1 Private Listening	Not Applicable	This product is not defined as closed functionality
402.3.2 Non-private Listening	Not Applicable	This product is not defined as closed functionality
402.4 Characters on Display Screens	Not Applicable	This product is not defined as closed functionality

Criteria	Conformance Level	Remarks and Explanations
402.5 Characters on Variable Message Signs	Not Applicable	This product is not defined as closed functionality
403 Biometrics	Heading cell – no response required	Heading cell – no response required
403.1 General	Not Applicable	The product reviewed did not have Biometrics in the HW
404 Preservation of Information Provided for Accessibility	Heading cell – no response required	Heading cell – no response required
404.1 General	Supports	This product does not remove non-proprietary information provided for accessibility or will restore it upon delivery.
405 Privacy	Heading cell – no response required	Heading cell – no response required
405.1 General	Supports	The product provides the same degree of privacy of input and output to all individuals
406 Standard Connections	Heading cell – no response required	Heading cell – no response required
406.1 General	Supports	Industry Standard ports are used
407 Operable Parts	Heading cell – no response required	Heading cell – no response required
407.2 Contrast	Supports	Keys and controls are light on dark
407.3 Input Controls	Heading cell – no response required	Heading cell – no response required
407.3.1 Tactilely Discernible	Supports	Controls are tactilely discernible
407.3.2 Alphabetic Keys	Not Applicable	This product does not have a keyboard, it will support an external keyboard
407.3.3 Numeric Keys	Not Applicable	This product does not have a keyboard, it will support an external keyboard
407.4 Key Repeat	Not Applicable	This product does not have key repeat
407.5 Timed Response	Not Applicable	This HW does not have a timed response.
407.6 Operation	Supports with exceptions	The product can be used with one hand and may not require tight grasping, pinching, or twisting of the wrist, for daily operation. If the enduser needs to pull from rack, or replace drives as part of their role, may result in some grasping, or pinching. The force required to activate

Criteria	Conformance Level	Remarks and Explanations
		operable parts is less than 5 pounds (22.2 N),
407.7 Tickets, Fare Cards, and Keycards	Not Applicable	The unit reviewed did not have tickerts, fare cards or key cards
407.8 Reach Height and Depth	Heading cell – no response required	Heading cell – no response required
407.8.1 Vertical Reference Plane	Supports	The end user set up will determine this compliance
407.8.1.1 Vertical Plane for Side Reach	Supports	The end user set up will determine this compliance
407.8.1.2 Vertical Plane for Forward Reach	Supports	The end user set up will determine this compliance
407.8.2 Side Reach	Supports	The end user set up will determine this compliance
407.8.2.1 Unobstructed Side Reach	Supports	The end user set up will determine this compliance
407.8.2.2 Obstructed Side Reach	Supports	The end user set up will determine this compliance
407.8.3 Forward Reach	Supports	The end user set up will determine this compliance
407.8.3.1 Unobstructed Forward Reach	Supports	The end user set up will determine this compliance
407.8.3.2 Obstructed Forward Reach	Supports	The end user set up will determine this compliance
407.8.3.2.1 Operable Part Height for ICT with Obstructed Forward Reach	Supports	The end user set up will determine this compliance
407.8.3.2.2 Knee and Toe Space under ICT with Obstructed Forward Reach	Supports	The end user set up will determine this compliance
408 Display Screens	Heading cell – no response required	Heading cell – no response required
408.2 Visibility	Supports	If this product includes a menu display, the display will be visible depending on the placement of the product.
408.3 Flashing	Supports	This product does not have a flashing

Criteria	Conformance Level	Remarks and Explanations
		display. LEDs do not flash more than 3 flashes in any one second
409 Status Indicators	Heading cell – no response required	Heading cell – no response required
409.1 General	Does not support	Status indicators on the hardware are discernible visually, on the hardware they are not discernible with touch or sound. IDrac can be used as alternate form of status with assistive technology for sound, via a screen reader, however IDrac has some issues with ATs
410 Color Coding	Heading cell – no response required	Heading cell – no response required
410.1 General	Supports with exceptions	If the product comes with a display menu there is a text equivalent that is not dependent on color, however color is the primary means of conveying drive status, with green, red, amber lights. On /Off blue or white light.
411 Audible Signals	Heading cell – no response required	Heading cell – no response required
411.1 General	Supports	Audible signals or cues are not used as the only means of conveying information, indicating an action, or prompting a response.
412 ICT with Two-Way Voice Communication	Heading cell – no response required	Heading cell – no response required
412.2 Volume Gain	Heading cell – no response required	Heading cell – no response required
412.2.1 Volume Gain for Wireline Telephones	Not Applicable	This product does not provide two way communication
412.2.2 Volume Gain for Non-Wireline ICT	Not Applicable	This product does not provide two way communication
412.3 Interference Reduction and Magnetic Coupling	Heading cell – no response required	Heading cell – no response required
412.3.1 Wireless Handsets	Not Applicable	This product does not provide two way communication
412.3.2 Wireline Handsets	Not Applicable	This product does not provide two way

Criteria	Conformance Level	Remarks and Explanations
		communication
412.4 Digital Encoding of Speech	Not Applicable	This product does not provide two way communication
412.5 Real-Time Text Functionality	Reserved for future	Reserved for future
412.6 Caller ID	Not Applicable	This product does not provide two way communication
412.7 Video Communication	Not Applicable	This product does not provide two way communication
412.8 Legacy TTY Support	Heading cell – no response required	Heading cell – no response required
412.8.1 TTY Connectability	Not Applicable	This product does not provide two way communication
412.8.2 Voice and Hearing Carry Over	Not Applicable	This product does not provide two way communication
412.8.3 Signal Compatibility	Not Applicable	This product does not provide two way communication
412.8.4 Voice Mail and Other Messaging Systems	Not Applicable	This product does not provide two way communication
413 Closed Caption Processing Technologies	Heading cell – no response required	Heading cell – no response required
413.1.1 Decoding and Display of Closed Captions	Not Applicable	This product does not have closed captioning decoding capability it will stream video with closed captioning capability
413.1.2 Pass-Through of Closed Caption Data	Supports	This product can pass through closed caption video, but does not have any closed caption decoding
414 Audio Description Processing Technologies	Heading cell – no response required	Heading cell – no response required
414.1.1 Digital Television Tuners	Not Applicable	This product does not have a TV Tuner
414.1.2 Other ICT	Not Applicable	This product does not have audio description controls
415 User Controls for Captions and Audio Descriptions	Heading cell – no response required	Heading cell – no response required
415.1.1 Caption Controls	Not Applicable	This product does not provide operable parts for volume control, therefore does

Criteria	Conformance Level	Remarks and Explanations
		not provide operable parts for caption selection. If the product has a Microsoft OS installed. The Microsoft windows OS has some settings for Closed Captioning, Dell defers to Microsoft.com
415.1.2 Audio Description Controls	Not Applicable	This product does not provide operable parts for program selection, therefore does not provide operable parts for the selection of audio description. If the product has a Microsoft windows OS installed, it does have audio description controls in ease of access Dell defers to Microsoft.com.

Chapter 5: Software

Notes: This product is HW and not SW, therefore Chapter 5 table has been removed

Chapter 6: Support Documentation and Services

Notes:

Criteria	Conformance Level	Remarks and Explanations
<i>601.1 Scope</i>	Heading cell – no response required	Heading cell – no response required
<i>602 Support Documentation</i>	Heading cell – no response required	Heading cell – no response required
602.2 Accessibility and Compatibility Features	Does not support	Documentation does not list and explain how to use the accessibility and compatibility features
602.3 Electronic Support Documentation	See WCAG 2.0 section	See information in WCAG section
602.4 Alternate Formats for Non-Electronic Support Documentation	Supports with exceptions	It has been stated that Dell will supply documentation in alternate formats however these may not be readily available

Criteria	Conformance Level	Remarks and Explanations
603 Support Services	Heading cell – no response required	Heading cell – no response required
603.2 Information on Accessibility and Compatibility Features	Does not support	ICT support services does not include information on the accessibility and compatibility features
603.3 Accommodation of Communication Needs	Supports	Dell provides a TTY line, chat line, phone line and email to customers to assist with communication needs

EN 301 549 Report

Notes: EN 301 549 is not in scope for Section 508, and the tables have been removed

Legal Disclaimer (Company)

This VPAT[®] is for information purposes only. The information contained in this VPAT[®] represents Dell Technologies view regarding matters discussed herein as of the date of publication. Because of changing market conditions, this VPAT[®] is not a commitment on the part of Dell, and Dell cannot guarantee the accuracy of any information presented after the date of publication. Dell makes no warranties, express or implied.

E202.2 Legacy ICT. Any component or portion of existing ICT that complies with an earlier standard issued pursuant to Section 508 of the Rehabilitation Act of 1973, as amended (as republished in Appendix D), and that has not been altered on or after January 18, 2018, shall not be required to be modified to conform to the Revised 508 Standards.

Dell defers to www.microsoft.com for Windows[®] and Windows[®] application VPATS[®]. Dell defers third party applications that could be placed on this product to the third party supplier.

July 22, 2021

MJM
285 Davidson Ave Suite 202
Somerset, NJ, 08873-4153

RE: Dell Technologies Partner Program - Authorized Reseller
Reseller: **MJM**
RFP: **Commonwealth RFP 6100051403 for Enterprise Modular Servers and Services**

This letter confirms that as of the date written above, Reseller identified above is currently an authorized reseller participating in the Dell Technologies Partner Program. This relationship authorizes the Reseller to resell Dell and Dell EMC products and services¹ in accordance with the Reseller Terms of Sale at www.dell.com/resellerterms, Special Purpose Addendum to Dell's Reseller Terms of Sale or the EMC Channel Partner Reseller Agreement as applicable, and the Dell Technologies Partner Program Agreement.

Please feel free to contact your sales representative if you have any questions regarding this letter. We look forward to doing business with you.

Regards,

Signature: *T. Aaron Morris*

Email: Aaron_Morris1@Dell.com

Aaron Morris
Managing Director – Legal
Dell Technologies

¹ This letter is not an authorization to resell Dell or Dell EMC products to Federal end-users or to end-users prohibited by the Dell Technologies Partner Program Agreement, the Dell Technologies Reseller Terms of Sale, Partner's existing EMC Channel Partner Reseller Agreement or any reseller terms applicable to products from a Dell Technologies Strategically Aligned Business. Federal end-user means the United States Government or other entities as authorized in GSA Order ADM 4800.2 as amended or utilizing Dell IT assets in support of USG contracts and/or for internal use as a normal course of business.

**NOTICE OF SMALL BUSINESS SELF-CERTIFICATION
AND SMALL DIVERSE BUSINESS VERIFICATION**



The Department is pleased to announce that
MJM Systems, Inc

has successfully completed the Pennsylvania Department of General Services' process for self-certification as a small business under the Commonwealth's Small Business Contracting Program, and is verified as a Small Diverse Business with the following designation(s):

BUSINESS TYPE(s):

Information Technology Goods & Services

CERTIFICATION NUMBER: **522168-2019-10-SB-W**

CERTIFICATION TYPE: **SMALL DIVERSE BUSINESS**

ISSUE DATE: **10/30/2019**

EXPIRATION DATE: **10/30/2021**

RECERTIFIED DATE:

A handwritten signature in black ink that reads "Kerry L. Kirkland". The signature is written in a cursive style with a large initial 'K'.

Kerry L. Kirkland, Deputy Secretary
Bureau of Diversity, Inclusion & Small Business Opportunities

NOTICE OF SMALL DIVERSE BUSINESS VERIFICATION



The Department is pleased to announce that

MJM Systems, Inc

has successfully completed the Pennsylvania Department of General Services' process for self-certification as a small business under the Commonwealth's Small Business Contracting Program, and is verified as a Small Diverse Business with the following designation(s):

BUSINESS TYPE(s):

Information Technology Goods & Services

CERTIFICATION NUMBER: **522168201910SBW**

CERTIFICATION TYPE: **SMALL DIVERSE BUSINESS**

ISSUE DATE: **11/15/2019**

EXPIRATION DATE: **10/30/2021**

RECERTIFIED DATE:

A handwritten signature in black ink that reads "Kerry L. Kirkland". The signature is written in a cursive style with a large, looped "K" and "L".

Kerry L. Kirkland, Deputy Secretary
Bureau of Diversity, Inclusion & Small Business Opportunities

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, Karen Melillo [title] of MJM Systems, Inc. [name of Contractor] a NJ [place of incorporation] corporation or other legal entity, ("Contractor") located at 285 Davidson Ave Suite 202 Somerset, NJ [address], having a Social Security or Federal Identification Number of 22 8375777, 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:

 8/5/21
Signature/Date
ANN KRATZ
Printed Name/Title

MJM Systems, Inc
Corporate or Legal Entity's Name
 8/5/21
Signature/Date
Karen Melillo President
Printed Name/Title

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> M.J.M. Systems, Inc	
<i>By (Authorized Signature)</i> [Redacted Signature]	
<i>Printed Name and Title of Person Signing</i> Karen Melillo president	<i>Date Executed</i> 8/5/21

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:

MJM Systems, Inc

Contact information for submitting party:

Karen Melillo
285 Davidson Ave Suite 202
Somerset, NJ 08873
732-563
8441

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):

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.

 President 3/5/21
Signature Title Date

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.



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:

<https://www.gsa.gov/Forms/TrackForm/33144>

(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: _____

[Redacted Signature]

TITLE: _____

President

DATE: _____

8/5/21

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

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.

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, Karen Melillo [title] of MJM Systems, Inc. [name of Contractor] a NJ [place of incorporation] corporation or other legal entity, ("Contractor") located at 285 Davidson Ave Suite 202 Somerset, NJ [address], having a Social Security or Federal Identification Number of 22 8375777, 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:

 8/5/21
Signature/Date

ANN KRATZ
Printed Name/Title

MJM Systems, Inc
Corporate or Legal Entity's Name
 8/5/21
Signature/Date

Karen Melillo President
Printed Name/Title

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> M.J.M. Systems, Inc	
<i>By (Authorized Signature)</i> [Redacted]	
<i>Printed Name and Title of Person Signing</i> Karen Melillo president	<i>Date Executed</i> 8/5/21

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:

MJM Systems, Inc

Contact information for submitting party:

Karen Melillo
285 Davidson Ave Suite 202
Somerset, NJ 08873
732-563
8441

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):

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

President

Title

3/5/21

Date

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.



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:

<https://www.gsa.gov/Forms/TrackForm/33144>

(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: _____

President

DATE: _____

8/5/21

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

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.

LOBBYING CERTIFICATION FORM

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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(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:

<https://www.gsa.gov/Forms/TrackForm/33144>

(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: _____

President

DATE: _____

8/5/21

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
POWEREDGE R440	DELL	MALAYSIA
POWEREDGE R840	DELL	MALAYSIA

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: _____

Event Summary - Enterprise Modular Servers

Supplier:	MJM Systems, Inc	Type	Request for Proposal
Number	RFP 6100051403	Stage Title	-
Organization	CommonwealthPA	Currency	US Dollar
Exported on	1/13/2022	Exported by	Raymond Jaime
Payment Terms	-	Sealed Bid	Yes
Intend to Bid	Yes	Bid Total	0.00 USD

Event Dates

Time Zone	EDT/EST - Eastern Standard Time (US/Eastern)
Released	-
Open	7/7/2021 1:00 PM EDT
Close	8/11/2021 1:00 PM EDT
Submission Date	8/11/2021 11:36 AM EDT
Sealed Bid	8/11/2021 1:00 PM
Question Submission Close	8/4/2021 12:00 PM EDT

Prerequisites

★ Required to Enter Bid

1 ★ Instructions To Supplier :

Responsibility to Review.

Certification

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



Supplier Must Also Upload a File:

No

Prerequisite Content:

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.

Questions

RFP Questions

Group 1.1: Technical Questions

- 1.1.1 Please download, complete, and upload the attached Technical Submittal from Buyer Attachments. ★
File Upload
Commonwealth of Pennsylvania - Server Project Bid Response - MJM Systems.pdf
- 1.1.2 Any additional attachments in support of the 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
COPA Server Project RFP Documents.zip
- 1.1.3 I have read and fully understand the attached Service Level Agreements. ★
Yes/No
Yes
- 1.1.4 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 it would be in the best interest of the Commonwealth to waive the pertinent ITP.
Text (Multi-Line)
No response.

Group 1.2: Cost

- 1.2.1 Please use the attached Appendix D Cost Submittal to submit your cost proposal for this procurement. Do not include any assumptions in your submittal. If you do, your proposal may be rejected. ★🔒
File Upload
Appendix D - Cost Submittal - MJM Systems.xlsx

Additional Required Documentation

Group 2.1: Standard Forms

- 2.1.1 Please download, sign and attach the Domestic Workforce Utilization Certification Form. ★
File Upload
Domestic Workforce Utilization Certification - Signed.pdf
- 2.1.2 Please download and complete the attached Reciprocal Limitations Act form. ★
File Upload
Reciporical Limitations Act - Signed.pdf
- 2.1.3 Please download, sign, and attach the Iran Free Procurement Certification and Disclosure Form. ★
File Upload
Iran Free Procurement Certification Form - Signed.pdf
- 2.1.4 Please download, complete, and attach the Trade Secret/Confidential Proprietary Information Notice. ★
File Upload
Trade Secret - Confidential Proprietary Information Notice - Signed.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
Lobbying Certification Form - Signed.pdf
- 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
- 2.1.8** The Commonwealth has determined that this contract will be made available to external procurement activities. Further information can be found below in the attached file.
File Upload
No response.

Group 2.2: Terms and Conditions

- 2.2.1** By submitting a proposal, the Offeror does so on the basis of the attached 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
- 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 authorities). ★
Yes/No
Yes

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.

COSTARS PROGRAM ELECTION TO PARTICIPATE

If awarded a Contract, our firm agrees to sell the awarded items/services at the same prices and/or discounts, and in accordance with the contractual terms and conditions, to registered COSTARS Members who elect to participate in the contract. Our firm also agrees to pay the applicable Administrative Fee (\$1500, or \$500 for a Department of General Services Self-Certified Small Business, or \$166 for a Department of General Services-verified Small Diverse Business) at the beginning of each contract year and upon each contract renewal date.

If you are a Department of General Services Self-Certified Small Business or Department of General Services-verified Small Diverse Business, you must submit a copy of your active Small Business Contracting Program certificate with your bid response.

MJM Systems. Inc

Corporate or Legal Entity Name

 4/25/2022

Signature/Date

Karen Melillo/President

Printed Name/Title